2015

Personal Responsibility for Systemic Inequality

Martha T. McCluskey
University at Buffalo School of Law, mcclusk@buffalo.edu

Recommended Citation
Martha T. McCluskey, Personal Responsibility for Systemic Inequality in Research Handbook on Political Economy and Law 227 (Ugo Mattei & John D. Haskell, eds., Edward Elgar 2015)

This is a draft chapter. The final version is available in Research Handbook on Political Economy and Law edited by Ugo Mattei & John D. Haskell, published in 2016, Edward Elgar Publishing Ltd. https://doi.org/10.4337/9781781005354.00024. The material cannot be used for any other purpose without further permission of the publisher, and is for private use only.

RESEARCH HANDBOOK ON POLITICAL ECONOMY AND THE LAW, Ugo Mattei and John D. Haskell, eds., pp. 227-45 (Edward Elgar Publishing 2015).

PERSONAL RESPONSIBILITY FOR SYSTEMIC INEQUALITY

Martha T. McCluskey
mcclusk@buffalo.edu

I. Personal responsibility as a rationale for inequality

'Equality ha[s] come and gone as a social idea with traction, even among liberal intellectuals,' concludes the American historian Daniel T Rodgers.[1] In this chapter I argue that equality's undoing follows from an economic ideology of law that grounds justice in an illusory divide between individual agency and collective support.

If equality means gaining from government protection rather than from individual production, then equality will appear to come at the cost of responsible action. This conceptual bind operates through two strands of personal responsibility arguments. The first, perhaps more familiar version, legitimates inequality by attributing it to individual failure. In recent global austerity politics, a second theory of personal responsibility legitimates inequality and insecurity even while attributing these harms to systemic failures far beyond individual control.

A. *Personal responsibility for inequality within individual control*

Welfare reform efforts in the United States embraced the first strand of argument in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A prominent rationale for that legislation was that the former national welfare program of income support for impoverished single mothers caused more women to become impoverished single mothers, in a cycle of dependency or moral hazard that

[1] Daniel T Rodgers, *Age of Fracture* (Harvard UP 2011) 271.

effectively rewarded women for bearing and raising children without an employed husband or without sufficient earnings of their own. The reform legislation increased penalties and benefit restrictions in order to induce impoverished parents to seek wage work or marriage or to delay or forgo bearing (or raising) children.

This legislation follows a long tradition of limiting government economic protection to those deemed 'deserving' because of problems beyond their individual control.[2] Loss of income resulting from natural disasters, illness or physical disability, or overt discrimination based on irrelevant, immutable characteristics has sometimes (but not always) served to absolve those affected from individual responsibility for their injuries. Liberal defenders of welfare and regulatory protections often justify egalitarian policies by taking an expansive view of such constraints on individual autonomy, arguing (for instance) that single mothers in poverty often lack sufficient education or health to secure work or wage-earning husbands, or that they lack the social or economic resources to avoid pregnancy.

Yet even with substantial evidence of such barriers to individual economic success, these arguments for welfare support confront a bind. To deserve government aid, one must risk assuming status as essentially undeserving. If individual autonomy is an essential attribute of responsible legal and economic citizenship, then those who deserve protection due to lack of autonomy will also risk appearing incapable of responsible power in government and market. Within this framework, those deemed incapable of autonomy are more likely to deserve government constraint or punishment than support, through policies of surveillance, policing, incarceration or structural adjustment.

---

[2] cf Michele Landis Dauber, *The Sympathetic State: Disaster Relief and the Origins of the American Welfare State* (Univ of Chicago 2012) .

B. *Personal responsibility for inequality beyond individual control*

Further tightening this bind on egalitarian economic policy, the idea of ‘personal responsibility’ is being re-tooled to reach harms deemed largely beyond personal control. The economic crisis that surfaced in 2008 left broad and deep devastation around the globe. The resulting widespread austerity and instability does not lend itself as readily to the standard theory turning economic inequality into a problem of lack of capacity for responsible choice by particularly deviant groups.

Accordingly, the financial crisis raised hopes among some that faltering welfare and regulatory state programs might be shored up by a fresh understanding that systemic problems beyond individual control are a major source of economic loss. Nonetheless, these hopes have been eclipsed by a powerful counter narrative. This story concludes that even though most are blameless for their injuries, this pervasive vulnerability to structural failure is best alleviated by further ensuring that the resulting losses are borne privately and unequally. General austerity is good for both individuals and society, in this chastened view, not so much because it encourages beneficial change (in either individual behaviour or structural conditions) but because it avoids wasting resources on futile or harmful attempts to change inevitable scarcity.

This newly updated ‘personal responsibility’ theme presents systemic unequal harm as an inevitable feature of law and economy, thereby legitimating the message that the best response to systemic suffering is unequal personal surrender rather than collective resistance. Yielding to exploitative power can be turned into an expression of free and powerful personal agency – responsible autonomy– when that unequal power is constructed as natural, benign, or inevitable.

To resist this narrative construing responsible agency as individual submission to systemic deprivation, we must challenge the liberal vision of law and economy that idealizes individual independent agency as the essence of responsible power. Socio-legal theorist Martha Fineman offers a model that replaces the liberal ideal of autonomy with a fundamental premise of universal human vulnerability.[3] Meaningful power, in this view, necessarily and normally operates through collective action and institutions aimed at supporting and protecting resilience in the face of this vulnerability. The liberal ideal of personal autonomy reflects a disembodied illusion of agency and autonomy that masks the ubiquitous (yet unequal) collective protections and support (in family, society, state and market) on which all individual power inevitably depends.[4] Further, the liberal ideal of personal responsibility tends to undermine responsible agency among those most privileged by collective support, by absolving from accountability those whose personal power operates through control of seemingly impersonal, natural or transcendent systems and institutions such as markets, corporations or states. To change this picture, collective support and protection against systemic harm should be understood as a normal and pervasive expression of legal and economic agency, central rather than opposed to individual autonomy, responsibility and power.

II. Personal Responsibility for the Financial Crisis in the United States

A. *Solving Systemic Failure with Individual Sacrifice*

As the 2008 financial crisis unfolded into economic recession, US political parties sharpened a message of personal responsibility to cut government support for social spending and regulation despite harm to those without blame or control.

[3] Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 Emory L J 251.
[4] cf Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press 2004).

Explaining his 2012 proposal to cut popular domestic programs such as home heating aid for the elderly and funds for reducing toxic exhaust on school buses,[5] President Obama explained that his budget required ‘cutting things that I care deeply about’.[6] In order to rebuild the economy ‘from the worst recession in decades’, Obama emphasized that these cuts were the ‘responsible approach’, though likely to undermine beneficial goals: ‘as so many American families must do every day, [this budget] makes tough choices on things we can't afford’.[7]

Republicans in the House of Representatives countered by proposing deeper and broader cuts, such as reductions in unemployment benefits, Medicare’s health care coverage for elderly people, veterans’ programs,[8] and an anti-malarial program that had helped slash mortality among young children in Senegal by one third in just three years.[9] Both major parties have helped to implement severe cuts in state and local government spending, especially targeting children’s health and education.[10] Instead of moral and political outrage at this plunder[11] of protections widely judged beneficial and deserved, the strongest political challenge to these U.S. policies came from those who insisted austerity measures should cut even further into Medicare and Social Security.

These bipartisan austerity efforts treat loss and insecurity as a widespread, pervasive fact of the contemporary economy. In the past few decades, critics of government welfare and regulation have tended to portray economic loss as exceptional,

---

[5] Ron Scherer, ‘Among Obama’s Tough Budget Cuts: Money to Help Needy Pay for Heat’ *Christian Science Monitor* (New York, 2 February 2011); Elizabeth Shogren, ‘Obama Budget Slashes Clean Diesel Program’ National Public Radio (Washington DC, 16 February 2011)..
[6] Office of Press Secretary, The White House, ‘Remarks by the President on Unveiling of the Budget in Baltimore, Maryland’ (Washington DC, 14 February 2011).
[7] Obama for America, ‘President Obama’s 2012 Budget’ <https://my.barackobama.com/page/content/president-obamas-2012-budget> accessed 1 January 2015.
[8] Jean Sahadi, ‘Where GOP Budget Would Bite’ *CNN Money* (New York, 5 April 2011).
[9] Michael Gerson, ‘The GOP’s Door of No Return’ *Washington Post* (15 February 2011).
[10] Paul Krugman, ‘Leaving Children Behind’ *NY Times* (New York, 28 February 2011) A23.
[11] cf Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law is Illegal* (Wiley-Blackwell 2008).

characterized by particular problems of incapacity, deviance, or maladaptation. Similarly, scapegoating of groups such as immigrants, racial minorities, low-income families, and unionized public employees helps fuel recent austerity politics. Nonetheless, the recent surge of energy for cutting social spending and regulatory protections draws much of its power from seemingly gentler arguments.

Addressing state budget austerity, for example, a conservative blogger explained that widespread job loss and debt has left the average American feeling ‘hopeless and helpless’.[12] He nonetheless insisted that ‘personal responsibility’ is the answer, not because he blamed particular groups or behaviours for these problems, but because he claimed that such blaming takes away individual power from those who are innocent. No matter what the cause of the harm, he explained, we should not give in to thinking anyone, especially government, can better solve the problems better than ourselves. Spending cuts in South Carolina, for instance, are leaving parents wondering, ‘What can I do about the budget crisis that will reduce my child's education, force teachers (who get paid not enough now) to pay for supplies out of their own pockets, and cut teachers and administrators to the point of stretching the system too thin?’[13] He suggests parents could respond to this daunting situation by donating a dollar a day to buy necessary supplies for their children’s classrooms, thereby generating tens of millions of dollars that would free teachers from scrounging for resources so that they could devote more energy to improving educational quality. By taking this kind of personal responsibility for problems, rather than asking for others to fix things, he explains we would have ‘no

[12] Charles Reynolds, ‘Personal Responsibility Can Help us Overcome Budget Problems’ *Examiner* (3 February 2011) <http://www.examiner.com/article/personal-responsibility-can-help-us-overcome-budget-problems> accessed 1 January 2015.
[13] Reynolds (n 12).

need for bailouts, welfare, or "stimulus packages"'.[14] This rosy, fuzzy vision goes on to bend personal responsibility into an oddly communitarian image of people 'all act[ing] together for the future of America' removed from the 'politicians who are only in it for themselves'.[15]

This commentator's message of personal responsibility for economic insecurity reflects a US context where it has become normal policy for struggling public schools to enlist schoolchildren as a sales force peddling products for fundraising businesses, or for middle class parents to substitute homeschooling for inadequate public schools. Health policy has taken a similar turn with policies supporting individual medical savings accounts as a solution to inadequate health insurance. Given the erosion of savings for many households, this home-grown approach to funding medical care more often means that families of the seriously ill resort to community basket raffles, spaghetti dinners, benefit concerts and other forms of glorified begging.

This superficially appealing vision of can-do neighborly energy, however, closes off the possibility that 'we' could take back the responsibility and power of actually governing our economy. The fact that it can seem more responsible and effective to lean on similarly struggling neighbors rather than on government for basic social needs (such as education or health care financing) reveals a moral and political vision of profound passivity and submissiveness.

Speaking from a seemingly more centrist political position, National Public Radio reporter Scott Horsley offered a similar personal responsibility message federal budget debates in the post-crisis austerity climate.[16] In contrast to the conservative

---

[14] ibid.
[15] ibid.
[16] Scott Horsley, 'Balancing the Budget: The Problem Might be You' *NPR News* (Washington DC, 16 February 2011).

blogger, Horsley directed his skepticism toward popular sentiment rather than toward political leaders. Horsley noted polling evidence showing broad grassroots support for federal government spending on roads and bridges, education and Medicare. But he did not interpret this as evidence of principled agreement about the public value of collective support for shared risks and investment. Instead, he presented this desire for infrastructure and social spending as irrational and immature thinking, without denying that the risks of crumbling bridges and roads, illness and inadequate or costly educational opportunities require systemic rather than individual solutions. Nonetheless, he disparaged voters for being unwilling to personally pay more for such enhanced public protection, citing polling evidence of strong opposition to broadly applied tax increases (such as gasoline taxes or highway tolls).

Noting this negative response to tax increases, Horsley argued that popular sentiment has for too long pressured elected officials to 'indulg[e] Americans' desire for services, without trying to collect'[17], thereby leading to a $1.6 trillion deficit that he portrays (without further explanation) as the overarching economic problem. His answer: most Americans should take personal responsibility for bearing more costs, either through individual tax increases or sacrifices in vital services. This rationale develops the liberal ideal of autonomy for the post-crisis context of general economic insecurity and loss. Though most of us face increased risk of pervasive harm beyond our individual control, we nonetheless retain individual power and self-sufficiency to the extent we bear the costs of addressing those harms ourselves, rather than spreading the costs of protection and correction to others.

---

[17] ibid.

This view goes beyond the conservative writer's message that responsibility means replacing collective governmental action with individual charity. Outside the overt right-wing, commentators like Horsley are likely to accept that government can more effectively respond to widely shared needs such as health care and transportation infrastructure. Yet they nonetheless tend to assume that this government support requires that the presumed costs fall widely and heavily upon those struggling to stay in or reach the middle class.

If we assume a context of general scarcity matched by a general obligation for the costs of that scarcity, it can seem morally and economically justifiable to cut even the most effective and popular social spending or regulatory protections. President Obama's 2012 budget comments rationalized cutting valuable programs for deserving recipients as the necessary means to broad security in a time when personal and governmental debt has produced systemic economic vulnerability. These examples show how the more we assume innocent victimhood in the face of systemic inequality and instability, the more it can seem that our best hope for reclaiming control and security is to individually shoulder the burdens of that vulnerability. The most responsible people then become those who limit their authority – whether as President, workers, parents, or cancer patients unable to pay for health care – to bravely accepting painful loss. The call to personal responsibility is grounded in a vision of deep and pervasive powerlessness.

The chastening lesson presented by President Obama and echoed by Scott Horsley erases the possibility that general austerity and sacrifice are not the only solutions to widespread economic distress. Horsley misrepresents taxing and spending policies, for example, by implying that the existing system normally and naturally distributes both protections and sacrifices evenly and rationally. He attributes the federal deficit to the indulgence of ordinary Americans seeking personal or social benefits, not (for example) to the previous decade's tax cuts for the rich, or the staggering costs of unpopular foreign military actions, or the recent decades of financial regulatory policies designed to overlook potential instability and risk in favor of maximizing short term gain to financial industry executives and investors. And his analysis assumes that regressive tax policies are the only way to fund broad based social and economic programs, ignoring President Obama's efforts to revoke the previous administration's upper income tax cuts or to reverse the declining share of corporate taxation, or the lack of serious discussion from either party about proposals to tax the kinds of speculative financial gain that led to the recent economic crisis. Further, Horsley's analysis assumes that government spending on education, health and infrastructure drains rather than produces public resources, implicitly denying the possibility that this spending is an investment that will produce offsetting economic gain without tax hikes.

By foreclosing these possibilities, liberal or centrist rhetoric of personal sacrifice paves the way for stronger attacks on government spending from the right-wing, such as the emphasis on personal responsibility by Republican Congress Member and 2012 Vice Presidential candidate Paul Ryan in his prominent policy paper, 'Roadmap for the Future'.[18] Ryan's roadmap attributed economic instability and loss to excessive government regulation, taxing and spending, rather than to the recent dismantling of financial market controls and consumer protections. As the solution, the Roadmap proposed substantial social spending cuts aimed at replacing government dependency

[18] Representative Paul D. Ryan, 'A Roadmap for America's Future Version 2.0: A Plan to Solve America's Long Term Economic and Fiscal Crisis' (January 2010) <http://roadmap.republicans.budget.house.gov/> accessed 1 January 2015.

with self-reliance.[19] It reasoned that increased market pressure for sacrifice and hard work would strengthen the economy by strengthening the American character.[20]

B. *Solving specific failures through collective sacrifice*

But why hasn't the theme of personal responsibility for austerity led to new policies demanding increased sacrifice and accountability from the financial industry at the core of the global economic crisis? The financial crisis shed new light on tremendous inequalities of privilege and power in the US, as a federal government awash in financial industry largess responded with staggering industry bailouts outside normal channels of control and accountability, while Wall Street bonuses and profits grew to new heights. Ironically, popular cynicism about these inequalities has fueled new political energy for popular sacrifice rather than for policies holding those at the top responsible.

III. Specific Power Masked by Systemic Harm

The contemporary construction of the crisis as a widely shared experience of hardship and insecurity beyond individual control sweeps too broadly and indiscriminately. This collective vulnerability is imagined to apply not just to workers, families, small businesses, local governments and developing nations, but also to multinational corporations and their executives and wealthy financiers, as well as to Congress, the Federal Reserve, leading regulatory agencies and the U.S. Presidency. In response to the recent economic crisis, the sense of broadly shared insecurity often works to erase collective power more than to mobilize it. The neoliberal economic

[19] ibid. 1, 14-15.
[20] ibid. 13-15.

narrative helps to construct solidarity in suffering as a natural failure of human rationality and economic capacity rather than as a particularly unequal and intentional appropriation of resources to support some at others' expense.

For example, the 2011 report of the US government's Financial Crisis Inquiry Commission (FCIC) detailed, in hundreds of pages, the fraudulent activity of powerful business leaders, but emphasized collective vulnerability rather than concentrated power.[21] The report acknowledges dramatic failure, stating that the FCIC's mission was to figure out 'how the world's strongest financial system came to the brink of collapse'.[22] It begins by describing staggering and widespread devastation, noting more than 26 Americans out of work, nearly $11 trillion in household wealth lost, over 8 million homeowners in foreclosure or at risk of imminent foreclosure, businesses in recession, and concluding that the 'impacts of this crisis are likely to be felt for a generation'.[23] It emphasizes that such hardship and loss is happening to '[m]any people who abided by all the rules'.[24] Its opening overview takes a stance of shared shock, humbly positioning the Commissioners on the same common ground of insecurity as their fellow citizens, noting that '[l]ike so many Americans' the Commissioners are 'deeply affected' and struggling to find answers in a confusing situation.[25]

The report uses this theme of mass vulnerability to gloss over conflict and power. In fact, the Commissioners were not ordinary Americans caught off guard by economic failure, but some of the major players in a long-developing, deeply contested divide over economic policy and ideology. Chairman Phil Angelides, for example, was

---

[21] US Financial Crisis Inquiry Commission (FCIC), *The Financial Crisis Inquiry Report* (January 2011) xvii –xxviii.
[22] ibid.xvi.
[23] Ibid. xv- xvi.
[24] Ibid. xvi.
[25] ibid. xvi.

defeated in a bid for Governor of California in which he advocated tax hikes for the very rich to fund expanded education. Democratic appointee Byron Georgiou has built a career as a lawyer for organized labour, a proponent of tough safety regulation, and a litigator representing investors in major financial fraud cases such as the Enron and WorldCom scandals. Most famously in her former position leading the Commodity Futures Trading Commission, Commissioner Brooksley Born made heroic and outspoken efforts to regulate the derivatives market, correctly warning of their destabilizing threat, but she was defeated in these efforts by the financial industry and their free-market advocates, such as Larry Summers, Robert Rubin and Alan Greenspan.

The report plays down this leadership and expertise, instead telling the story as if the Commissioners were among those whose trust that the economy was the 'world's strongest' was suddenly and unpredictably shattered. By strategically avoiding this controversy, the report sends an overriding message of inevitability and powerlessness that weakens its stated conclusion that the crisis was avoidable.

Similarly, although the majority report's summary blames free-market ideology for undermining regulatory policies that could have avoided the crisis, it presents this ideology as a fixed and mysterious external force without connection to particular interests, institutions or agents. It seems accurate, as the report adheres, that there was a widely accepted faith in an idealized self-correcting market which swayed leaders of both parties in Congress and the Presidency, as well as experts in the Federal Reserve and other government agencies.[26] Nonetheless, a range of sophisticated competing views were well-developed and vigorously argued by many intellectuals, political leaders, regulators, and advocacy groups. Indeed, a competing orthodoxy had been

[26] ibid. xviii.

central to the longstanding New Deal policies enacted in response to the Great Depression and only repealed in the late 1990s. The victory of deregulatory ideology did not just happen by self-evident consensus or random historical change, but instead required powerful, orchestrated and intentional action to discredit and defund these opposing voices concerned about flawed economic assumptions (such as the warnings from Born). The Democratic Commissioners could have identified themselves as part of this opposition, using their own particular experience to probe more deeply into the reasons this free-market fundamentalism was taken as a consensus or as objective and sophisticated economic science rather than as a self-serving, contested and even corrupt politics.

Because the report omits this story of conflicting ideology and interest, its critique of deregulatory free-market ideology instead slides into a narrative of generalized, blameless loss. Instead of analysing this free-market economic theory as a well-honed instrument of powerful interests, it leaves the impression that political and economic experts had little choice but to succumb to the dazzling laissez-faire vision that just happened to come with lavish campaign contributions and prestige, and that unpredictably facilitated vast inequalities, staggering risk, and extensive fraud.

Along the same line, the report concludes that the crisis resulted from widespread regulatory failure and systemic bad management in the financial industry, not simply from a few bad actors, a temporary or random blip, or a normal business cycle. But it uses this theory of systemic failure to cover up controversy, skipping over the exceptions to this bipartisan bandwagon, such as the CFTC's regulatory efforts under Born's leadership. It also ignores the examples of strong, relatively successful regulatory action in response to financial instability in the US Savings and Loan Crisis[27] or in other nations,[28] as well as the relative soundness and success of many smaller community banks.

It is true that the report seems to take a bold stand by insisting that regulators were not powerless to stop the risky behaviour and impending meltdown, and by noting that regulators actively chose not to exercise their power.[29] The report also denies that regulatory failure reflects inevitable human fallibility or greed, and instead emphasizes that regulation is supposed to correct and prevent the failures of human rationality. It even identifies the overwhelming power and money of the financial industry to corrupt regulatory independence as a major problem.[30] Nonetheless, by failing to discuss the concrete efforts of regulators and critics to resist this power or the success of alternative structures, it tends to reinforce the idea that this systemic failure represents universal and inevitable irrationality rather than policies deliberately and carefully chosen to privilege particular interests and ideologies.

Further, the majority report's opening picture of shared hardship paints over the enormous gains and overwhelming power exercised by some of the leading players in the crisis. The report encourages sympathy for those suffering devastating losses, deflecting right-wing efforts to minimize the harm or to scapegoat low-income or minority homeowners or their advocates. Yet its summary omits any details about the exceptions to this picture, such as the soaring profits and compensation earned in the newly strengthened and consolidated financial firms, even as those firms were receiving

[27] William K Black, *Prepared Testimony of William K Black Before a Hearing of the Senate Committee on the Judiciary*, *Examining Lending Discrimination Practices and Foreclosure Abuses* (7 March 2012) 27-35.
[28] Carter Dougherty, 'Stopping a Financial Crisis, the Swedish Way' *NY Times* (New York, 22 September 2008) C9.
[29] FCIC (n 21) xviii.
[30] ibid.

massive bailouts. Moreover, the report's summary extracts this widespread austerity from the broader context of rising inequality over the last several decades, which arguably set the stage for subprime lending through increased hardship among middle and lower-income families and policies aimed to increase protection of lavish gains at the top of the economic scale. Though its conclusions highlight the role of financial industry mismanagement and fraud driven by incentives for short-term gain (e.g., executive compensation policies), the report's summary nonetheless situates this failed corporate governance as part of a broadly shared unwitting vulnerability. By omitting details about these gains and the policies that have protected some so successfully, the report leaves the impression that the executives, politicians and intellectuals who led the charge for deregulation and financial risk-taking are likely to have suffered the consequences of the resulting collapse along with unemployed workers, evicted homeowners and struggling small businesses.

This picture of collective weakness rather than concentrated gain leads the report to repeatedly dilute any particular responsibility for correcting and compensating the harm. In attributing the crisis to speculative borrowing, risky investments and lack of financial transparency, for example, the report states that both homeowners and leading financial firms became 'vulnerable' to economic ruin when they 'borrowed to the hilt', and it goes on to insist that the downturn in housing value 'walloped' homeowner and financial firm alike[31] – without mentioning the glaring difference in vulnerability between those who lost their homes and life savings to foreclosure and the financial executives (and their political protectors) who ran major financial firms into the ground while typically retaining or even increasing their lavish incomes and assets, perhaps

[31]ibid. xix-xx.

even securing bailouts and buyouts that enhanced their failed firms' market and political power. Further, the report repeatedly describes this unrealistic speculation as a shared borrowing spree, equating the high-risk borrowing and lending by the worlds' wealthiest financial institutions with the excessive borrowing of ordinary homeowners who took out mortgages without realistic hope of making even the initial interest payments, much less covering the principle. The report's summary does not explore whether this tone of shared fallibility and misjudgment is contradicted by the report's showing of extensive one-sided financial firm fraud and intentional obfuscation selling these mortgages to far less sophisticated buyers (or that these homeowners were likely to be already struggling to pay off debt from uninsured medical costs, education and falling wage income). Instead, it treats lack of transparency and risky borrowing as a free-floating force divorced from the particular power of the sellers and financers of subprime mortgages, so that the widespread panic and pain that ensued was universal and fundamentally just, leading the report to conclude 'we had reaped what we had sown'.[32]

Although the report claims to reject the view that 'everyone is at fault' and though it acknowledges that those at the top of finance and government had special responsibility and power to avoid the crisis,[33]it quickly shifts responsibility to an undifferentiated collective failure. The report concludes that 'as a nation, we must accept responsibility for what we permitted to occur. Collectively, but certainly not unanimously, we acquiesced to or embraced a system, a set of policies and actions, that gave rise to our present predicament'.[34] As financial journalist William Greider points out, the familiarly vacuous tone of the conclusion is matched by the report's careful

[32] ibid..xx.
[33]ibid. xxiii.
[34]ibid.

ducking of responsibility for pinpointing the problem and its solutions, despite its unique authority and expertise.[35] The report avoids recommending strong and specific action, such as prosecution of the rampant high-level fraud that the full report describes in vivid detail. In response to Greider's probing, Commission Chair Angelides insisted that his job was only 'to bring out the facts',[36] as if the occasion of a special commission called simply for passive observation that might be handed over in full faith and confidence to the very institutionalized regulatory processes whose systemic failure the report detailed. Consistent with this stance of powerlessness and detachment, the Commission repeatedly presents its findings of fraud and irresponsibility by those in power as an unprecedented 'tragedy' rather than an outrageous injustice connected to a broader struggle over legal and economic power.[37] As a result, the Commission's majority constructs systemic failure as a rationale for acquiescing to increasing inequality and hardship.

This perverse logic recognizes that insecurity and loss is structural and pervasive, not a problem of individual responsibility concerning those suffering most. But this reasoning proceeds to assume that those who suffer must nonetheless take personal responsibility for bearing those systemic losses rather than acting collectively to attribute blame or to seek redress from others. After all, 'we' are part of the system that has failed. And, more subtly, this narrative suggests that because the problem was the failure of powerful collective institutions, the solution requires avoiding collective power struggles for systemic reform in favor of individual discipline and taking

---

[35] William Greider, 'FCIC Report Turns a Blind Eye to Wall Street Fraud' *The Nation* (3 February 2011) <http://www.thenation.com/article/158274/fcic-report-turns-blind-eye-wall-street-fraud> accessed 1 January 2015.

[36] ibid..

[37] Tavis Smiley, Interview with Phil Angelides, Tavis Smiley Show, *PBS* (14 February 2011) <http://www.pbs.org/wnet/tavissmiley/archive/201102/20110214_angelides.html> accessed 15 February 2011. Webpage no longer available.

personal responsibility for starting anew. Echoing the Obama administration's approach to a number of national problems, the FCIC suggests we should eschew divisive and distracting ideological conflicts over blame in favor of buckling down to the hard individual work of moving forward under newly challenging conditions.

IV. Collective Submission Reconstructed As Responsible Power

Despite this rhetoric of consensus and commonality, it is impossible for political leaders to fully mask or dismiss the unequal power behind the current sense of pervasive insecurity, especially given the blatant disparity between the bailouts for the financial industry and the much more meager support or even increased austerity directed toward most homeowners, workers, dependents, Main Street businesses and communities suffering the effects of the crisis. A twist in the message of personal responsibility suggests that when systems of mass austerity produce concentrations of extraordinary privilege and luxury, we have all the more reason for personal surrender rather than collective resistance. We must take personal responsibility for bearing the costs of those who are too big to fail because appeasing their superior power is our best protection against the mass insecurity and hardship their power generates.

This argument is a staple of neoliberal economic ideology and policy, and it rests on an assumption that unequal power is fixed, natural and pre-political, largely outside the reach of human agency and especially beyond law.[38] Efforts to reform law to 'intervene' in this unequal power, even to help those whose hardship is the result of bad luck or exploitation, are likely to backfire because those with more power will simply use their superior resources to circumvent whatever restrictions or redistributive policies

[38] Martha T McCluskey, 'Thinking with Wolves: Left Legal Theory After the Right's Rise' (2007) 54 *SUNY Buffalo L R* 1191, 1266-68.

are imposed on them, not only restoring or exceeding the original inequalities but also wasting additional resources in the process. This theory rationalizes opposition to bank regulations restricting exploitative and risky lending on the ground that banks will likely respond by tightening credit overall or by raising interest rates.[39] That result would deepen the recession because productive businesses and responsible consumers would have less access to affordable loans. Or, for another example, a proposal to hold rating agencies liable for their evaluations of securities as a check on fraudulent or irresponsible ratings was quickly withdrawn from Congress when rating agencies responded by refusing to rate bond deals crucial to the teetering auto industry.[40]

Most dramatically, the bailouts and subsidized government loans to Wall Street have been justified on the ground that the financial firms are too powerful to be allowed to suffer losses, regardless of their culpability for the disaster. The FCIC summarized its mission as cutting through the emotional outrage against the financial bailouts to focus on '*how... it came to pass in 2008 that our nation was forced to choose between two stark and painful alternatives* – either risk the total collapse of our financial system.. or inject trillions of taxpayer dollars...'[41] The report gave blow by blow details about how government leaders felt caught in this bind, spurred by AIG's September 2008 unraveling after its 'enormous sales' of insufficiently funded credit default swaps threatened to spill financial ruin on virtually every bank, financial firm and financial product in a cascading series of failures throughout the global economy.[42] Each time, the only solution in view for regulators was to appease and cater to financial market

[39] Tom Petruno, 'A Fix for Better or for Worse' *L A Times* (26 June 2010) (reporting the comments of the American Banking Association).
[40] Anusha Shrivastava, 'Ford Scuttles Debt Deal as Overhaul Chills Market' *Wall St J Online* (21 July 2010) <http://www.wsj.com/articles/SB10001424052748703954804575381644138678302> accessed 1 January 2015.
[41] FCIC (n 21) xvi.
[42] ibid. 347-52.

'confidence', and to exacerbate the 'too big to fail' conundrum by consolidating failing firms into even bigger and more powerful and precarious entities.[43] The report concludes by admitting that this process has created an economy more vulnerable to irresponsible behemoths, heightening yet confounding demands for regulators to escape this vicious cycle.[44] This ending is particularly disconcerting given that the 2010 Dodd-Frank reform law largely punted on the regulatory details, which remain to be worked out by regulatory agencies facing continuing pressure from an increasingly powerful and profitable financial industry with legions of experts ready to work out the details in their clients' favor.[45]

Yet the report proceeds from this bleak and unsettled position not to detail the controls and reforms that would be helpful, or even to note the competing sides in the debate, but instead simply to further describe how largely innocent individuals are bearing the pain of this crisis through business failures, job loss, government spending cuts and foreclosures. Revealing the report's refusal to connect the dots to reveal the class conflict driving the facts, the only section of the report lacking a concluding capsule analysis is the detailed final section on the 'economic fallout' that ends its catalogue of disaster and austerity with a description of the record profits enjoyed by the financial industry since the crisis, with 2009 profits triple those of three years earlier.[46]

The overall effect of the report reinforces the sense of inevitable capitulation to overpowering exploitation – the very thing that the report's mission was to challenge. Its exhaustive efforts, though enormously revealing and potentially explosive, seem

---

[43] ibid. 353-86.
[44] ibid. 386.
[45] Gary Rivlin, 'How Wall St. Defanged Dodd-Frank' *The Nation* (30 April 2013) <http://www.thenation.com/article/174113/how-wall-street-defanged-dodd-frank> accessed 1 January 2015.
[46]FCIC (n 21) 401.

ultimately directed at exhausting and overwhelming rather than engaging and mobilizing collective resistance by those left in the lurch. The Commission does not describe any possible alternatives to the bailout, mergers and further regulatory buck-passing it presents, so that like all descriptions, it makes prescriptive choices and assumptions covertly. Further, by shying away from the big picture, it cedes the bold narrative of fault and solution to the Commission's dissenters and other critics, who have no qualms about skipping over factual detail or fanning flames to pin all manner of responsibility on big liberal government and efforts to support the most economically vulnerable homeowners.[47]

Rather than a struggle for meaningful regulatory control or for redress from those whose enormous gains brought the crisis, the major political contest in the aftermath of crisis appears to be over just how much increased pain must be imposed on those who were largely innocent victims. Even under Democratic leadership, states facing fiscal pressures seem politically unwilling to respond to deficits with policies increasing taxes on the rich who gained from the crisis or reducing subsidies and tax breaks for corporate interests – all out of fear that these measures will drive away wealthy investors and taxpayers to leave workers and governments even more in debt. In short, the mainstream picture of the crisis suggests that systemic vulnerability demands systemic personal sacrifice from those who are most harmed, rather than systemic reform. The vastly unequal power and privilege that protects those most responsible for widespread suffering makes fearful servility seem the most responsible option, on the theory that the best response is to appease those with superior power in hopes that some crumbs will eventually trickle down. Systemic, pervasive vulnerability

[47] Peter J Wallison and Arthur F Burns (dissenting statement), FCIC (n 21) 452-70.

and loss, in this perverse logic, means that submission to inequality is not only natural, but actually beneficial.

V. Systemic failure excuses particularly powerful irresponsibility

Finally, by attributing the crisis to failures in a nebulous and overarching 'system', responsibility for costs not only appears to logically fall on the majority of people, but also ironically appears to fall away from the institutions and individuals whose irresponsible actions tended to produce the losses. Critics ask why 'Wall Street hasn't gone to jail' despite the extensive evidence that egregious fraud throughout the financial industry led to the crisis. Given that theft of small amounts of money can lead to incarceration for life in the US criminal justice system,[48] the lack of criminal prosecution of financial industry wrongdoing is striking.[49] Civil fraud lawsuits confront bankruptcy and trust laws that can help executives and owners of fraudulent subprime lenders and their financiers shelter illicit gains from both their failing companies and from the homeowners, investors and communities those companies harmed.[50]

Defending the glaring absence of personal responsibility in the recent crisis, free-market advocacy groups and think tanks have been cautioning that emotional reaction to increased hardship in the recent crisis might lead to 'over-criminalization' or 'over-deterrence' of corporations and their executives. The Manhattan Institute, for

---

[48] cf Timothy Williams, 'Sisters' Prison Release is Tied to Kidney Donation' *NY Times*, (30 December 2010)(reporting on special circumstances leading to release of two African American sisters serving life sentences for participation in an $11 theft) http://www.nytimes.com/2010/12/31/us/31sisters.html?_r=0> accessed 1 January 2015.

[49] Matt Taibbi, 'Why Isn't Wall St. In Jail' *Rolling Stone* (16 February 2011) <http://www.rollingstone.com/politics/news/why-isnt-wall-street-in-jail-20110216> accessed 1 January 2015; Chris Arnold, 'After Five Years, Why So Few Charges in Financial Crisis?' *NPR* (26 July 2013) <http://www.npr.org/2013/07/26/205866019/few-on-wall-street-have-been-prosecuted-for-financial-crisis> accessed 1 January 2015.

[50] Michael Hudson, *The Monster: How a Gang of Predatory Lenders and Wall St. Bankers Fleeced America –And Spawned a Global Crisis* (Henry Holt 2010) 296.

example, recently issued a paper criticizing corporate criminal liability, using as an example the prosecution of accounting firm Arthur Anderson when a partner ordered the destruction of potentially incriminating documents related to the government investigation of Enron's fraud.[51] A jury verdict against Anderson was overturned by the Supreme Court on the grounds of insufficient evidence of corporate consciousness of wrongdoing, but by that time the firm had been dissolved. The Manhattan Institute paper acknowledges the seriousness of this wrongdoing, but focuses on the particular vulnerability of major corporations in criminal procedures due to their distinct role as economic organizations. The paper warns that the legal and administrative costs of defending against criminal investigations, for example, may be enough to make the business unviable, even if the firm is ultimately found innocent, resulting in an effective death penalty merely from being charged with a crime. It explains that corporations are highly dependent on the trust and confidence of customers, clients, suppliers, communities and creditors to survive, and that a mere indictment may be sufficient to damage the company's reputation so much that it cannot recover.[52] In addition, it emphasizes that corporations exist not for themselves (they have no self) but instead represent the interests of employees and customers, so that a prosecution (deserved or not) will end up hurting hosts of innocent people.[53] Furthermore, the paper argues that as complex organizations, major corporations cannot reasonably be expected to control the actions of all their employees,[54] so that criminal liability puts blame on executives and investors victimized by the actions of innumerable potentially wayward subordinates. Most importantly, the paper instead emphasizes that corporations are

[51] James R Copland, 'Regulation by Prosecution: The Problems with Treating Corporations as Criminals' *Manhattan Institute Civil Justice Report #13* (December 2010) 6-7.
[52] ibid. 6-7.
[53] ibid. *7.*
[54] ibid. 10.

distinctly vulnerable and deserving of protection because criminalization shifts corporate governance from executives to public officials, who can use what it describes as pervasive fear of prosecution to extract concessions, directing the corporations' power to social goals such as altering executive compensation practices or submitting to extensive reporting requirements - or even donating to charity.[55]

Given the US criminal justice system's harsh punishments and mass incarceration directed at individual human beings (in a manner highly skewed by race and class) and the extensive corporate power to influence both the civil and criminal justice systems, it might seem difficult to construct corporations and their leading agents or principals as distinctly fragile in the face of government power to hold wrongdoers responsible. Even without conviction, criminal prosecution puts enormous costs on human defendants (and their families and communities), many of whom may be wholly innocent or who may similarly lack full control over their wrongful behaviour (due to mental disability, addiction, youthful age and coercion or exploitation from family members, gangs or pimps). Regardless of culpability, human individuals subject to criminal prosecution may suffer long-term harm to jobs, assets and families and may face enormous pressure to plead guilty to avoid the costs and uncertainties of a trial.

Despite the possible similarities to individual human defendants, the recent critiques of corporate criminalization tend to construct the economic interests of corporations and their executives as distinctly deserving of freedom from social accountability and control. After all, a basic legal purpose of the corporate form is to protect investors against personal responsibility for the potential economic harms of their collective action, on the theory that this protection from risk will induce socially

---

[55] ibid. 8-9.

beneficial innovation, complex organization and vigorous growth – a ‘moral opportunity’ rather than the increased carelessness and loss from protection typically termed ‘moral hazard’.[56]

The Manhattan Institute paper develops this theory by contrasting the inevitably compromised personalized and politicized interests of human prosecutors with the purportedly impartial and benign purpose it attributes to the corporation. It strips down the public institutional nature of courts to the biased judgment of private individuals, while blurring the private economic interests of corporate executives and investors with the collective well-being of workers, consumers, and communities likely to suffer ‘tremendous’ harmful impact when corporate gains are threatened.[57] Further, it presents criminal prosecution as an evasion of democratic politics, on the theory that criminal prosecution results in government control without the participation afforded by the normal regulatory process. By humanizing prosecutors as individual actors operating outside legitimate politics and market, this analysis perversely makes subjecting corporations to criminal liability a threat to the rule of law, rather than the fulfillment of law’s promise to control power equally.

But even without culpability, those with great wealth might seem to have particular responsibility for sharing their gains in the face of widespread devastation and insecurity. Why shouldn’t the rich have a personal and social duty to bear much of the costs of post-crisis austerity - through targeted increases in taxes, regulation, and liability - given the recent message of personal responsibility regardless of fault? Neoliberal economist Greg Mankiw defends the morality of policies protecting

---

[56] cf Martha T McCluskey, ‘The Substantive Politics of Formal Corporate Power’ (2006) 53 *Buffalo L R* 1453, 1470-72; cf Deborah A Stone, ‘Beyond Moral Hazard: Insurance as Moral Opportunity’ (1999-2000) 6 *Connecticut L R* 11.
[57] Copland (n 52) 7.

inequality in the face of great need by affirming philosopher Robert Nozick's principle, 'from each as they choose, to each as they are chosen'.[58] For those to whom much has been given, less is required in return by this logic because the gains of the very rich appear as rewards bestowed by higher powers. Financial executives' interest in protecting their gains appears to be part of a complex and beneficial system, while blameless individuals' desire for public aid for home heating, safe workplaces or life-sustaining medicine seems to demonstrate an irresponsible refusal to sacrifice for those whose greater success defines their greater worth.

In his popular video on the financial crisis, David Harvey asks why we should want to live in a world where hedge fund managers can walk away from the global financial meltdown with $3 billion in compensation while billions of humans face increasing austerity.[59] A conservative commentary responded by stripping the wealthy executives of any individual moral agency, arguing that other people freely chose to pay those hedge fund managers staggering riches because those hedge fund managers gave something equally valuable in return.[60] Wanting to take away that wealth to help those suffering from their actions would be irrational in this view: 'we' asked for their services through the market, so we are not playing fair when we want to take back the gains we offered.

VI. Reconnecting economic equality with law's power

[58] N Gregory Mankiw, 'How to Break Bread with Republicans' *N Y Times* (1 January 2011)(quoting Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1974) 160).
[59] David Harvey, 'The Crises of Capitalism' *RSA Animate* (26 April 2010) <http://www.youtube.com/watch?v=qOP2V_np2c0> accessed 1 January 2015.
[60] Lee Doren, 'Crisis of Capitalism: The Critique' *HowtheWorldWorks* (30 June 2010) <http://www.youtube.com/watch?v=NJGAs2KwoWk> accessed 1 January 2015.

This neoliberal logic of unequal personal responsibility for systemic harm builds on a tradition of theory and policy defending equality by avoiding contentious questions of individual control over harm. By separating the goal of compensation for disadvantage from the goals of fault or deterrence, this tradition attempts to defend welfare state programs against arguments that disadvantaged individuals have a personal responsibility to prevent or mitigate their loss. Nonetheless, this rationale for equality is undermined by the second strand of the personal responsibility argument. The no-fault frame seems to make more harm deserving of redress, but at the same time constructs this redress as individual need for special protection outside the normal systems for rewarding productive action. If public support for disadvantage does not appear to promote responsible economic and moral action, but instead simply compensates for blameless bad luck or natural incapacity, then that support will appear to divert resources from those more likely to enhance collective well-being. The framing division between passive receipt of collective support and active production of gain grounds neoliberalism's overarching message that dividing resources to promote equity risks undermining the goal of maximizing resources to promote overall welfare.

In a contemporary example of how the no-fault version of personal responsibility undermines equality theories, legal scholar Daniel Markovits painstakingly articulates a moral justification for limited 'redistribution' of collective resources to those vulnerable to losses beyond their control.[61] Drawing on principles of 'luck egalitarianism', he challenges the right-wing focus on personal responsibility as the central moral argument against egalitarian policies. He argues that requiring people to bear the costs of their own choices ignores that much inequality comes not from

[61] Daniel Markovits, 'How Much Redistribution Should There Be?' (2003) 112 *Yale L J* 2291.

making bad choices as much as from *having* bad choices – making reasonable and responsible choices among harmful alternatives - as a result of broader systemic conditions. If we deny aid to those whose personal choices contributed to their loss, we will therefore paradoxically violate the moral goal of tying aid to responsibility, because those whose particularly bad luck gives them the least attractive options will appear to be the most undeserving.[62]

This analysis seems to counter the foundational liberal ideal of autonomy with an understanding that all individual choices are both limited and enabled by collective political economic policies central to any resulting individual success or failure. Yet Markovits instead retreats to further entrench the dichotomy between autonomous agent and passive dependent, arguing for a tepid egalitarianism aimed more at excusing than rectifying systemic inequality. In his view, harmful constraints on individual economic success derive largely from random and natural bad luck out of normal human control, and are therefore beyond legal and moral responsibility. Adopting a Rawlsian veil of ignorance, his analysis presumes an economic system disengaged from politics, history and morality so that constraints on individual choices appear natural and inevitable. From this shrouded position, Markovits defines inequality as the problem created by differences among individuals' naturally endowed 'talents' and 'tastes', which in turn produce unequal socioeconomic value.[63]

While this view recognizes that inequality can be unjust, it proceeds to make robust equality a tragic impossibility. If we 'redistribute' luck-driven human capital to enhance the choices of those less fortunate in talent and taste, we will diminish resources going to more productive agents, thereby risking reduced overall capacity for

[62] ibid. 2300.
[63] ibid. 2300, 2305-07.

responsible gain. Though equality goals could justify mitigating one person's bad luck in having 'talents' with relatively little market value (such as talents for elementary school teaching, home health care or union organizing), Markovits cautions that this support comes at the expense of others' competing desires.[64] By indulging one person's 'expensive tastes' for raising children, for life-saving cancer treatment, for nontoxic air and water, for effective transportation, higher education, safe neighborhoods and so forth, we must necessarily reduce the good fortune of another whose highly valued talent otherwise would allow indulging expensive tastes in (for instance) fancy cars, mansions, political campaign contributions – or as the post-crisis response has demonstrated, in amassing the economic and political power to defraud, dispossess, and extract further sacrifices from others. Without evaluating the morality of the specific economic context (which would require moving beyond consensus principles to contested politics), we cannot value the possible economic 'luck' between people. Markovits thus offers refuge in the seemingly less controversial normative decision to generally favor productive socioeconomic agency over dependency by limiting 'redistribution' in the face of unequal human capital.[65]

From this superficially benign moral ground, Markovits reasons that collective compensation for faultless inequality reasonably could be limited to the relatively small amount of hypothetical insurance a disembodied individual in an abstract market would purchase against bad luck in talent and taste. In this view, demanding full protection against the risk of being a low-paid non-unionized elementary school teacher with an expensive taste for raising a family would be irrational. The high 'premium' charged for such protection would inevitably interfere with other potential tastes and talents, such as

[64]ibid. 2301, 2303, 2308-09, 2321-22.
[65] ibid. 2323-29.

the power to become a lawyer talented in protecting lucrative corporate fraud from taxes, punitive damages and criminal prosecution, or the power to satisfy a taste for mass incarceration rather than for public education of impoverished youth.

These examples point to a gaping hole in the Rawlsian veil of ignorance, as well as those similar theoretical frameworks that claim to limit equality in order to protect personal choice in the face of systemic inequality. Markovits jumps from an abstract assumption of scarce resources to the conclusion that collective support for equality is a zero-sum game, inevitably requiring tough tradeoffs. In contrast, this analysis assumes that public support for *inequality* lies outside those naturalized boundaries as a source of beneficial growth. This conclusory logic presents a strikingly impotent view of the agency it purports to celebrate because it assumes that we have no power or responsibility to alter systemically unequal conditions of scarcity. More realistically, a rational abstract person offered exorbitant insurance as the alternative to the high risk of becoming a low-paid teacher without health insurance, collective bargaining rights and job security might prefer to actively change or refuse this system rather than to passively submit to its extortionate terms.

Glaringly absent from Markovits' analysis, and from much liberal legal theory of equality, is the idea that the power to control against harm is routinely and most effectively exercised through political economic institutions, not just through autonomous individual consumer exchanges in an abstract 'market'. The collective systems that enable or limit our choices are not the result of objective or passive aggregation of isolated individual preferences or of an unmediated natural or supernatural order. By emphasizing that responsible power necessarily operates through collective protections, we can better challenge the false assumption of scarcity that makes unequal systemic harm a personal responsibility rather than a public injustice. Markovits' theory helps cover over pervasive legal and economic structures of unequal collective risk-spreading– such as the corporate form in business – as presumptively good and normal background conditions. That erasure enables beneficiaries of these naturalized collective protections to appear to secure gains as productive individual agents, while those rendered needy by structural disadvantage appear to be passive 'patients' demanding outside help.

Stripped of the arbitrary distinction between protection and production, the moral arguments for sharply limiting government support for systemic harm lose their logic. Collective protection from low wages, inadequate or unaffordable infrastructure, child care, heat, nutrition, credit, medical care, clean air, transportation, pensions or education can actually enhance overall societal well-being. Securing and benefiting from that collective protection is just as much an expression and enhancement of free, responsible, normal individual agency as accepting, protecting and legitimating the structural privileges granted to certain 'talents' and 'tastes' under the current system.

The conceptual vocabulary, institutional frameworks and the members that make up law and economics must scrutinize, rather than naturalize, the existing tough choices in the face of scarcity, and more meaningfully address the glaring moral question why, on the one hand, so much horrific and routine harm to so many is so cheap to inflict and, on the other hand, why so much 'talent' or 'taste' for producing that harm gets so lavishly rewarded. Such questions too often become silenced by legal and economic arguments disguising irresponsible passivity toward systemic injustice with a pretense of responsible neutrality.