RUNAWAY TRAIN

The Perilous and Pernicious Path of Private Capital Worldwide

PUBLIC VERSION

DECEMBER 2020

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There's not a mountain that we can't climb! There's not a river we can't make it over! There's no tomorrow that we can't find if we try! You know we're gonna make it! Nothing can stop us now!”

— Platt & Munk, "The Little Engine That Could" (1930)

As of 2020, the corporate heir to this children's favorite is none other than Penguin Random House LLC, a private company itself owned 100% by a privately-held German company, which in turn is 75% owned by one of Germany's wealthiest families and 25% by a hierarchy of at least 10 limited liability companies located in tax havens from Luxembourg to the Netherlands and Canada. A true jewel in the crown of private capital, we daresay!

The geographic expansion and systemic deepening of capitalist relations of production over the last 20 years have led to one of the most brutal divisions of the winners and losers.

One way of putting it is that capitalism is undergoing a deepening of advanced capitalism predicated on the destruction of more traditional forms of capitalism. The financializing of non-financial domains is one such form of deepening.”

— Saskia Sassen, "Expanding the Terrain for Global Capital: When Local Housing Becomes an Electronic Instrument" (2012)[1]

The value of global financial assets is 379 trillion USD. Banks, central banks, and public financial institutions account for 195 trillion USD (51.5%) while non-bank financial institutions account for 184 trillion USD (48.5%). In the first category, commercial and investment banks not controlled by a government account for the largest share at 148 trillion USD. In the second category, all financial institutions that are not central banks or government institutions, banks, insurance companies, or pension funds, including asset managers, private equity, and hedge funds, account for 114 trillion USD.

— Empower, with figures from the G20 Financial Stability Board (2019)[2]

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I. INTRODUCTION

I INTRODUCTION

In southeast Myanmar, near the border with Thailand, three mega-cities shrouded in secrecy are being constructed as casino resorts to attract Chinese tourists while one of the world's longest running civil wars is fought nearby.[3] With gambling outlawed back home and its 25 billion USD-a-year illegal online market itching for a physical and virtual hub, Chinese entrepreneurs plan to use blockchain, crypto-currency, encryption, and other financial technologies to launder money, evade law enforcement, and create a private world free from public scrutiny.

Sound far-fetched? It's the capitalist dream: unfettered access to legitimate and illicit capital from both the world's second-largest economy (China) and its fastest-growing region for private capital (Asia); the most advanced financial infrastructure available; ownership by private companies located in tax havens throughout southeast Asia; an isolated region of Myanmar where the military and non-State actors collude just enough to offer security without requiring anything other than protection payments; and no disclosure or regulation whatsoever.

Ostensibly forming part of China's global infrastructure development strategy called the Belt and Road Initiative, albeit with strong denials from the Chinese government, these greenfield investments showcase the confluence of private capital, transnational crime, and State action and inaction. They should also sound alarms of concern as the taxpayers of Myanmar, China, Cambodia, the Philippines, Malaysia, Singapore, and Thailand pay the price of tax evasion and wealth accumulation, while the populations of Myanmar and Thailand suffer the human rights and environmental effects of cities of vice built near a jungle.

The Yatai New City project, as it's called, could prosper, its volatile ingredients could combust, Myanmar could crack down, or China could enforce anti-mon-

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ey-laundering provisions. The future of this arguably extreme case of private capital is unwritten. However, its fate and our fate are linked insofar as the universe of private capital represents an advanced form of capitalism whose future — our future — is also uncertain.

The increase, expansion, and acceleration of private capital are both causes and symptoms of the decay of capitalism as it silently spreads across new markets and technologies and seeps into unregulated crevices, obfuscating sources of investment or their effects on society. The sociologist Saskia Sassen refers to this as "the destruction of traditional capitalisms in order to extract what can be extracted for the further deepening of advanced capitalism."[4]

After conducting dozens of stakeholder interviews and reviewing nearly a thousand sources over six months, at Empower we conclude that there is no single definition, official source, or even common understanding of private capital. It is quintessentially opaque. What is clear, however, is that private capital is present, pernicious, and — on its current runaway course — perilous.

In this book we aim to catch up with the runaway train of advanced capitalism that propels private capital forward. We explain where private capital comes from, its salient trends, and worrisome characteristics. We document its pervasiveness and insidiousness worldwide. We explore opportunities for transparency and accountability across the investment chain. And we offer recommendations for our intended audience — corporate accountability advocates and other civil society stakeholders of corporations — as we attempt collectively to contain if not reverse the shift of capital from public markets under public scrutiny into private markets beyond our influence.

If we are to prevent the decay and deepening of capitalism from further affecting human rights, the environment, and the common good and reassert public decision-making over our economic systems, we must join forces across the frontiers that separate us. To this end, this book also speaks to researchers and scholars, advocates and campaigners, funders, journalists, investors and pensioners, and even like-minded regulators and politicians.

Together we must act to demystify private capital among grassroots and advocacy organizations. In doing so, we will produce the information and expertise needed within civil society and the media to track and expose private capital. We must also push strategic litigation and public policy reforms to bring transparency and accountability to private capital. And pension funds and other institutional investors must begin to reallocate their portfolios away from private capital to focus on responsible investments. These efforts will bring initial changes and, with them, the norm for governments facing budget deficits can begin to shift from privatization towards local financial control and economic alternatives.

Our objective is nothing less than to achieve economic justice in a stakeholder economy that prioritizes the common good.

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EXECUTIVE SUMMARY

What is private capital, and why does it pose an urgent problem deserving of our attention?

The easiest way to understand private capital is that it comprises the direct investments that only an accredited, sophisticated investor can make. Whereas public markets such as the New York Stock Exchange (NYSE) or Tokyo Stock Exchange (TSE/TYO) allow companies to raise money directly from retail investors — individuals who use brokerage firms or investment accounts — in exchange for requiring specific disclosures and regulatory compliance, private capital is essentially undisclosed, unregulated, and undertaxed.

A more thorough explanation of private capital contemplates where the money comes from, its corporate forms, investment vehicles, legal jurisdictions, and even the technologies used to move it. It's also important to look at which assets ultimately receive investment and which markets facilitate these investments. The universe of private capital is complex and variegated.

Theorists debate whether the manifestation of private capital is best explained by Marxism, rational choice theory, or another axiom of economics. Often this discussion pits the argument for the natural evolution — and eventual destruction — of capital against the logic of self-interest maximization. While elements of these theories describe what's happening, we find the most useful explanation for the rise of private capital in the field of political economy: the corporate capture of the State.

Private capital is not an accident. Economic systems worldwide — capitalism and its many forms, notably crony capitalism — were designed by powerful architects to optimize shareholder returns to the exclusion of broader stakeholder interests and externalities. These designs reflect the direct and indirect influences of economic and political elites over public decision-making at all levels of the State. The results are codified in law and permeate virtually all of our norms. So, as capitalists — those narrowly focused on short-term financial performance instead of the long-term well-being of society — perceive disadvantages in public markets where disclosure, regulation, taxation, and scrutiny are the rules of the game, it's only consistent that they maximize their advantages elsewhere by expanding into private markets. In this regard, the future of private capital is predictable — left unchecked, the runaway train will continue gaining steam.

No matter how we define or explain it, private capital exists at the expense of the common good. It's increasing. It's expanding. And the shift of capital is accelerating from public to private markets. This should frighten us all.

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How are we to understand, confront, and ultimately slow down or reverse the course of something dangerous we cannot see? Private capital is on a runaway train that evades our detection. We perceive its general whereabouts, but we can barely keep up with it, let alone take over the controls to pull the emergency brake. Perhaps due to its velocity or opaqueness, private capital also represents a blind spot for corporate accountability advocates, civil society organizations (CSOs), corporate stakeholders, regulators, democrats, and the public alike. We may feel the wavefront of air as it passes through our workplaces, we may feel it bearing down on our livelihoods, we may pay the price for its recklessness, we may suffer the harms it causes. But there's no transparency, accountability, or public reckoning. It's as if this is how it's been designed — out of control, threatening everyone and everything in its path.

Private capital is a threat to basic human rights protections and efforts to hold corporations and capital accountable. As advocates we have developed expertise campaigning around banks, publicly-traded companies, and State-based capital, such as development finance institutions, and we've won important victories. However, there is a dearth of expertise in civil society about financialization and private capital — namely private equity and hedge funds — which can cause our efforts to run into a brick wall of impunity. Occasionally, a call for divestment, media exposé, or well-meaning legislation can even inadvertently hasten the capital shift into private markets where we no longer have leverage. In the end, shadow banking and the shadow economy increasingly capture greater financial flows and, with it, power over our jobs, public goods, the State, and our planet.

Collectively, if we're bold, creative, well-informed, organized, and willing to engage with unlikely bedfellows — such as pension fund members, endowment and foundation trustees, publicly-traded companies affected by unfair competition from private markets, and progressive regulators and politicians — we have an opportunity to stop private capital in its tracks if not reverse its harmful effects on the common good. Our challenge is to get in front of private capital before it leaves us behind. There's still time. But we must act now.

With this first-of-its-kind book, Empower seeks to explore and discuss the inner-workings of capitalism as they relate to private capital while making both the language, subject matter, discussion of opportunities, and recommendations relevant and useful for CSOs and other corporate stakeholders.

In the **Introduction** we summarize our main arguments, list key findings, explain our methodology, and give credit where credit is due.

Subsequently, in **How We Got Here**, we discuss macro drivers behind the manifestation of private capital: neoliberalism resulting in privatization; decoupling of the Main Street and Wall Street economies, leading to the financialization of everything; outsized influence of banks and asset managers on the financial economy and their

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roles in the private capital universe; and corporate capture of the State, specifically in terms of those central banks and economic policies that encourage the capital shift from public to private markets.

Next, in **Private Capital**, we explain what the term means and discuss how much private capital is worth. We also explore its history, typologies, and geographic dispersion as well as analyze how private capital is increasing, expanding, and accelerating. We focus on two main assets classes — private equity and hedge funds, including their regulation or lack thereof — while also discussing the broader universe of private capital, from privately-held companies to financial technology. Finally, we examine three key inputs for private capital — institutional investors, wealthy individuals, and financial leverage — without which this universe would cease to exist.

In **Case Studies**, we review dozens of quick case studies across nine key sectors that are emblematic of how private capital is both present and pernicious worldwide. While the economic and typological discussions in prior chapters are necessary to understand and contextualize private capital, this chapter is particularly relevant to advocates and other CSOs and stakeholders on the ground who observe and receive reports of the harmful effects of private capital on people and planet.

Next, in **Accountability Opportunities**, we discuss twelve areas of opportunity for corporate accountability advocates and other readers where — working together, including with unlikely allies — we can track down and expose the runaway train of private capital, deprive it of equity and debt investment, regulate and hold it accountable, and decapture the State from corporate and financial interests in order to reclaim the common good.

In **Recommendations**, we tailor our findings to specific audiences who our research indicates are best positioned to implement change. These include researchers and scholars, advocates and campaigners (for whom we have specific comments around divestment), investors and pension funds, and philanthropic funders.

Finally, in **References** we include all works cited.

To all of our readers, as far as we know this book is unique — we are currently unaware of another like it. Your thoughtful consideration and constructive criticism of this book as well as your continued engagement about the juggernaut of private capital are much appreciated. We intend to continue researching and documenting private capital and the capital shift from public to private markets. Please feel free to contact us by e-mail at info@empowerllc.net, via the web at www.empowerllc.net, or on Twitter at @EmpowerLLC.

KEY FINDINGS

The research for this book reveals noteworthy findings about the phenomenon of private capital and the capital shift to private markets, as follows:

- **Opacity:** The universe of private capital is a black box. Despite receiving significant investment and playing a pioneering role in advanced stages of capitalism, private capital investors and asset classes — namely private equity and hedge funds — are opaque both in practice and by law. Private capital, in whichever of its forms, has a virtually nonexistent bar for disclosure. Extant information is scant, diffuse, and often anecdotal across sectors and sources.[1]

- **We're a small group:** Several handfuls of observers have commented on the increase and expansion of private capital, mainly in terms of either the financialization of the economy (the purview of academics and think tanks) or asset allocation to alternative investments (the purview of asset managers, investment bankers and consultants, and financial journalists). An even smaller group — mainly CSOs — has documented the effects of specific private equity and hedge fund investments on human and labor rights, the environment, and public goods and services. And a few keen observers — mostly scholars — have documented the decline in public markets, the rise of private markets, and the drivers linking the two. That's about it.[2]

- **It's increasing and expanding:** Although public markets remain vastly important, capital is increasingly raised and held privately and, consequently, ownership shifts to private markets. As of 2020, private market assets under management (AUM) reached 10.74 trillion USD or roughly 10% of global GDP. By 2025, private market AUM will rise to 17.16 trillion USD, with Asia overtaking the U.S. and the U.K. as the major growth driver. These figures could as much as double if reliable estimates and consistent categorization existed for typologies such as fintech, consumer lending, and privately-held companies writ large.

- **The shift to private markets is accelerating:** Since 1990, public market listings in upper-middle and high income countries decreased between 33-50%, though they increased in emerging markets, as did market capitalization across the board. Simultaneously, the amount of private capital seeking alternative investments increased by two orders of magnitude. The result — impelled by a series of macro, structural, legal and regulatory, and economic and technological drivers — is an accelerating shift of capital away from public markets, regulation, and scrutiny towards the reckless abandon of private markets.

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1 The vast majority of extant research examines publicly-traded assets and securities, State-based financial actors, or international financial institutions. See References or individual endnotes for our sources.

2 See **Universe of private capital** and **Increase and acceleration of private capital**.

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Privatization, financialization, and State capture are powering the train: These macro drivers have conditioned the economic and regulatory environments for private capital.[3] Essentially they exacerbated existing imbalances across and within economic sectors and legal jurisdictions, undermined collective resistance, and created a parallel investment universe. The fingerprints of corporate capture are apparent on: the privatization of public goods; the retreat of the regulatory State; the monopolization of distressed industries; State-based actors and international financial institutions directly and indirectly investing in private capital; the securitization of debt and equity assets; corporate ownership secrecy for legal and illicit purposes; and the deleterious impacts on people and planet. Other reasons for the capital shift include: the connivance of banks, asset managers, and institutional investors; technology's facilitation of instantaneous speculation, fungibility, and liquidity; wealth accumulation by asset owners who impatiently seek new markets and greater returns; and investors' avoidance of public scrutiny.

- **Economic policy and the law laid the tracks:** It's easy to avoid public scrutiny — the corporate capture of central banks and securities laws took care of that, arguably as far back as 1694 when the slave-traders, plantation owners, and commodity brokers who owned private banks convinced the Crown to form the Bank of England in order to underwrite their reprehensible activities. For nearly four centuries, the State has been using democracy and other political systems as window dressings for crony capitalism. Whereas securities laws in the U.S. — the world's financial capital — were meant to incentivize firms to "go public" by allowing them to raise capital from retail investors in exchange for publicly disclosing their financial performance and risks, over time this "disclosure quid pro quo has been subverted."[5] Today, publicly-traded companies must still disclose while capital increasingly flows into opaque private markets that aren't subject to the same rules. Regulators not only turn their cheeks — they actively encourage this shift away from public scrutiny.[4]

- **Private equity represents the lion's share:** After examining 30+ typologies and asset classes of private capital worldwide, Empower has found that private equity (4.4 trillion USD AUM as of 2020) is by far the most prominent, followed distantly by hedge funds (3.6 trillion USD AUM). Both asset classes are structured as limited partnerships, are managed by general partners, charge similar fees, enjoy enormous disclosure and tax loopholes, receive investment from institutional investors, rely heavily on leverage, and are run mostly from North America or Western Europe (though incorporated in tax havens such as Delaware and the Cayman Islands). Private equity invests mainly in venture capital and distressed assets through portfolio companies over a 10-year horizon. However, it increasingly offers debt and equity capital in secondary markets to peers for similar investments. Hedge funds traditionally exploit price differentials across individual securities, often over the period of a year, though they also invest in distressed assets and are becoming indistinguishable from private equity.

3 See **How We Got Here**.
4 See **Increase and acceleration of private capital.**

- **We all contribute to private capital:** Whether through consuming commercial goods and services, investing in retirement funds, making a pension contribution, or paying taxes, we spend money that directly or indirectly finds its way into the pockets of wealthy individuals, companies, or governments. These entities — high-net-worth individuals, privately-held and publicly-traded companies, banks, pension funds and other institutional investors, governments, and even international financial institutions — are the main investors in private capital. Where does their money come from? Us!

- **There is no single definition of private capital:** A multitude of overlapping terms are used in reference to private capital, including: privately-held capital, private equity(ies), private asset classes, private markets, private investments, alternative investments, limited partnerships, non-bank financial intermediaries, and shadow banking. With no standard definition, how can we advance our understanding of the subject? To remedy this issue, Empower proposes using an investment analysis continuum whereby the presence of private capital can be identified at each link of the chain, from the original asset owner to the ultimate market where investments are converted into liquidity.[5]

- **It's an expansive, diverse universe:** Opaque privately-held companies — including most private equity and hedge funds — are the main corporate form of private capital, whether a limited liability company in the U.S., a family-owned holding corporation in Mexico, or a variable capital company in Singapore. Other typologies include non-financial corporations, the consumer finance industry — from payday lenders to microfinance agencies —, and digital currency and fintech firms. Generally, private capital can assume myriad corporate forms across virtually all legal jurisdictions, receive direct or indirect State investment, and employ any number of investment vehicles (from mutual funds to real estate investments trusts) and financial instruments and markets (from cap-and-trade and commodities to high-yield bonds, among others) to meet investors' expected rates of return.

- **Back to the future:** The future of private capital may or may not look different than its past. In 2020, the special purpose acquisition company (SPAC) — formed to raise capital from public markets in order to acquire an existing company — gained new prominence as the *du jour* investment vehicle of the COVID-19 global pandemic. Though publicly listed, SPACs are eerily similar to private equity funds, including seed capital and co-investment from company sponsors. They charge high fees, maintain unprecedented secrecy, and have a predilection for taking acquired companies private. As private capital investment emanates from and consolidates in Asia, emerging markets produce more high-net-worth individuals (HNWIs) and sovereign wealth funds (SWFs), digital currencies supplant paper money outside the reach of regulators, and as shadowy secondary markets for debt capital replace commercial lenders, will SPACs and similarly gray iterations bend public markets to attract capital back from private markets, or will the capital shift to private markets continue in perpetuity as the fintech of mega-cities in Myanmar would indicate?

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5 See **Universe of private capital**.

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METHODOLOGY

A team of four Empower researchers spent the latter half of 2020 studying private capital. We set out to identify advocacy, engagement, litigation, and organizing opportunities vis-à-vis private capital for the corporate accountability field. We began with no preconceived notions, read anything we could get our hands on, spoke with a plethora of advocates, scholars, investors, and regulators with often diverging facts and figures, and attempted to peer around corners to discover hiding places of private capital. Ours was as much an exercise of curiosity as it was a hunch to follow the money wherever it led us, including to investment chain bottlenecks where private capital is arguably more exposed and vulnerable to public pressure.

In addition to an extensive literature review of nearly one-thousand sources, we conducted 35 stakeholder interviews across the public, private, and social sectors globally. Most of our questions focused on the effects of private capital at the levels of transparency (supply of information) and accountability (demand for corporate respect for human rights and remedy for direct and indirect impacts). We were particularly interested to learn what — if anything — had worked to track and expose private capital and rein it in.

We examined nine sectors worldwide where private capital is present and its direct human rights impacts are particularly pernicious: banking and finance; construction and infrastructure; data and technology; extractives and related infrastructure; food and beverage; health; heavy and light manufacturing; tourism; and urban housing and real estate.

Overall we employed a mix of open sources, fee-based databases and media publications, human sources, and specific cases to study what is arguably a similar (though not necessarily comparative) universe of private capital. The title of this book — "Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide" — tells it all: private capital is on an elusive and reckless runaway train and is both opaque and pernicious as it careens across the globe.

RECOGNITION

First and foremost, we recognize the communities, workers, pensioners, retail investors, small business owners, neighbors, homeowners, patients, consumers, individuals, groups, lands, and waters — the general populace and planet — that have been affected by the pervasiveness and insidiousness of private capital. Your stories, as told by you and your advocates, were integral to our understanding of private capital and — in one fashion or another — are reflected in this book.

We appreciate the trust placed in us by the experts and stakeholders we interviewed or corresponded with who shared their data, documents, candid opinions, expertise, and contacts with us. The only way to comprehend, challenge, and curtail private capital is if we do this together.

We also extend our gratitude to Gregory Tzeutschler Regaignon of the Wellspring Philanthropic Fund for originally commissioning this work. And, of course, we thank our editor and lead author, Benjamin Cokelet, as well as authors and researchers Eryn Schornick, Mariana Gutiérrez, and Florencia Rivaud Delgado for committing to this project. We truly believe that private capital represents the next frontier for the corporate accountability, human rights in the global economy, and business and human rights fields.

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II. HOW WE GOT HERE

II. HOW WE GOT HERE

The Yatai New City project, built near a jungle in Karen State, Myanmar, did not appear out of thin air. The economic, monetary, and political foundations for this grab of real and financial assets were laid decades if not centuries earlier halfway across the globe.

Since at least the 1800s the architects of the economic systems that paved the way for private capital have been busy. Some might argue that our starting point should be the invention of money, promissory notes, and moneylending in private markets unsanctioned by an Emperor, Czar, Crown, or State.[6,7] Others would adjust the timeline to the beginning of the transatlantic slave trade in the 1500s when the first corporations and monopolies received royal charters granting them shipping rights that, in turn, led to central banking, private banking, and venture capitalism — mechanisms that essentially finance the most heinous of human and labor rights abuses.

Regardless of its genesis, the development of private capital parallels that of capitalism, of which it is an integral part. Since the industrial revolution, the deepening of capitalism — known as advanced capitalism — has been associated with the corporatization of public goods and services, the concentration of wealth, and decay in the form of economic crises requiring State intervention. Private capital also shares these characteristics, as its post-modern development has been marked by succes-

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sive waves of austerity, privatization, and — more recently — financialization. The result, which we will explore in detail, has been an increase and expansion of private capital as well as an accelerated shift of capital from public to private markets.

Following the U.S. Civil War, severe panic, recession, and eventually depression ensnared the industrializing economies of the world, and railroads were no exception.[6] In the U.S., banks such as J.P. Morgan & Co. and Kuhn, Loeb & Co. (KLC) took control of distressed railroad companies, bringing on competent management and creating economies of scale across diverse business segments. Union Pacific, for example, was once a corrupt company mismanaging the construction of the transcontinental railroad. After collapsing into bankruptcy in 1893, it was taken over by KLC and became so profitable that it made its private backers extremely wealthy. Similar merger, acquisition, and buyout tactics were also used by private investors throughout the years in the steel, communications, and cosmetics industries.

After years of resisting central banking (as the Revolutionary War and debts to the Bank of England still lingered in American minds) and flirting with combinations of state and national banks to bailout struggling business, the U.S. relented and, in 1913, created the Federal Reserve System. The Fed was created to be the lender of last resort, though eventually its mission would include protecting consumer credit and promoting maximum employment, stable prices, and moderate interest rates.

During World War II, just as the first modern private equity firms appeared, the U.S., Canada, Australia, Japan, and Western European countries agreed to the Bretton Woods system of monetary management to govern their commercial and financial relations. A key point was to tie exchange rates to gold prices and for the International Monetary Fund (IMF) to manage payment imbalances. The Bretton Woods Agreement of 1944 also created the International Bank for Reconstruction and Development (IBRD) to ensure member-state-backed loan guarantees and participation in private foreign investment. Under the Agreement, the IBRD would also provide capital to supplement private investment when necessary.[8] In 1971, the U.S. canceled the direct international convertibility of the dollar to gold, marking the end of the system. Nonetheless, institutions created under the Agreement continue to exist, including those under the World Bank Group (WB) and the IMF.[9]

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6 From this point on, we beg the reader's forgiveness for our disproportionate references to the U.S. As the financial capital and largest economy in the world, the U.S. arguably sets the norms for financial laws and regulation — or the absence of — across common law, civil law, and most other countries. If we are to understand private capital, we must look often to the U.S. Other countries and examples will be used whenever possible.

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Around the time of the Bretton Woods Agreement, the A.W. Jones & Co. began using an investment strategy that would later be known as a hedge fund.[7] By 1968, the U.S. Securities and Exchange Commission (SEC) had identified 140 investment partnerships that it considered hedge funds. After just a few short years, inexperienced hedge fund managers grew tired of hedging only high risk, causing the assets managed by the 28 largest funds to decline by 70% in 1970.[10]

In the early 1950s, the economist Harry Markowitz developed his "Modern Portfolio Theory," highlighting the concept of diversification. He laid out the measurement of investment portfolio risk and return in a mathematical framework as well as a methodology for assembling portfolios that consider risk and return of underlying assets. Today, his expanded theories are the basis for modern asset management.[11]

Later, throughout the 1980s, the financial sector experienced stress in the U.S. savings and loan industry (S&L) when inflation and interest rates rose dramatically. The S&L system, established in 1932 to promote homeownership for the working class, suffered greatly as its Fed-mandated interest rates on deposits were suddenly not competitive. As a result, depositors withdraw their funds to seek greater returns elsewhere. At the same time, high interest rates caused long-term fixed-rate mortgage loans (where the S&Ls held most of their assets) to lose significant value, virtually wiping out the largely privately-held S&L industry.[12] Lacking sufficient resources to save the industry, the federal government deregulated it and the resulting bailouts cost taxpayers dearly.[13] With the industry under water the government created a number of new agencies, including Freddie Mac and Fannie Mae, to provide mortgages for low- and moderate-income families. Later, however, these agencies became sources of cheap loan tranches and even privatization targets for private equity in the wake of the Global Financial Crisis (GFC) of 2007-09.[14]

Also in the 1980s, some of the best-known firms to deal in private capital — Bain Capital, The Blackstone Group, and The Carlyle Group — were founded.[15] Though the typology of private equity was new at that time, the tactics — venture capital, growth capital, distressed situations, and leveraged buyouts — were not.[16]

Meanwhile, as the 1990s gave way to a recession following the tech boom that was largely financed through venture capital, private equity firms began creating value through the now common leveraged buyout method (LBO).[17] Later, through the dot-com bust of the early 2000s, HNWIs, private equity, and hedge funds focused on record-breaking deals.[18] By 2007, however, they turned to tangible assets such as real estate for value creation, amidst the GFC that led to mass mortgage defaults and tightening credit, primarily in the public markets.[19]

7 "A hedge fund is an actively managed portfolio of investments that uses leveraged, long, short and derivative positions." Jason Fernando, "Hedge Fund," Investopedia, 24 January 2021, www.investopedia.com/terms/h/hedgefund.asp.

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Between 2000 and 2018, the number of private equity-backed companies in the U.S. rose from less than 2,000 to nearly 8,000.[20] By contrast, publicly-traded companies during this period fell from 7,000 to about 4,000.[21] By the end of 2000, employer-based pension assets — the largest investment pool for private equity and hedge funds — amounted to 12 trillion USD worldwide, although 90% of total assets were centered in five countries — Canada, Japan, Holland, the U.K., and the U.S. The largest market for pension funds was — and still is — the U.S., while pension assets in the U.K. in the early 2000s were the same size as those of all other continental European countries combined.

During the early 2000s, private debt was also growing as an asset class, and the GFC further accelerated the process. Since then, private debt markets expanded and, as of 2020, were worth 848 billion USD.[22] By the outset of 2021, small- and middle-market businesses found themselves in similar, challenging financial positions amidst the COVID-19 pandemic. The lifelines from private debt markets continued to grow and fill gaps left by banks, promising consistent, high-yield returns and portfolio diversification.[23]

The economic aftershock of the pandemic and related bankruptcies, however, likely hurt private capital funds. Private equity firms scrambled to rescue investments loaded with debt while simultaneously trying to improve returns. Similarly, real estate and infrastructure asset classes were impacted as the global workforce stayed and worked from home while flying less.[24]

Another key type of private capital is fintech — the union of financial services and information technology — which has evolved over the last century. Since 2008, this sector has boomed, seizing the evolution of smartphones, increasingly automated investment services, the launch of Bitcoin and other digital currencies, crowdfunding platforms, and sophisticated money transfer services in Asia and the West, as well as greater financial inclusion and economic development throughout Asia and Africa more generally. Investments in these new technologies continue to progress as regulatory frameworks fail to keep pace.[25]

As we can see, the development of private capital — from financing the slave trade, industrialization, and railroads; through the post-war emergence of private equity and hedge funds, mortgage, and private debt markets; and now fintech — did not miraculously occur. Rather, it's been steadily progressing alongside the advance of capitalism, at once depending on the State for credit and bailouts while expanding beyond its regulatory grasp. How slave ships were financed in the 17th century is similar to how leveraged buyouts are structured in the 21st century — just as what happens in the jungles of Myanmar is tied to what happens on Wall Street. But what are the main drivers behind the increase of private capital and the shift from public to private markets? How did we get here?

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In July 2018, a 15-year-old Honduran girl escaped from her handlers in a parking lot in Homestead, Florida. She fled across a street, hid in an auto repair shop, and cried inconsolably. Though she was alone in the world, she was terrified for another reason — she feared that the security personnel of Comprehensive Health Services, Inc. (CHS) would forcibly return her to the Homestead Temporary Shelter for Unaccompanied Children five miles away. An hour later, local police appeared and, against the girl's will, returned her to the for-profit detention center, one of several facilities that U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security sub-contracted to provide public services for the government.[26]

The girl — whose name we may never know — is one of tens of thousands of undocumented children in the U.S. who were separated from their families or traveling partners upon entering the country. Following negative press attention, the Homestead facility was emptied of detainees in August 2019.[27] However, the same company — CHS, a subsidiary of Caliburn International, LLC, a portfolio company of a private equity fund managed by DC Capital Partners, LLC[28] — continued operating six other facilities housing migrant children, mostly in Texas.[29]

Among names we do know, former White House chief of staff John Kelly, retired General Anthony C. Zinni, Admiral James G. Stavridis, and Rear Admiral Kathleen Martin are members of the board of directors of Caliburn.[30] And the board of DC Capital Partners — whose investments include infrastructure and development, technology security, defense, information technology, intelligence, and homeland security[31] — is a who's who list of diplomatic, intelligence, and military officials, from former director of the U.S. National Security Agency Michael Hayden to former U.S. Secretary of State Richard Armitage.[32]

In March 2019, Caliburn International announced it was withdrawing its proposed initial public offering (IPO) of stock, citing "negative press attention around its 'work with UACs' — unaccompanied alien children."[33] Since then, DC Capital Partners has tried unsuccessfully to sell its 75% stake in Caliburn. While the market may have been stagnant for exploitative portfolio companies in 2020, private equity and its friends in government had the steam engine of privatization working at full blast.

Privatization and financialization are steam engines thrusting the train of advanced capitalism forward. As the temperature rises and the engine lurches ahead, a truly unique passenger — who not only designed the train but also holds a one-of-a-kind first-class ticket in the luxury car — calls the shots. He decides the train route, who sits in which car, and how much of the train he shall occupy for his exclusive enjoyment free of encumbrance or uninvited guests. This passenger is none other than private capital. His fate depends on the machinery facilitating his journey. In this regard, private capital does not go it alone. Instead,

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two macro drivers — privatization and financialization, whose developments also parallel each other[8] — propel its increase and expansion and the shift from public to private markets.

In this section we discuss the actors and policies that have driven these changes in our economic system, beginning with privatization. More than ever, it is incumbent upon rightsholders, advocates, and stakeholders to understand the phenomenon of privatization and recognize the presence of private capital if we are to challenge these trends and propose alternatives.

8 See **Financialization**.

Brief history of privatization

In the 1980s, pensions in the U.S., the U.K., and even Chile were privatized, followed by a wave of pension privatization across the global South promoted by the World Bank. Later, as privatization encroached on the provision of basic utilities, consumers noticed the link between rising household debt and weak services, and farmers were denied access to water for their productive needs. According to Léo Heller, former United Nations (UN) Special Rapporteur on the human rights to safe drinking water and sanitation, as of 2020, 10% of the world's population receives water and sanitation services from the private sector. For example, in the U.K., eight of the eleven privatized water companies are owned by either private equity or sovereign wealth funds, and three are located in offshore tax havens.[34]

Privatization is particularly pernicious in the housing sector where, since the 1980s, governments have used a mix of austerity and securitized housing credit to "eliminate housing programmes, privatize social housing and sell off massive amounts of housing and real estate assets to private equity funds."[35] Leilani Farha, the former UN Special Rapporteur on the right to adequate housing, notes that private mortgage-based housing schemes dressed up as social housing preclude the poorest who cannot meet the basic credit requirements. Similarly, agricultural land and rural real estate have also been privatized, as exemplified in Mexico where, since the 1990s, the government has dissolved the communal land-tenure system, known as *ejidos*, particularly in areas surrounding major cities.

More recently, education at all levels, health care, public spaces including parks and forests, and a host of myriad but critical public functions, including voting, telecommunications, and public security and surveillance, have been fully or partially privatized. Regarding education, the Roosevelt Institute writes: "Higher education is no longer a state responsibility, or provided collectively, but instead a private, individual investment in 'human capital' that one makes with debt contracts, like a miniature corporation. In this scenario, the state is less a partner in developing the conditions for a rich society than it is a portfolio of objects and functions that can be sliced off and privatized."[36]

Among the most controversial privatizations have been prisons and detention centers — beginning in 1984, when the U.S. government first sub-contracted the full operation of a prison through CHS's forced detention of migrant children. As of March 2020, approximately 198,000 people were held in private prisons in the U.S. (out of a total prison population of 2.3 million).[37] Currently, the industry is dominated by two publicly-listed companies, GEO Group and CoreCivic. Private equity firms also play an important role as secondary service providers at private prisons and detention centers.[38]

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Understanding privatization

Until the 1970s, it was generally accepted that the State should administer inherently public functions, such as the provision of public goods and services. However, this concept has been transforming, essentially along ideological lines, challenging the widely-shared beliefs of those who are unprepared to confront the erosion and arguably corporate capture of the State.[9] As a result, privatization has become a largely accepted norm of our political economies, albeit debated or resisted by scholars, policymakers, and observers alike. There is no clear consensus about the definition of privatization. According to former UN Special Rapporteur on extreme poverty and human rights, Philip Alston, "Privatization is a process through which the private sector becomes increasingly, or entirely, responsible for activities traditionally performed by government, including many explicitly designed to ensure the realization of human rights. It can take many forms, ranging from the complete divestiture of government assets and responsibilities to arrangements such as public-private partnerships."[39]

Alston argues that "Most definitions of privatization are of limited utility, because they fail to capture the deeper processes of value transformation that are at play. Narrowly conceived, privatization involves full divestiture, through which 'all or substantially all the interests of a Government in a utility asset or a sector are transferred to the private sector', even if some form of governmental regulation or oversight is maintained. More broadly, the term can cover any private sector involvement in public service provision."[40] For this book, we define privatization as the provision of public goods and services by the private sector. Notably, civil society is excluded from our definition. However, international agencies, philanthropic foundations, and other public-private intermediaries fall into definitional limbo, as many have promoted or implemented privatization in the global North or global South, while others have not.

Ideologically, privatization is a core free market policy, alongside free trade, deregulation, and fiscal austerity. It is also one of the most obvious manifestations of the reduction of the State in the economy. Beginning in the 1970s, it characterized a period of structural adjustment programs implemented in emerging economies, initially promoted by international financial institutions (IFIs), namely the IMF and the WB, particularly in countries experiencing economic and debt crises. Then it took root in agrarian land, urban real estate, and infrastructure projects across the globe before spreading through governments big and small, and finally into virtually every public function. Alston notes that "In 2017, the Privatization Barometer concluded that 'the massive global privatization wave that began in 2012 continues unabated'. That wave has been driven not only by Governments and the private sector, but also by international organizations, especially the International Monetary Fund, the World Bank and the United Nations."[41]

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9 See **State capture, central banks, and economic policy**.

Under the current development paradigm, privatization continues to be deemed central to market efficiency and competitiveness. According to FIAN International, the Transnational Institute, and Focus on the Global South, "The transformation of land and other common goods into asset classes that can be traded on global financial markets has to be seen in the continuity of the privatization and commodification of these goods, which has been promoted by actors, such as the World Bank for a long time."[42] A clear example of this is the revolving door phenomenon personified by Jim Yong Kim, World Bank president from 2012-19. Kim notoriously "bailed out" distressed governments using a privatize-then-securitize formula, whereby financial intermediaries in the form of private equity firms managed the International Finance Corporation's (IFC) privatization agenda, before he resigned to join a private equity firm in New York.

Concerning features of privatization

Privatization has numerous worrisome features. The first is that it clearly favors corporate interests and the overall capital shift away from State control. Another is that nearly any government function can be performed by the private sector, such as feeding the hungry, caring for the elderly and infirm, providing transportation for all, or building affordable housing. However, these functions make little sense for private companies to perform under symmetric market conditions without explicit enticements in the form of regulatory exemptions and relaxations, regressive taxation, and receiving practical monopolies.

Under the provision of the State, public services such as water, electricity, or waste management are subsidized by taxpayers, available to all without distinction, and — in the case of a user's inability to pay — flexible in terms of payment installments, moratoriums, and even reductions. However, with privatization, companies — including private equity and hedge funds with less accountability than their publicly-traded counterparts — are free to charge significant fees and even recoup underlying assets from users in the case of delinquency. This resource distortion makes accessing once-public goods and services conditional on one's ability to pay. Privatization responds not to need but rather to rent-seeking opportunity, exacerbating income inequality and disproportionately harming poor and marginalized populations.

While violations of human rights or expropriation of public goods by private parties are clearly illegal, privatization as a phenomenon is legal and, moreover, too often unchallenged. Alston argues that this is the normative effect of privatization pro-

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ponents having "reversed the burden of proof." Their lobbying and public relations efforts have bought a general acceptance that the private provision of public goods and services is more efficient and effective, essentially the natural paradigm. Sassen situates the ubiquitousness of privatization within a systemic "extractive logic," which manifests in widely accepted deregulatory policies that promote predatory capital formations, detach fiscal and monetary arrangements from State regulation, and expel populations to the periphery of society.[43]

The Roosevelt Institute lists other problems with privatization. "The first concern is that it has the potential to introduce significant opportunities for abuse into government functions. Private-sector providers of services can use the opportunity to abuse the process of allocating government services, wasting taxpayer resources. This leads to less government innovation and an inability to meet citizen needs. ... Government privatization also allows private individuals and ultimately the state itself to circumvent state accountability and transparency measures. A large number of government transparency laws, from the Freedom of Information Act to the Administrative Procedure Act, do not apply when government actions are privatized. Privatization discards the liberal conception of what democracy itself is good for: checking private and government power and promoting accountability and responsiveness. ... Another major problem with the privatization of government services is that it replaces funding streams drawn from general revenue with individual user fees."[44]

Generally, there are three prominent types of privatization: the definitive sale of public goods, the short- or long-term sub-contracting of public services, and public-private partnerships (PPPs or P3s). In the first case, common examples include extractive industries such as mines or pipelines, facilities such as hospitals, transportation such as railroads, and utilities such as power stations. Mexico is a prime example of this, where, beginning in the 1980s, the government sold off everything from railroads to mines, banks to refineries, and tortilla makers to bicycle companies.[45]

In the second case, an example of short-term service provision is the world's largest asset manager, BlackRock, and its pandemic-era contract with the Fed to manage the government's corporate debt purchase program. A long-term example is a company providing municipal water and waste management for 25 or even 50 years, as is the case of private equity-owned companies in the U.K. In this vein, observers often point to the recent bankrupting of the U.S. Postal Service as a proximate target for privatization, either wholesale or as a long-term contract.

The third type — P3s — falls into definitional limbo insofar as governments contract directly with international agencies, CSOs, or the private sector to build public infrastructure or deliver services. According to FIAN International, the Transnational Institute, and Focus on the Global South, "PPPs are being promoted as a solution to overcome the lack of governmental funding for resource development and infrastructure projects. In many cases, this amounts to the privatization of the provision

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of public services like transport, health, education and energy, with detrimental consequences for disadvantaged and low-middle income sectors of the population. In addition, PPPs blur the lines between public and private actors and mix up their respective roles and responsibilities. Public goods and services are increasingly seen as commodities and assets, and the state abdicates from its public responsibilities. In practice, PPPs are used by businesses to evade the bulk of the risks involved in certain types of 'investment' by pushing governments to bend rules and regulations to their advantage, and to avoid accountability."[46]

Today privatization has become the norm for international, national, and sub-national development and public service provision alike. From its neoliberal roots through broad acceptance and implementation, it is a primary driver of the erosion of the State, the capital shift from State control to private ownership, and the acquisition by private equity and hedge funds of once-public goods and services. Essentially, "(P)rivatization has also metamorphosed into an ideology of governance," adds Alston.47

What's at stake is public well-being, not to mention human rights guarantees and protections, particularly across the spectrum of economic, social, and cultural rights. While perhaps a blind spot to some, the impacts of privatization affect us all. Education, health care, housing, infrastructure, water, prisons, voting, the digitalization of government, and a host of what were once core administrative functions of the State are now privatized to one degree or another. As we'll see in the next section, once privatized, these assets can become securitized — pooled together in the form of loans — and sold and re-sold, seemingly in perpetuity. As this happens, the train of advanced capitalism picks up the pace.

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MODERN TRADER

Mortgage backed securities, subprime loans, tranches… (It's) pretty confusing right? Does it make you feel bored? Or stupid? Well, it's supposed to. Wall Street loves to use confusing terms to make you think only they can do what they do. Or even better, for you to leave them the fuck alone. So here's Margot Robbie in a bubble bath to explain…"

MARGOT ROBBIE

Basically, Lewis Ranieri's mortgage bonds were amazingly profitable for the big banks. They made billions and billions off of their 2% fee they got for selling each of these bonds. But then they started running out of mortgages to put in them. After all, there are only so many homes and so many people with good enough jobs to buy them, right? So the banks started filling these bonds with riskier and riskier mortgages. That way they can keep that profit machine churning, right? By the way, those risky mortgages are called "subprime." Whenever you hear subprime, think shit. Our friend Michael Burry found out these mortgage bonds that were supposedly 65% AAA were actually mostly just full of shit, so now he's going to "short" the bonds, which means to "bet against." Got it? Good. Now fuck off!"

— Movie scene from *The Big Short* (2015)[48]

A second macro driver, whose development also parallels that of privatization, is financialization. Like privatization, it too shares responsibility for powering the train of advanced capitalism, as it erodes the State, public goods and services, and human rights protections. However, financialization is more removed from the real economy, as actress Margot Robbie delicately explains in the 2015 film The Big Short about the global financial crisis. Unlike privatization, its presence is less tangible, its effects more indirect. But make no mistake — financialization is no less insidious, no less powerful, no less toxic for the common good. If anything, it's more pervasive and pernicious as well as more closely associated with private capital and the shift from public to private markets.

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Understanding financialization

The reconfiguration of power in international and national markets and the deepening of neoliberal processes through economic liberalization and privatization have driven "the growth and empowerment of financial markets across multiple sectors of the economy and societies."[49] This process is referred to as financialization. In academia, financialization is a contested, somewhat ambiguous term, often analyzed from multidisciplinary perspectives. For our purposes, we understand financialization as "the growth of the financial sector, its increased power over the real economy, the explosion in the power of wealth, and the reduction of all of society to the realm of finance."[50] This entails international capital mobility as well as the deepening of finance-oriented accumulation strategies, both key components of advanced capitalism.[51]

Financialization is not a new phenomenon, though it has garnered more attention since 2007 when low interest rates fueled portfolio diversification and led to increased capital accumulation through financial and legal engineering.[52] Despite the GFC having its origins in subprime mortgage lending, in 2009, institutional investors turned to land and real estate to maintain steady revenues. Real assets continued to lead the global absorption of capital, becoming "central to the reproduction of the current highly financialized system."[53]

On the one hand, real estate is viewed as high-quality collateral, essential for private debt and consumption. A study of 17 advanced economies between the period 1870 and 2010 found that "the sharp increase of credit to GDP ratios in advanced economies in the 20th century has been first and foremost a result of the rapid growth of loans secured on real estate, i.e., mortgage and hypothecary lending."[54] Private debt to GDP ratios increased from 50–60% in 1980 to 118% by 2010, and the mortgage debt to outstanding private loans ratio doubled from about 30% in 1900 to 60% in 2010.55 On the other hand, real estate in cities such as New York and London have become "safe deposit boxes" for international capital and the global elite.[56]

At the same time, agricultural land is increasingly seen as a viable portfolio asset for institutional investors, driving farmland grabs.[57,58,59] The expansion of real estate investment trusts (REITs) in agriculture in the U.S. reflects how productive landownership became concentrated in a small number of companies and how farmers were transformed from owners to renters.[60]

International capital mobility and financial capitalism rely on the continuing expansion of finance's frontiers through the creation of new asset classes that tend to fall outside of traditional financial markets and have the capacity to absorb rapidly increasing global pools of wealth, such as real estate, land, commodities, precious metals, and other natural resources. Excess liquidity is a result of financialization through the emergence of pension funds, sovereign wealth funds, and institutional investors writ large. This pool of wealth stems from the "growing imbalance between the growth rate of the stock of capital and GDP" and has four main sources: i) "pension fund capitalism," or the pool of assets owned by institutional investors; ii) the recycling of the growing trade surplus of emerging economies; iii) loose monetary pol-

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icies, which increase demand for high quality collateral; and iv) "corporate savings," or the rise in accumulated profits of transnational corporations in tax havens.[61]

Asset owners and managers with excess liquidity have pushed towards including socio-economic resources and other productive assets into rent-bearing properties with tradable income streams through a process referred to as assetization. The creation of new asset classes in sectors such as agriculture, commercial construction, manufacturing, and extractives means that their unmarketable qualities (illiquidity and spatial fixity, for instance) are systematically distorted by investors through financial abstraction and risk management models. Financialization instills a productive asset with "qualities that make it attractive as a tradable financial investment," including short-term liquidity and regularized returns, in addition to developing common financial metrics through complex calculative devices.[62] Land, food, water, energy, infrastructure, housing, and other public goods such as education and healthcare —fundamental human rights — are increasingly considered by investors as attractive and viable financial assets — in other words, liquid, manageable, standardized, quantifiable, and marketable.[63]

Assetization, then, is a principal component and prerequisite of financialization, through which these assets are then bundled and circulated in financial markets.[64] The capitalization of these new asset classes depends on innovative securitization tools that "re-embed income streams within credit-mediated global capital circuits, so that the rents circulated as pure financial assets."[65] In the process of asset creation, credit rating agencies have played a central role in their legitimization in global financial markets.[66, 10]

Spread of financialization

The spread of finance-oriented accumulation strategies can be observed and analyzed at all levels of economic interaction, from the international to the macro, firm, and individual levels.[67] Financial actors have expanded their role in the operation of domestic and international economies, while other economic actors — non-financial corporations, states, and households — have also progressively incorporated financial logics and motives into their operations.[68]

10 See **Ratings industry**.

Firms operating in non-financial sectors hold a higher proportion of financial assets, earn an increasing portion of profits from financial activities, and are subject to pressures to increase shareholders' profits.[69] By maintaining shareholder primacy, "profits are increasingly used to drive up rising short-term share prices, and are captured by shareholders, rather than invested in labor or capital."[70] This fundamentally changes the notion of how value is created and the relationship between the Main Street (real) and Wall Street (financial) economies.

Financialization has also proven to be both an economic and political project, closely tied to neoliberalization, "characterized by a politics centered upon actively creating investable assets from state services, either directly through privatization, whereby public assets are sold to the private sector; or through marketisation, whereby states and markets are increasingly entangled."[71] States are increasingly studied in financialization literature for their role in creating and enforcing the "socio-legal regulatory environment necessary for financial markets to unfold."[72] They facilitate the expansion of financial markets through policy and actively participate in financial markets by making sovereign debts marketable.[73] States have further adopted financial logics and turned to finance for providing public goods and promoting growth through which financialization has become "a rising paradigm of governance and a new form of statecraft."[74]

Recently, scholars have linked the mobilization of land as a financial asset to the expansion of financial markets and the market-oriented regulatory restructuring of urban governance. Local governments with budget restrictions have relied on monetizing land and infrastructure to secure public service provision — giving finance structural and infrastructural power in the global economy.[75] Not only does the State increasingly depend on financial structures and logics, but it is central to creating new markets for asset managers and financial actors, which require a "complex set of institutional, regulatory, socio-cultural, calculative and political practices."[76] In this sense, finance created the conditions of its own deepening[77] through largely hidden, complex, opaque processes and techniques that escape accountability.[78]

Although financialization has a global reach, the process has been variegated across geographies and sectors, determined by local contexts — such as land ownership, institutional arrangements, regulatory frameworks, the nature of local institutions, and the existence of social opposition — and the position of domestic economies within global capitalism.[79] Rather than providing a path for States to "catch up" on the road towards development, financialization has deepened inequalities between and within States. This is particularly evident in relations of indebtedness between States and financial actors and the increased exposure of some States to risk and volatility. An emerging capitalist economy's "subordinate position in relation to money and capital markets means that capital inflows are predominantly short-term, seeking financial yields rather than assuming productive risk."[80]

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Tensions caused by financialization

The unequal process of financialization across geographies and sectors reflects the fallacy of the "circulability" of alternative assets in global financial markets and evidence why this process is not without contestation. Let's take, for example, the myth of financial inclusion. Since 1980, global wages as a proportion of GDP have stagnated. At the same time, under the banner of financial inclusion, development finance institutions (DFIs) and IFIs have supported and advocated for policies and business models that facilitate lending to poor and rural populations. Microfinance, microcredit, fintech, and other forms of private capital have surged thanks to these policies and the decreasing cost of financial intermediation provided by technology and increased competition.[81] In the global South, microfinance pushed the "frontier of financial accumulation" into the economic activities and everyday lives of the poor.[82] Financial inclusion "implies rhetorically and practically turning poverty into a problem of finance, diverting funds from public services and infrastructure to financial institutions."[83]

At the local level, financialization is increasingly linked with worker and social precarity, land grabbing, subordination, social exclusion, and loss of democratic accountability.[84] The expansion of asset-based welfare programs, such as compulsory savings schemes and State-subsidized mortgages, has become central to social provision and has facilitated new practices of financialization.[85] Ultimately, financialization has created a form of "hyper-individualized governmentality" through the expansion of credit scoring using all types of data and financialized pension schemes.[86] Financial logics also impact labor, transforming workplaces, labor markets, and means of production.[87]

Financial abstraction requires a disconnect between the revenue streams of private credit or productive assets — such as public utilities — and their social purpose or location-specific value. A central contradiction of financialization and the creation of land into liquid capital is in the fixity of space.[88] For instance, housing is increasingly disconnected from its "social function of providing a place to live in security and dignity and hence undermines the realization of housing as a human right."[89]

Another tension is in the provision of public services, in which investor incentives diverge with consumer and public interests, as in the case of private education. Eaton *et al* (2020) analyze value creation in private equity buyouts in post-secondary education in the U.S., an intensely subsidized sector, where the incentive misalignment among stakeholders leads to poor student (consumer) outcomes.[90] According to the study, LBOs led to higher tuition and per-student debt alongside lower education inputs, graduation rates, loan repayment rates, and earnings among graduates.[91]

Scholars have also studied the spread of financial logics to nature and life. The concept of the financialization of nature refers to "a process of ontological reconfiguration through which different qualities of nature and resource-based production are translated into a financial value form to be traded in specialized markets."[92] This process is reflected in "new financing arrangements in mining, oil and gas extraction, farmland, and agricultural production" and the creation of "financial assets in di-

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verse fields such as carbon markets, ecosystem services compensation and mitigation schemes, water rights, agricultural microinsurance, and agri-food chains."[93]

What are the ethical limits of financialization when it can be applied to all aspects of life, nature, and society? More importantly, should the expansion of finance continue to be presented as a solution to social and climate crises? At the macro level, financial actors have expanding structural power that limits the possibility of effective reform and regulation and has significant consequences for democracy and accountability. Inequalities in the global financial system, both within and between States, are also deepening. At the firm level, companies in all sectors are driven by shareholder primacy, which prioritizes dividends above value creation. Meanwhile, workers are facing stagnating wages are increasingly pressured to bear and manage risks. For instance, pervasive subcontracting in sectors such as construction and infrastructure and among delivery workers and taxi drivers, for example, means that workers are misclassified as entrepreneurs, which limits their access to benefits and provisions. Finally, financial inclusion as a global solution to poverty — in the form of access to private credit — makes public goods and services conditional while transferring risk and responsibility to the individual for their well-being.

Together, privatization and financialization have become the twin engines of advanced capitalism. Hand-in-hand, these macro drivers have allowed for the increase in private capital and the shift to private markets by privatizing, assetizing, securitizing, and ultimately financializing not just public goods and services but virtually every aspect of life and nature. Of course, these processes have had more than a little help from the locomotive where the conductor and engineer — arguably the two biggest players in the global financial system — ensure that the train functions to perfection.

BANKS AND ASSET MANAGERS

Banks and asset managers are the conductor and engineer of advanced capitalism, playing an outsized role in the global economy due to their size and centrality in the financial system. They control the throttle and guide the train across new frontiers. Their special passenger — private capital — used to be along just for the ride. But recently, he's taken a keen interest in how the locomotive is driven and which route it takes, leading to a precarious course for Wall Street and Main Street alike.

In this section we discuss the relationship between banks and asset managers and private capital. They are at once mutually dependent and wholly invested in each other's success as their future in capitalism — and the fate of the rest of us — hangs in the balance. Let's begin with financial assets in the form of cash and securities, excluding for the moment real assets that are less liquid. How much money is there in the global economy, which institutions control it, and what's the link to private capital? This discussion is critical to understanding the pervasiveness of financialization and how capital is shifting from public to private markets.

By the end of 2018, the G20 Financial Stability Board (FSB) measured the value of global financial assets at 379 trillion USD. Banks, central banks, and public financial institutions accounted for 195 trillion USD (51.5%), and non-bank financial institutions held 184 trillion USD (48.5%). In the first category, commercial and investment banks not controlled by the State accounted for the largest share at 148 trillion USD. In the second category, all financial institutions that are not a central bank or government institution, bank, insurance company, or pension fund, including asset managers and private equity funds, accounted for 114 trillion USD.[94] While this metric is imperfect given that physical assets like real estate and metals are frequently collateralized, securitized, or otherwise financialized, financial asset value provides a useful framework for understanding the global economy as it comprises the four types of public and private capital on balance sheets worldwide: equity, debt, working, and trading.

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Table 1
Macro-mapping of the financial system (2018)

	Total global financial assets	Central banks	Banks	Public financial institutions	MUNFI	Insurance corporations[1]	Pension funds	OFIs	Financial auxiliaries[2]
Size at end-2018 (USD trillion)	378.9	30.1	147.9	17.3	183.7	32.9	35.6	114.3	1.0
Share of total global financial assets (%)	100.0	7.9	39.0	4.6	48.5	8.7	9.4	30.2	0.3
Growth in 2018 (year-over year,%)	1.4	2.5	2.8	3.2	-0.1	0.2	0.4	-0.4	8.8
Growth 2012-17 (annualised growth, %)	5.9	8.5	3.4	4.7	7.8	5.5	6.3	9.0	8.8

[1] For some jurisdictions, data on insurance corporations include separate accounts.

[2] Financial auxiliaries are institutional units principally engaged in serving financial markets, but do not take ownership of the financial assets and liabilities they handle (SNA 2008). The figures for financial auxiliaries excludes the euro area due to reporting constraints.

Original Source: Jurisdictions' 2019 submissions (national sectoral balance sheet and other data); FSB calculations.

Our Source: Financial Stability Board, "Global Monitoring Report on Non-Bank Financial Intermediation 2019", 19 January 2020, www.fsb.org/wp-content/uploads/P190120.pdf.

For the sake of comparison, global gross domestic product (GDP) was estimated at 90 trillion USD in 2019,[95] and global real estate value in 2017 was estimated at 228 trillion USD. According to Savills, "Global real estate is a more valuable asset class than all stocks, shares and securitised debt combined — which, together amount to just 170 trillion USD. The value of all the gold ever mined throughout history pales into even greater insignificance at a mere 6.5 trillion USD."[96]

Financial institutions can be divided into two categories: banks (central banks, banks, and public financial institutions) and non-bank financial institutions (NBFIs or shadow banks, including insurance companies, pension funds, investment banks, and all types of private capital). Their worldwide market share is considerable. Assets under management (AUM) is a standard measure of financial assets that a bank or NBFI manages for clients as opposed to itself. Using this metric, banks and asset managers are the largest financial institutions, followed by pension funds and insurance companies, and then sovereign wealth funds and private equity firms.[97]

According to the FSB, "(B)anks are the largest single sector of the financial system in 22 jurisdictions of the 29-Group," and, increasingly, the world's largest banks are concentrated in China, as discussed below. "However," continues the FSB, "(the com-

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bination of non-bank sectors) represents more than 50% of the financial system in 11 of those jurisdictions, with (all financial institutions that are not central banks, banks, public financial institutions, insurance corporations, pension funds, or financial auxiliaries) typically comprising the largest share. In other jurisdictions still, namely Australia, the U.S. and some (emerging market economies), pension funds constitute an important share of the financial system. Central banks hold a relatively large share of financial assets in two jurisdictions (Argentina and Saudi Arabia)."[98]

Banks and NBFIs conduct credit and other types of financial intermediation in order to make a profit, moving funds from parties with excess capital to those needing funds. However, while a financial institution receives and lends money, a financial intermediary may lend its own money or instead facilitate borrowing. Financial institutions and intermediaries can be one and the same or separate, depending on regulation and function. Banks connect depositors and other lenders, including central banks and NBFIs, with borrowers. NBFIs, such as insurance companies and asset managers, collect premiums or investments and distribute benefits and payments. All of these actors offer a wide variety of financial products and services for which they charge fees, earn interest, and manage assets (either their own or those of others).

The critical distinction between financial institutions is that a banking license allows banks to solicit and receive deposits from the general public, leaving the provision of virtually any other banking service to NBFIs. In most countries, banks are more heavily regulated than NBFIs. Since the GFC, this was also the case in the U.S., the only country with a dual federal and state banking system. However, the Trump administration signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (2018), which significantly reduced the regulatory burden for banks created under the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010). Notwithstanding, NBFIs play a huge role at both the firm and household levels and increasingly pose a systemic risk for the financial system overall, given their interconnectedness with banks and other actors.[11]

Due to their weight and importance in the financial system and their roles as key drivers of financialization, we discuss banks and asset managers in some detail here. To be clear: banks can be asset managers, and asset managers can be banks. Of the top twenty asset managers worldwide, banks account for 25% of AUM while comprising 35% of the managers, insurance companies 9% and 10% respectively, and independent asset managers 66% and 55% respectively.[99]

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11 "Both banks and insurance companies are financial intermediaries. However, their functions are different. ... (I)nsurance companies may channel the money into investments such as commercial real estate and bonds. Insurance companies invest and manage the monies they receive from their customers for their own benefit. Their enterprise does not create money in the financial system (unlike banks)." See: Poonkulali Thangavelu, "Insurance Companies vs. Banks: What's the Difference?," Investopedia, 17 April 2019, www.investopedia.com/articles/personal-finance/070715/insurance-companies-vs-banks-separate-and-not-equal.asp.

Banks

In an analysis of financialization and the role of private capital, banks deserve particular attention. First, they own the most financial assets (39%) of any category of financial institution in the world. Second, they manage between one-quarter and one-third of assets globally. Third, their primary function is to create money by accepting deposits while paying out a minimal interest rate to savings depositors, and then lend that money out to companies and individuals while charging a higher interest rate. Fourth, banks are generally more heavily regulated than shadow banks and other NBFIs, and the deposits they receive are insured by the government. And fifth, two types of banks — commercial and investment — cater exclusively to corporate clients, unlike retail banks that focus on individual customers.[12]

As mentioned previously, the shift from industrial to financial capitalism is characterized by greater demands for liquidity, which are primed through credit and lending. Increasingly, businesses depend upon borrowing to meet short-term expectations, preferring to spend the net present value of financial assets on hand today while essentially betting that sales and investments will net greater returns tomorrow. This economic model, while efficient for creating new financial assets, favors financial institutions and asset owners to whom capital returns flow over average depositors, debtors, and financial consumers, producing the significant income gap between the Wall Street and Main Street economies.

Commercial and investment banks provide the majority of liquidity for financial transactions globally, including providing credit and loans to private capital firms such as private equity and hedge funds, which regularly leverage assets on a scale of 6-10x to produce returns for their partners. Commercial banks provide a mix of day-to-day banking and financing services for corporate clients, including credit lines, term loans, etc. And investment banks provide these clients with more sophisticated financial services and intermediation, including for IPOs, mergers and acquisitions, underwriting investment risks, and private placements and other secondary market transactions typical of private equity and hedge funds. Almost all corporations and NBFIs use investment banks, though these companies are increasingly turning to largely unregulated private capital markets for credit, loans, and financial intermediation.

In its October 2020 report, FIAN International, Transnational Institute, and Focus on the Global South illuminated the evolving role of commercial banks in financialization. "Until the 1980s, commercial banks would originate mortgage loans and keep them in their balance sheets for the duration of the loan period. The loans were granted to close financing gaps and were repaid with the aim of full and permanent repayment. Today, banks originate mortgages, and then sell them off to securitization trusts, which turn these mortgages into 'securities' and sell them to financial

12 Incidentally, HNWIs and their family offices use private banking services, which are offered by a variety of banks, including retail banks.

investors. The primary goal is no longer to repay the loans, but to transform the debt into a financial instrument (a 'security') that can be traded on financial markets. Commercial banks are now mere 'underwriters' of the mortgage (which is quickly sold and securitized), while households that took the mortgage are now de facto 'issuers of securities' on (global) financial markets." As we know from our discussion of financialization, what's clear is that the assets of Main Street increasingly fuel the profits of Wall Street, often without our knowledge or acquiescence.[100]

In terms of banking market share worldwide, as of 2019, China was home to the largest number of top banks in the world, albeit with a significant asterisk. Nineteen Chinese banks held assets totaling 26 trillion USD in 2019. However, all of these institutions, to one extent or another, depend upon and are subject to State control, blurring the line between bank and public financial institution. According to S&P Global, "China's 'Big Four' — Industrial & Commercial Bank of China Ltd., China Construction Bank Corp., Agricultural Bank of China Ltd., and Bank of China Ltd. — all maintained their positions as the four largest banks in the world, posting a combined asset value of 14.821 trillion USD, up 7.52% from the prior year's ranking. Other Chinese banks also saw strong asset growth compared to their global peers; nine of the remaining 15 Chinese banks on the top-100 list ranked higher this year than they had previously."[101] Next is the U.S., where 11 banks hold assets worth 13 trillion USD in 2019, followed by Europe and Japan.

Table 2

The World's Top 100 Banks (2019)

Current rank^	Previous rank^^	Current vs. previous	Company (ticker-exchange)	Headquarters	Accounting principle	Total assets (US$B)
1	1	NC	Industrial & Commercial Bank of China Ltd. (1398-HKG)	China	IFRS	4,324.2
2	2	NC	China Construction Bank Corp. (939-HKG)	China	IFRS	3,653.1
3	3	NC	Agricultural Bank of China Ltd. (1288-HKG)	China	IFRS	3,572.9
4	4	NC	Bank of China Ltd. (3988-HKG)	China	IFRS	3,270.1
5	5	NC	Mitsubishi UFJ Financial Group Inc.(8306-TKS)	Japan	Japanese GAAP	2,892.9
6	7	▲	HSBC Holdings PLC (HSBA-LON)	U.K.	IFRS	2,715.1
7	6	▼	JP Morgan Chase & Co. (JPM-NYSE)	U.S.	U.S. GAAP	2,687.3
8	8	NC	Bank of America Corp. (BAC-NYSE)	U.S.	U.S. GAAP	2,434.0
9	9	NC	BNP Paribas SA (BNP-PAR)	France	IFRS	2,429.2
10	10	NC	Crédit Agricole Group	France	IFRS	2,256.7
11	12	▲	Japan Post Bank Co. Ltd. (7182-TKS)	Japan	Japanese GAAP	1,984.6
12	14	▲	Sumitomo Mitsui Financial Group Inc. (8316-TKS)	Japan	Japanese GAAP	1,954.7
13	11	▼	Citigroup Inc. (C-NYSE)	U.S.	U.S. GAAP	1,952.1
14	13	▼	Wells Fargo & Co. (WFC- NYSE)	U.S.	U.S. GAAP	1,927.5
15	15	NC	Mizuho Financial Group Inc. (8411-TKS)	Japan	Japanese GAAP	1,874.8
16	16	NC	Banco Santander SA (SAN-MAD)[1]	Spain	IFRS	1,702.6
17	18	▲	Société Générale SA (GLE-PAR)	France	IFRS	1,522.0
18	20	▲	Barclays PLC (BARC-LON)	U.K.	IFRS	1,510.1
19	19	NC	Groupe BPCE	France	IFRS	1,501.5
20	22	▲	Postal Savings Bank of China Co. Ltd. (1658-HKG)	China	PRC GAAP	1,467.3
21	17	▼	Deutsche Bank AG (DBK-ETR)	Germany	IFRS	1,456.2
22	21	▼	Bank of Communications Co. Ltd. (3328-HKG)	China	IFRS	1,422.6
23	23	NC	Royal Bank of Canada (RY-TSX)*	Canada	IFRS	1,116.3
24	24	NC	Lloyds Banking Group PLC (LLOY-LON)	U.K.	IFRS	1,104.4
25	26	▲	Toronto-Dominion Bank (TD-TSX)*	Canada	IFRS	1,102.0
26	27	▲	China Merchants Bank Co. Ltd. (6000036-SGSE)	China	IFRS	1,065.2
27	35	▲	Intesa Sanpaolo SpA (ISP-MIL)[2]	Italy	IFRS	1,057.8
28	29	▲	Norinchukin Bank	Japan	Japanese GAAP	1,011.1

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29	25	▼	ING Groep NV (INGA-AMS)	Netherlands	IFRS	1,000.72
30	33	▲	Goldman Sachs Group Inc. (GS-NYSE)	U.S.	U.S. GAAP	992.97
31	31	NC	Industrial Bank Co. Ltd. (601166-SGSE)**	China	PRC GAAP	976.79
32	28	▼	Crédir Mutuel Group***	France	IFRS	976.14
33	30	▼	UBS Group AG (UBSG-SWX)	Switzerland	IFRS	972.18
34	32	▼	UniCredit SpA (UCG-MIL)	Italy	IFRS	960.21
35	38	▲	China Minsheng Banking Corp. Ltd. (600016-SGSE)	China	IFRS	959.63
36	36	NC	Royal Bank of Scotland Group PLC (RBS-LON)	U.K.	IFRS	957.60
37	34	▼	Shanghai Pudong Development Bank Co. Ltd. (600000-SGSE)**	China	PRC GAAP	950.01
38	37	▼	China CITIC Bank Corp. Ltd. (998-HKG)**	China	IFRS	904.02
39	39	NC	Morgan Stanley (MS-NYSE)	U.S.	U.S. GAAP	895.43
40	40	NC	Bank of Nova Scotia (BNS-TSX)*	Canada	IFRS	872.62
41	41	NC	Credit Suisse Group AG (CSGN-SWX)	Switzerland	U.S. GAAP	812.91
42	42	NC	Banco Bilbao Vizcaya Argentaria SA (BBVA-MAD)[3]	Spain	IFRS	782.16
43	44	▲	Standard Chartered PLC (STAN-LON)	U.K.	IFRS	720.40
44	43	▼	Commonwealth Bank of Australia (CBA-ASX)	Australia	Australian GAAP	688.40
45	49	▲	China Everbright Bank Co. Ltd. (601818-SGSE)	China	IFRS	679.81
46	50	▲	Bank of Montreal (BMO-TSX)*	Canada	IFRS	665.20
47	46	▼	Rabobank	Netherlands	IFRS	662.77
48	45	▼	Australia & New Zealand Banking Group Ltd. (ANZ-ASX)**	Australia	Australian GAAP	661.72
49	51	▲	DZ BANK AG	Germany	IFRS	627.31
50	47	▼	Nordea Bank Abp (NDA SE-OME)	Finland	IFRS	622.66
51	48	▼	Westpac Banking Corp. (WBC-ASX)**	Australia	Australian GAAP	611.47
52	52	NC	National Australia Bank Ltd. (NAB-ASX)**	Australia	Australian GAAP	571.34
53	58	▲	Ping An Bank Co. Ltd. (000001-CNSSE)	China	PRC GAAP	565.72
54	53	▼	Danske Bank A/S (DANSKE-CSE)	Denmark	IFRS	564.83
55	54	▼	State Bank of India (SBIN-NSE)	India	Indian GAAP	561.54
56	55	▼	Resona Holdings Inc. (8308-TKS)	Japan	Japanese GAAP	549.51
57	57	NC	Sumitomo Mitsui Trust Holdings Inc. (8309-TKS)	Japan	Japanese GAAP	509.28
58	59	▲	Canadian Imperial Bank of Commerce (CM-TSX)*[4]	Canada	IFRS	495.99
59	60	▲	U.S. Bancorp (USB-NYSE)	U.S.	U.S. GAAP	495.43
60	66	▲	PAO Sberbank of Russia (SBER-ME)	Russia	IFRS	482.53
61	65	▲	Shinhan Financial Group Co. Ltd. (A055550-KRX)	South Korea	Korean IFRS	478.50
62	56	▼	Commerzbank AG (CBK-ETR)[5]	Germany	IFRS	478.40
63	62	▼	Truist Financial Corp. TFC-NYSE)	U.S.	U.S. GAAP	473.08
64	64	NC	KB Financial Group Inc. (A105560-KRX)	South Korea	Korean IFRS	449.15
65	61	▼	CaixaBank SA (CABK-MAD)	Spain	IFRS	439.25
66	68	▲	DBS Group Holdings Ltd. (D05-SGX)	Singapore	Singapore FRS	430.45
67	67	NC	Nomura Holdings Inc. (8604-TKS)	Japan	U.S. GAAP	425.50
68	71	▲	Hua Xia Bank Co. Ltd. (600015-SGSE)**	China	PRC GAAP	422.74
69	63	▼	ABN AMRO Bank NV (ABN-AMS)	Netherlands	IFRS	420.89
70	70	NC	PNC Financial Services Group Inc. (PNC-NYSE)	U.S.	U.S. GAAP	410.30
71	69	▼	Itaú Unibanco Holdings SA (ITUB4-BSP)	Brazil	IFRS	407.37
72	73	▲	Capital One Financial Corp. (COF-NYSE)	U.S.	U.S. GAAP	390.37
73	75	▲	Bank of New York Mellon Corp. (BK-NYSE)	U.S.	U.S. GAAP	381.51
74	74	NC	Bank of Beijing Co. Ltd. (601169-SGSE)**	China	PRC GAAP	374.97
75	72	▼	NongHyup Financial Group Inc.	South Korea	Korean IFRS	369.92
76	78	▲	Oversea-Chinese Banking Corp. Ltd. (O39-SGX)	Singapore	Singapore FRS	365.57
77	76	▼	Banco do Brasil SA (BBAS3-BSP)	Brazil	BR GAAP	365.51
78	77	▼	Hana Financial Group Inc. (A086790-KRX)	South Korea	Korean IFRS	365.10
79	79	NC	Banco Bradesco SA (BBDC4-BSP)[6]	Brazil	IFRS	345.21
80	83	▲	China Guangfa Bank Co. Ltd.***	China	PRC GAAP	343.26
81	80	▼	Svenska Handelsbanken AB (publ) (SHBA-OME)	Sweden	IFRS	328.59
82	82	NC	KBC Group NV (KBC-BRU)[7]	Belgium	IFRS	327.87
83	81	▼	Caixa Econômica Federal	Brazil	BR GAAP	321.68
84	86	▲	DNB ASA (DNB-OSL)	Norway	IFRS	317.75
85	85	NC	Woori Financial Group Inc. (A316140-KRX)	South Korea	Kirean IFRS	313.54
86	84	▼	Nationwide Building Society (NBS-LON)**	U.K.	IFRS	307.45
87	88	▲	Bank of Shanghai Co. Ltd. (601229-SGSE)**	China	PRC GAAP	306.04
88	87	▼	Skandinaviska Enskilda Banken AB (SEB A-OME)	Sweden	IFRS	305.79
89	91	▲	La Banque Postale SA	France	IFRS	304.88
90	89	▼	United Overseas Bank Ltd. (U11-SGX)	Singapore	Singapore FRS	300.68
91	90	▼	Bank of Jiangsu Co. Ltd. (600919-SGSE)	China	PRC GAAP	296.58
92	92	NC	Landesbank Baden-Württemberg	Germany	IFRS	287.99
93	93	NC	Erste Group Bank AG (EBS-WBO)	Austria	IFRS	275.72
94	94	NC	Industrial Bank of Korea (A024110-KRX)	South Korea	Korean IFRS	275.54
95	97	▲	Bayerische Landesbank AoR**	Germany	IFRS	266.27
96	-	▲	Qatar National Bank (QPSC) (QNBK-DSM)	Qatar	IFRS	259.48
97	99	▲	China Zheshang Bank Co. Ltd. (2016-HKG)	China	IFRS	258.63
98	96	▼	Swedbank AB (publ) (SWED A-OME)	Sweden	IFRS	257.79
99	-	▲	Raiffeisen Gruppe Switzerland	Switzerland	Swiss GAAP	256.43
100	95	▼	Banco de Sabadell SA (SAB-MAD)	Spain	IFRS	251.10

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Banks and institutions with significant lending business are ranked by total assets for the most recent period available. Only one institution per corporate structure is included in the ranking. Rankings account for completed and pending SNL-covered bank deals on a best-efforts basis. Deals, where the assets sold are in excess of $300 million or the deal value is in excess of $200 million, have been adjusted using the most recent available assets of the target company or the deal announcement/completion assets where available.

Companies classified as "banks" or "savings banks/thrifts/mutuals," companies regulated in the U.S. as bank holding companies, or any financial holding companies with significant banking subsidiaries are included in these rankings. The rankings have been created on a best-efforts basis and exclude development banks and entities that act as central banks/banking associations/supervisors for banking groups.

Data is reported in native currencies and converted to U.S. dollars using end-of-period exchange rates.

^ Pro forma for mergers as of March 31,2020.
^^ Based on previous rankings published April 5, 2019.

Total assets are as of Dec. 31, 2019, unless stated otherwise.

* Data is as of Jan. 31, 2020.
** Data is as of Sept. 30, 2019.
*** Data is as of Dec. 31, 2018.
1 Financial data adjusted for the pending sale of U.S.-based Santander BanCorp.
2 Financial data adjusted for the pending purchase of Italy-based Unione di Banche Italiane SpA.
3 Financial data adjusted for the pending sale of Paraguay-based Banco Bilbao Vizcaya Argentaria Paraguay SA.
4 Financial data adjusted for the pending sale of FirstCaribbean International Bank Ltd.
5 Financial data adjusted for the pending sale of Poland-based mBank.
6 Financial data adjusted for the pending purchase of U.S.-based BAC Florida Bank.
7 Financial data adjusted for the pending purchase of Slovakia-based OTP Banka Slovensko a.s.

Banco de Sabadell SA agreed to sell its institutional depositary business to BNP Paribas SA unit BNP Paribas Securities Services for €115 million on March 28,2020. This transaction has not been adjusted in this ranking due to unavailability of a precise figure.

NC = no change; dash indicates the company was not part of the top 100 banks in the previous ranking.

Source: "The world's 100 largest banks, 2020," S&P Global Market Intelligence, *op.cit*.

The GFC marked a low point for banks worldwide, as credit tightened and financial institutions and their counterparties were unable to fulfill contracts. However, governments stepped in to bail out or close most financial institutions and then increased regulation to curb riskier lending and interconnectedness. According to KPMG, "Banks lost billions of dollars on mortgage defaults, interbank lending came to a virtual halt, and credit markets around the world dried up. In the U.S., the Federal Deposit Insurance Corporation (FDIC) closed 465 failed banks from 2008 to 2012. In Europe, eight of the region's biggest banks have lost USD 420 billion in market value since 2008. In response to the crisis, regulations such as Dodd-Frank Act and Basel were put in place that required banks to make less risky loans and to have more capital on their books. New regulations also increased requirements for financial reporting and transparency."[102]

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Following this, banks rebounded in a major way during the 2010s, posting significant profits while spending excess capital on dividends and stock buybacks for shareholders, versus on the needs of individual depositors and debtors. In 2020, however, as companies faced pandemic-induced bankruptcies during the pandemic and central banks stepped in to provide nearly free credit and purchase junk corporate bonds, banks were tested like never before. On one hand, bank deposits were up 20% in 2020 thanks to customers receiving government subsidies in one form or another and then saving their cash. But on the other hand, near-zero interest rates significantly reduced loan balances and thus bank profits.[103]

To add self-inflicted wound to injury, 2020 also marked a rude awakening for banks following the leak of hundreds of thousands of suspicious activity reports from the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). The FinCEN Files revealed pervasive and recurring money laundering practices by global North and global South banks, totaling 2 trillion USD in financial transactions from 1999-2017. While money laundering by U.S., European, and other banks is well-documented, the scale and impunity associated with these transactions remain startling.

BuzzFeed News, which broke the story, together with journalists and media organizations around the world, writes that "The networks through which dirty money traverse the world have become vital arteries of the global economy. They enable a shadow financial system so wide-ranging and so unchecked that it has become inextricable from the so-called legitimate economy. Banks with household names have helped to make it so." It concludes that "Ultimately, the power to keep criminal profits from being laundered through the U.S. financial system may not reside in the actions of a bank's compliance office or its computer systems or even its executive tier. It may not reside with banking regulators or federal prosecutors or FinCEN. It may not even be a matter of national policy alone. Shutting down wayward banks could have an impact on the whole economy — for the U.S., its major trade partners, and beyond."[104]

As we will discuss subsequently, since the GFC led to increased government regulation and public scrutiny of banks, private capital firms have stepped eagerly into the void, both to buy up banking assets that were shed — as required by law— as well as to increase their market share as financial intermediaries. While private equity, hedge funds, and other private capital types continue borrowing from banks, they also have begun to seek leverage from each other as well as from other NBFIs. Despite the shift from public to private markets, the link between banks and private capital remains one of mutual dependency: banks draw significant business from private capital, and these companies, in turn, conduct day-to-day banking with and receive enormous leverage from banks for their high-risk investments.

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Asset managers

Asset managers merit specific mention due to their enormous weight in the global financial system. Among the NBFIs, excluding insurance companies (which hold 33 trillion USD of financial assets) and pension funds (36 trillion USD), asset managers arguably control the most money, after banks, in the financial system.[105] As of 2019, according to the Thinking Ahead Institute and *Pensions & Investments*, the top 500 asset managers in the world managed 104 trillion USD (AUM).[106] This does not include approximately 40 trillion USD of mostly passive (index-based) mutual funds and exchange-traded funds (ETFs), or the asset managers' own institutional funds.[107] While still less than the 148 trillion USD controlled by banks, the figure for asset managers is significantly larger than the estimated 4.5 trillion USD managed by private equity firms, for example.

Unlike banks, asset managers ostensibly have fewer ties to private capital (as they invest mostly in public markets), while private equity and other types of private capital — by definition — invest almost exclusively in private markets, buy entire companies, and assume hands-on portfolio management. In 2019, on average, asset managers allocated their investments as follows: equities and REITs (46%), fixed income (34%), cash (7%), alternatives including private equity and hedge funds (6%), and other (7%).

What they have in common, however, is that both asset managers and private capital managers actively and discretionarily manage investments (76% of asset managers' investments are active, versus 100% of the most common types of private capital investments) for similar clientele. The risk tolerance of asset managers, as well as their time horizons, are different from that of private equity or hedge funds. Asset managers tend to mitigate risk and invest over the long term, while private equity and hedge funds seek greater risk over a shorter period of time. Both asset managers and private capital managers charge fees and maintain investment minimums, catering to HNWIs, pension funds, government entities, and other NBFIs.

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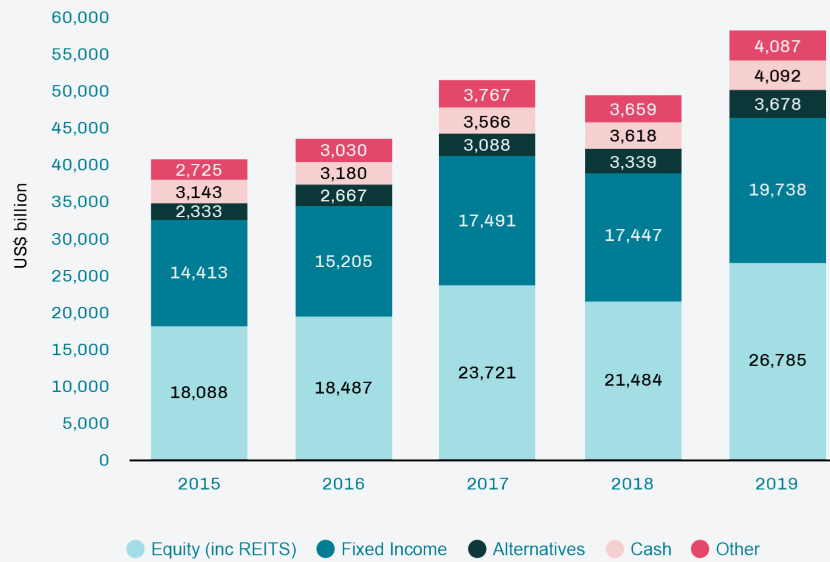
Figure 1
Asset Allocation by Asset Managers (2019)[1]



[1] Based on a subset of asset managers in the 2019 ranking who provided relevant data for all years since 2015.

Original Source: Based on a subset of asset managers in the Thinking Ahead Institute's 2019 ranking who provided relevant data for all years since 2015.

Our Source: "The world's largest asset managers 2020," Thinking Ahead Institute, *op.cit.*

Given that asset managers own securities on behalf of clients, versus banks which employ a variety of ownership and non-ownership strategies such as lending to make a profit, it can be said that asset managers are the largest owners of global financial assets.[108] The main asset owners (clients of these asset managers) in descending order are: non-government retirement plans, other, non-affiliated insurance companies, government retirement plans, sovereign wealth funds, endowments and foundations, and central banks.[109] Of the Top 10 asset managers in the world, with AUM totaling 32 trillion USD, eight are based in the U.S., including BlackRock at number one with AUM of 7.4 trillion USD, and Vanguard and State Street filling out the top three. Notably the top 20 managers' share of AUM increased by 43% during 2019, indicating significant industry consolidation. In 2019, AUM growth was most significant in Japan (25%), followed by North America (20%), and Europe, including the U.K. (5%), with 4.5% for the rest of the world.[110]

Needless to say, 2020 was a unique year for the global financial system, and asset management is no exception. In general, the industry took losses, though some managers benefited from a rebound in equity investing, larger-than-expected ETF

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inflows, and corporate bond buybacks by central banks. In particular, BlackRock gained 100 billion USD in new clients during Q2 2020 alone, as well as a privatized form of management of the Fed's bond-buying program.[111] For comparison's sake, BlackRock's 7.4 trillion USD AUM is approximately equal to the combined value of the world's top 20 pension funds.[112]

Such size and influence have led to calls by financial regulators to regulate asset managers like banks given their systemic importance for the economy. "The 10 largest institutional investors collectively own more than a quarter of the U.S. stock market after quadrupling their holdings since 1980. Concentration of ownership and the increasing importance of the trading activities of the top investors has pushed up the volatility of stocks held in their portfolios and added to the 'noise' or mispricings embedded in shares, according to a study by four finance professors."[113]

Table 3

The World's Top 100 Asset Managers (2019)

Rank	Manager	Market	Total assets
1	BlackRock	U.S.	$7,429,632
2	Vanguard Group	U.S.	$6,151,920
3	State Street Global	U.S.	$2,116,424
4	Fidelity Investments	U.S.	$3,043,134
5	Allianz Group	Germany	$2,539,842
6	J.P. Morgan Chase	U.S.	$2,364,000
7	Capital Group	U.S.	$2,056,991
8	BNY Mellon	U.S.	$1,910,000
9	Goldman Sachs Group	U.S.	$1,859,000
10	Amundi	France	$1,617,280
11	Legal & General Group	U.K.	$1,568,891
12	Prudential Financial	U.S.	$1,550,982
13	UBS	Switzerland	$1,413,000
14	BNP Paribas	France	$1,257,603
15	Northern Trust	U.S.	$1,231,300
16	Invesco	U.S.	$1,226,173
17	T. Rowe Price	U.S.	$1,206,800
18	Wellington Mgmt.	U.S.	$1,154,735
19	Morgan Stanley	U.S.	$1,131,824
20	Wells Fargo	U.S.	$1,091,100
21	AXA Group	France	$1,085,547
22	Nuveen	U.S.	$1,060,770
23	Natixis Investment Managers	France	$1,048,507
24	Aegon Group	Netherlands	$1,007,636
25	Sumitomo Mitsui Trust Holdings	Japan	$928,145
26	HSBC Holdings	U.K.	$867,000
27	DWS	Germany	$859,379
28	Sun Life Financial	Canada	$841,264
29	Legg Mason	U.S.	$803,534
30	Manulife Financial Corp.	Canada	$798,498
31	Mitsubishi UFJ Financial Group	Japan	$780,655
32	Ameriprise Financial	U.S.	$778,100
33	Principal Financial	U.S.	$735,300

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34	Affiliated Managers Group	U.S.	$772,500
35	Power Financial	Canada	$714,734
36	Franklin Templeton	U.S.	$698,305
37	Nippon Life Insurance	Japan	$688,267
38	Schroders	U.K.	$662,630
39	Standard Life Aberdeen	U.K.	$638,141
40	AllianceBernstein	U.S.	$622,915
41	Dimensional Fund Advisors	U.S.	$609,337
42	MetLife Investment	U.S.	$600,030
43	New York Life Investments	U.S.	$596,573
44	Royal Bank of Canada	Canada	$592,337
45	Geode Capital Mgmt.	U.S.	$584,279
46	Federated Hermes	U.S.	$575,874
47	Blackstone Group	U.S.	$571,122
48	MassMutual	U.S.	$567,000
49	Generali Group	Italy	$559,930
50	Brookfield Asset Mgmt.	Canada	$545,000
51	Prudential	U.K.	$543,900
52	Eaton Vance	U.S.	$518,600
53	Dai-ichi Life Holdings	Japan	$508,603
54	Credit Suisse	Switzerland	$504,273
55	Asset Management One	Japan	$490,837
56	Nomura Asset Mgmt.	Japan	$488,788
57	Charles Schwab Investment	U.S.	$487,100
58	Landesbank Baden-Wurttemberg	Germany	$481,389
59	Aviva	U.K.	$458,537
60	Macquarie Group	Australia	$412,127
61	Intesa Sanpaolo	Italy	$380,933
62	Fidelity International	U.K.	$380,900
63	Janus Henderson Group	U.K.	$374,829
64	Union Investment	Germany	$365,251
65	BMO Wealth Mgmt.	Canada	$360,550
66	Neuberger Berman	U.S.	$355,794
67	Meiji Yasuda Life Insurance	Japan	$352,593
68	Shinkin Central Bank	Japan	$351,954
69	MEAG	Germany	$332,962
70	Stifel Financial	U.S.	$329,500
71	Dodge & Cox	U.S.	$326,660
72	Nordea	Denmark	$324,100
73	Voya Financial	U.S.	$322,538
74	TD Asset Mgmt.	Canada	$314,130
75	NN Investment Partners	Netherlands	$309,081
76	Russell Investments	U.S.	$307,397
77	Mercer	U.S.	$305,100
78	Sumitomo Life Insurance	Japan	$302,726
79	Societe Generale	France	$300,122
80	Zurcher Kantonalbank	Switzerland	$287,035
81	Baillie Gifford	U.K.	$280,111
82	Zurich Financial Services	Switzerland	$275,423
83	La Poste	France	$263,167
84	Banco do Brazil	Brazil	$263,128
85	DekaBank	Germany	$262,483
86	Swiss Life Asset Managers	Switzerland	$261,971
87	Lazard	U.S.	$248,239
88	SEI Investments	U.S.	$244,561
89	CCB Principal Asset Mgmt.	China	$231,822
90	Scotiabank	Canada	$230,820
91	Banco Santander	Spain	$225,092
92	NISA Investment	U.S.	$224,820
93	SEB Sweden	Sweden	$218,734

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94	Kohlberg Kravis Roberts	U.S.	$218,355
95	Samsung Group	South KOREA	$218.002
96	TCW Group	U.S.	$217,480
97	Guggenheim Investments	U.S.U.S.	$215,553
98	Pictet Asset Mgmt.	Switzerland	$208,350
99	Lord, Abbett	U.S.	$205,217
100	E Fund Mgmt.	China	$205,077

Original Source: U.S. data was sourced from the P&I500, while figures for other regions were sourced from annual reports, websites, and direct communication with asset managers through Thinking Ahead Institute / Pensions & Investments Global Manager Survey.

Our Source: “The world’s largest asset managers 2020,” Thinking Ahead Institute, *op.cit.*

Asset managers have traditionally charged clients, mainly other financial institutions and HNWIs, a premium to actively and discretionarily invest their money and beat the average returns of public markets. This began to change in 2007, however, with passive assets under management increasing at least twice as fast as active assets, which effectively reduces managers’ earnings.[114] In particular, in 2020, net inflows into ETFs increased 40%, despite dips in equity prices, and even top asset managers such as BlackRock promoted such funds in order to compete.[115]

As the largest owners of global financial assets, asset managers are increasingly criticized for contributing to human rights and environmental abuses, both through action and inaction. Though 2020 marked a year of unprecedented divestment in private prisons and fossil fuel assets by insurance companies, asset managers, and institutional investors — not to mention boardroom votes against companies and banks that contribute to the climate crisis — the behavior of asset managers can nevertheless be generally characterized as dismissive or unconcerned when it comes to social and environmental issues.

According to a September 2020 report by Majority Action, “(A)side from a small number of votes, market leaders BlackRock and Vanguard overall chose to continue to shield management across these climate-critical sectors in the U.S. from accountability, serving as a roadblock for global investor action on climate. ... Finally, this report recommends that asset owners closely examine the proxy voting activities of the asset managers they engage, demand greater transparency on those managers’ voting decisions, call the asset managers to account for inadequate voting policies and practices, and consider those activities when evaluating and selecting asset managers.”[116] What’s clear is that asset managers’ weight in the financial system makes them a prime target for criticism on a range of issues.

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BANKS AND ASSET MANAGERS

While asset managers have fewer ties to private capital than do banks, three links are worth mentioning. First, 6% (or approximately 6.24 trillion USD) of asset managers' funds are invested in alternative investments, including private equity, hedge funds, commodities, real estate, infrastructure, and other types of private capital. They invest in these funds as limited partners or co-invest alongside general partners of private equity and hedge funds directly. Second, the same institutional investors that are clients of asset managers are also limited partners of private equity and hedge funds. Though their liability is limited, these investors contribute to and suffer from risky investments and poor management by funds and their portfolio companies, resulting in additional leverage, fund losses, or even bankruptcies — effects which can ripple across financial institutions and the system at large. This can lead to less liquidity and increased costs of capital. Third, public and private asset owners alike feed from the same credit and debt trough: banks. In a worst-case scenario, should investment losses spiral out of control and create contagion across asset classes, commercial banks, depositors, governments, and ultimately taxpayers and the public at large pay the price.

A discussion of private capital must include the role of banks and asset managers, the conductor and engineer of the train of advanced capitalism that, together, account for two-thirds of global financial assets. On one hand, they face regulation, public scrutiny, and diminishing returns in public markets; lose financial intermediation market share to passive index-driven funds and new technologies; and watch as private equity and debt is generated outside their purview on secondary markets. On the other hand, banks and asset managers are significant lenders to and investors in private capital, as the attractions of new markets, greater returns over shorter periods of time, higher risk profiles, lack of regulation, tax-deductible debt, and limited liability of private capital entice them further.

Increasingly, these factors link the fate of banks, asset managers, private equity, hedge funds, and other types of private capital. In many ways, they are simultaneously conductors, engineers, and passengers on the train of advanced capitalism. As these actors lurch forward and accelerate the shift from public to private markets, those of us in the back of the train — rightsholders and advocates — suffer an ever-bumpier ride with no certainty whether we'll disembark or simply be decoupled from the drivers of advanced capitalism altogether.

STATE CAPTURE, CENTRAL BANKS, AND ECONOMIC POLICY

In the previous sections, we documented how the steam engines of advanced capitalism — privatization and financialization — power the train while its conductor and engineer — banks and asset managers — guide it along the tracks. But the mechanical engineering — precision tools ranging from onboard steering and braking systems to communication with signal workers along the tracks — is the internal system that connects the engines to the cab and ensures optimal functionality — for a select few. This critical component is the corporate capture of the State and its influence on central banking and economic policy. We argue that this final component of advanced capitalism is the most important, as this is where the macro drivers of privatization and financialization in the hands of banks and asset managers are instrumentalized into public policy at the behest of the privileged passenger — private capital — who makes the most of his journey and the tools at his disposal.

Corporate capture of the State

The determining factor contributing to the capital shift from public to private markets is none other than the presence or absence of the State. If ours were a statistical model, the dependent variable in our exercise would be the extent to which governments, legislatures, and courts inhibit or contribute to this shift. In our analogy, the independent variable would arguably be the pressure that capitalists exert on the State to optimize their return on investment, which, in capitalism, is constant as new markets and greater returns are relentlessly sought. The State-capital duality and the policies that, by action or omission, determine our economic system are fundamental to understanding the capital shift.

The relationships between capital, capitalists, and States are well-documented. Scholars across myriad academic disciplines have theorized about it, studied the political economy of individual and firm-level connections, noted business politics as a particular form of capitalist participation in public decision-making, and recognized the autonomy of political actors and public officials as a class separate from workers and owners and thus individually susceptible to outside influence. Over the

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last two decades, a subset of these scholars has expounded upon political economy theories to apply a new lens — alternately known as state capture, corporate capture, or regulatory capture studies — to better understand how capital, capitalists, businesses, and businesspeople influence the State based on their particular (arguably class-based) ideologies, incentives, and interests. Independently of which vantage point is most compelling, there is broad agreement that all types of actors attempt to define and shape the common good and that, in our current economic and political system, capitalist pressure on the State is a constant.[117]

Joel Hellman, Geraint Jones, and Daniel Kaufmann, who coined the term "state capture" in 2000, "(D)istinguish between three types of relationships marked by different distributions of rents between the firm and the state — state capture, influence and administrative corruption. State capture is defined as shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials. Influence refers to the firm's capacity to have an impact on the formation of the basic rules of the game without necessary recourse to private payments to public officials (as a result of such factors as firm size, ownership ties to the state and repeated interactions with state officials). Administrative corruption is defined as private payments to public officials to distort the prescribed implementation of official rules and policies."[118]

We argue that corporate capture is an apt description of our independent variable (the pressure that capitalists exert on the State), as it encompasses the shaping and implementation of the rules of the game with or without private payments, as well as broadly characterizes business influence over public decision-making, including regulation, legislation, and judicial interpretation by State actors. In what follows, we discuss the role of the State, particularly central banks and their policies, and how its presence or absence in the economy contributes to the capital shift from public to private markets. Let's begin with the recent history of misaligned incentives between the State and capital in capitalist democracies.

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Central banking

Arguably, the Atlantic slave trade between Africa, the Americas, and Europe influenced how the U.S. and the U.K. structured their central banks and banking systems. Slave-traders, plantation owners, and commodity traders in both countries increasingly sought credit to finance their operations, essentially borrowing prior to a voyage or planting season so as to repay the interest afterward. The merchants and middlemen who participated in these arrangements formed banks, notably Barclays and Lloyds in the U.K., to pool risk and increase lending and returns. "The Bank of England was also involved. When it was set up in 1694, it underpinned the whole system of commercial credit, and its wealthy City members, from the governor down, were often men whose fortunes had been made wholly or partly in the slave trade."[119]

Similarly, early banks in the U.S. — first British extensions and later American institutions — financed the slave trade, including through then innovative means such as mortgages. Throughout the 1600s, 1700s, and 1800s, slaves were essentially used by their capitalist owners as collateral for mortgages. This cycle of lending and securitization laid the groundwork for the global financial system. "(C)onsider a Wall Street financial instrument as modern-sounding as collateralized debt obligations (CDOs), those ticking time bombs backed by inflated home prices in the 2000s. CDOs were the grandchildren of mortgage-backed securities based on the inflated value of enslaved people sold in the 1820s and 1830s. Each product created massive fortunes for the few before blowing up the economy."[120]

Following the end of the slave trade, the shift from agrarian to industrialized economies, and multiple economic panics in both the U.K. (such as the Panic of 1866) and the post-civil war U.S., central banks bailed out commercial banks and businesses with increasing frequency, acting as lenders of last resort. In times of crisis, financial institutions were varyingly assured of liquidity to avoid bankruptcies and bank runs as central banks learned from each economic scare. This imperfect system, whereby the State ultimately assumed bad corporate debts, was modernized in the 20th century with the establishment of the U.S. Federal Reserve System in 1913 and the nationalization of the Bank of England in 1946. A real concern at the time, which arguably is more exacerbated today, was that private capital accumulation — whether through monopolization or by wealthy business trusts and individuals — posed a threat to the entire economic system. "In very real terms, the Fed was created so that J.P. Morgan (the person, not the bank) wouldn't get to decide who did and did not survive financial panics, and wouldn't get to decide the price of this survival."[121]

Robert Hockett, an expert on central banking, studies the Fed and its relationship to the private sector. He notes that private financial institutions essentially captured the Fed, ensuring ownership-level access to macroeconomic and monetary policy-making. He attributes the bank's current iteration, whereby "regional Fed Banks would be owned — in a novel and rather thin sense of 'owning' — by their private sector Member Banks, even while overseen from the Fed Board in Washington," to a compromise that struck a balance between the system operating as a "liquidi-

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ty risk-pooling authority and national money-modulator" and as "something more like a public-private partnership than a 'command and control' style federal regulator."[122] While the U.S. and eight other countries retain private ownership of their central banks, the U.K. discontinued this practice in 1946.[123]

Hockett argues that the misalignment between State and capital is baked into the creation of the Fed. "Privately ordered, decentralized 'capitalist' production, in other words, is sustainable only if the public component of the nation's capital stock is not privately ordered or decentralized."[124] Put differently, when public resources — namely government and taxpayers' pooled liquidity — are essentially owned by Fed member banks and are used for last-resort lending, mortgage-backed guarantees, or corporate bank deposit insurance, or are privatized, securitized, and otherwise financialized in the capital markets, the result is unsustainable. What's stopping private financial institutions from relying on public resources? Essentially, homeowners and taxpayers bear the burden of private capital speculation-gone-awry in regulated public markets and, increasingly, from the contagion by financial losses in private markets as well.

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Economic policy and cheap credit

Previously, we mentioned that banks are not only the largest financial institutions worldwide, they are also key sources of leverage for private capital firms whose activities are largely unregulated. This creates a system whereby private capital losses can affect banks' balance sheets, which in turn can affect central banks and, ultimately, all of us. Hockett and Omarova write that "Commercial banks are unlike most other American business firms: they are privately-owned corporations in a market-capitalist economy, yet they are explicitly backed, intrusively regulated, and, when they nevertheless fail, expeditiously liquidated by the federal government."[125] The authors also note that "Public credit underwrites private credit: Government securities as necessary liquidity reservoir; government securities as necessary benchmarks; and government securities as shadow-bank 'base money.'"[126]

In terms of public and private markets, the explicit role of the State — that of the backstop for financial capital — is dependent upon the liquidity reserves of central banks and varies across countries. Since the GFC and the COVID-19 pandemic, the State has come under increasing scrutiny for bailing out banks and financial institutions, relaxing credit guidelines to facilitate inexpensive lending, and helping NBFIs such as asset managers, private equity, and hedge funds accelerate the process of financialization. A discussion of the Fed and these problematic financialization policies will help us understand the risks posed by unregulated private capital and what the State could do differently to "rescue Wall Street by rescuing Main Street" instead.[127]

Bailouts are arguably the most notorious feature of the last two global financial crises. In 1998, the Fed organized the first private rescue of a hedge fund — Long Term Capital Management — following several months of over-leveraging and exposure to emerging markets. A decade later, risky mortgage lending by banks and NBFIs — driven by enormous leverage — caused massive credit defaults and bankruptcies, the fallout of which was made worse by the interconnectedness of these institutions. The Fed and the U.S. Treasury Department stepped in to organize the Troubled Asset Relief Program (2008), a half-trillion-dollar banking bailout to prevent a run on banks. Additionally, the Fed initiated a series of quantitative easing (QE) measures to purchase billions of dollars of junk assets, including mortgage-backed securities, from over-leveraged financial institutions that were unable to renegotiate their debts given that interest rates were already at a historical low. Other countries soon replicated this model and, by Q1 2020, the global debt-to-GDP ratio hit a new record of 331% of GDP (258 trillion USD).[128]

In 2020, following lockdown orders and travel bans in response to the pandemic, credit tightened over night and equities fell in staggering numbers across the world. Notably, the 20 trillion USD market for U.S. Treasury bonds, considered a "bedrock of the global financial system and the benchmark off which almost every security in the world is priced," faltered in March 2020. According to the *Financial Times*, "The dysfunction was instead exacerbated by the unwinding of what is known as the 'basis trade.' It involves highly-leveraged market participants arbitraging the difference between Treasury futures and Treasury bonds, which are slightly cheaper

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than futures due to different regulatory treatment. A favourite trading strategy has been to buy cash Treasuries and sell the corresponding futures contract. The price differential is often small, but hedge funds can juice returns by using huge amounts of leverage. The main way to do so is by swapping Treasuries for more cash in the 'repo' market, one of the world's largest hubs for short-term, collateralised loans. The extra cash can then be recycled into even bigger positions, repeating the process to further augment returns."[129]

Using mountains of cheap debt to purchase approximately 750 billion USD of government bonds, these hedge funds drove the Treasury yield curve down to near zero, which threatened not only the liquidity possibilities of public and private markets but also the government's ability to raise new money. In response, the U.S. and other governments dusted off their QE playbooks, largely outdoing their efforts of the past decade, as they sought to inject immediate liquidity into the markets. From Q2 to Q3 2020, the Fed's balance sheet nearly doubled to 7 trillion USD as it took Treasury bonds and bad debt off the hands of hedge funds and financial institutions alike. "The multibillion investors were, technically, close to broke and the market was shutting down. So the Fed came in and bought the market. Prices recovered, and the hedge funds were back in the money."[130]

However, the Fed wasn't done. The Coronavirus Aid, Relief & Economic Security (CARES) Act (2020) mandated it to create the Main Street Lending Program to provide 600 billion USD in financing for small and medium-sized businesses. As part of this, the Fed took the unprecedented step of purchasing U.S. corporate bonds, including those of Apple, Berkshire Hathaway, and Walmart, as well as those of foreign companies with U.S. subsidiaries. Raising the eyebrows of corporate cap-

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ture observers, the Fed hired none other than BlackRock to manage the bond purchasing program. According to Americans for Financial Reform (AFR), "The expansive eligibility for higher risk firms makes more (private equity-owned) companies eligible, since portfolio firms are commonly laden with so much debt from leveraged buyouts and other distributions that their loans and bonds are riskier and bear lower ratings. As part of its contract with the Federal Reserve, BlackRock is purchasing corporate bonds through exchange traded funds... Many of these ETFs contain riskier bonds and loans of private equity-backed firms with even lower non-investment grade ratings."[131]

The Fed's corporate welfare policies, which in 2020 encompassed wholesale bailouts, quantitative easing, and corporate loan purchases, also included unmitigated support for private equity, hedge funds, asset managers, and NBFIs writ large. While it's unclear how much small and medium-sized businesses benefited from the CARES Act, it's evident that the Fed considered NBFIs critical to the financial system and deserving of a free pass. As it were, the Fed contributed to the credit explosion of the past decade by relaxing credit guidelines instead of regulating lending.

One of the primary causes of the GFC was subprime mortgages that borrowers defaulted upon, creating a ripple effect across financial institutions that had bought and re-sold mortgage-backed securities or held credit default swaps. The predatory lenders behind this practice granted mortgages to borrowers who were not creditworthy, requiring little documentation, proof of earnings, or collateral. The CARES Act — through its Main Street Priority Loan Facility — replicated subprime lending to corporations on a massive scale. This is another example of how Fed policies, or inaction in this case, facilitate enormous leverage and risk-taking at taxpayer expense.

AFR notes that "Under the (now eliminated 2013 Federal Reserve's Leveraged Lending Guidelines), regulated banks could not underwrite a loan of greater than 6 times debt-to-adjusted EBITDA. Stories quickly emerged about private equity firms creatively reverse engineering all sorts of adjustments necessary to get financing backing their leveraged buyouts below that critical 6 multiple. The Priority Loan program not only allows the same 6 times EBITDA multiple that private equity firms already abused under the 2013 leveraged loan guidelines but allows firms to provide their own adjusted-EBIDTA, making it easier for them to evade even this overly generous leverage standard."[13] It goes on to say that "Unlike other figures on a financial statement, EBITDA is not a figure based on Generally Accepted Accounting Princi-

13 "EBITDA, a commonly used finance acronym that stands for 'Earnings Before Interest, Taxes, Depreciation, and Amortization' measures a company's profitability and is typically used to determine a business' earnings potential." Sean Ross, "How are operating income and EBITDA different?", Investopedia, 10 June 2019, www.investopedia.com/ask/answers/122414/what-difference-between-operating-income-and-ebitda.asp.

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ples (GAAP) and therefore has no standard method of calculation, making it very susceptible to be artificially inflated. Under the Main Street credit facilities, higher EBITDA figures allow greater debt loads and leverage than would be permissible under more strict accounting."[132]

The problem of cheap credit is nothing new. In 2018, the Bank for International Settlements, an IFI owned by central banks, reported that one in six companies across 14 wealthy countries could be classified as "zombies" or unable to pay the interest payments on their debts. "This appears to be linked to reduced financial pressure, reflecting in part the effects of lower interest rates. Zombie firms are less productive and crowd out investment in and employment at more productive firms."[133] The number of zombies grew to one in five companies by 2020, including in China. Yanis Varoufakis explains the problem of zombie companies, as follows:

"Consider the following chain reaction: The European Central Bank extends new liquidity to Deutsche Bank at almost zero interest. To profit from it, Deutsche Bank must lend it on, though not to the 'little people' whose diminished circumstances have weakened their repayment ability. So, it lends to, say, Volkswagen, which is already awash with savings because its executives, fearing insufficient demand for new, high-quality electric cars, postponed crucial investments in new technologies and well-paying jobs. Even though Volkswagen's bosses do not need the extra cash, Deutsche Bank offers them such a low interest rate that they take it and immediately use it to buy Volkswagen shares. Naturally, the share price skyrockets and, with it, the Volkswagen executives' bonuses (which are linked to the company's market capitalization). ... This was the state capitalism was in when COVID-19 arrived. By hitting consumption and production simultaneously, the pandemic forced governments to replace incomes at a time when the real economy had the least capacity adequately to invest in the generation of non-financial wealth. As a result, central banks were called upon to boost even more magnificently the debt bubble that had already zombified the corporations."[134]

During the pandemic and under a spotlight following the inaction of the U.S. government, Fed chair Jay Powell was lauded for using the CARES Act's Municipal Liquid Facility (MLF) to fund states and cities, effectively providing the pandemic response that Trump resisted. However, this QE measure only increases the Fed's balance sheet to arguably unsustainable levels, which could ultimately prove toxic if the underlying policies that promote zombies, predatory financial institutions, and other facets of financialization over actual economic growth remain unchanged. It would appear that the Fed's greatest fear — an existential crisis from which capitalism would not recover — is a run on the banks. It would certainly argue that avoiding this unintended consequence justifies bailing out financial institutions and sub-national governments and doling out free credit. After all, all NBFIs — accounting for 61% of global financial assets — carry bank balances in excess of the 250,000 USD maximum insured by the U.S. Federal Deposit Insurance Corporation. The conventional thinking is: if the financial system crashes, the economy goes with it.

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In **Chapters V** and **VI**, we address specific policy innovations and recommendations for reversing financialization, correcting the shift away from public markets, and reclaiming the common good. Regarding the role of the State in light of the corporate capture of central banking and economic policy, here is a brief list of policy opportunities that — in the U.S. — progressive lawmakers like Senator Elizabeth Warren (D-MA),[135] Congresswoman Alexandria Ocasio-Cortez (D-NY), and others propose, which we believe could be adapted to countries around the world.

- Publicly manage monetized public capital instead of putting it to work in the public and private securities markets.[136]

- We must "reassign Regional Feds the tasks of lending (a) directly to local and regional enterprises through public purchase of private business paper, and (b) indirectly to the same through discount lending to community, public, and other local investment institutions."[137]

- Introduce public participation in and representative public oversight of the Fed's supervisory and regulatory functions, specifically the credit risk management functions that monitor the guidelines that banks and NBFIs, as well as credit rating agencies, use as benchmarks for the out-of-control, excessive, and risky leverage in our financial system.

- Using Fed-administered fintech, create a "national system of 'Citizen Accounts.' This will not only end the problem of the 'unbanked,' it will also simplify monetary policy. Instead of working through private bank 'middlemen' that it hopes will pass QE to borrowers during downturns, the Fed will be able to make 'helicopter drops' directly into Fed Citizen Accounts. ... It will look like a digital dollar administered by a 'Citizens' Fed.'"[138]

- The Stop Wall Street Looting Act (SWSLA): Reform private equity by closing legal, tax, and regulatory loopholes.[139]

- Require "beneficial ownership" disclosure and expand and institutionalize real estate disclosure requirements.

- Gather better data on cross-border financial flows, expand enforcement against financial institutions, and promote international cooperation to combat tax evasion.

- Expand anti-bribery law authorities.

- Update campaign finance laws to limit foreign interference and "transparentize" dark money, as well as close existing loopholes by prohibiting U.S. subsidiaries of foreign companies, firms with meaningful foreign ownership, and trade associations that receive money from those entities from spending money in U.S. elections.

- Shut the revolving door between financial institutions and regulators who are supposed to oversee U.S. transparency and money-laundering efforts, including the Fed. Giant banks will be banned from hiring senior government officials for four years after those officials leave office.

- Make strong anti-money laundering legal frameworks a central requirement for receiving assistance from IFIs.

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These policy ideas are the dependent variables mentioned at the outset — those actions the State can take to modulate public and private capital and ensure that the economy works for everyone. While opportunity for change may lie ahead, today, our economy is beholden to financial interests backed explicitly by the State and, increasingly, private capital firms, asset managers, and other NBFIs act in concert at the expense of the common good.

As we have seen, for nearly five-hundred years and across every place on Earth — from Myanmar to Florida, the shores of Africa to the fields of the U.S., and from Main Street to Wall Street — the train of advanced capitalism has been gaining steam. Privatization and financialization power its engines, banks and asset managers steer the locomotive, and the corporate capture of the State influences central banking and economic policy to ensure that taxpayers — not financial speculators — foot the bill should the train veer off course or even crash. We didn't get here by accident — we got here by design. Economic and political elites scraped up enough for a one-of-a-kind first-class ticket, and now private capital dines in an exclusive luxury car on our dollar, peso, and renminbi. As we'll discuss in **Chapter III**, the train of advanced capitalism has not only left the station but is gaining speed and acting erratically. It would appear that private capital — unencumbered by regulation, significant taxation, or public scrutiny — is calling the shots, throttling us forward and, increasingly, careening dangerously off course. It's become a full-blown runaway train.

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III. PRIVATE CAPITAL

III. PRIVATE CAPITAL

> "This wealth transfer from several hundred million pension scheme members to a few thousand people working in private equity might be one of the largest in the history of modern finance."
>
> — Ludovic Phalippou, Saïd Business School, University of Oxford[140]

In this chapter we explain the term "private capital" and discuss how much it's worth and whether and how it's increasing, expanding, and accelerating. We focus on the main asset classes — private equity and hedge funds — while also discussing the broader universe of private capital, from privately-held companies to fintech. We examine the history, typologies, and geographic dispersion of private capital globally. Finally, we discuss three key inputs for private capital — institutional investors, wealthy individuals, and financial leverage — without which this universe would cease to exist, and the train of advanced capitalism would stop cold in its tracks.

UNIVERSE OF PRIVATE CAPITAL

The emergence of privatization and financialization is not an accident. Rather, it is the policy result of the corporate capture of the State. The public and private architects of this policy have sought to ensure optimal conditions for advanced capitalism — even crony capitalism, including wealth creation for an elite few. These conditions include not only new business opportunities and investment markets but also access to large amounts of capital and reduced costs, such as those caused by disclosure and regulation. Increasingly, one type of capital meets all four conditions, ultimately at the expense of the common good: private capital.

In this section we define and explain private capital as well as discuss its typologies and salient characteristics, particularly those that avoid public scrutiny yet harm human rights, the environment, and society at large. Our objective is to demystify and explain an opaque phenomenon that affects us all — and is a blind spot for corporate accountability advocates and rightsholders alike. In the next section — **Increase and acceleration of private capital** — we discuss the underlying trend: the capital shift from public to private markets.

What is private capital? The answer to this fundamental question varies depending on who you ask. In our search for the answer, Empower cast a global net, interviewing dozens of experts and stakeholders and reviewing over a thousand sources, only to conclude that there is no single definition of private capital. Most often, it is used as an umbrella term for investment that excludes publicly-traded securities, which are subject to specific disclosure requirements and regulations, essentially to protect retail investors.[141] Arguably this is the easiest way to understand private capital. As we'll see, however, in defining private capital, there are as many exceptions as there are rules.

Similarly, if State-based actors or international financial institutions (IFIs) are excluded from a given definition, the role of sovereign wealth funds, development finance institutions (DFIs), and their equivalents, as well as their particular prominence in emerging markets (such as China's State-based Belt and Road Initiative (BRI) investments around the world), will be disregarded. Drawing a line between public and private markets or State and non-State actors ignores important details about whose money is invested (where it comes from), how it's invested (the corporate forms and investment vehicles), which asset classes receive investment, and which markets facilitate these investments.

The term "private capital" is the subject of debate as overlapping terminological variety complicates a shared understanding of the concept. Examples of terms found in the literature that are often used to define or substitute for "private capital" include: privately-held capital, private equity(ies), private asset classes, private markets, private investment, alternative investments, limited partnerships, non-bank financial

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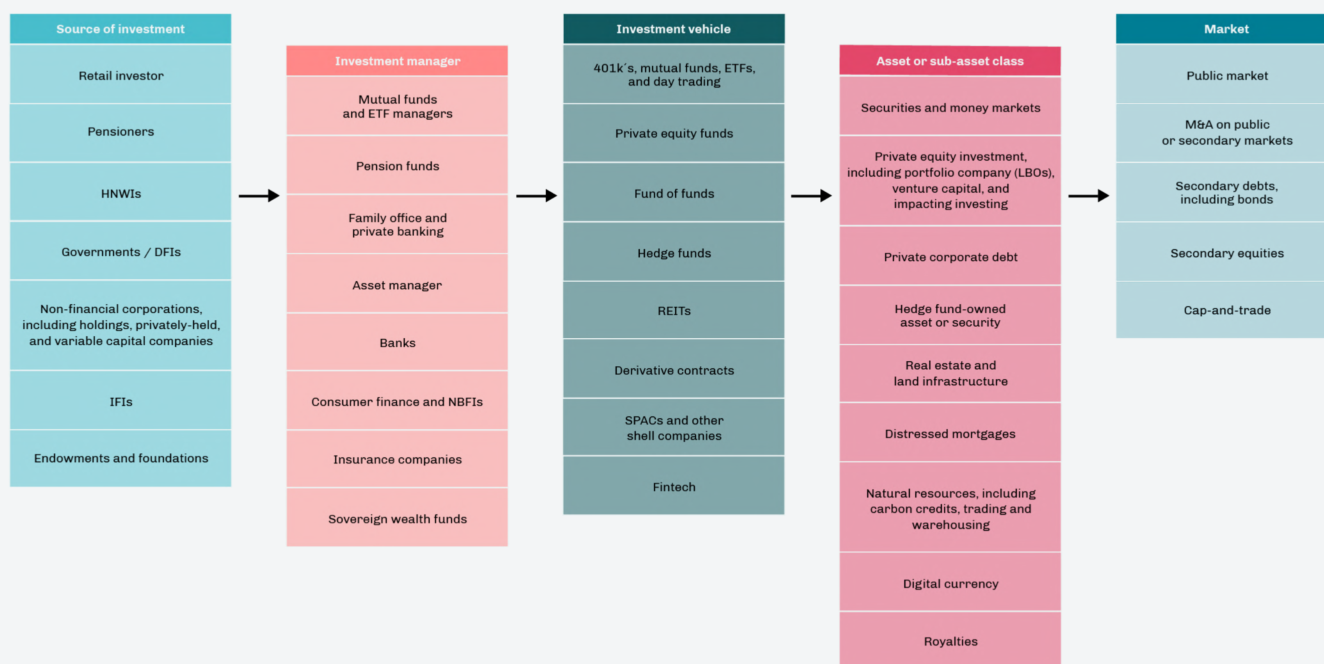
intermediaries, and shadow banking. Each of these encompasses a significant but incomprehensive portion of the universe of private capital.

Perhaps a more helpful framework for understanding the concept is to examine the presence of private capital, link by link, along the investment chain, as follows:

Figure 2
Private Capital Investment Chain



Source: Empower

Where does the money come from to invest in private capital?

The simple answer is: from everyone. Whether through consuming commercial goods and services, investing in retirement funds, or paying taxes, we spend money that directly or indirectly finds its way into the pockets of wealthy individuals, companies, or governments. Though anyone with a financial asset is technically an asset owner, for investment purposes, the main classes of asset owners who one way or another end up with our money include: high-net-worth individuals (HNWIs); privately-held or publicly-traded companies; pension funds; governments, DFIs, or State-owned enterprises; or even IFIs.

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Though all of us indirectly provide money to large asset owners and managers — see **Banks and asset managers** — for practical purposes, the average retail investor cannot directly invest in private capital because we cannot afford the price or risk of entry. Instead, the largest concentrated sources of private capital are what financial regulators consider sophisticated — and often accredited — investors who can afford the multi-million-dollar minimum investments and economic risks of what are largely unregulated transactions. Private capital managers, for example, have no obligation to publicly disclose performance data.[142] Sophisticated investors include **Wealthy individuals and family offices** and **Institutional investors** such as banks, insurance companies, asset managers, investment managers of mutual funds and ETFs, pension funds, sovereign wealth funds, DFIs, and endowments and foundations — independently of their non-profit status.

Limitations on directly investing in private capital were put in place to protect retail investors from losing money in private markets. However, a recent attempt by private equity proponents in the U.S. to make the 6.2 trillion USD of retail investors' defined contributions to retirement funds (non-pension funds) eligible for private investment jeopardizes these protections. Since the 1990s, the old system, whereby "firms that chose to 'go public' took on substantial disclosure burdens, but in exchange were given the exclusive right to raise capital from the general public," is changing. Now, a simultaneous system grows where "capital is flooding into private companies with regulators' blessing."[143]

A key distinction about asset owners is between the beneficial owners of capital — the physical person or people who ultimately own an asset — and those people (investment advisors) or entities (asset and investment managers) that manage financial assets. For example, a bank can be a publicly-traded company that lends or invests the hard-earned savings deposits of retail clients directly or indirectly in private capital. A publicly-traded asset manager or insurance company can do the same, as can a pension fund that manages individual retirement accounts. While the ultimate asset owner may be the depositor, retail investor, policyholder, or pensioner, the manager of the asset wields enormous control in deciding where to allocate the money.[144]

How is money invested in private capital?

Sometimes asset owners or managers invest directly in an asset class or alternative investment, such as real estate or precious metals, without employing a separate investment vehicle or intermediary. However, these cases are relatively rare because the investor assumes legal and tax liabilities when investing directly. And, by not borrowing or investing collectively with other sources of private investment, they also miss out on the opportunity to optimize their capital.

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More commonly, investment advisors or managers set up limited liability companies (LLCs) — usually based in either offshore tax havens such as the Cayman Islands or onshore havens such as the U.S. state of Delaware — so as to create private equity or hedge funds where the fund sponsor becomes a general partner (GP) and asset owners or managers become limited partners (LPs). With LLCs as the preferred corporate form and funds as the preferred investment vehicle, GPs and LPs can create limited partnership agreements (LPAs) for fund-specific investments. GPs can also use LLCs as a vehicle to create a fund of funds (FOF), whereby fund investments are pooled and used to invest in other funds. See **Private equity and hedge funds** for further explanation.

Asset owners and managers most often invest indirectly in a chosen asset class, as it's the intermediaries such as GPs, LPAs, and the funds themselves who directly invest on behalf of LPs and beneficial owners. Increasingly, however, HNWIs, pension funds, and other institutional investors prefer to directly co-invest alongside GPs in order to avoid the onerous fees of LPAs.

An essential facet of most investment in private capital is **Financial leverage**. Once a fund is created, GPs, their funds, occasionally co-investors, and most often their portfolio companies borrow on a massive scale from banks and other direct lenders to optimize the original equity investment and decrease tax liability.

What are private capital investments?

As previously mentioned, the answer to this question typically passes for the definition of private capital — private equity and debt securities that are not publicly traded. A more nuanced definition might draw the line between public and private markets at those securities with greater liquidity (those which are instantaneously bought and sold in public markets) versus those with perceived lesser liquidity (private markets where the investment pool is limited to sophisticated and often accredited investors).

The most common asset and sub-asset classes receiving investment in private capital are private equities and debt, hedge funds, and unlisted (on any public exchange) real estate, infrastructure, and natural resource commodities, also known collectively as alternative investments.

Following along the investment chain, once asset owners and managers have invested — directly or indirectly, individually or collectively — with GPs and other LPs, their ultimate investments are typically the portfolio companies of a private equity fund, individual equity and debt securities through a hedge fund, or real assets.

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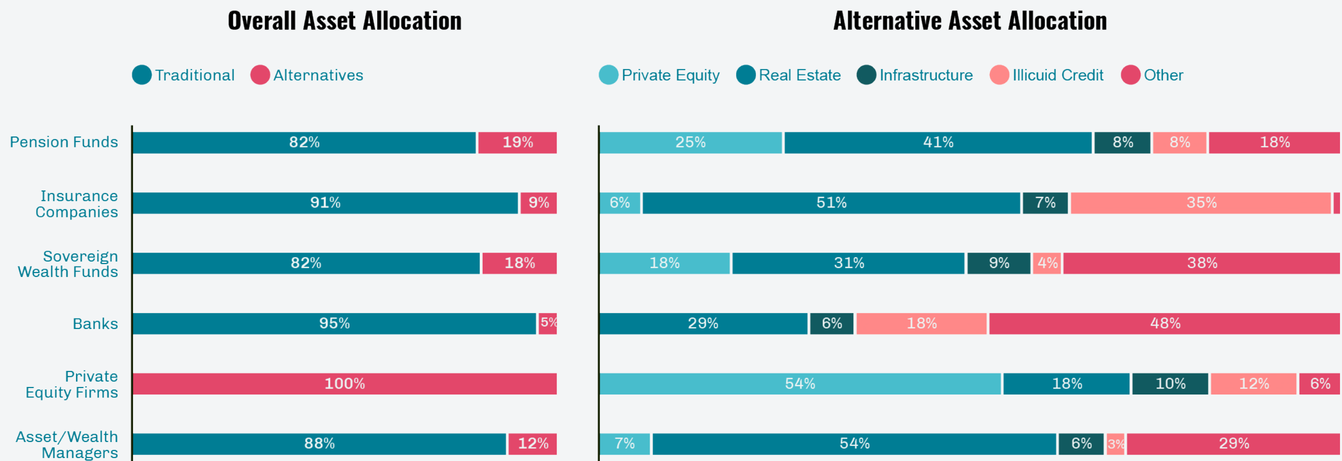
Figure 3
Institutional Investors' Asset Allocations (2014-17)



Original Source: Multiple.

Our Source: "Who is the Private Sector? Key Considerations for Mobilizing Institutional Capital Through Blended Finance," Convergence, Blended Finance Taskforce and Business & Suitable Development Commission, *op.cit.*

Which markets facilitate these investments?

As highlighted earlier, a general distinction between public and private markets centers around liquidity, with the latter presumed to be a much tighter market. However, as the capital shift from public to private markets accelerates, investors increasingly find liquidity in private markets as well. Though not yet equal, public and private markets both facilitate investment in private capital. For example, private equity funds — most of which are privately held though some are also publicly traded — often invest in distressed assets, which can be a publicly-traded company that is taken private or a privately-held company. When the time comes to sell off a portfolio company, the sale can occur through an IPO in a public market or through a private transaction in a secondary market.

Similarly, hedge funds — mostly privately held though occasionally publicly traded — invest in both public and private securities, alternating between markets. In this regard, from an investment chain perspective, the marketplace for buying and selling companies and securities does not define private capital. The distinction designed to protect average investors from investing directly in private markets, however, does ostensibly limit the amount of available capital and liquidity in private markets, an "inconvenience" that the public and private architects of financialization actively seek to change.

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Viewpoints on private capital

The patchwork literature on private capital includes a range of definitional and typological contributions from CSOs, scholars, the media, and capitalists alike.[14] Instead of favoring one or another, we list examples of contrasting and even overlapping contributions to show the diversity of representative viewpoints.

From civil society

Because of the illegitimacy of global finance's grab of our territories and lives, because of the destructive impacts that it has in our communities, and because the involved actors actively seek to hide their operations, we propose to call financialization rogue capitalism. (...)

One key feature of financialization is that it unfolds through largely hidden processes, and in some cases, under secrecy. Creating opaque webs of investment, 'shadow banking systems' and off-shore tax havens in order to escape taxation, public scrutiny and regulation, are deliberate strategies of global finance to obfuscate operations and to prevent any form of accountability for the crimes and structural injustice for which this system is responsible. Even though proponents of financialization tell us that free (financial) markets go along with free societies, the reality shows that this process unfolds alongside increasing repression and authoritarianism. Previous forms/manifestations of capitalism have used some of these or similar strategies, and have led to destruction and abuses in our territories. However, we consider that the current dynamics have exacerbated these features in a new way. Financialization is thus a new and distinct way of organizing the capitalistic extraction of wealth.”

— FIAN International, Transnational Institute, and Focus on the Global South (2020)[145]

14 Notably, legal definitions are few and far between and often contradictory, so for the sake of clarity we've omitted them here.

For a concise explanation of the financial sector and its typologies, including asset managers, private equity, and hedge funds, please also refer to the "Fair Finance Guide International Methodology 2020."[146]

From scholars

From its inception, the federal securities law regime (in the U.S.) created and enforced a major divide between public and private capital raising. Firms that chose to 'go public' took on substantial disclosure burdens, but in exchange were given the exclusive right to raise capital from the general public. Over time, however, the disclosure quid pro quo has been subverted: Public companies are still asked to disclose, yet capital is flooding into private companies with regulators' blessing. (...)

While regulators may have hoped for both the private and public equity markets to thrive, they may instead be hastening the latter's decline. Public companies benefit significantly less from mandatory disclosure than they did just three decades ago, because raising large amounts of capital no longer requires going and remaining public. Meanwhile, private companies are thriving in part by freeriding on the information contained in public company stock prices and disclosure. This pattern is unlikely to be sustainable. Public companies have little incentive to subsidize their private company competitors in the race for capital and we are already witnessing a sharp decline in initial public offerings and stock exchange listings. With fewer and fewer public companies left to produce the information on which private companies depend, the outlook is uncertain for both sides of the securities-law divide. ...

(Within the vast realm of private capital, this Article focuses on private companies -- that is, businesses that are not subject to periodic reporting requirements under the securities laws and whose stock is not publicly traded.)"

— Elisabeth de Fontenay, Duke University School of Law (2017)[147]

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From the media

’Private capital’ is handy short code for virtually any asset that is not publicly traded like stocks and bonds. It ranges from the now-mainstream private equity and real estate, to more niche but fast-growing areas including infrastructure and ‘private credit’ -- bespoke loans arranged between corporate borrowers and investment funds.**”**

— Robin Wigglesworth, *Financial Times* (2020)[148]

Private capital is a term that is being used more and more often to describe the crossover between capital provided by private equity (PE), venture and growth capital investors, and private wealth investment by high-net-worth individuals (HNWIs) and family offices. Given the expediential rise in private wealth – the ‘EY wealth management outlook 2018’ predicts that the global volume of net investable assets of HNWIs will increase by around 25 percent to almost 70 trillion USD by 2021 – and the cultural changes that are taking place around HNWIs making direct investments, we are seeing more and more crossovers between the worlds of PE and private wealth. ...

One of the key investment pools for investment in PE funds themselves is the private wealth pool, either HNWIs direct or through family offices or fund of funds. As the pool of private wealth dramatically increases, we would expect to see this pool of investors increase. HNWIs and family offices are also increasingly looking to co-invest alongside PE funds and we expect to see this trend continue.**”**

— *Financier Worldwide Magazine* (2018)[149]

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The (U.S.) Securities and Exchange Commission describes private funds as pooled investment vehicles that are excluded from the definition of 'investment company' under the Investment Company Act of 1940, which governs mutual funds. Private funds generally include hedge funds and private equity funds, according to the SEC. Hedge funds wager on public-market equity, debt, derivative, foreign exchange, cryptocurrencies, and other liquid investments. The conventional PE strategy similarly uses high amounts of debt to purchase underperforming companies or corporate assets, which managers then restructure. Unlike hedge funds, PE vehicles are illiquid, with long investor lockups being a signature of the asset class. Both asset classes cater exclusively to institutional clients and accredited investors, or people whose net worth exceed 1 million USD. 'Over the last several years, hedge funds have fallen out of favor among many institutional investors, while private equity funds and other private markets vehicles have continued to grow in assets under management,' said Bryce Klempner, a partner at consultants McKinsey & Company in Boston.**”**

— Timothy Lloyd, *Reuters* (2020)[150]

From capitalists

Private Capital is a broad label applied to any private investment fund that invests in the equity or debt securities of privately-held companies, real estate and other real assets. (...)

Compared to investors in public companies, Private Capital fund managers typically take a much more active role in the management of the companies and assets in which they invest. Private Capital fund managers often contribute to business strategy and can play a part in directly managing assets. (...)

Private Capital is generally considered to be a high-returning asset class that may enhance the overall return and help to smooth the performance of a well-diversified investment portfolio. (...)

Investors may consider Private Capital for a portion of their wealth which does not require daily liquidity. These attributes of Private Capital come with commensurate risks. (...)

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The three distinctive Private Capital asset groups each have a number of investment strategies: Private Equity strategies invest in equity and debt interests in privately-held companies, ranging from the first funding of a startup to buyouts of multi-billion dollar companies; Real Assets strategies acquire and manage real estate, production assets and commodities; and Special Situations strategies pursue companies, assets and owners of assets that have elements of distress or opportunities to participate as a minority investor.”

— Jonathan Firstein and Sean Olesen, Ascent Private Capital Management, U.S. Bank (2013)[151]

Private capital and hedge fund investments can help organizations pursue returns above and beyond traditional equity and fixed income investments and mitigate portfolio impact from outsized losses during periods of market volatility, economic downturns or both. These types of investments aren't without challenges: Investment — especially in the private space — mean assets can be locked up for years which can translate into unintended consequences for other areas of an organization's financial health; Even meeting the regulatory requirements doesn't mean direct investment in these types of opportunities makes sense for all but the largest investors; The most popular of these investments often quickly become over-subscribed or closed due to demand; and Private capital investments can be more expensive compared to publicly offered investments.”

— F.E.G. Investment Advisors (2020)[152]

Obviously, the number of unlisted companies around the world is vastly larger than the number of publicly traded companies. However, the majority of these companies are not investable for an institutional investor. This includes most small businesses, which have few assets and employees, limited profitability and growth prospects, and would yield below the required investment return for external investors. Similarly, there are larger and/or faster-growing and more profitable private firms, whose equity is not for sale by the owners (although they might be so in the future). Such firms are typically financed by bank debt and internal equity provided by the founders themselves or their friends and family.

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We therefore narrow down our definition to investments in unlisted firms by professional investors, which is referred to as the private equity market. The bulk of the investments in this market are done by financial intermediaries referred to as private equity (PE) funds. PE funds are typically limited partnerships with a finite life, managed by private equity firms and funded by institutional investors. Most of the existing research on private equity has studied such PE funds. Other investors in this market include high net-worth individuals investing directly into private companies (such as business angels investing in early-stage companies), publicly traded investment companies or closed-end funds investing in unlisted companies (...), 'in-house' PE subsidiaries of companies (e.g. corporate venture capital subsidiaries...), and institutional investors (like pension funds and sovereign wealth funds) investing directly into unlisted companies.”

— Trond M. Døskeland and Per Strömberg, Norwegian Government Pension Fund Global (GPFG) (2018)[153]

“The past year (2019) was one of the biggest ever for fund-raising. Investors poured 894 billion USD into private capital, which includes private equity, real estate, infrastructure and natural resources. The buyout asset class alone raised 361 billion USD — the largest amount on record — and increased its share to 40% of total private capital, the highest level since 2006.”

— Bain & Company (2020)[154]

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History of private capital: redux

Some of the first and best-known firms to invest in private capital — Bain Capital, The Blackstone Group, and The Carlyle Group — were founded in the 1980s.[155] As the 1990s brought a recession following the tech boom, private equity firms began creating value through the now common leveraged buyout model.[156] In fact, global private equity fund-raising increased by two orders of magnitude — from under 10 billion USD per year in 1990 to nearly 900 billion USD in 2019 — with the U.S. and the U.K. receiving the lion's share.[157] Later, through the dotcom bust in the early 2000s, wealthy individuals, private equity, and hedge funds focused on record-breaking deals.[158] By 2007, however, they began turning to tangible, albeit unlisted, assets such as real estate for value creation amidst a financial crisis involving mass mortgage defaults and tightening credit.[159]

During the 2010s, private equity funds became notorious for buying distressed mortgages for a song, becoming one of the largest owners of single-family homes in North America and Europe. They also became synonymous with leveraging up portfolio companies, stripping their assets, and leaving lenders, taxpayers, pensioners, and workers holding the bag. Perhaps no deal was as ominous as the Toys "R" Us bankruptcy in the U.S., when 30,000 workers brutally lost their employment following questionable management by Bain Capital, Kohlberg Kravis Roberts (KKR), and Vornado Realty Trust.[160]

In 2020, for the first time ever and as a result of abrupt market sell-off following the global spread of COVID-19, the Fed bought inexpensive, distressed corporate debt — including substantial private equity and hedge fund debt — and hired the world's largest asset manager, BlackRock, to oversee the purchases. That summer, the U.S. Securities & Exchange Commission (SEC) amended the accredited investor rules to make it easier than ever for wealthy individuals to invest in private capital. As of December 2020, by all accounts, we were at the dawn of an eviction and foreclosure crisis created by private equity. And that's just in the U.S. Around the world private capital haunts distressed companies and governments as it eyes their debt and equities markets and public goods following the pandemic.

Analysts observe an increase, and perhaps even acceleration, of capital away from public markets and State control, including through evolving investment methods beyond traditional private equity and hedge funds, such as digital currencies and fintech and the proliferation of NBFIs. Reasons for this capital shift — see **Increase and acceleration of private capital** — include States seeking to decrease reliance on social health and welfare systems and deregulate mainstream public markets, as well as investors' insatiable appetites for new markets and financial products to gain greater returns.[161]

By early 2019, the global value of private capital AUM was conservatively estimated at 6.5 trillion USD.[162] More liberal estimates range as high as 13 trillion USD by 2020.[163] However, during the pandemic, private investment fled global markets as asset owners and managers' home governments bought corporate debt and provided lifelines for struggling businesses. As of 2020, private capital faced a "dry powder problem": 2.5 trillion USD of uncalled capital and counting that was burning a hole in investors' deep pockets.[164]

According to the World Economic Forum, "The alternative investment industry is deeply embedded in the global financial system and economy, with investment decisions affecting capital markets, companies, and individuals across the world. This stands in stark contrast to its origins. The industry has grown from a handful of private investors making relatively small investments in companies and start-ups, to one that covers a wide array of asset classes and encompasses thousands of firms managing and investing trillions of dollars globally on behalf of institutional and individual investors alike. It not only survived the financial crisis, but emerged stronger and more important to stakeholders than ever before. The new economic and regulatory environment is impacting relationships with capital providers, while new business models are fundamentally challenging the competitive landscape."[165]

Private equity and hedge funds

Globally — and particularly in North America, Europe, and East Asia — private equity is the most prominent asset class within the universe of private capital, followed by hedge funds.[15] According to Preqin, a private investment information provider,[166] the main types of private capital are:

- **Private equity —** investments in equity securities of unlisted corporations; the most notable sub-asset class is LBOs, followed by both angel and mezzanine-level venture capital and growth equity funds;
- **Private debt —** investments in unlisted debt securities;
- **Real estate —** investments in the equity/ownership of unlisted properties;
- **Infrastructure —** investments in the equity/ownership of unlisted infrastructure assets; and
- **Natural resources —** investments in unlisted real assets such as commodities, oil and gas, timberland, and farmland.

15 Given the significant exposure of hedge funds to publicly-traded securities and money markets, not all sources include hedge funds as an automatic asset class of private capital. For our purposes, and we discuss in the section, we do consider hedge funds as private capital.

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Table 4
Private Capital Market Segments (2016)

Private Equity	Private Debt	Real Estate	Infrastructure	Natural Resources
Buyout	Direct Lending	Private Equity Real Estate	Infrastructure	Energy
Venture Capital	Distressed Debt			
Growth				Agriculture/Farmland
Turnaround	Mezzanine	Private Equity Real Estate Fund of Funds	Infrastructure Fund of Funds	Metals & Mining
Other Private Equity	Special Situations			Timberland
Private Equity Secondaries	Venture Debt			Water
Private Equity Fund of Funds	Private Debt Fund of Funds	Private Equity Real Estate Secondaries	Infrastructure Secondaries	Natural Resources Fund of Funds

Original Source: Preqin (2016).

Our Source: Trond M. Døskeland and Per Strömberg, "Evaluating Investments in Unlisted Equity for the Norwegian Government Pension Fund Global," *op.cit.*

Private equity and hedge funds — the twin standard-bearers of private capital — are more similar than they are different. Both types of firms structure their funds as limited partnerships managed by a general partner, charge similar fees, exploit enormous disclosure and tax loopholes, receive investment from institutional investors and other public and private sources, rely on huge amounts (6x+) of leverage, and are run mostly from North America or Western Europe. Private equity funds invest primarily in leveraged buyouts of distressed assets across the globe through portfolio companies over a 10-year horizon, though increasingly they make private loans to peers for similar investments. Hedge funds traditionally exploit price differentials across securities and money markets, including between public and private markets, often over a one-year time horizon. However, they also invest in distressed assets and, increasingly, are indistinguishable from private equity funds.

According to Phalippou and Peter Morris, "A typical private equity investment (by which we mean an institutional leveraged buyout) sees a new vehicle being set up, funded about one-third by equity from institutional investors such as pension funds (called limited partners, or LPs) and two-thirds by debt from banks and other investors including specialized funds (e.g. private credit funds). The new vehicle buys a mature business, referred to as the 'portfolio company', operates this company, and de facto becomes the portfolio company. This whole operation is sponsored by a general partner (GP). The GP arranges all the financing and controls (fully or partially) the company's board of directors, and also appoints senior operating managers,

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designs their pay packages, etc. Strictly speaking, the GP acts mainly as a sponsor or fund manager. To simplify, we refer to this arrangement as 'private equity ownership' and the GP is also referred to as a 'private equity firm'. A key feature of these transactions is that senior corporate managers receive steep financial incentives to ensure that the company maximizes profits. ... Few other forms of corporate ownership contain such a sharp focus on profit."[167]

Traditionally, private equity firms and hedge funds invest through limited partnership agreements (LPAs) whereby a GP sponsors a fund and brings on HNWIs and institutional investors as LPs. A GP ultimately manages a fund for the benefit of a fund's LPs but holds no personal liability for the partnership's debt. Examples of recognizable GPs include Blackstone, Apollo, and KKR.[168] The LPs do not manage the partnership, but they do enjoy limited personal liability. Finally, as the sponsor of the fund, the GP makes all investments and assumes the requisite diligence.[169]

For helpful overviews of private equity, see "Private Capital Investing" by U.S. Bank's Ascent Private Capital Management and Phalippou's book Private Equity Laid Bare.[170,171] And for hedge fund references, see Sheelah Kolhatkar's book Black Edge: Inside Information, Dirty Money, and the Quest to Bring Down the Most Wanted Man on Wall Street and also The Balance's "What is a Hedge Fund."[172,173]

However, times are changing. Given the onerous "2 and 20" fee arrangement that characterizes the private investment industry[174] and evidence that returns minus fees are equivalent or even sub-standard compared to public market returns,[175] increasingly asset managers, insurance companies, pension funds, HNWIs and their family offices and private bankers, sovereign wealth funds, and endowments and foundations are directly managing their alternative investments and investing as co-investors in private capital. The primary example of this is Canada's "Maple revolutionaries," public pension funds that internalize management functions and largely avoid the haircut occasioned by fees.[176] While these institutional investors don't yet operate their own private equity or hedge funds, the lines separating them from GPs are slowly disappearing. Notwithstanding, most pension funds and other institutional investors continue relying on GPs and investment consultants to guide their alternative investing, despite criticism of this form of capture.[177]

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Notable aspects of private equity

- In the U.S., private equity firms (GPs), like any corporation, register at the state level, where they are primarily subject to subnational — not federal — regulation. However, they also register in offshore jurisdictions — often simultaneously — at both the fund and portfolio levels, where arguably regulation is even less strict.

- Outside of North America, Western Europe, and East Asia, the majority of private equity investment is in host countries at the portfolio level. For example, IFIs and DFIs in the global North — including the World Bank's IFC, the U.K.'s CDC, and Holland's FMO, among others — regularly hire private equity firms to lead their investments in Sub-Saharan Africa, Southeast Asia, and Latin America. To date, exclusively emerging market funds with general partners also headquartered in the global South remain rare.

- Private equity funds tend to specialize at different phases of an investment's lifecycle, whether early on as an angel venture capital (VC) investor, a bit later as a mezzanine-stage VC investor or lender, much later at the growth equity or debt phases, or beyond as leveraged buyouts and restructuring opportunities. These funds — time-specific, closed investment funds — are tailored to specific sub-asset classes, financial instruments, geographies, and industrial sectors, based both on a GP's prior experience as well as the LPs' or co-investors' allotment criteria. For example, a specific pension fund acting as an LP might be authorized to only invest in single-family rental homes in certain U.S. geographies, or in renewable energy infrastructure in Mexico, or in agricultural farmland in Brazil, etc.

- Another revenue stream for private equity, as previously mentioned, is as an investment advisor for IFIs, DFIs, governments, or even institutional investors such as pension funds. Since Dodd-Frank (2010), the SEC classifies most private equity and hedge funds as "private advisers,"[178] which in the Patriot Act (2001) is an exempted category that otherwise requires financial institutions to implement anti-money laundering programs. During the administration of U.S. President Joseph Biden, analysts expect this exemption to be removed, which would make beneficial ownership disclosures applicable to private capital.

Notable aspects of hedge funds

- A hedge fund is a pooled investment structure formed by a GP, money manager, or registered investment advisor and is often set up as a limited partnership. It is an investment vehicle used to reduce risk — not necessarily a type of investment per se.[179] Hedge funds typically follow a short-term strategy and contain assets and securities ranging

- from long-term publicly-traded equities, private equity, other hedge funds, deriv-

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atives,[16] currencies, junk bonds,[17] or specialized sub-asset classes such as real estate or patents.[180] Unlike private equity, they do not typically invest in distressed assets or own portfolio companies but rather short stocks by using massive leverage to borrow stocks for a fee, sell them on the market, repurchase the stocks at a lower price, and then repay the loan. In a good market, the long plays offset the short ones and, in a bad market, the short plays offset the long ones. This strategy also applies to other financial instruments, often using algorithmic trading technology.

- HNWIs and institutional investors tend to use hedge funds because they can afford both the high management fees and the greater risk. An individual or entity must meet certain requirements to invest in a hedge fund, such as a specific level of income or net worth or a trust worth millions. Most GPs make 2% of net assets per year plus 20% of profits above a predetermined amount, while others are paid on a pure profit arrangement.[181] The same goes for private equity managers.

- This profit model for managers and advisers was justified by guarantees of consistent above-market returns, which were marketed originally to private individuals and firms and, subsequently, to public pension funds, charitable endowments, and even government funds. However, since 2009, this changed as hedge fund returns often trailed the stock market. As of 2020, the exorbitant fees paid to managers and advisers by public-facing institutional investors on behalf of teachers, firefighters, other pensioners, and taxpayers were harder to justify.[182] This caused some hedge funds to reduce their fees, though certainly not all.[183]

- Most hedge funds are incorporated as limited liability companies in offshore jurisdictions — mainly in the Cayman Islands — so as to reduce their tax bills.[184] They inherently lack transparency[185] and are notoriously unaccountable for their actions.[186] When public markets crashed at the outset of the COVID-19 pandemic, hedge funds came under new scrutiny for short-selling Treasury futures using huge amounts of leverage, only to be caught holding the bag and requiring a bailout from the Fed.[187] As if the GFC hadn't taught regulators a lesson, again in 2020, unchecked hedge fund trading nearly caused a global financial collapse.

- An April 2020 study conducted by U.S., Dutch, and French universities found that hedge fund activism is more likely to target companies ranking highly on corporate social responsibility (CSR) measures. These activist investors interpret strong CSR programs as a waste of corporate money and they're unconvinced that environmental, social, and corporate governance (ESG) measures create financial value. While not all funds hold this view, it is particularly the case for hedge funds looking to improve corporate efficiencies for greater returns.[188]

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16 Derivatives are financial instruments that draw their value from an underlying asset and essentially represent a contract between two parties detailing the cost and rules for the exchange of goods or money at a future date. Coryanne Hicks, "What are Derivatives and Should You Invest in Them?," *U.S. News*, 23 March 2020, money.usnews.com/investing/investing-101/articles/what-are-derivatives-and-should-you-invest-in-them.

17 A junk bond is high-risk and high-return and not rated as "investment grade" by credit rating agencies such as Moody's because the issuing company is not financially sound. "Junk Bonds, Pros, Cons, and Ratings: Why Would a Person Invest in Junk Bonds?," The Balance, www.thebalance.com/what-are-junk-bonds-pros-cons-ratings-3305606.

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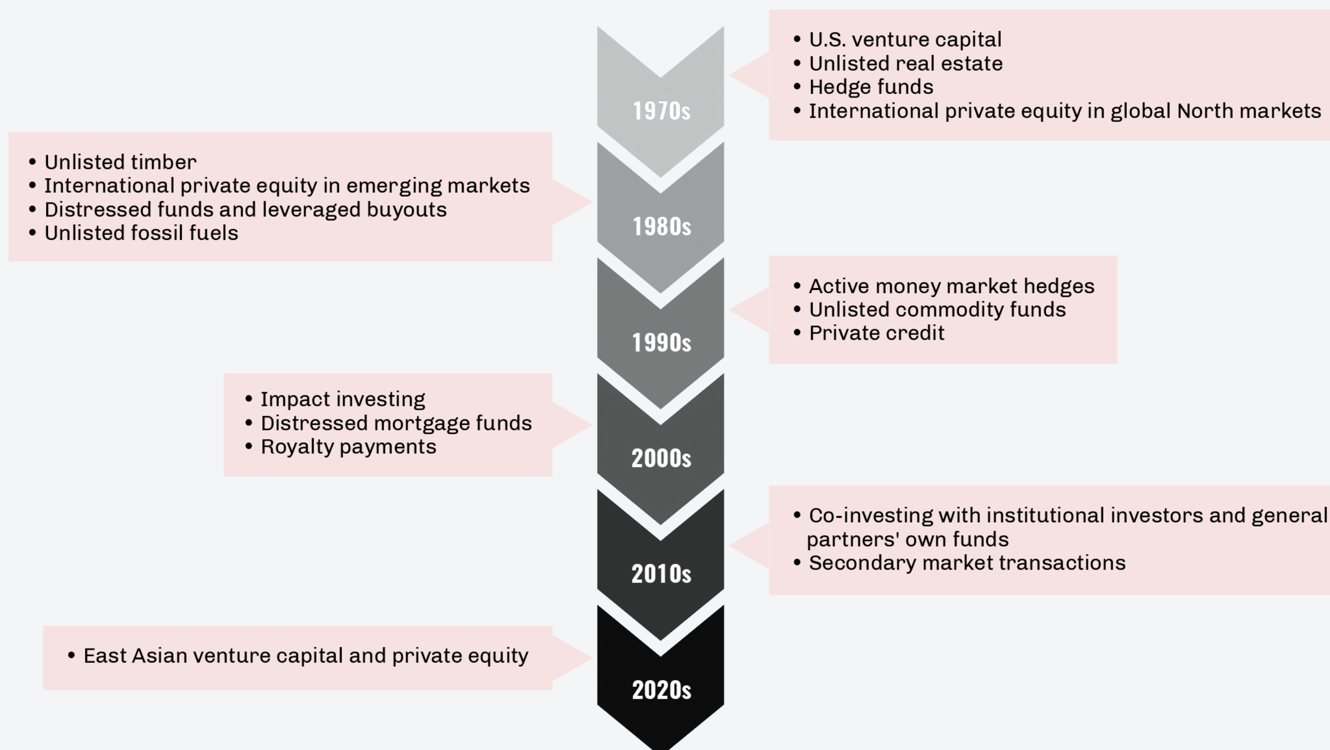
Figure 4
Timeline of Private Equity Asset Classes



Source: Multiple, including Cambridge Associates and Empower.

Private equity and hedge funds worldwide

While private capital is global, 51% of private equity funds are based in the U.S., Canada, Western Europe, and Japan, and 80% of hedge funds are incorporated in the Cayman Islands.[189] The U.S. is the most developed private equity market, though it accounts for a relatively small percentage (1.6%) of its GDP. However, this is rapidly changing worldwide. As of 2020, the Asia-Pacific region represented a quarter of the global private equity market and growing.[190] In Australia, for example, the penetration level of private equity reached 1.1% of GDP, and no other country had yet surpassed 0.5%.[191]

By 2018, private equity funds experienced a surge in investment value, capping the strongest five-year stretch in the industry's history. While the number of individual transactions dropped, the total buyout value increased.[192] As of 2018, the median holding period for buyouts fell to just under five years (from a previous point of ten years).[193] In 2019, the Nordic countries led the market for private equity returns. France and Spain also experienced sharp increases in returns while attractive

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risk-return profiles were also seen in the U.K. and the U.S. During this time, China and Hong Kong saw a slight decline while funds in Eastern Europe and Russia performed the weakest.[194]

Beginning in 2019, GPs reported that the global economy was reaching a cyclical peak or had already entered a recession and that geopolitical conditions were cause for concern. To address uncertainty, GPs reported that they were reviewing specific risk in due diligence, though global private equity investment did not slow much.[195] However, external market, environmental, and political factors adjusted the investment environment for private capital, as the pandemic exacerbated uncertainty. While private equity fund managers reported that they were prepared to weather the storm by diversifying revenue streams and preparing for longer holding periods,[196] hedge funds were a different story.

Several of London's biggest hedge funds suffered significant losses in 2020, resulting in the culmination of a few years' worth of capital outflow towards fast-growing U.S. and Chinese technology stocks. In Europe, deregulation in the U.K. due to Brexit involved moving the center of activity away from London and into the European Union.[197] As a result, the share of global hedge fund assets run by U.K.-based managers shrunk by about 2% at the start of the COVID-19 pandemic. The U.S. share dipped slightly, while Canada and France picked up new business.

Nevertheless, the U.S. dominates the hedge fund industry, a position that has only been amplified by the pandemic. For example, analysts find that there is significantly more investment capital in the U.S. than in Europe or Japan, while everyone else pales in comparison.[198] By contrast, average returns between 2012 and 2020 (not necessarily amounts fund-raised or invested), as measured by fund manager location, saw the most growth in Asia (nearly doubling the industry average), followed by the U.S., the U.K., and Europe (making up less than half of the industry average).[199]

Private equity began moving to Asia and Latin America during the 2000s.[200] In the Middle East and North Africa (MENA), the first private equity funds were raised in 2007, though the asset class nearly disappeared as quickly as it emerged due to the GFC. By 2014, there was a slow but steady recovery in the MENA region, albeit representing only 2% of all emerging market fund-raising globally.[201] In 2018, there were only 186 private equity deals throughout Africa for a total value of 3.5 billion USD. Similarly, amounts raised by LPs for investing in Africa rose only slightly in 2018, reaching 2.7 billion USD.[202]

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Profits before people and planet

The runaway train of advanced capitalism and private capital portends economic, political, social, and environmental consequences for people and planet alike. While private equity and hedge funds treat the impacts created by their woeful practices as externalities to be mitigated in legal or written down in accounting, society increasingly pays the price for these investments as well as the harms occasioned when private capital escapes disclosure, regulation, taxation, and public scrutiny.

In 2014, the U.N.-supported Principles for Responsible Investment (PRI) first published a general partner's guide to integrating ESG factors into private equity. By 2020, it had also published a technical guide and supporting materials for limited partners on responsible investing in private equity.[203] During this period, several factors drove concerns about the private equity industry, including risks, LPs' expectations, regulations, and investor-led advocacy initiatives vis-à-vis funds and their portfolio companies. PRI's recommendations for GPs begin with a commitment to ESG integration followed by engagement with stakeholders.[204]

Many of the worst impacts of private equity — which can include hedge funds as well, albeit over a shorter time horizon — originate from their investments in distressed assets, which lead to significant cost-cutting and harm for affected stakeholders. Distressed assets are those companies, corporate assets, shares, debt, or corporate bonds that have been devalued because they are in or close to default.[205] Emerging markets in Africa, Eastern Europe, and Latin America tend to provide valuable opportunities for investing in distressed debt and equity, as owners are forced to sell at rates below perceived value.[206] With the right strategy, control of a company's debt restructuring, for example, can lead to equity control for a private equity fund and its partners.[207]

Once private equity and hedge funds gain an edge, what follows is rarely beneficial for people and planet. They tend to invest by loading the portfolio target or the fund itself with debt, otherwise known as a leveraged buyout (in the case of private equity) or margin trading (for hedge funds).[18] Private equity firms, for example, borrow upwards of 80% of the purchase price of the corporate entity — sometimes significantly more, even up to 40x in extreme cases — while contributing the balance from equity. This use of leverage enhances expected returns for the firm; however, should something go wrong — as it often does — it's the portfolio company, fund itself, or even government and taxpayers that foot the bill, as general partners and limited partnerships are shielded from liability.[208] Look no further than the GFC or the COVID-19 pandemic for examples, from the mortgage-lending crisis of 2007 and subsequent monopolization of single-family home rentals by private equity firms to

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18 See **Financial leverage**.

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the Treasury futures trades by hedge funds that went belly-up in 2020 — both benefited from significant government intervention.

The exit strategies for private equity and hedge funds — whether for distressed firms in the case of LBOs, those with great potential in the case of venture capital, or mispriced securities in the case of hedge funds — depend upon large returns on equity as measured by the internal rate of return (expected annual growth rate), which is the basis for general partner compensation.[209] Exit strategies can take the form of an IPO, the sale of a private equity stake, a management buyout, or the liquidation of assets and securities.[210] However, the potential for alpha returns resulting from enormous leverage also increases risk. If the underlying asset runs into cash-flow problems or the economy takes a dive, for example in the case of LBOs, the portfolio company may be unable to service the debt, leaving employees and other stakeholders on the hook, including the taxpayer on occasion.[211]

Private equity firms also finance young companies with high growth potential, often in new or high-tech industries, through venture capital. Common characteristics of VC investment include companies with an unpredictable cash flow, low asset base, little debt, and primarily equity financing. The products and markets receiving investment are often still developing as the company is focused on growing revenue. While the risk of failure is high, private equity funds typically recoup their overall investment across VC portfolios from just a small number of successes.[212] Most young companies are unable to handle the risks of leverage and the pressure it places them under — again leading to bankruptcy and related impacts.

With such an extreme focus on profit, private equity and hedge funds subordinate all other considerations. If institutional reformers of the Wall Street economy such as PRI were hip to the inherent problems in 2014, advocates, scholars, progressive regulators, and other concerned observers and stakeholders from the Main Street economy had been sounding a clarion call for action long before. Among the hype and marketing surrounding the industry, a multitude of mostly civil society, academic, and news media sources have served as a dissident voice, diligently documenting the human rights, labor, environmental, economic, and financial impacts of private equity and hedge funds and warning us all that much more needs to be done to hold them to account. See **Case Studies** for numerous examples of impacts and warning signs caused by private capital placing profits before people and planet.

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Private equity and hedge fund regulation

Private equity is among the least transparent financial entities worldwide, and the same seems to be true of hedge funds. In 2010, with the passage of the Dodd-Frank Act in the U.S., private equity and hedge funds were required to register with the SEC for the first time after decades of existence. They were also required to report limited information, such as total assets under management, types of services provided, clients, employees, and potential conflicts of interest. These disclosures, however, are significantly less than what is required of publicly-traded companies and are not made publicly.[213] When the Act took effect in August 2012, these weak requirements became evident when Congressional budgets did not provide for additional inspections to find and punish non-compliance. This is concerning, given a now widely-held understanding of legal violations in the sector.[214]

In May 2014, the then-director of the SEC's Office of Compliance Inspections and Examinations reported that, of the more than 150 examinations conducted, legal violations or material weaknesses in controls in the handling of fees and expenses were found in over half. In her April 2014 testimony to Congress, the SEC's top regulator described abuses by private equity firms, including improper and false fees, misallocated fees and expenses, and inadequate fee monitoring.[215]

Important regulations of hedge funds cover their managers or advisors. The SEC proposed a plan, in July 2020, that caused concern, as it would have allowed most hedge funds to keep their equity holdings secret — exempting disclosure requirements for all but the largest investment managers. This would have meant that managers with assets over 3.5 billion USD would be required to report holdings, a stark difference from the current threshold of 100 million USD.[216] According to the SEC, this change would lessen reporting burdens on smaller managers. Though self-reporting by hedge fund managers and advisors is imperfect, it provides critical insight into corporate ownership. Moreover, according to the SEC's analysis, the 10% of managers that would publicly file this information account for 90% of the value of the stock holdings disclosed.[217] In October 2020, bowing to public pressure, the SEC withdrew its proposal.[218]

However, also in October 2020, the SEC adopted amendments to its auditor independence rules, which were intended to "focus on complications that arise from auditor independence assessments with respect to affiliates of the audit client. Such issues include situations where the entity under audit is under common control with other entities, which frequently is an issue for operating and portfolio companies, investment companies, and investment advisers and sponsors."[219] For the second time in two years, the SEC relaxed these rules, giving auditors significantly more leeway to sign off on the books of firms, such as private equity funds, whose affiliates or subsidiaries present conflicts of interest with the auditing firm.[220]

Regulation in the U.S. tends to be the weakest in the world, which is concerning given that the U.S. is home to by far the most private equity and hedge fund AUM. For example, the E.U.'s Alternative Investment Fund Managers Directive (AIFMD) requires a risk assessment of the use of debt by alternative investment fund managers. They must set a maximum leverage limit as well as conduct related risk and liquidity management activities. Even though it includes other requirements not covered by Dodd-Frank, some European analysts still consider the AIFMD not strong enough.[221]

For analysis of securities laws and light-touch regulation in the U.S., see **Legal and regulatory drivers of the capital shift**. For a discussion of corporate capture of the State — including over economic policy and financial regulation — see **State capture, central banks, and economic policy**. And for a discussion about how the absence of regulation, taxation, and public scrutiny of private capital affects transparency, accountability, and rightsholders and stakeholders alike, see **Challenges to transparency and accountability**.

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Golden inputs of private capital

Three inputs are essential for the universe of private capital to succeed: massive equity investment, enormous debt financing, and like-minded people with pockets lined with gold who can invest, manage private investments, champion their advantages, and use their influence in policy, regulatory, and judicial circles to ensure optimal conditions. These inputs fuel the runaway train of advanced capitalism, without which the joyride of that privileged passenger in the luxury car calling all the shots — private capital — would come to an abrupt halt.

Institutional investors

Institutional investors — the single largest source of equity investment for private capital worldwide — are large entities that aggregate funds from numerous smaller investors to invest in financial instruments for a profit. In other words, they are essentially an institution that invests on behalf of clients or members. Institutional investors include commercial banks, asset managers, private and public pension funds, sovereign wealth funds, insurance companies, hedge funds, qualifying investment managers, family offices, mutual funds, and exchange-traded funds, real estate investment trusts, and endowments and foundations.

Institutional investors are the largest investment class worldwide — owning upwards of 80% of equities in public markets, or approximately 72 trillion USD.[222,223] According to the *Financial Times*, "The 10 largest institutional investors collectively own more than a quarter of the U.S. stock market after quadrupling their holdings since 1980."[224] While exact figures don't exist, it is estimated that their share of private markets is approximately 70-80%. Pension funds, for example, typically allocate 5-10% of their portfolios to alternative investments. This is a significant amount, given that the AUM of the 22 largest pension markets were worth a combined 46.7 trillion USD as of 2019, split about evenly between defined benefit and defined contribution funds.[225]

As part of their allocation strategies, institutional investors seek alternative investments to generate returns that are not directly correlated to financial markets, as well as to diversify and mitigate market volatility. As of 2020, they increasingly turned to private equity and debt, real estate and real estate debt, and infrastructure, as hedge funds had not met performance expectations in recent years.[226]

Institutional investors are not funds themselves, but rather legal entities that manage funds on behalf of clients.[227] They have significant influence over the pricing of different financial instruments. For example, when a mass of institutional investors holds, buys, or sells ownership in an asset — such as equity shares — they signal to the market the perceived value of that asset under basic laws of supply and demand. The more money institutional investors can pool from banks, pension funds, insurance companies, mutual funds, and other large investors, the greater their power in the market to impact prices, reduce the cost of capital, and influence corporate performance.

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Incidentally, the activism of institutional investors is found to improve the overall state of corporate ESG performance. This is due to their size and influence over financial markets. The more an asset owner or manager holds of a particular asset — such as a publicly-traded company — the greater its say in how it behaves and operates. Generally, institutional investors demand more and better of the companies they hold, particularly over the long-term, as they see direct links between their returns and responsible business practices.[228] However, this slow-burn, inside-out strategy is insufficient — even provoking backlash[229] — and much more is needed to raise the standard of responsible investment.[230]

Among other **Recommendations**, in **For investors** and **For pension funds**, we suggest that, if we are to rein in the shadow economy, more shareholder activism by institutional investors is urgently needed to engage with or divest from private capital. Some positive developments include that "the European Union (EU) has taken on a global leadership role in redefining the roles and responsibilities of institutional investors as financial actors by seeking to embed environmental, social, and governance (ESG) considerations at the heart of the region's financial system. In 2019, the European Parliament and Council adopted a new set of rules requiring European investors to disclose the steps they have taken to address the adverse impact of their investment decisions on people and the planet. Under this regulation, which entered into force in December of 2019, EU member states will have until May 2021 to fully implement these rules, which will apply to all investment advisors who sell products in Europe and thereby cover all large investment advisers worldwide. Moreover, as of March 2020, the minimum safeguards under the EU Taxonomy — which set performance thresholds under new legal obligations for European financial market participants — are based in internationally recognized human rights standards."[231]

Institutional investors can provide opportunities for positive action, as demonstrated by research on pension funds that drive the financial sector's aggressive investment in farmland. While pension funds provide significant funds, both directly and indirectly, for the purchase of large areas of land through asset managers, they are also supposed to be accountable to the workers whose retirement savings they manage, which makes them more susceptible to social pressure than other farmland grabbers.[232]

As of 2020, most of the money going into farmland was concentrated in North America, Europe, Australia, New Zealand, and parts of South America and came from North American and European pension funds. This is problematic because Brazil, for example, is a major target for pension fund farmland acquisitions, yet it ranks highest in the world for agribusiness land conflicts. Similarly, Eastern European farmland is an important market for pension funds, even though it is notoriously corrupt. Climate and human rights advocates systematically target campaigns on the issue at pension funds, a recommendation we endorse in this book.[233]

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Wealthy individuals and family offices

High-net-worth individuals (HNWIs) and the family offices that manage their money are experts at maximizing their many advantages. As asset owners, managers, and institutional investors, they continuously seek new opportunities and greater returns — including as first movers among private equity and hedge fund investors — while protecting themselves from market volatility, especially since the GFC and the COVID-19 pandemic.[234] While 77% of the wealthiest families worldwide — whose fortunes average over 1.6 billion USD — saw their investments perform in line with or above expectations during 2020, the United Nations University estimated that the pandemic could increase global poverty by as much as half a billion people, or 8% of the world's population.[235]

As discussed in **State capture, central banks, and economic policy**, the modus operandi of wealthy individuals involves optimizing their capital, including ensuring favorable conditions for investment, privacy, and taxation from the executive, legislative, and judicial branches of government. According to *Financier Worldwide*, "Given the expediential rise in private wealth — the 'EY wealth management outlook 2018' predicts that the global volume of net investable assets of HNWIs will increase by around 25% to almost 70 trillion USD by 2021 — and the cultural changes that are taking place around HNWIs making direct investments, we are

seeing more and more crossovers between the worlds of PE and private wealth. As exits of PE-backed companies and the PE industry itself continue to produce HNWIs, and as HNWIs become more and more likely to reinvest in growth companies either on their own or alongside PE, this is a trend that is likely to continue to grow and gather momentum."[236]

Their sheer numbers alone — the accumulation of income and wealth at the very top of inequality ratings worldwide — are staggering. The greatest number of billionaires resides in the U.S., followed by China, though the third-richest family is in France, the sixth-richest individual in Spain, and the twelfth-richest person in Mexico. The top ten billionaires are connected to major multinational corporations such as Amazon, Microsoft, LVMH, Berkshire Hathaway, Zara, Facebook, and Walmart.[237]

The global population of very-high-net-worth individuals (VHNWIs) — defined as those with a net worth between 5-30 million USD — grew to 2.67 million people in 2019, a growth rate of 10% from the previous year. "This was a sharp acceleration in growth from just 1% in 2018. The combined net worth of VHNW individuals also increased by over 10%, to 26.6 trillion USD." According to Wealth-X, this increase is primarily attributable to a surge in stock prices due to central banks cutting interest rates in order to stimulate the economy.[238] Similarly, the number of ultra-high-net-worth individuals (UHNWIs) — those with assets over 30 million USD — rose by 6% in 2019. The majority of UHNWIs are based in the U.S., followed by China, Germany, France, and Japan.[239] However, the fastest growing number are in Asia (India, Vietnam, China, and Malaysia) and Africa.[240]

For the past few years, private banks have flourished that cater primarily to HNWIs and family offices — a major subset of wealth management that includes personal investment, retirement planning, philanthropy, wealth structuring, dedicated banking, and other financial services. Meanwhile, commercial and retail banks have been unable to maintain revenue margins, as pressure from low interest rates, strict regulation, and demands for transparency stunts their growth.[241] Usually, private banking services are reserved for those with over 500,000 USD worth of investment potential in alternative instruments, including private equity and hedge funds.[242] These services are often provided from branches or headquarters in tax havens to help clients escape taxation in their home countries — Switzerland is a notorious home for private banking, for example.[243]

AUM growth in private banking is driven by a combination of favorable markets, mergers, and acquisitions, particularly in Europe, Switzerland, and North America. However, the situation of China, where the percentage of billionaires grew by 37% in 2017 alone, is different.[244] There, the participation of private capital in the banking sector was only first allowed in 2013; since then, eight private commercial banks have been created.[245]

Wealthy families are evolving the ways they hold their assets, as regulations become more complex and elicit scrutiny. Increasingly, they rely on various types of

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family offices where they can grow their legacies in private. A report by the French Family Office Association on families' assets allocations, in 2018, showed that private equity represented 21% of allocations, as families sought to limit their risk exposure to listed equities and hedge funds. Real estate and other real assets also tended to be strong holdings for family offices.[246]

The trend of multi-family offices (MFOs) to provide wealth management to UHNWIs is also popular. They are being established in London, Switzerland, Monaco, and Luxembourg for emerging market customers and onshore in other European countries for local customers. Family offices increasingly look to hedge funds and alternative strategies, including blockchain and artificial intelligence, as they seek to gain an edge using the latest analytical and investing tools.[247]

In terms of wealthy individuals, European investors tend to look offshore for tax efficiencies. This is also true for 17% of global wealth, which is being invested outside of home or residential countries. In some cases, HNWIs are even seeking residence in other jurisdictions by anchoring their immigration status to a high-level investment in their host country, a practice that is both legal and often encouraged. However, national governments are growing wary of the "golden visa" trend and cracking down on abuses, citing evidence of tax evasion and organized crime.[248]

Beginning in 2020, Hong Kong positioned itself as an investment destination for VHNWIs and UHNWIs. It innovated legal reforms to attract private capital and family offices, leading it to compete with tax havens such as the Cayman Islands and Singapore.[249]

In Africa, the growth of wealthy and ultra-wealthy individuals is driving the development of private banking. While some international banks, notably Barclays, have withdrawn from Africa or specific countries within it, many financial entities are quickly filling the void. Traditionally, South Africa has been the leading private banking market, though Mauritius is gaining ground by providing offshore portfolios with no capital gains, dividend, or estate taxes and no capital controls.[250] For those VHNWIs and UHNWIs in the Middle East, the favored family office model uses a holding company structure linked to an investment business. This is a contrast from the family investment groups in the U.S. and Europe where regulation limits this practice.[251]

According to the head of wealthy clients at the Swiss bank UBS, there is a recent shift in the way family offices operate. They no longer call banks and ask for opportunities but rather source deals privately through their networks of friends, venture capital firms, and investment banks.[252] In this regard, family offices are becoming more sophisticated as they hire former bankers and private equity executives with full-fledged teams equipped to conduct due diligence and compete at auctions. Unlike the one to ten-year time horizons typical for most investors in private capital, family offices tend to hold on to their assets for the long-term.[253]

These direct deals between family offices reflect a general shift in capital away from public markets into private deal-making, as family offices can invest across

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borders and sectors like never before.[254] With no holds barred, the self-perpetuating accumulation of wealth naturally leads HNWIs to diversify their portfolios, hedge against ownership concentration and other pitfalls of public markets, and invest in private capital. Without the investment, management, and elite connections of wealthy individuals and family offices, the train of advanced capitalism wouldn't have left the station in the first place.

Financial leverage

The last key input for private capital is financial leverage, or how a company uses debt to finance its operations. Without it, private equity and hedge funds would implode — as at least four out of every five dollars they invest are borrowed from banks, asset managers, other institutional investors, and private lenders in secondary credit markets. As debt greases the wheels of the runaway train, the risk-reward profiles of private capital investments increasingly cause it to gain speed and nearly run off the rails.

Privately-held companies — including most private equity and hedge fund firms — do not seek public or shareholder funds. Instead, their money comes from the wealth of general partners, families and friends, bank loans, and private debt and equity from other HNWIs, venture capitalists, asset managers, and institutional investors. These companies are privately owned by their founders, managers, or a limited group of investors and rarely trade on the stock market. However, as a private equity or hedge fund grows, it may issue publicly-traded stock — for example, shares of Blackstone Group have traded on the NYSE since 2007.[255]

For private equity and hedge funds relying heavily on leverage, the underlying assets, securities, or companies acquired serve as collateral to obtain and service debts. However, this leaves a portfolio company, for example, with high interest rates, making it difficult to stay afloat and pay dividends, which, in turn, leads to additional leverage, and so on. Once it finds itself unable to manage its debt obligations, the company, its employees, providers, and other stakeholders are left on the hook — causing serious consequences for people and planet.[256] For example, in the case of over-leveraged hedge funds mentioned earlier, funds that had borrowed massively to purchase Treasury futures were unable to meet their obligations during the COVID-19 crisis and the Fed stepped in to bail them out.

As its name indicates, leveraged buyouts (LBOs) — the most typical form of private equity investment — regularly borrow at a ratio of 6 USD of leverage for every 1 USD of equity. Anything beyond 6x — which is already regarded as high risk — is questioned by government regulators with an eye towards default and the possibility of systemic risk. In the years preceding the GFC, it was common for corporate debt levels to exceed 10x — even up to 40x in extremely risky cases — a ratio that dipped slightly between 2008-09 before increasing from 2010-17, only to subside again from 2018-20.

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The blog *Naked Capitalism* summarizes this problem plainly. "It's not hard to see that private equity is often a hazard to the health of the companies it buys. How about to lenders, and more importantly, to the financial system? After all, bankruptcies generally result in loan restructurings, which is a polite way to say, 'Agreeing to take losses.' And it would add insult to injury to have private equity looting for fun and wreck banks who, if they are big, would be bailed out, further confirming that private equity's gains often come at considerable collective cost."[257]

As to its benefits, in addition to optimizing returns, leverage for private capital investors ensures the deductibility of interest expenses for income tax purposes — which decreases, if not eliminates, tax liability — and simply minimizes their skin in the game while maximizing rewards. If private capital investors can convince some to lend capital and others to pick up the tab should something go wrong — all while limiting legal liability through tax havens and protected investment vehicles — where's the risk, right?

As it were, private capital doesn't just rely on leverage to grease its wheels — it also provides debt financing to other private companies through secondary private credit markets, as do limited partners such as institutional investors.[258] According to Preqin, as of 2020, global private market AUM reached 10.74 trillion USD, of which private equity accounted for 4.4 trillion USD (41% of the total), hedge funds 3.6 trillion USD (34%), and private debt 848 billion USD (8%).[259] While still relatively small, the secondary debt market is approaching 1 trillion USD and counting as private capital investors seek new returns for the approximately 2.5 trillion USD of uncalled capital (or "dry powder") that's fund-raised but not yet invested.

Again, *Naked Capitalism* makes clear what's at stake. "By contrast (to banks), private equity investors look to be setting themselves up for a world of hurt. They are exposed to subscription line capital calls. They now are also at greater risk of having their assets in mature funds takes [sic] away if NAV credit line borrowings go sour. And like CalPERS, many are or planning to invest in private debt, mainly or entirely via private equity credit funds, which invest in riskier debt exposures than banks do, so they are also exposed to credit losses on the debt side. And CalPERS, as most readers know, plans to create its own leverage on leverage by borrowing 20% across all its funds."[260]

During the COVID-19 pandemic, private equity managers turned to new strategies to ensure that their use of leverage survives. For example, in the real estate market, private equity funds are less willing to work with property owners struggling to service debts, preferring to provide mezzanine financing instead to help owners of hotels, retail complexes, and office buildings run their businesses. As private lenders, they make loans that can convert to an equity interest if the owner cannot pay the mortgage, rather than seize the property itself — a traditional practice for mortgage lenders that accept actual real estate assets as collateral. Mezzanine lending comes with higher interest rates, causing more risk but also greater potential returns. It is one of the fastest-growing corners of commercial real estate and its most active lenders are Apollo, Blackstone, Brookfield, and KKR.

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In *Euromoney* magazine, Peter Lee quotes the co-head of HSBC securities services, who aptly summarizes the significance of private debt markets: “There are more and more sources of liquidity and I definitely think that private capital is a threat to the banking industry. Issuers will still need banks for advice and portfolio construction, but they now have a far bigger pool of capital to go to.” Lee continues, “The overseers of these private pools are the new drivers of capital formation and capital markets activity, now pulling the conventional institutional managers of middle-class investments and pensions along in their wake. … Intriguingly it is in Asia, where capital markets have grown fastest over the past 20 years, that the influence of private capital is most pronounced.”[261]

As we’ve seen, private capital cannot move an inch without three key inputs: equity capital, financial leverage, and wealthy individuals and their support. For advocates, CSOs, regulators, and other stakeholders concerned about the runaway train of advanced capitalism, we have an opportunity to repurpose these inputs as strategic opportunities for transparency and accountability — golden opportunities to reverse the course of private capital and subject it to public decision-making and scrutiny.

Typologies of private capital

Globally, private equity, private debt, and hedge funds represent the lion’s share of private capital, accounting for approximately 9 trillion USD (or 82%) of the nearly 11 trillion USD held in private investments. However, this figure is arguably the most conservative estimate of private capital because a) it doesn’t account for other, admittedly grayer categorizations such as consumer lending or fintech, and b) it doesn’t include the entire universe of private capital across the investment chain, from sources of investment through asset and investment managers, ownership structures and investment vehicles, emerging sub-asset classes, and new markets. In our estimation, if reliable estimates and consistent categorization existed for the whole universe of private capital, its overall value could as much as double, which would render the relative value of private equity, debt, and hedge funds closer to 40%.

Opaque privately-held companies in general — including most private equity and hedge funds — are the main corporate form of private capital, whether a limited liability company in the U.S., a family-owned holding corporation in Mexico, or a variable capital company in Singapore. Other prominent typologies include non-finan-

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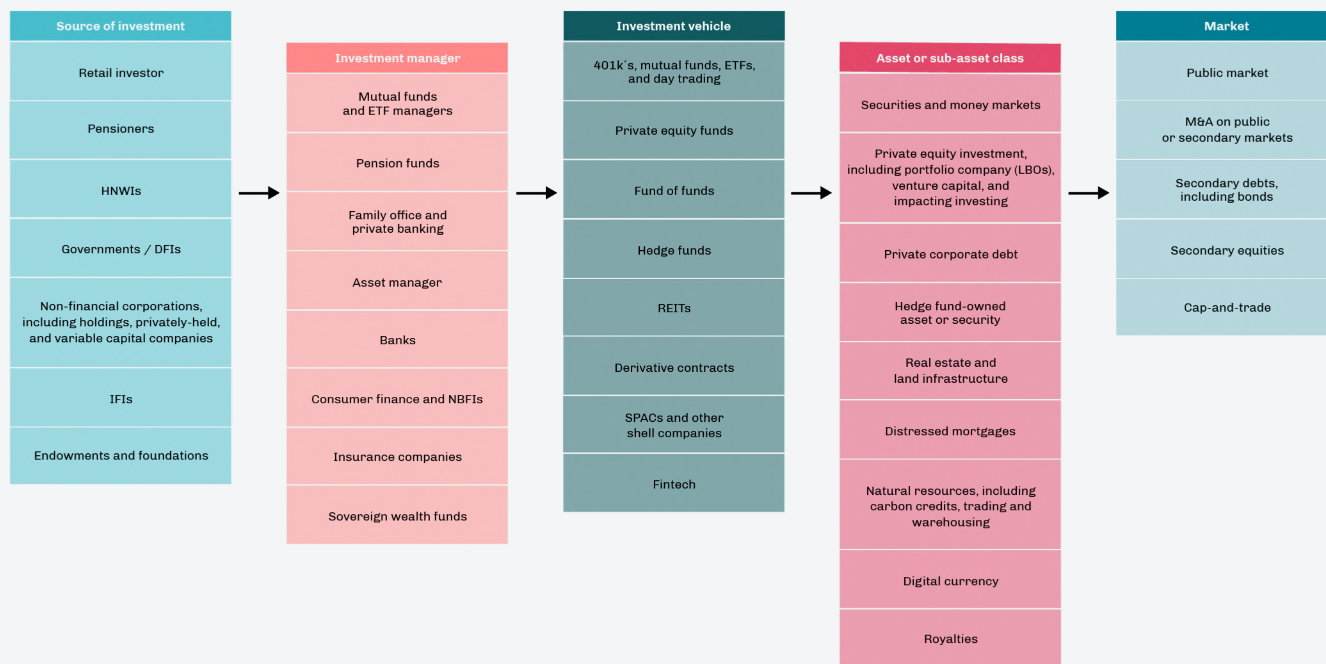
cial corporations, the consumer finance industry (from payday lenders to microfinance agencies), digital currency and fintech, and arguably SPACs. Categories such as financial and vehicle leasing companies, securities and derivatives dealers, development capital corporations, and — for our purposes — State-based investments from China and the Middle East also deserve mention.

As a rule, private capital can assume myriad corporate forms across virtually all legal jurisdictions, receive direct or indirect State investment, and employ any number of investment vehicles (from mutual funds to real estate investments trusts), financial instruments, and markets (from cap-and-trade and commodities to high-yield bonds, among others) to meets investors' expected rates of return. Given this typological fluidity, it is important to discuss the variety and prevalence of private capital if we are to accurately recognize, track, and hold it to account. For this book, Empower examined more than 30 typologies, asset classes, or sub-asset classes worldwide. The typologies listed below in **Table: Shades of Gray** do not exclusively or even mainly belong to the universe of private capital. Rather, they're included to show the comprehensiveness and pervasiveness of many of these categories.

Figure 5
Shades of Gray: Typologies of Private Capital



Source: Empower

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In this section, we discuss several types of private capital that our research indicates are most prominent or emerging in a significant way around the world, including distinct corporate formations. For a discussion of the main typologies of private capital, see **Private equity and hedge funds**.

Privately-held companies

Privately-held companies — a broad category that includes most private equity and hedge funds but is naturally a larger universe — are a prominent typology worldwide. Typically, they are limited liability companies acting as holding companies, often family-owned, do not bring on partners, and are most common in emerging markets such as Southeast Asia, Sub-Saharan Africa, and Latin America.

A privately-held company is one that is wholly owned by individuals or corporations. Private companies do not offer equity interests to investors in the form of shares traded on a public stock exchange.[262] They are most commonly incorporated as corporations, limited liability companies, limited partnerships, sole proprietorships, or non-profit organizations and vary by structure depending on their legal jurisdiction of incorporation.[263] Some of the biggest and most recognizable privately-held companies include Koch Industries, PricewaterhouseCoopers (PWC), Ernst & Young, IKEA, LEGO, and Rolex.[264] The largest privately-held companies in the world tend to be in the food, beverage, and tobacco industries, including C&S Wholesale Grocers, Reyes Holdings, Publix Super Markets, Mars, Inc., Cargill, and Albertsons.[265]

As they are not listed on public stock exchanges, privately-held companies have limited disclosure obligations, which allows them to operate with confidentiality and opacity.[19] The managers of these companies do not answer to investors or regulatory bodies, making them less accountable than their publicly-traded peers. For the most part, the owners' liabilities are limited to their ownership of the company and excludes their personal and pass-thru assets. And for sole proprietors or partnerships, the liability of owners and partners is unlimited. Traditionally, privately-held companies had limited access to capital and credit;[266] however, as discussed previously, this is changing now that private debt and equity and increasing liquidity are available on unregulated secondary markets.

There are several reasons why corporate executives decide not to take a private company public. Going public — also called an initial public offering (IPO) of stocks

19 In a few circumstances, disclosures about privately-held companies are available in the U.S. One way is when a privately-owned company merges with or is acquired by a public company and its information is published by the publicly-traded entity. Another is when a public company goes private allowing previously disclosed information to remain available. Additionally, there is often information — albeit limited — in a private company's incorporation document.

— can be expensive, and it may be difficult to generate interest from investors. PWC estimates that the average company spends 3.7 million USD on the IPO process. One of the most attractive parts of managing a private company is a high level of control over operations and the ability to maintain a corporate culture, for better or worse.[267]

Privately-held companies that operate globally, such as Cargill in the food and beverage sector, are sometimes linked to human rights and environmental abuses. According to the civil society organization Mighty Earth, Cargill is responsible for people becoming sick or dying from eating contaminated meat, child laborers growing cocoa that's used to produce chocolate, polluted water, and mass displacements — including of indigenous people — due to deforestation to make way for animal feed.[268] Some of the world's largest privately-held companies also tend to be most prevalent in the commodities sector and have reported ties to large-scale corruption.[269]

Limited liability companies

A limited liability company (LLC) is a private limited company, used mainly in the U.S. but increasingly in other jurisdictions, that is a preferred form of incorporation for private equity and hedge funds. An LLC is formed in accordance with state law and can have multiple owners or outside investors. Many countries have some form of an LLC with similar characteristics.[270] LLCs provide owners with limited liability protections whereby each member — or partner — is liable only for what they contribute to the business; their personal assets are not at risk. Profits may be distributed however the members choose, unlike corporations that must issue dividends to shareholders unless they vote otherwise.[271]

A common analogy used to describe LLCs and similarly opaque corporations is the "corporate veil" — the legal separation of a company from its owner(s) that shield its directors from personal liability for debts or negligence. "Piercing the corporate veil" therefore refers to a situation where a court sets aside the limited liability and holds the directors personally responsible for the entity's actions, debts, or negligence. In some instances, the corporate veil may describe a parent company as legally distinct from its subsidiary, thereby shielding the former business entity from the latter. For example, parent companies may argue that they are distinct legal entities with limited liability to avoid being implicated in a subsidiary's human rights violations. In this instance, the corporate structure can be used to take profit while avoiding responsibility for human rights abuses and tax avoidance or evasion.[272]

LLCs are not recognized as entities by the U.S. Internal Revenue Service (IRS) for tax purposes. Instead, an LLC is considered a disregarded entity — a business that is not seen as a separate entity from the business owner — if it has only one member or a partnership if it has more than one. LLCs can provide tax benefits in that only the owners of the LLC are taxed (versus the LLC itself). LLC members may not be paid wages and their profits, which are reported on individual members' tax returns, are

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subject to self-employment tax unless the LLC was structured as a corporation.[273] Several incorporation services — from serious companies to fly-by-night post office box schemes — offer to quickly and inexpensively create LLCs in tax havens from Delaware to Panama and the Cayman Islands.[274] Most businesses must register in the location where they conduct business, and several LLCs should be established in multiple jurisdictions when business is done across borders.

Non-financial corporations

A particularly concerning type of hybrid public-private capital is non-financial corporations (NFCs),[275] such as Amazon, Apple, and Google, whose stark entry into financial markets has only just occurred over the past few years. As both sources of private investment and owners of private capital companies, NFCs wield the power of monopolies or oligopolies.[276] Though most of these huge companies are publicly traded, increasingly they stockpile cash — which they invest in public and private markets — or acquire financial businesses themselves, such as credit card businesses, digital currencies, fintech firms, or even asset management services.

According to researcher Lenore Palladino, "'Financial assets' in the NFC context refers to the holdings of cash and short-term investments, current receivables, advances, and a miscellaneous category of 'other' financial assets. Financial asset holdings are not trivial: *The Financial Times* has documented how, in 2015, NFC financial holdings topped 2 trillion USD for the first time, outstripping the asset holdings of traditional Wall Street asset managers. Just thirty U.S. companies have portfolios of cash, securities, and investments worth more than 1.2 trillion USD; holdings of corporate debt and commercial paper are at a record 432 billion USD, as companies avoided repatriating cash for tax purposes and instead looked for riskier investment opportunities."[277]

Consumer finance

The global consumer lending industry to private individuals by non-bank financial institutions (NBFIs) — ranging from payday lenders to microfinance agencies, many of which are owned by private equity and hedge funds — was placed under a microscope of scrutiny in 2020. The COVID-19 pandemic hastened a 5.2% reduction in global GDP — arguably much worse than the GFC of 2007 — and with it the inability of millions of borrowers to pay back housing, student, payday and microloans, vehicle leases, and other forms of debt.[278] While governments responded by slashing interest rates and some introduced temporary forbearance on rent, student debt, and other loan payments, the lending practices of these companies were put to the test.

The global value of short-term, non-bank consumer finance was projected to reach 85 billion USD in 2020 and was expected to grow to 100 billion USD by 2024. The av-

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erage transaction value in this segment globally is quite low — 2,752 USD. Chinese financial consumers are responsible for the lion's share of consumer borrowing, at 61 billion USD or approximately 72% of total transactions.[279]

These lenders — collectively termed "shadow banks," most of which are privately-held companies with no public market exposure — are subject to virtually no lending regulations, capital constraints, disclosures, or fiduciary requirements. While some are connected to consumer credit firms, mortgage companies, and securities brokers and dealers, others are portfolio companies of private equity and hedge funds — the black boxes of private capital. From a systemic perspective, the main risks associated with this sector are the cyclical, short-term nature of lending and borrowing, which, if the cycle stops, suddenly leaves over-leveraged consumer finance firms — or their corporate parents — with enormous debt obligations they're unable to meet.[280]

From a consumer perspective, the main risks of consumer borrowing are "not access to credit but a future in debt," which is particularly pernicious in an industry known for predatory lending targeting communities of color and the poorest worldwide.[281] According to Americans for Financial Reform, "Private equity has pushed into the high-priced consumer loan industry, offering payday and other consumer loans that profit off trapping borrowers in a cycle of debt. Private equity firms own over 5,000 storefront payday and online lenders that often make loans at 300% annual percentage rates (APR) and higher."[282]

In the U.S., the Consumer Financial Protection Bureau was formed in 2011 precisely to offer consumers protection and recourse vis-à-vis banks and NBFIs. Many countries have a similar agency, including Mexico, whose Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros in Mexico (CONDUSEF) was founded in 1999. Notwithstanding, critics argue that these institutions have been defanged and defunded over the past two decades, bowing to pressure from financial lobbyists. They also advocate for a financial transactions tax to reduce the short-termism and speculative practices of consumer lenders and other NBFIs.[283]

For an industry so focused on the most vulnerable financial consumers — whether borrowers of student debt, health insurance, car loans, mortgages, and payday loans — the lack of regulation and public scrutiny of their practices should come as no surprise, given the opacity and institutional design of private capital.

Digital currency and fintech

Over the last century, the union of financial services and information technology gave rise to other key types of private capital — digital currency and fintech. Since 2008, this broad sector has boomed, seizing the evolution of smartphones, increasingly automated investment services such as Robinhood, the launch of Bitcoin and other digital currencies, mobile platforms and digital wallets like Apple Pay, crowd-

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funding, and sophisticated money transfer services in Asia and the West such as PayPal and TransferWise, as well as greater financial inclusion and economic development throughout Asia and Africa, including through mobile technology and peer-to-peer (P2P) lending.

As of May 2020, the global value of all cryptocurrencies was 244 billion USD, of which Bitcoin accounts for two-thirds.[284] While still minuscule within the universe of private capital — representing barely 2% — this technology is advancing rapidly and increasingly is a go-to hedge against public market volatility during times of economic crisis. The global fintech market, as of June 2019, was worth [187] billion USD.[285] While both digital currencies and fintech receive significant venture capital financing, virtually the entire fintech sector is funded by private equity and hedge funds.[286] As investments in these technologies continue to progress, regulatory frameworks fail to keep pace.[287]

According to a seminal study of digital money by the IMF, "…The two most common forms of money today will face tough competition and could even be surpassed. Cash and bank deposits will battle with e-money, electronically stored monetary value denominated in, and pegged to, a common unit of account such as the euro, dollar, or renminbi, or a basket thereof. Increasingly popular forms of e-money are stablecoins. E-money may be more convenient as a means of payment, but questions arise on the stability of its value. It is, after all, economically similar to a private investment fund guaranteeing redemptions at face value. If 10 euros go in, 10 euros must come out. The issuer must be in a position to honor this pledge."[288]

So as to not get left behind, as of July 2020, five countries — including China and the U.S. — had introduced digital currency pilot programs, as had one currency union, and three others had completed trials.[289] According to the Fed, "The introduction of Bitcoin and the subsequent emergence of stablecoins with potentially global reach, such as Facebook's Libra, have raised fundamental questions about legal and regulatory safeguards, financial stability, and the role of currency in society. This prospect has intensified calls for (central bank digital currencies) to maintain the sovereign currency as the anchor of the nation's payment systems. Moreover, China has moved ahead rapidly on its version of a CBDC. … To enhance the Federal Reserve's understanding of digital currencies, the Federal Reserve Bank of Boston is collaborating with researchers at the Massachusetts Institute of Technology in a multiyear effort to build and test a hypothetical digital currency oriented to central bank uses."[290]

As we saw in the case of Myanmar — where a digital world and casino enclave were built near the jungle amidst a civil war, and far beyond regulation, taxation, or public scrutiny from either the host government or the home capital of China — digital currency and fintech are ideal tools for private capital. They allow for the utmost privacy, secrecy, tax avoidance and evasion, and the unfettered capture of legitimate and illicit funds alike. It's a dream come true for capitalists and — for the runaway train of advanced capitalism — nothing short of the Wild West.

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In this regard, private equity and hedge funds have already marked common trends in the sector:[291]

- Big Data analytics and the use of artificial intelligence in the initial stages of the investment process significantly reduce information asymmetries and even offer more accurate predictions of the probability of success than human analysts;

- Emerging technologies help democratize investment decisions by closing the expertise gap and creating a level playing field for all types of investors;

- Technology has the potential to make the hedge fund, private equity, and venture capital industries accessible to retail investors; and

- Crypto markets emerged only recently, but their instantaneous success highlights the demand for alternative investment assets and opportunities across different investor groups.

As progressive rapper and entrepreneur Killer Mike (aka Michael Render) — part-owner of a new digital bank in Atlanta focused on Black and Latinx entrepreneurs and small businesses — put it: “What I have learned about capitalism is that you’re either going to be a participant in it or a victim of it. The ultimate protest is focusing your dollar like a weapon.”[292]

Despite enthusiasm for these new types of private capital, the downsides are numerous, beginning with the inability of regulators and the public to glean what’s happening, let alone catch up to it and rein it in.[20] Other concerns include the unfettered access of private companies and governments to users’ biometric information and other personal details, as well as the increasing separation of the connected class from the poor and disadvantaged — arguably the unconnected class.[293]

Real estate investment trusts

A real estate investment trust (REIT) is a company that finances, owns, or operates income-producing real estate — ranging from single-family rental homes to for-profit prisons in the global North to agribusiness farmland in the global South. While the majority of REITs are publicly-traded corporations — including equity REITs and mortgage REITs — others are unlisted companies registered with the SEC or altogether privately-held companies that do not trade on stock exchanges.[294]

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20 Notably, this may begin to change. In June 2020, the European Commission initiated an antitrust investigation against Apple Pay and, so far, two other countries have followed suit. Patrick McGee, “Apple Pay draws antitrust attention,” *Financial Times*, 17 December 2020, www.ft.com/content/13da1d7e-d771-40b1-a597-e37ab7112d46.

According to industry association Nareit, "In total, REITs of all types collectively own more than 3 trillion USD in gross assets across the U.S., with stock-exchange listed REITs owning approximately 2 trillion USD in assets, representing more than 500,000 properties."[295] By these numbers, REITs arguably figure among the most important sub-asset classes of private capital — to the extent that they meet the definition — with 1 trillion USD or approximately 9% of private capital worldwide.

In many ways, REITs epitomize financialization. According to former UN special rapporteur on adequate housing Leilani Farha, "Real estate investment trusts, for example, have been around in Canada since 1993. But the film (The Push) explains that following the 2008 global financial crash, when real estate values plummeted, they swept in like vultures to feed on the wreckage. These real estate investment trusts — and other similar investment vehicles — will take your savings and promise you an annual rate of return much higher than you could get in a term deposit or stocks. And the best part is you don't have to know that your money was responsible for bouncing grandma out of her West End rental. The business model for REITs and their counterparts is often to buy up 'undervalued' rental properties. By undervalued, they mean buildings where existing rents are lower than the market will bear. Delivering higher returns for investors relies on getting rent-controlled tenants out of those apartments and offering them at much higher rates. Renovictions — evicting tenants based on the claim significant renovations are needed — is a favoured method. Once the rents have been raised, the owners can sell the asset at a hefty profit or manage it for steady financial returns."[296]

In **Chapter IV: Case Studies**, we expound on several examples of the presence and perniciousness of REITs worldwide, in addition to the example of the publicly-traded prison REIT — The GEO Group (NYSE: GEO) — mentioned in **Privatization**.

SPACs

As traditional IPOs lose steam, some public market capital formations, such as special purpose acquisition companies (SPACs) in the U.S. and the U.K., adopt characteristics typical of private capital. These include charging high fees, obtaining seed capital or co-investment from company sponsors, extraordinary secrecy, and a predilection for taking public companies private, ostensibly to provide acquired companies with a short-cut to liquidity and investors with a short-cut to profits. Another way to understand this phenomenon, which was particularly popular during the COVID-19 pandemic, is as a one-off private equity fund that takes one portfolio company public before exhausting its original purpose.

While many investors and firms jumped onto the SPAC bandwagon in 2020 — including Bill Ackman of Pershing Square Management and Paul Ryan, former speaker of the U.S. House of Representatives — perhaps none drew more scrutiny than the second-richest man in Japan, Masayoshi Son of Softbank. The multinational holding

company runs the world's largest VC fund investing in technology, Vision Fund. Its SPAC will list on the NASDAQ in 2021, reportedly to take public one of Vision's portfolio investments.[297] As if inverting the space/time continuum, the fact that a champion of private capital is using a publicly-traded vehicle to raise new capital is proof positive that the lines between public and private markets are increasingly blurry. As a warning, critics of SPACs note that their prominence in 2020 might have been nothing more than a bubble that — buyer beware — will burst as soon as investors ditch the stocks.[298]

Across the investment chain, from the original asset owner to the final liquidity market, private capital assumes a variety of corporate forms across myriad legal jurisdictions — often with direct or indirect State support — and can use any number of financial vehicles (from ETFs to REITs) and financial instruments and markets (including commodity trades, cap-and-trade schemes, derivative contracts, and bonds, among others) to meet expected rates of return. In other words, once formed, private equity, hedge funds, privately-held companies, and other private capital typologies are not limited in how, where, in what, or with whom they invest.

For our purposes, we include opaque State-based companies from China and Middle Eastern countries such as the United Arab Emirates (UAE) and Saudi Arabia among private capital investors, as they share many characteristics with institutional investors worldwide. One example of this is the 200+ billion USD in "IOUs" or commercial acceptance bills in China that substitute for cash liquidity and became financialized and traded on secondary markets with lukewarm State support.[299]

Other private capital typologies of note — mostly unlisted companies, though within typologies this can vary to include publicly-traded companies — are financial and vehicle leasing corporations, securities and derivatives dealers, and development capital companies, which we do not explore in this book.

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Notable characteristics of private capital

Though not easily defined, private capital has several notable characteristics whose explanations help demystify the phenomenon. For rightsholders, advocates, and other watchdogs concerned about the perniciousness of private capital, understanding these characteristics can provide a map to better track it down and reverse its course.

- **Dearth of information:** There is scant available research on private capital per se. Most extant information is about public equities and debt or State-based or IFI-driven finance. The main reason for this is that private capital has an essentially non-existent bar for disclosure — whatever data might exist is often too anecdotal or specific to draw accurate conclusions. This lack of information is a significant obstacle to holding investors in private capital accountable and a primary motivation for this book. Beyond linking investors' reputations to the often harmful and visible effects of pernicious private capital, advocates and other stakeholders seeking accountability have few tools at their disposal due to the dearth of information and concomitant expertise among CSOs.

- **Asymmetric information:** A core tenet of capitalism is symmetric information, or equal access by stakeholders to the same information, which should ensure that the rewards of open markets reflect quality products rather than who or what you know. Unfortunately, as has become self-evident, this is not how public markets actually work, as myriad insider trading, fraud, and other corruption cases have shown us. Unlike in public markets where this tenet is protected by laws and regulators, information asymmetry is par for the course in private markets where privileged access to information is a luxury only a wealthy few can afford. By definition, private capital is limited to sophisticated investors who assume the risks of asymmetric information, which, while ostensibly holding potential for greater returns, do not necessarily reflect true asset valuations or protect ultimate asset owners from losses borne by speculation.

  According to a banking executive quoted in *Euromoney*, regarding asset valuations, "'(The growth of private capital is) a phenomenon heavily focused on technology, a sector in which even highly valued companies prefer to drive growth further in private hands without worrying about explaining quarterly earnings. And because of the success of the original venture capital firms focused on tech, the increasing multiples and amounts of money they have to invest, there has been a surge in the quantum of capital that wants access to private companies, thus raising the amounts that can be raised privately. So now you see valuations of $1 billion series A rounds and $2 billion in series B and $4 billion in series C. ... A number of Silicon Valley companies got to higher valuations in private rounds than they could have achieved in public markets, and not every unicorn that was a private market darling has performed so well after listing.'"[300]

- **Null disclosure or regulatory requirements:** Since most public attention is focused on protecting retail investors, sophisticated investors in private capital tend to avoid the same scrutiny. By *de facto*, their transactions are unmonitored — hence the terms shadow bank or shadow economy — which is a source of increasing concern, as non-bank financial intermediation and fintech approach the levels of systemic risk that caused the GFC of 2007 and the market uncertainty of 2020.[301] By *de jure* private capital investments are subject to virtually no disclosure requirements, as

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they're beholden only to immediate owners, and regulation remains porous at best.

For example, the Volcker Rule of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) sought to prevent banks protected by deposit insurance from engaging in risky trading activities. However, like the effect of squeezing a balloon that simply displaces air from one place to another, the Rule created an opportunity for private capital to supplant some of the core functions of heavily regulated banks, and as of 2020 it's gaining in both the equity and credit markets. Suddenly "too big to fail" has become "too hard to regulate."[302] Another example is the Jumpstart Our Business Startups Act (JOBS Act of 2012) in the U.S., which raised the limit that triggers even minimal public reporting requirements to the SEC from 500 to 2,000 individual shareholders in a private company. Other notable legal loopholes for private equity and hedge funds — which spend considerable sums lobbying to exclude their transactions from scrutiny and their earnings from taxation — include the carried interest exemption on GPs' earnings and interest deductibility on leverage.[303]

> Since the GFC, private equity and hedge funds have come under increased scrutiny for foreclosing on homeowners, preying on single-family renters, surprising patients with expensive medical bills, and a host of questionable practices. Well-documented bankruptcies and layoffs in portfolio companies in retail, manufacturing, and other sectors have not helped their image. If public pressure in this regard holds or intensifies, the winds of change could blow against the opacity that has protected private capital for the last half-century.[21]

- **Institutional investors:** The importance of sophisticated investors that invest money on behalf of others — primarily pension funds, but also sovereign wealth funds, endowments, and foundations, among others — cannot be overstated. These oftentimes public and ostensibly responsible investors — with fiduciary duties to seek greater alpha returns for pensioners, taxpayers, and non-profit trustees alike — are collectively the largest source of private capital investment. Usually as limited partners, though increasingly as co-investors, pension funds and other institutional investors provide capital and legitimacy to the alternative investment sector that would likely not exist without them. Frequently, the investment consultants who advise trustees and the GPs of private equity and hedge funds who receive their investments push marketing on institutional investors and encourage them to hire staff and advisors with a pro-private capital mindset.

21 See **Chapter V. Accountability Opportunities**.

This cycle of groupthink — deemed virtuous in private capital promotional materials — is increasingly vicious for ultimate asset owners and public stakeholders who not only receive diminishing returns minus fees, but also bear the brunt of economic, social, and environmental externalities.

- **Enormous fees instead of outsized returns:** Arguably the greatest myth about private equity and hedge funds is that their enormous fees are justified because they consistently produce alpha returns — an investment's edge or strategy to beat the market. Recent scholarship proves that this is simply untrue. According to Morris and Phalippou, "Until 2006, private equity as a whole seems to have given investors net excess returns of about 3 percentage points per annum over many public equity benchmarks. Since 2006, this outperformance seems to have fallen to about zero."[304] Generally, private equity and hedge funds have similar fee structures. GPs "typically use the '2 and 20' fee model, charging pension funds an annual management fee equal to 2 percent of assets under management, regardless of performance, as well as a performance fee (also called carried interest) based on the profit from the investment, sometimes after a hurdle rate or high water mark has been met. The performance fee usually hovers around 20 percent of annual profits."[305] While institutional investors — particularly public pension funds — are slowly wising up to fee gouging (some have even negotiated lower rates such as "1.8 and 18"), this practice continues to pervade alternative investing and is exacerbated by the fact that GPs are not obligated to reveal how much they charge or why.[306] For example, observers have discovered tens of additional fees and exaggerated charges[307] — sometimes even by chance.[308]

- **Leverage and risk:** Cheap and abundant credit combined with speculation on risky transactions are core elements of private capital investment. Since the 1980s, the rise of private equity and hedge funds has paralleled a decline in interest rates, an increase of cheap corporate debt, greater demand for debt yields, and regulations limiting bank financing. This occasioned runaway leverage ratios and "innovative" financial products, including private debt, high-yield bonds, leveraged loans, and collateralized loan obligations (CLOs).[309] This tendency finally reached an extreme, known as "capturing the discount," whereby "When lenders and debt investors worry that a company's debt load is too high for the company to service, the debt may start to trade at a discount. GPs may then be able to persuade lenders to accept a discount on the value of the loans they originally provided. This can involve a cash transaction, in which case the GP must have access to further funding; or a non-cash restructuring, in which lenders agree to change the terms of their investment in a way that reduces its value. Both cases see value being transferred directly from lender to equity investor."[310] The volatile combination of leverage and risk virtually ensures that, for every successful bet, others will fail. Since most GPs and LPs protect themselves through limited liability, offshore tax havens, and portfolio companies that assume any real liability, any losses inevitably trickle downward to workers, pensioners, or taxpayers, while gains flow upward to asset owners and managers.

- **Opportunism:** When the general public experiences crisis, private capital investors often spy opportunity. They typically invest in distressed assets or exploit price differences across securities, seemingly without regard for collateral damage to people or planet. For example, following divestment in fossil fuels by investors in public markets,

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private equity investors began to purchase these once-stranded assets at a significant discount, arguably propagating the climate crisis.[311] In another example, vulture funds owned by private equity and hedge funds acquired significant stakes in emerging market debt, including notoriously in Argentina and Puerto Rico, and insisted upon austerity and privatization before agreeing to forbearance or other flexible repayment options.[312]

- **Money laundering and regulatory and tax avoidance:** In May 2020, a leaked U.S. Federal Bureau of Investigation (FBI) document revealed that "'Threat actors (criminals and foreign adversaries) use the private placement of funds, including investments offered by hedge funds and private equity firms,' to reintegrate dirty money into the legitimate global financial system." The leak described four instances where private equity, hedge funds, bankers, and criminal organizations used accounts and transactions in the U.S., Europe, the Cayman Islands, and elsewhere to commit fraud and launder money. "Enabling the activity are private fund incorporation and operating structures that disproportionately favor bank secrecy jurisdictions, particularly Delaware state and the Cayman Islands. These locales are the most popular domestic and offshore destinations to set up general partnerships for global hedge funds and PE funds, respectively. 'Hedge funds and private equity firms receive funds from entities registered in nations that maintain laws conducive to masking underlying beneficial owners,' which makes it harder for U.S. financial institutions and regulators to determine the source of funding, the FBI bulletin read."[313]

The wealth transfer is on — and private capital leads the way. A landmark study of the private equity market in 2018 by the world's largest sovereign wealth fund, Norway's Government Pension Fund Global (GPFG), determined that "Private equity is accounting for an increasingly large fraction of wealth compared to public equity. Structural changes, such as an increased allocation to private equity by institutional investors, increasing economies of scale of public listings, and VC-backed companies being held longer in private ownership, have contributed to this trend, and are likely to continue at least over the medium-term. Concentration risk in public equity markets seems to have been increasing."[314]

This phenomenon — literally the capital shift from public to private markets — is not an accident. By design, private capital provides the optimal conditions for crony capitalism, and it affects us all. Whether as ultimate asset owners, consumers, or taxpayers, our asset managers, pension funds, governments, and financial institutions propagate, invest in, and profit from what is essentially unregulated and undertaxed capital at the expense of the common good. Like a privileged passenger on a runaway train who can press its will to go faster and faster at the expense of everyone on board, private capital is on a joyride and — if history is any indication — should we crash, there's likely to be only one golden parachute on board, and it will have the letters "PC" embroidered on its side.

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INCREASE AND ACCELERATION OF PRIVATE CAPITAL

If there was ever a time for Marxism, rational choice, and elite theories to coincide, it might be now that an unprecedented wealth transfer is underway. While this has been publicly discussed, albeit wholly unaddressed, the concomitant phenomenon of the capital shift from public to private markets is taking place in real-time and right under our noses, threatening the last vestiges of public decision-making in our economic systems. A primary motivation for this book is to document what's happening and alert advocates, CSOs, and other stakeholders before the runaway train of advanced capitalism reaches the end of the line.

Since the 1800s, Marxists — arguing economic determinism — have predicted the relentless accumulation of capital by wealthy elites and its expansion into new markets at the expense of the State. More recently, rational choice theorists have posited that individual actors are rational insofar as they weigh costs and benefits to maximize advantage, indicating that determinism is, in fact, human design. And for a century, elite theory scholars have argued that successful economic and political systems require elite consensus and unity. Rarely have these theorists agreed. However, given the current accumulation of wealth, expansion into private markets, elite economic preferences and controls over public policy, and pliant States, this moment appears to align unlikely bedfellows like never before.[315]

An undisputed surge in private capital is at hand. Although public markets remain vastly important, capital is increasingly raised and held privately and, consequently, ownership is shifting to private markets. As of 2020, private market assets under management reached 10.74 trillion USD or roughly 10% of global GDP. By 2025, the data provider Preqin estimates that this figure will rise to 17.16 trillion USD, with Asia instead of the U.S. or the U.K. as the major growth driver.[22] Private equity AUM currently accounts for 4.4 trillion USD or 41% of private capital, with private debt accounting for an additional 848 billion USD or 8%. Unlisted real estate, infrastructure, and natural resources commodities together comprise an additional 1.9 trillion USD or 18%. And hedge fund AUM are currently valued at 3.6 trillion USD or 34% of private capital.

22 As mentioned, these figures do not include other typologies of private capital, which are omitted in official calculations due to a dearth of available information. If included, Empower estimates that these figures could as much as double.

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Figure 6
The Future of Private Markets (2020-25)

Private Markets Overall:
As of 2020, private market AUM reached 10.74 trillion USD.
Preqin predicts that private market AUM will reach 17.16 trillion USD by 2025.
Asia will be the major growth driver.
Private Equity:
As for PE specifically, AUM in 2020 was 4.4 trillion USD.
This will reach 9.1 trillion USD by 2025.
Private Debt:
As of 2020, private debt AUM was 848 billion USD.
By 2025 private debt AUM will be 1.45 trillion USD.
Real Estate:
Private real estate AUM as of 2020 was 1.046 trillion USD.
By 2025 this will rise to 1.2 trillion USD.
Infrastructure:
Unlisted infrastructure AUM as of 2020 was 639 billion USD.
By 2025 this will rise to 795 billion USD.
Natural resources:
Unlisted natural resources AUM as of 2020 was 211 billion USD.
By 2025 this will rise to 271 billion USD.
Hedge funds:
Hedge fund AUM as of 2020 was 3.6 trillion USD.
By 2025 this will rise to 4.3 trillion USD.

Original Source: Preqin.

Our Source: "Future of Alternatives 2025," Preqin, *op.cit.*

The amount of private capital is trending upward. From the 1990s to date, private equity fundraising increased by two orders of magnitude — from under 10 billion USD annually to 894 billion USD in 2019 — with the U.S. and the U.K. receiving the lion's share.[316] Similarly, since 2008, investors increased private lending from 60 billion USD annually to a high of 812 billion USD in 2019.[317]

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According to the landmark study of private capital by GPFG, "There are notable cycles in both fundraising and deal volumes (of unlisted equity): the buyout boom in the late 1980's (and the following bust), the tech boom in the late 1990's (and the following bust), and the credit boom in the mid-2000's (and the following bust). Judging from 2017 fundraising, which was at a historical high at 1.5% of stock market capitalization, we are currently entering a new boom period. Despite the cyclicality, there is a clear upward trend in the size of the PE market relative to public markets, which has been growing by roughly 0.2% of stock market capitalization every decade from the mid-1980s. The question is what is driving this trend, and whether it is likely to continue in the future."[318]

Figure 7
The Primary Drivers of the Capital Shift

- Corporate capture of the State, both directly through control of and participation in executive, legislative, and judicial decision-making and indirectly through campaign financing, lobbying, and other forms of public policy influence (see **State capture, central banks, and economic policy**);
- Smaller government at all levels, including deregulation of public markets, privatization of public goods and services, and defunding social welfare and other public systems (see **Privatization**);
- Financialization of the economy, including central bank policies (see **Financialization** and also **Economic policy and cheap credit**);
- States investing in private capital, including facilitating private investment through development finance institutions,[341] international financial institutions,[342] and State-based actors such as parastate companies;[343]
- Companies, high-net-worth individuals, and institutional investors investing directly in private capital as they seek new investment opportunities and avoid regulation and public scrutiny (see **Golden inputs of private capital**);
- Corporate ownership secrecy, both for legal tax avoidance as well as for illicit purposes (see **Typologies of private capital**);
- Structural changes in public and private markets (see below);
- Legal and regulatory changes (see below); and
- Myriad economic factors, including wealth accumulation (see below).

Source: Empower.

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As we can see from the numbers, the presence and increase of private capital are clear, particularly over the past decade. However, what is less apparent is the shift (and, arguably, acceleration) of capital away from public markets, regulation, and scrutiny.[23] In previous sections, we discussed key drivers of private capital, mainly: corporate capture of the State; downsizing and privatization of government; financialization and economic policy; State participation in the financial economy; and the role of institutional investors. Additionally, several structural, legal and regulatory, and economic drivers are responsible for the capital shift, as discussed below.

Structural drivers of the capital shift

The primary structural changes driving the shift are: a decline in public listings, ownership concentration in public markets, and venture capital that allows companies to remain private longer. As GPFG puts it, "Private equity is accounting for an increasingly large fraction of wealth compared to public equity."[319]

Decline in public listings

For forty years, the overall capitalization of public markets increased while the number of publicly-traded companies decreased. This trend has been most pronounced in the U.S., where IPOs decreased annually from an average of just over 300 between 1980-2000 to under 100 between 2000-20.[320] Since 2000, the number of publicly-traded U.S. equities dropped by half, from 8,090 to 4,336.[321] However, the trend is actually a worldwide phenomenon, albeit more pronounced in the global North than the South. According to GPFG, "...(T)he decrease in the number of listed firms is present in upper-middle and high income OECD countries more generally, while non-OECD countries and emerging markets have experienced an increase in the number of listed firms."[322]

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23 Across our extensive literature review and interviews, we noted a dearth of research about the capital shift from public to private markets and virtually no agreement about the causes, extent, velocity of change, or future of this phenomenon. While we provide some correlational indications of it, we recognize that the lack of extant information inhibits proof of a causal relationship between the aforementioned drivers and a capital shift. In this void, we employ the best information available for our discussion.

According to Phalippou and Morris, "Today, there are 3,000 publicly listed companies (in the U.S.), one-third fewer than...thirty years ago. Does this prove the claim that private equity is a superior form of ownership? ... More recently, private equity has moved into buying smaller, unquoted companies where private equity may help instead with an under-investment problem. At this end of the market, private equity is arguably providing an alternative to quoted stock markets for companies that have never been quoted before."[323] During this time, the costs of going public, including investment banking fees and regulatory requirements, rose. As of 2020, smaller companies found it difficult to afford the price of entry.

Ownership concentration in public markets

As discussed in **Banks and asset managers**, the asset management industry has experienced significant consolidation over the past decades, resulting in behemoths such as BlackRock, Vanguard, State Street, and Fidelity achieving huge economies of scale while often controlling the same large swaths of financial assets. "Common ownership is a structure under which firms, termed commonly owned firms, are at least partially held by the same institutional investors, the common owners. The rise of common ownership, largely attributed to massive capital shifting to the asset management industry, has significant implications that extend beyond its potential anticompetitive effects."[324]

As GPFG notes, "These trends imply that concentration risk may have increased for public market investors. As a smaller number of companies constitute a higher fraction of the stock market index diversification benefits achieved by holding an index portfolio may have decreased. In addition, these firms are increasingly concentrated in the technology sector. Currently (fall 2017) seven out of eight of the most valuable firms in the world are technology firms. The five largest companies in NASDAQ 100 constitutes 43% of the index. For the Asian MSCI index minus Japan, TATS, Tencent, Taiwan Semiconductor, Samsung and Ali Baba constitute over 40% of the index."[325]

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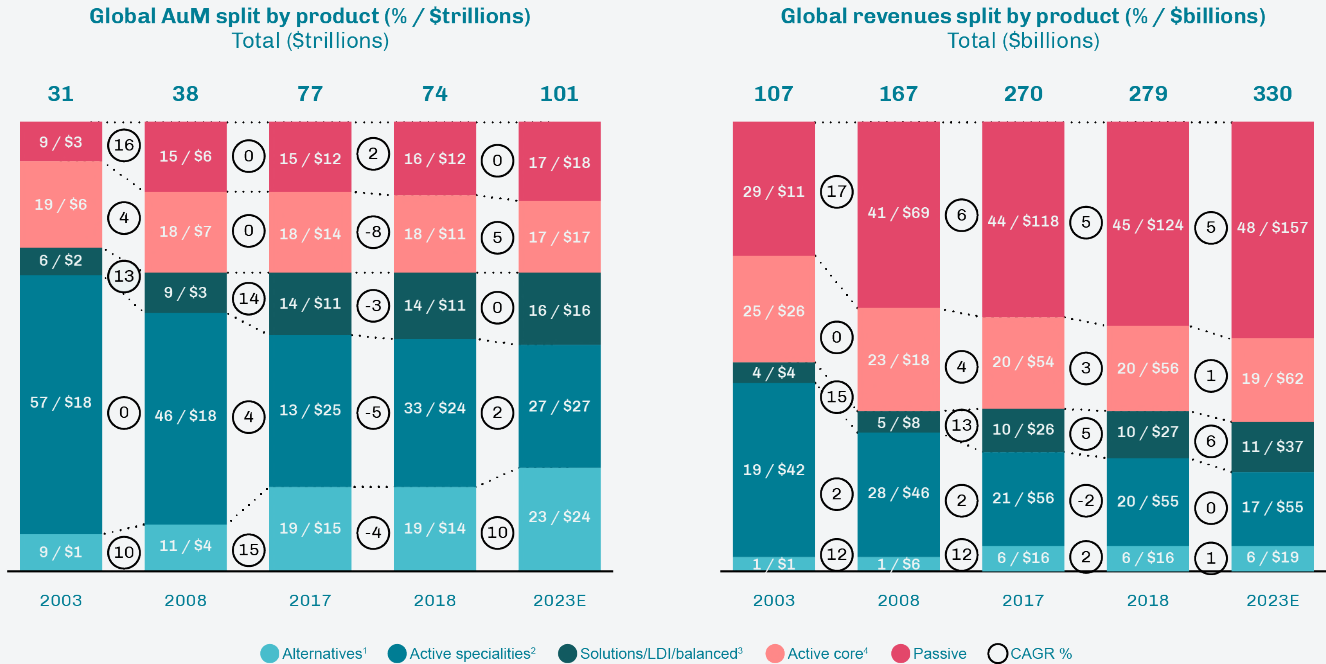
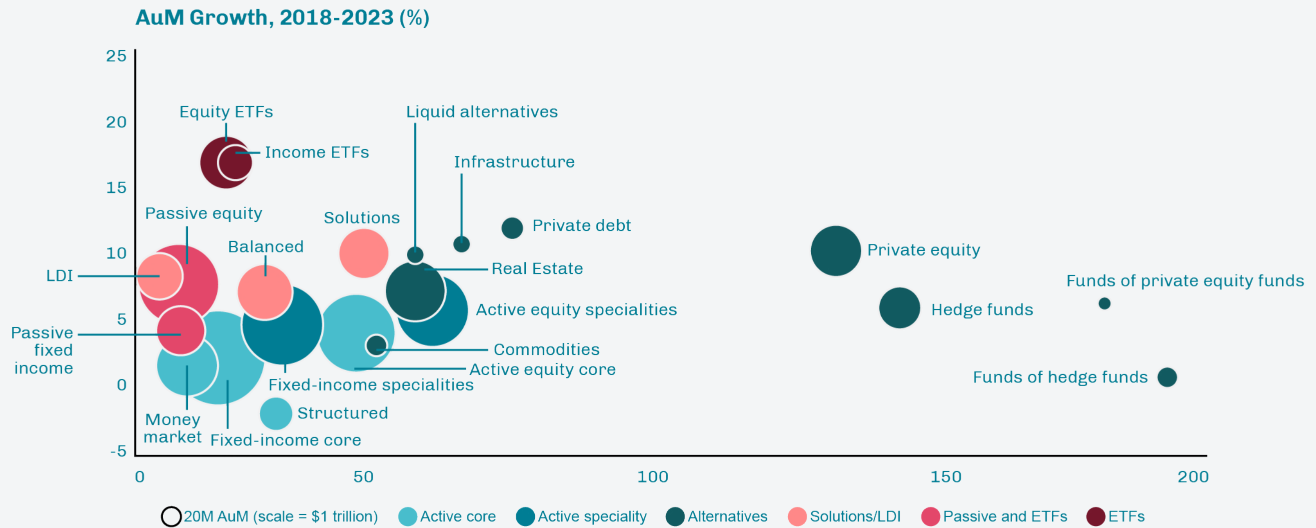
Figure 8
Asset Products' Popularity Continues to Slip...



...With ETFs and Select Alternatives Likely to Grow Faster through 2023



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Notes: LDI = liability-driven investments; ETF = exchange-traded fund.

[1] Includes hedge funds, private equity, real estate, infrastructure, commodities, private debt, and liquid alternative mutual funds (such as absolute return, long and short, market-neutral, and trading-oriented); private equity and hedge fund revenues do not include performance fees.
[2] Includes equity specialities (foreign, global, emerging markets, small and mid caps, and sectors) and fixed-income specialities (emerging markets, global, high yield, and convertibles).
[3] Includes target-dated, global asset allocation, flexible, income, liability-driven, and traditional balanced investments.
[4] Includes actively managed domestic large-cap equity, domestic government and corporate debt, money market, and structured products.
[5] Includes absolute return, long and short, market-neutral, and trading-oriented mutual funds.
[6] Includes target-date, global asset allocation, flexible, and income funds.
[7] Includes foreign, global, and emerging-market equities; small and mid caps; and sectors.
[8] Includes emerging-market and global debt, high-yield bonds, and convertibles.
[9] Includes actively managed domestic large-cap equity.
[10] Includes actively managed domestic government and corporate debt.
[11] Management fees net of distribution costs.

Original Source: BCG Global Asset Management Market-Sizing Database 2019, BCG Global Asset Management Benchmarking 2019, Strategic Insight, P&I, ICI, Preqin, HFR, BlackRock ETP report, IMA, INREV, and BCG analysis.

Our Source: Boston Consulting Group Partners, "Global Asset Management 2019, Will These' 20s Roar?", July 2019, image-src.bcg.com/Images/BCG-Global-Asset-Management-2019-Will-These-20s-Roar-July-2019-R_tcm9-227414.pdf.

Venture capital

Paralleling the decline in public listings has been an increase in private equity markets, including at the angel, mezzanine, and growth stages where venture capital (VC) plays a critical role, marking a "clear and sustainable trend of private markets replacing public markets."[326] The GPFG notes that, although the growth in private capital markets may not relate causally to the decrease in public listings, it does contribute in two ways, particularly in the technology sector. "First, buyout investors sometime acquire publicly traded companies in 'going private transactions,' which contributes to de-listings. … Second, successful VC-backed companies are being kept private for a longer time, even as they grow large and in principle could be listed in public markets. …(T)he fraction of large VC-backed companies that are still kept private rather than being taken public seven years after the first financing round has increased from less than 20% to almost 90% over the last two decades. … This is not only because commitments to VC funds have increased, but also due to new types of investors entering this market, such as mutual funds, hedge funds, and non-VC private equity funds… This has led to an increasing number of private VC-backed firms with a valuation higher than USD 1 billion, so-called "Unicorns". … Although the first unicorns were well-known U.S. tech companies, such as Uber and Airbnb, unicorns have become a worldwide phenomenon…"[327]

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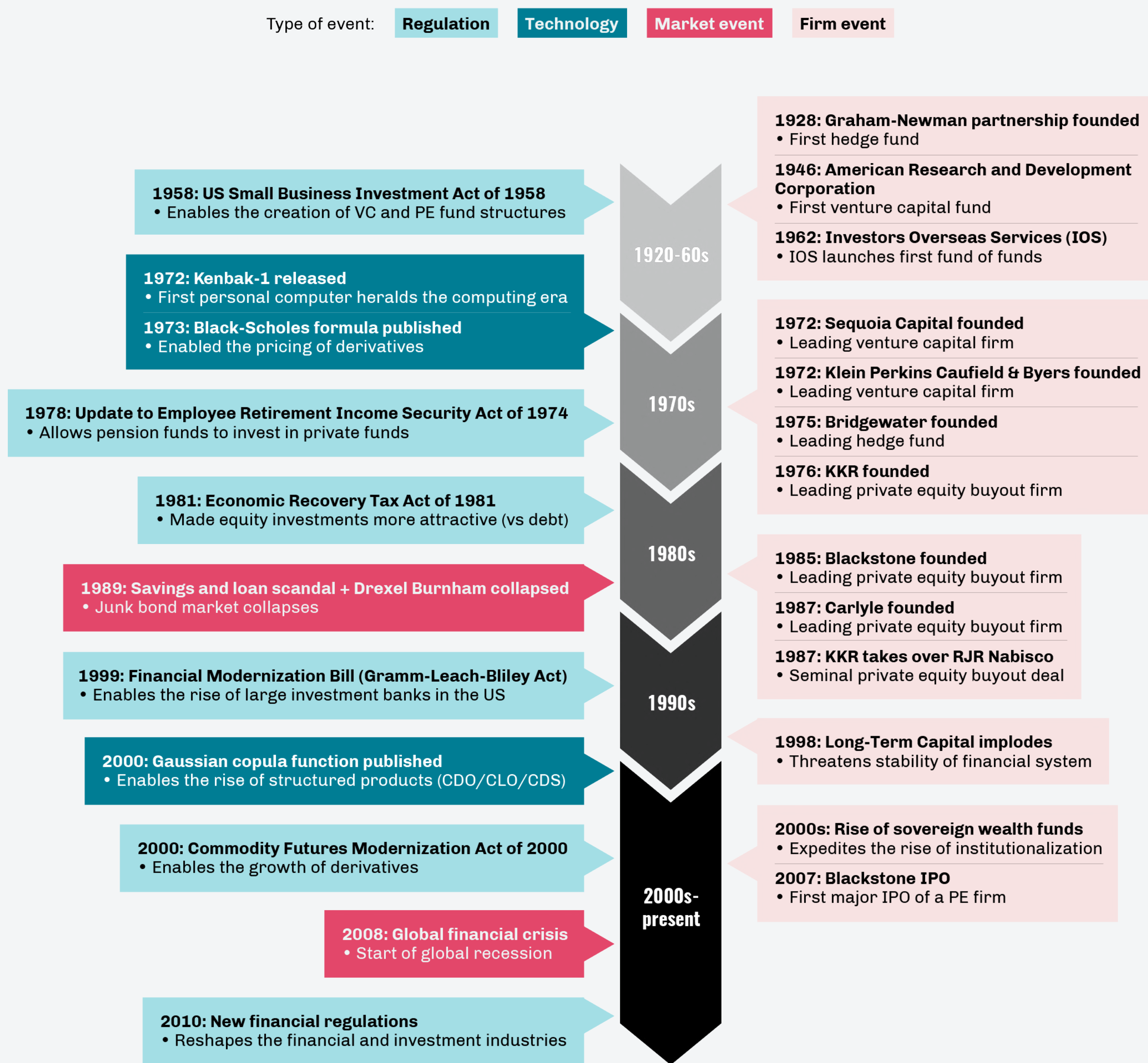
INCREASE AND ACCELERATION OF PRIVATE CAPITAL

Figure 9
Key Moments in the History of Alternative Investments



Original Source: World Economic Forum Investors Industries.

Our Source: "Alternative Investments 2020. The Future of Alternative Investments,"World Economic Forum, 2020, espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/WEF_Alternative_Investments_2020_Future.pdf.

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Legal and regulatory drivers of the capital shift

The primary legal and regulatory factors driving the transition away from public equity markets and towards private ownership are: the deregulation of securities laws, the declining benefits of disclosure, and freeriding on information from public markets. Whereas securities laws in the world's financial capital — the U.S. — were designed to incentivize firms to go public by allowing them to raise capital from the general public in exchange for publicly disclosing their financial performance and risks, today, this quid pro quo has been undermined. While publicly-traded companies must still disclose financial information, capital nevertheless flows into opaque private markets. Meanwhile regulators not only turn their cheeks but actively encourage this shift away from public regulation and scrutiny. For the sake of clarity we quote directly from an exemplary, one-of-a-kind article by Duke University law professor Elisabeth de Fontenay titled "The Deregulation of Private Capital and the Decline of the Public Company" (2017).[328]

Deregulation of securities laws

> As the emblematic institution of American capitalism, it is easy to forget the extent to which the stock market is constructed by law. The overwhelming majority of federal securities regulation is directed to publicly traded equities and their corporate issuers. And, by a wide margin, the law's most consequential intervention in this area is the sharp divide it creates between 'public' and 'private' securities transactions and — relatedly — between 'public' and 'private' companies. In each case, the public side bears substantial regulatory burdens (primarily involving disclosure), but in exchange, it benefits from privileged rights of access to investors.
>
> The public-private divide is a creature of the major federal securities statutes enacted following the Great Depression. Focusing on operating businesses, as a rough approximation these laws currently require extensive public disclosure from companies (1) that offer to sell their securities to the general public, (2) that grow sufficiently large (measured by their assets and the number of their record shareholders), or (3) whose securities are traded on a national securities exchange. Such issuers are referred to as 'reporting companies' herein. This Article further refers loosely to reporting companies whose stock is publicly traded as 'public companies' and to firms that are non-reporting companies and do not have publicly traded stock as 'private companies.' Such disclosure is required both in connection with specified events and on an ongoing, periodic basis.
>
> The public-private divide has been largely responsible for the U.S. stock market's disproportionate importance for two reasons. First, it results in the issuance and trading of securities deemed 'private' being deliberately hidden from the view of the general public. Conversely, public companies trading on the major securities exchanges are made significantly more visible than they otherwise would be through mandatory disclosure and direct regulatory scrutiny. Second, the public-private divide includes various rules that, until recently, confined retail in-

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vestors to the public markets. Thus, the 'public' and 'private' labels in securities regulation have always been self-reinforcing, with both descriptive and prescriptive aspects. The public stock market's continued power to command our attention conceals an arresting development, however: the market's traditional role of helping companies to raise large amounts of equity capital is in decline.

... Deregulation on the Private Side: The deregulatory wave that swept over the United States beginning in the 1970s did not leave the securities laws untouched. Many of the most significant restrictions on raising private capital and trading private securities have been lifted or defanged since the 1980s, and the exemptions from securities registration continue to multiply. The first hole in the dyke came in the form of Regulation D, the 1982 rulemaking that created a series of safe harbors from registration for securities offerings. Most notably, offerings limited to 'accredited investors' can generally escape registration entirely. The concept of an accredited investor was designed to be a proxy for investor sophistication, but in practice it captures investors (such as institutional investors or high-net-worth individuals) with financial means deemed sufficient to absorb a certain amount of losses.

Over time, Regulation D has proven to be the exception that swallows the rule, largely for two reasons. First, the number and types of institutional investors able to qualify for the exemption have expanded dramatically since Regulation D was introduced (as discussed later in this Part), through financial innovation, regulatory arbitrage, and the major shift in the retail investment landscape from direct investing to investment management. Second, the income and net worth thresholds in the 'accredited investor' definition have not been adjusted for inflation for decades. All told, Regulation D has allowed a far wider array of investors to participate in the private markets than its architects could have anticipated.

Changes to the securities laws governing investment funds have similarly paved the way for a surge in private capital. A 1996 change to section 3(c)(7) of the Investment Company Act, for example, effectively removed the 100 investor cap in private investment funds, prompting the rise of the mega private equity funds — vast pools of private capital used to invest in private companies or to take public companies private. The explosive growth of leveraged buyout and venture capital funds over the last four decades has created an entirely new and seemingly bottomless source of capital for private companies, allowing them to substantially delay going public or to forego doing so entirely. More surprising still, securities regulators are implicitly blessing the ongoing 'retailization' of private investment funds, whereby retail investors are increasingly able to participate in private side investments either directly or through mutual funds.

In order to avoid securities registration entirely over the life of a particular investment, not only must the original offering be exempt (as under Regulation D, for example), subsequent trading in the company's securities must also be exempt. A decisive turning point in developing private markets was the SEC's 1990 adoption

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of Rule 144A, which facilitates the syndication of private capital by permitting securities to be resold without restriction to large institutional investors (referred to as 'qualified institutional buyers' or 'QIBs'). Primarily used for debt securities of all types, Rule 144A is a key avenue for firms to raise vast amounts of capital privately. Finally, following several amendments, Rule 144 now effectively permits unlimited and unfettered resale of restricted securities — that is, securities that could not otherwise be resold without an exemption — after a six-month or one-year period. This has facilitated the rise of secondary trading platforms for private company stock. Notwithstanding, the exemptions for secondary trading do not appear to be keeping pace with the exemptions for securities offerings, potentially hindering truly liquid markets for private company equity.

Yet the exemptions keep coming. Concerned in part by the decline of IPOs and exchange listings, Congress enacted the previously introduced JOBS Act in 2012. In notable irony, while professing a desire to encourage U.S. companies to go public, the statute created a slew of new exemptions from securities registration for issuers and offerings, further easing firms' ability to raise money on the private side. Reversing its eighty-year policy of confining non-high-net-worth individual investors to the public side, the securities laws are now beginning to welcome them across the divide through the new crowd funding exemptions and the so-called 'Regulation A+' exemption allowing issuers to raise up to fifty million dollars in a single offering. 'Private' capital is fast becoming a misnomer — the JOBS Act repealed even the prohibition on general solicitations under Regulation D, thus allowing private placements to be advertised publicly. As a final blow to the public side, the JOBS Act rendered toothless the Securities Exchange Act of 1934 ('Exchange Act') provision requiring companies to become public companies — that is, to take on the Exchange Act's disclosure and other requirements for 'reporting' companies — once they reached a threshold number of assets and shareholders. By increasing the shareholder cap from 500 to 2,000, Congress enables extraordinarily large private companies whose stock is widely held by passive investors to avoid becoming public companies.

The deregulatory push on the private side is by no means limited to new exemptions in the securities statutes and regulations. Commentators routinely overlook a key way in which securities regulation can become more permissive — which is simply by not treating certain instruments as 'securities' at all. Instruments not deemed to be 'securities' under the securities statutes avoid the entire panoply of federal securities regulations. The original statutory concept of a 'security' was intended to comprise — among other things — all passive investments (such as a corporation's stock and bonds), while nonsecurities were to be limited to instruments embodying, for example, a purely commercial relationship (such as a bank loan to a corporation). Today, however, the securities regime treats as nonsecurities several instruments that are manifestly widely held, passive investments, and treats them as such even when they are functionally identical to instruments that are still treated as securities.

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Declining benefits of disclosure

Critics of mandatory disclosure are correct that the stock market's woes turn at least in part on the information that it generates — they may simply have gotten the story backwards. The culprit need not be rising costs of disclosure, but declining benefits. From their inception, the federal securities laws proposed a simple bargain to U.S. companies: disclosure in exchange for investors. Companies that went public took on the obligation of publicly disclosing substantial amounts of information and, in return, were permitted to solicit the largest (and therefore cheapest) source of capital: the general public. Conversely, private companies were restricted to raising capital primarily from insiders and financial institutions, without publicity and subject to severe limitations on subsequent transfers of their securities effectively precluding any sort of market for private company equity.

This paradigm divided the world of corporate finance into two: a public side, tending toward larger companies with dispersed, passive investors and exchange-traded stock, and a private side, characterized mostly by small, owner-managed companies with illiquid equity. Companies seeking to raise large amounts of capital gladly took up the public side bargain precisely because there was a plausible, direct connection between the cost (information disclosure) and the benefit (the broad investor base).

Over the last three decades, the disclosure bargain has largely been revoked. By repeatedly loosening the restrictions on capital raising and trading on the private side, securities regulators have given birth to a contradiction in terms: private securities markets. Today, private companies can raise ample, cheap capital with relative ease. Public company issuers therefore benefit significantly less from their disclosure obligations and can justifiably complain of a regulatory bait-and-switch. Thus, while critics blame the increase in regulation for the decline of public equity, the ongoing deregulation of private capital raising arguably played the greater role. That is, even if public company disclosure requirements had remained constant over the last three decades, there would likely still be a dearth of public companies today, due to the increasing ease of raising capital privately.

Freeriding on public markets

Yet the current regulatory path may be self-defeating. The outlook for U.S. public companies is indeed cloudy. Mesmerized by the stock ticker, we have somehow failed to notice that our capital is moving elsewhere. While the gap between the regulatory burdens on the public side and the private side of corporate finance grows larger, the rules confining investors to the public side have been loosened dramatically. Investor capital is freely and eagerly crossing the divide. This paradigm shift undermines the key bargain struck with public company issuers: disclosure in exchange for investors. While public companies are being compelled to disclose ever more information, they are losing their very reason for doing so.

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> Meanwhile, large private firms are thriving in part by freeriding on public company information and stock prices. Such firms' astonishing ability to attract cheap capital may last only so long as public companies continue to yield vast, high-quality information covering a broad range of companies. That is not likely to be the case, however. The continuing flight from the public side suggests that the benefits of disclosure for many public companies are now insufficient to offset the cost of subsidizing their private company competitors. The new public-private divide has left Congress and the SEC at the crossroads of two markets with uncertain futures.

Economic drivers of the capital shift

Global investment in private capital increased by approximately two orders of magnitude from 1980 to 2020, mirroring both the decline in publicly-traded companies and the capital shift to private markets. These changes were most prominent in the U.S. and the U.K. and, to some extent, in Western Europe and Japan. However, a host of governmental, financial, and academic sources, including the World Bank, World Economic Forum, and the Organization for Economic Cooperation and Development, have also documented new economic trends driving the capital shift, including in the global South.[329,330,331] In this regard, the main economic drivers of the shift are: the accumulation of wealth (see **Wealthy individuals and family offices**); investment allocation to private asset classes in pursuit of superior returns; liquidity and technology in private markets; investment potential from emerging markets; and the Holy Grail of potential new investment sources — retail investors.

Chasing perceived returns

Like HNWIs, mainstream institutional investors — pension funds, banks, insurance companies, sovereign wealth funds, endowments, and foundations — act as limited partners in private equity and hedge fund investment, seeking alpha (above-market) returns. As such, investment allocation to private capital increased significantly since the 1980s. While private equity expert Phalippou notes that, since 2006, private equity returns have been essentially equivalent minus fees to the performance of passive stock exchange indices,[332] nevertheless there remains an enormous appetite for private capital investing. It would seem that the perception of alpha returns in private equity, while not indicative of actual superiority to public markets, continues to attract enormous inflows.

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INCREASE AND ACCELERATION OF PRIVATE CAPITAL

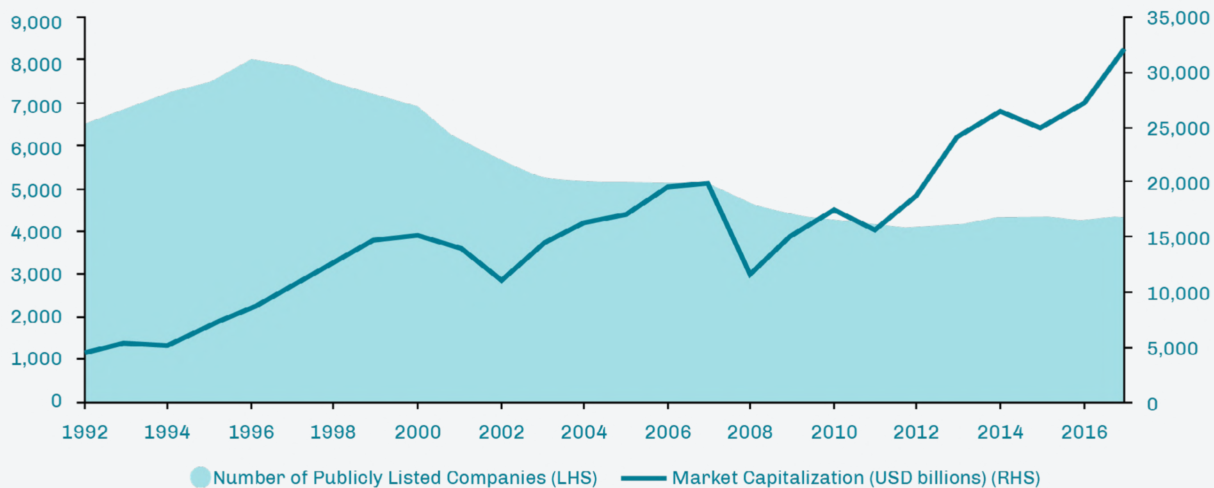
In 2018, the U.S. National Bureau of Economic Research published a unique study that gained unparalleled access to over 5,000 private equity investments of 112 State Street Corporation clients over forty years. The results showed that LPs, when allocating their private equity investments, increasingly chose to invest not in GP-driven funds but rather in discretionary alternative vehicles of their choosing. For a variety of reasons, including to avoid excessive fees and direct their own investments, institutional investors chose to seek alpha on their own. According to the study, "Two patterns are apparent… The first is the acceleration of private capital activity over time. Dollar commitments to main funds and GP-directed vehicles increased 100-fold, and to discretionary vehicles more than 200-fold. In part, this pattern may reflect State Street's increasing coverage of LPs after the 1980s. But as highlighted above, the primary driver of this pattern was that the increased allocation to private capital by LPs over time. Moreover, the share of alternative vehicles among the private capital commitments increased."[333]

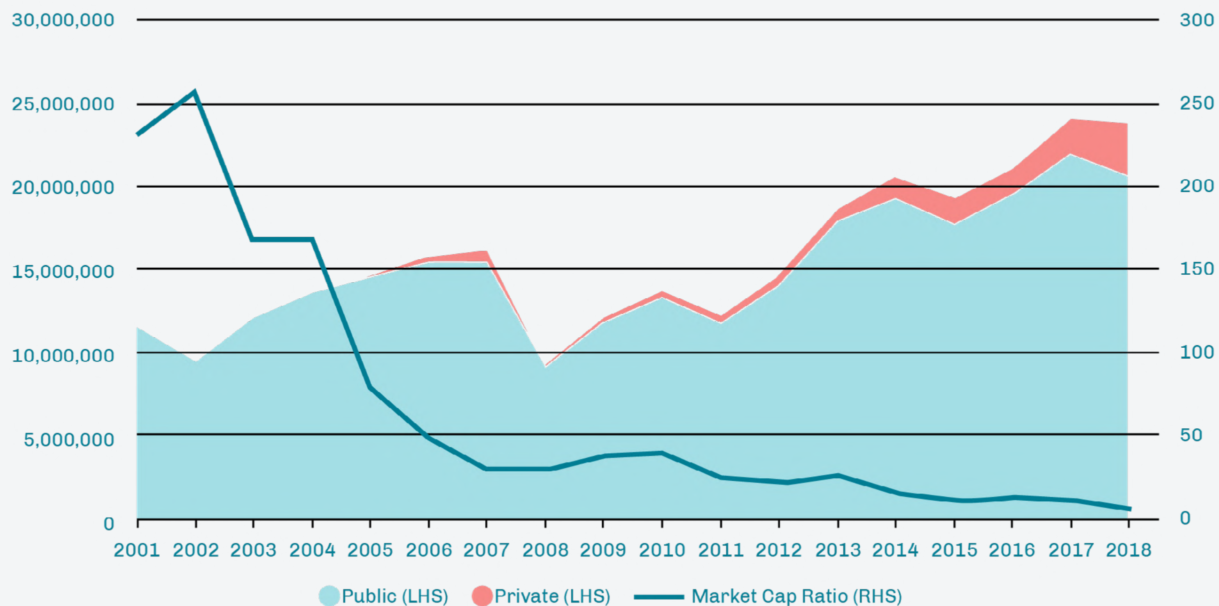
Similarly, hedge funds, which continue to trade in public securities using innovative technology, increasingly seek alpha returns in private capital, too. While their funds' time horizons are often much shorter (one year) than the 10- or even 15-year investment horizons of private equity funds, hedge fund partners nevertheless demand above-market returns. According to the Northern Trust Corporation, "There are three primary reasons driving investors to allocate to alternatives. The first is that they hope to generate returns uncorrelated to the markets, then they aim to diversify their portfolio and also mitigate the volatility of their performance. Although hedge funds were designed to meet these objectives, it turned out that many did not make the grade; the hedge fund market underperformed the broader market nine out of the last 10 years. As a result, there has been a move from hedge funds into private capital — which includes private equity, private debt, real estate, real estate debt and infrastructure."[334]

Institutional investors and their private equity and hedge fund investments are significant drivers of the shift to private capital. For example, since the 1980s,[335] they quadrupled their overall holdings while increasingly allocating to private capital — by 2019, nearly 14% of asset managers' portfolios were in alternative investments.[336] When this trend began, virtually no actively-managed investments went to private markets. Additionally, institutional investors — as mentioned in **Banks and asset managers** — see fewer returns from traditionally safe investments such as fixed income assets, as central bank policies favoring lower interest rates lead to lower yields.[337]

Chart 1

The Evolution of Public and Private Markets





Original Source: Cambridge Associates LLC, Global Financial Data Inc., New York Stock Exchange, PitchBook, and World Bank.

Our Source: "Venture Capital Positively Disrupts Intergenerational Investing," Cambridge Associates, *op.cit.*

Notes: Market capitalization (also known as market value) is the share price times the number of shares outstanding. Listed domestic companies are the domestically incorporated companies listed on the country´s stock exchanges at the end of the year. Listed companies do not include investment companies, mutual funds, or other collective investment vehicles. Public equity market capitaliation is taken from historical market capitalization of New York Stock Exchange. Private market valuation is recorded as post-money valuation for all private equity and venture-backed companies.

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Liquidity and technology

Liquidity — the ease of converting assets and securities into cash — is fundamental to successful financial markets as, without it, buyers and sellers cannot complete transactions. Traditionally, securities laws favored ensuring liquidity in public markets; however, today the old standard has been partially upended. Increasingly, investors in private companies, assets, and securities can find a buyer — sometimes immediately or even instantaneously — through a combination of deregulation, secondary markets, technology, and deep pools of private capital. Notably, the rise in liquidity is happening arguably faster on the private debt side than with private equities. The void left by banks and traditional corporate lenders is now squarely the domain of private credit lenders, including non-bank financial intermediaries such as private equity and hedge funds and institutional investors directly.[338]

According to de Fontenay:

> Even assuming an interested and legally qualified buyer and seller, there had to be a mechanism for the two parties to find one another and, further, to negotiate, consummate, and clear the trade. Over time technology and new institutions may provide a partial remedy for both the lack of publicity and the legal restrictions imposed on private company stock. New electronic trading platforms such as NASDAQ Private Market (formerly SecondMarket) and SharesPost provide a centralized marketplace for sales of a wide range of private securities, including private company stock, by clearing trades and confirming accredited-investor status. An individual investor meeting the increasingly generous accredited-investor thresholds can directly purchase shares in a private company with which it had no prior relationship, for example, by buying the stock from a company employee or former employee who received it as compensation. Non-accredited investors can simply purchase shares in a mutual fund specifically formed to invest in private companies. The development of a full-fledged secondary market for private company stock is significant, given that the decline of IPOs has left private company investors such as founders, venture capital and private equity funds, and employees with only mergers and acquisitions as a ready means of exit. Greater liquidity at the back end ensures private companies cheaper capital at the front end. ... In sum, deregulation, technology, and a global glut in investment capital have combined to provide U.S. private companies with many of the traditional benefits of going public (such as access to capital and some liquidity for insiders and investors) without their having to bear any of the burdens (compliance with mandatory disclosure and other regulatory requirements, securities litigation, hedge fund activism, and so forth). It should come as no surprise, then, that increasing numbers are choosing to avoid going public entirely.[339]

HNWIs and other investors' risk tolerance for new markets, financial products, and greater returns drives innovation.[340] Evolving technologies such as blockchain and

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high-frequency trading permits instantaneous speculation, fungibility, and liquidity like never before, allowing hedge funds, for example, to design and implement algorithms that detect and exploit subtle price differences across markets, securities, and asset classes. They are largely able to do this without oversight or regulation, leading to additional business and investment. Indicative of this trend towards innovation, in 2019, despite consolidation and mixed returns in the more analog asset management industry, hedge funds reported a double-digit annualized return for the first time in six years.[341]

Emerging markets

While global North countries, namely the U.S. and the U.K., have been the predominant home and host countries for private capital investment, global South countries have played a marginal role until recently. With the exception of a handful of HNWIs and sovereign wealth funds from emerging markets investing in private equity in the 1970s and 1980s, it wasn't until the 1990s and even the 2000s that emerging markets became a steady source of and destination for private capital. As of 2020, sovereign wealth funds from Middle Eastern countries such as the UAE and Saudi Arabia, Chinese State-owned enterprises and private companies, and increasingly East Asian and Southeast Asian pension funds and asset managers from Japan, Taiwan, Hong Kong, and Singapore were driving exponentially more capital into private markets.

According to the World Economic Forum, "The most fundamental macroeconomic driver is the rise of emerging market economies. They generate new investment opportunities and serve as an increasingly important source of capital. At the moment, most emerging market capital flows into alternatives via sovereign wealth funds (SWFs), but the growing number of high net worth individuals in emerging markets — and their openness to alternative investing — will soon become important. ... Driving this is the emergence of a robust middle class in emerging nations, now accounting for 6.9 trillion USD in annual spending. With large-scale economic reforms underway in countries such as China, the rebalancing of the global economy is likely to continue for quite some time. The shift has created new opportunities for alternative investors, with private equity investments in emerging markets increasing by ten times between 2000 and 2013."

From 2000 to 2010, the percentage of global financial assets owned by emerging nations increased from 7% to 18%. While companies and institutions hold the majority of these assets, increasingly, HNWIs figure prominently as well. "Importantly, the accumulation of assets is not necessarily balanced within such societies, as state entities and the wealthiest individuals in society often hold and manage a disproportionate share of financial assets. In addition, Knight Frank forecasts that during the 2014-2024 period some 40-45% of new ultra high net worth ($30M+) and centa-millionaires and some 60% of new billionaires will come from emerging markets. High-net worth individuals and family offices may only own some 2.5% of

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global assets, but they have historically been an important source of capital for new funds and for alternative investments overall, accounting for 11% of private equity buyout AUM and 35% of hedge fund AUM."[342]

A prominent driver of private capital investment in emerging markets is development finance institutions, such as the World Bank's International Finance Corporation (IFC), the European Investment Bank, State-based development corporations such as the U.K.'s CDC Group, and regional development banks. Since the global financial crisis, DFIs have used banks and other financial institutions, including private equity funds, to act as financial intermediaries on their behalf to manage mostly credit (but also some equity capital) flows to alternative asset classes in the global South. In the case of the IFC, over 60% of its portfolio is invested through such intermediaries. While a handful of CSOs have documented this trend of outsourcing development and advocated transparency and accountability for what is arguably a wealth transfer from public funds to private pockets, DFIs continue to partner with private companies — often acting as a first mover in emerging markets to prospect and de-risk subsequent investment from pension funds and other institutional investors — mainly from their global North home countries.

While China was once considered the figurative jewel in the crown of emerging market investment, as of 2020 it is an international financial heavyweight in its own right with significant host and home country investment in private capital, including through non-traditional asset classes and financial vehicles, such as peer-to-peer secondary lending markets and digital currencies. For example, since 2002, when private equity host country investment in China amounted to a mere 2.2 billion USD,[343] the industry has increased by three orders of magnitude. As of 2020, private equity investment in China was worth 2.45 trillion USD,[344] much of which flowed into the tech sector from institutional investors abroad.[345] As for home country investment, through its Belt and Road Initiative (BRI), China is the world's second-largest foreign investor. As of 2018, it spent 130 billion USD abroad annually or 10% of global foreign direct investment, of which approximately 40% was from State-owned entities and 60% from privately-owned enterprises.[346] While numbers for private capital investment are vague, 2019 and 2020 were notably difficult years for private BRI investment owing to increasing scrutiny by foreign anti-trust regulators of Chinese investment, the historic U.S.-China trade spat, and more recently the COVID-19 pandemic.[347]

Perhaps as a result of these limiting factors, the shadow economy in China — and the one it foments abroad, including the Yatai New City gambling enclave in Myanmar — is booming. "The shadow banking system has been significantly growing worldwide, and this study evaluates reasons behind this system's development particularly in China. Some of the reasons noted include China Central Bank's monetary tightening policy, a capital shift from the equity market to profitable hidden underground systems, diminishing government influence on credit allocation, a gap appearing between traditional banking and hidden shadow banking, declining capability of medium and small size firms to cover all their costs due to worldwide economic slowdown, as well as anonymity and imperfect information within financial institutions."[348]

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Retail investors

The Holy Grail of private capital investment, given its elusiveness, is retail investors. Securities laws once designed to protect them now bend and fold to attract their investment. Private equity and hedge funds lobby for access to trillions of dollars in their individual retirement accounts. And asset managers offer mutual funds, exchange-traded funds, and investment products that drive the bank savings deposits and retirement accounts of average run-of-the-mill retail investors into private capital. While regulators, politicians, and watchdogs alike have publicly documented these attempts — to date warding off the direct flood of retail investment into private capital, which would likely eliminate once and for all the divide between public and private markets — as of 2020, this phenomenon was already occurring indirectly.

As discussed throughout this book, banks, insurance companies, and particularly pension funds and other institutional investors already receive or manage our money in one form or another. What remains "uninvested on our behalf" are the hundreds of millions of relatively small investments of defined contribution retirement accounts (such as 401ks), day traders, and any form of unsophisticated and unaccredited investor who currently is prohibited from investing directly in private capital.[349] While too small to matter individually, collectively, retail investors account for the majority of investment potential worldwide across all markets and geographies. In the U.S., according to the SEC, "households own 29 trillion USD worth of equities — more than 58 percent of the U.S. equity market — either directly or indirectly through mutual funds, retirement accounts and other investments."[350]

As we have seen, the capital shift from public to private markets is gaining speed and — on its current fast track — is increasingly beyond our reach. The macro, structural, legal and regulatory, and economic drivers of this change have unleashed a torrent of pressure on public markets, regulators, and society, who today have less information, control, and accountability over economic decision-making than at any time in recent memory. Marxism, rational choice, and elite theories, while often at odds with one another, surely agree that what's at stake is none other than control of public decision-making in order to define the common good. On one side, economic and political elites favor policies designed to protect capitalism for the wealthy, leading to the expansion of private capital and markets. On the other side, communities, workers, consumers, pensioners, retail investors, and other stakeholders fall farther behind the runaway train of advanced capitalism.

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CHALLENGES FOR TRANSPARENCY AND ACCOUNTABILITY

As rightsholders and advocates, we lack information, expertise, and resources to track private capital, link it to rights violations, and make the business or legal case for accountability, remedy, or divestment. We also lack a common understanding of the various types of private capital and financial flows, the individual and corporate actors involved, their alternating roles at different stages of financing, where harms are most likely to occur, and which pressure points and vulnerabilities of private capital can be converted into opportunities. While our objective is to achieve economic justice in a stakeholder economy that prioritizes the common good, we're still a long way off and much learning and campaigning remain to be done.

When we have engaged with private capital, our campaigns have largely focused on public-facing companies involved in private investments that are sensitive to reputational risk and adhere to some internationally recognized human rights or environmental standards.[351] Generally, we have tried to leverage the power that banks and other financial institutions wield over private entities' decision making by linking finance to ESG factors in order to increase their incentives to either cooperate or comply with better accountability measures.

Many investors hold private capital and assets for only a short term of one-to-ten years, which is different than traditional asset owners, managers, or institutional investors that generate returns through long-term investing. Believing that change takes too long or simply unwilling to jeopardize the runaway train of advanced capitalism, many investors are reticent to engage with their private capital holdings or do so only on a normative level regarding those ESG considerations that improve their returns on investment. These short-term investors in private capital leave advocates with less time to press for long-term change.

Moreover, advocates report that challenges identifying the ultimate owner or controller of private debt and equity are exacerbated when the target is constantly moving, whether through successive acquisitions or legal jurisdictions. Additionally, advocates do not clearly understand incentive structures within private capital for responsible business. There is little alignment with investors about the scope of existing or potential levers available to rightsholders and advocates to prevent harm or hold bad actors accountable. Occasionally, a call for divestment, a media exposé, or well-meaning legislation can even have unintended consequences by inadvertently causing a target to adapt its investment strategy to prevent advocates and lawmakers from achieving real impact or hastening the capital shift into private markets where we no longer have leverage.

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Success for CSOs must include a common understanding among stakeholders of the problem — the worst types of private capital actors in specific industries and geographies, where they fit into value chains, and their links to negative impacts on people and planet. Credible recommendations and use cases of bad actors held to account and policy solutions are important to demonstrate that change is possible and necessary. An organized approach to the problem among stakeholders globally will better enable the efficient use of resources and capacities as well as strengthen the exchange of information, strategies, and learning. As our strategies develop, the implementation and enforcement of meaningful accountability measures may not keep pace with the high-speed evolution of alternative investment strategies. We cannot become complacent.

A key challenge to accountability for advocates and stakeholders engaging with private capital is a deep lack of transparency, including almost total opacity around the ultimate owners or controllers of capital. Some investors prefer private capital investments because they see benefits in avoiding disclosure requirements typical of publicly-traded capital.[352] This transparency gap prevents us from identifying targets for accountability measures and, through litigation, seizing assets to service debts or as reparations for those harmed. The ultimate owner or controller of capital, or the legal entity holding that capital, is legally referred to as the beneficial owner and cannot be another company or trust. Investors tend to operate through private capital to benefit from corporate ownership secrecy for legal and illicit purposes.[353]

For example, corporate entities may be structured under the letter of the law in a way that maximizes tax benefits to the detriment of everyone else. Alternatively, they may be formed to evade taxes, which is illegal. For example, in industries linked to deforestation, some public-facing companies targeted by campaigners use private capital to structure investments and distance themselves from negative impacts, making it more difficult to pierce the corporate veil.

In legal terms, vicarious liability can arise when a party that controls and is responsible for a third party is negligent in exercising that control and responsibility. Establishing the necessary connections between the third-party wrongdoer and its publicly-traded parent entity is challenging and essential to accountability. Even more critical is gathering the evidence required to show the links between a wrong-doing third party and its privately-held parent entity or ultimate beneficial owner. Unfortunately, this area of law and impact litigation is under-developed due to technical challenges and the costly nature of civil suits.

From a criminal law perspective, financial crime involving private capital investments can include bribery and corruption, sanctions violations, and money laundering.[354] These types of investments can be made to either generate or move dirty money and can include a public official or politically-exposed person.

Exacerbating these challenges is an inconsistent and limited understanding among CSOs — including researchers, advocates, and campaigners — about how private

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capital is controlled, generated, moved, and invested. Even when it can be causally linked to specific harms to people and planet, it has been difficult for civil society to develop and implement strategies that result in meaningful accountability and redress.

While reforms of private capital (mainly of private equity and hedge funds) are gaining greater attention among policymakers, investors in the housing[355] and health sectors,[356] for example, are financially backing lobbying efforts against reforms they perceive as threatening to their continued earnings. Similar efforts are underway to prevent greater disclosure requirements like those required of publicly-traded companies, such as climate-related, geopolitical, and other ESG and risk issues.[357]

Ultimately, the runaway train of advanced capitalism and its privileged passenger — private capital — are on the same insidious trajectory where the cost of purchasing political power is affordable. According to the Center for Responsive Politics, in the 2018 political donor cycle in the U.S., the billionaire CEO of Blackstone Group was the number one donor to Senate majority leader Mitch McConnell, the number two donor to former House speaker Paul Ryan, and the number three donor to Senate minority leader Chuck Schumer.[358]

The corporate capture of the State knows no limits. That's why it's incumbent upon a host of unlikely bedfellows — rightsholders, advocates, pension fund members, endowment and foundation trustees, publicly-traded companies affected by unfair competition from private markets, and progressive regulators and politicians alike — to stop private capital in its tracks for the benefit of all. If not us, then who? If not now, then when?

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IV. CASE STUDIES

IV. CASE STUDIES

Private capital and advanced capitalism are on a perilous and pernicious path. Increasingly, private capital acts and transacts beyond our scope of understanding. But while it largely eludes regulation, taxation, and scrutiny, its effects on people and planet are tangible, visible, and all too often painful. In our workplaces, on our livelihoods, in our neighborhoods and communities, on our health, on our incomes, and at the ballot box, we suffer the harm caused by private capital and pay the price for its recklessness.

If we are to arrest its development, if not reverse its course and bring private capital under public control, we must learn to recognize and identify it in our lives and work and in those of the rightsholders we accompany. Our intended audience — corporate accountability advocates and other civil society stakeholders of corporations — has already begun observing and receiving reports of the harmful human rights and environmental impacts of private capital, as discussed here. In this chapter, we provide case studies and examples of the presence and perniciousness of private capital across nine sectors known for human rights and environmental risks worldwide. This will help us to identify choke points and vulnerabilities of private capital that, in **Chapter V. Accountability Opportunities**, we can convert into opportunities for improved transparency and accountability.

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SECTOR: HOUSING

Private equity, mortgage companies, and foreclosures in the U.S.

In 2017, homeownership rates fell to 50-year lows as private landlords tightened their grip on the U.S. housing market.[359] Rent burdens as a percentage of income became particularly oppressive for people of color in segregated neighborhoods.[360] Since the GFC in 2007, private equity firms have swept into the housing market to replace banks as primary mortgage lenders. According to an investigation by *The New York Times*, private equity firms as landlords are quick to foreclose on owners to create value for shareholders, often exploiting errors or technicalities in mortgage agreements.[361] Between 2007 and 2011, 4.7 million homes were lost to foreclosure and a million more to short sales.[362] Foreclosures are deepening the corporate control of housing in the U.S., turning middle- and lower-class neighborhoods into rental communities subordinated to the value creation imperative.[363]

In many cities, such as Los Angeles, corporate ownership disproportionately affects communities of color, which exacerbates inequality.[364] In Atlanta's Fulton County, one of the strongest predictors of evictions was the concentration of Blacks in any given neighborhood.[365] Amidst the current health and economic crises, the trend of distressed homeownership is likely to continue, and Black and Latino communities will be hurt the most. According to *The Washington Post*, over 40% of adult Black and Latino renters had "no or slight confidence they could pay their rent next month or were likely to defer payment."[366]

The three major players in the U.S. housing market are Lone Star Funds, Nationstar Mortgage, and Blackstone. Lone Star Funds is a private equity and real estate investment firm based in Texas and founded by billionaire John Patrick Grayken. As one of the country's biggest buyers of delinquent mortgages, it was linked to thousands of foreclosures.[367] According to dozens of court proceedings examined by *The New York Times*, it moves quickly to foreclose on a home if that's the most lucrative option, taking possession only to resell it for profit.[368]

Until July 2018, Nationstar Mortgage LLC was controlled by private equity firm Fortress Investment Group, after which it became an indirect, wholly-owned subsidiary of a Texas-based public company, Mr. Cooper Group Inc. (known as WMIH Corp. until October 2018), which specializes in services for single-family residences in the U.S. According to the latest corporate filings, close to 75% of Mr. Cooper Group's shares are held by institutional investors — of which 32% are hedge funds — and close to 6% by private equity firms. These institutional investors include KKR & Co.

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Inc., with 16% of total shares, and BlackRock with 12%. In 2016, Nationstar was considered the fourth-largest collector of mortgage bills in the U.S.[369]

The Blackstone Group Inc. is a public alternative asset management firm based in New York, specializing in real estate with investments in North America, Latin America, Europe, and Asia, and considered perhaps the biggest corporate landlord in the world. Invitation Homes Inc., a single-family home leasing company based in Texas, is a Blackstone subsidiary. It was linked to a significant number of foreclosures in the U.S. that disproportionately affected communities of color.[370] According to Leilani Farha and Surya Deva, chair of the U.N. Working Group on Business and Human Rights, private equity firms “have converted homes into financial instruments and investments, buying up affordable properties, upgrading them and substantially raising rents, putting them out of the reach of those living on low incomes.”[371]

Two dominant mortgage finance firms are Fannie Mae and Freddie Mac, government-sponsored and privately owned to “buy mortgages from banks and repackage them into mortgage-backed securities that are guaranteed against default.”[372] In August 2020, amidst the COVID-19 pandemic, both firms announced additional fees on home loan refinancing, affecting millions of homeowners seeking to defer their payments.[373] Fannie and Freddie are regulated by the Federal Housing Finance Agency, which both Donald Trump and private equity firms sought to eliminate during the pandemic.[374]

Structural drivers of the capital shift

Housing and urban policy agendas have experienced the slow withdrawal of States from the housing sector alongside the consolidation of market-based housing finance models. As of 2020, REITs existed in nearly 40 countries.[375] While they are framed as policy instruments for resolving the housing shortage or implementing development priorities, in practice, the asset management organizations that invest in them receive unprecedented freedom and tax benefits from this form of pooled capital.[376]

For example, in Brazil, the housing market is fueled by new financial actors, including publicly-traded property investment vehicles known FIIs (*Fundos de Investimento Imobiliário*), which receive tax advantages as long as 95% of profits are distributed to shareholders. Although FIIs were created in 1993, they became increasingly popular after being reclassified as structured securities in 2009 and after interest rates on sovereign bonds declined in 2011. By April 2019, FIIs in Brazil had over 25

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billion USD in net assets.[377] While government authorities framed REITs as a tool to extend housing finance and homeownership and intermediated to adapt regulations to attract investments, REITs have mainly funneled investment to commercial properties, including shopping malls in middle- and upper-income residential areas and office buildings in Sao Paulo and Rio de Janeiro.[378] Retail banks and other financial entities were also successful in attracting investments from Brazil's wealthy urban households.[379] As a financializing policy instrument, FIIs acted as a "'government device' which gradually led to deepening the interdependencies between real estate property and financial markets in selected Brazilian city-regions."[380]

Similarly, the financialization of housing in South Africa is centered around the growth of mortgage lending, the securitization of residential mortgage-backed securities (RMBS), and the rental market through the rise of corporate landlords.[381] Rather than resolve the critical housing shortage, real estate investment, particularly since 2010, has been directed mostly to commercial real estate in cities rather than residential real estate, which is less than 3% of total property listings.[382,383] Private investment has expanded through increasingly sophisticated financial instruments, such as the emergence of REITs and other mortgage instruments.[384] One of the first residential REITs is Transcend Residential, a branch of the private equity firm International Housing Solutions (IHS), which received millions in equity investments from DFIs and IFIs, such as the IFC, to invest in South Africa.[385]

The pandemic had a significant impact on the housing sector, creating housing crises in cities around the world with communities facing evictions and displacement. REITs were specifically affected due to empty malls, office buildings, and widespread payment delinquency.[386] For example, U.S. REITs decreased 27% during 2020 and, in Britain, many real estate funds ceased trading after "the value of more than 20% of their assets became uncertain."[387]

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Gentrification and private capital in London real estate

From 2010 to 2020, homeownership in the U.K. declined while the number of "rough sleepers" (or homeless persons) increased by 169%.[388] In London, foreign investors largely drove the housing shortage, financing the tearing down of affordable homes to build luxury apartments.[389] According to *The Guardian*, 40,000 properties across London were owned by offshore companies based in secrecy jurisdictions such as Panama, Liechtenstein, and the British Virgin Islands.[390]

Since the 1990s, the State has rolled back its role in housing to make room for market-based solutions. Two policy changes have been the creation of social impact bonds and the public listing of housing associations, both of which increasingly turn to the corporate bond market for financing[391] and rely on credit rating agencies as "gateway constructors" to secure finance.[392] Cumulatively, these changes in the housing market led to gentrification, rising rents, and displacement, particularly in London, as well as the increasing presence of private equity and hedge funds as both investors and owners.[393]

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SECTOR: FOOD AND BEVERAGE

Family-owned agriculture driving deforestation, debt bondage, and corruption in Brazil

In July 2019, the Brazilian food processor JBS SA was found buying cattle from ranchers operating on deforested land in the Amazon that the government had said must not be used for grazing. The company was previously fined 7.7 million USD and two of its meatpacking plants were suspended for sourcing cattle from prohibited pastures and farmers that concealed illegal sourcing between 2013 and 2016.[394] Following a 2012 Greenpeace report detailing these activities, JBS lost a lucrative contract with the mega-supermarket chain Tesco.[395]

JBS is also the world's largest meat processing company, exporting animal protein to more than 150 countries.[396] It is majority-owned by the Brazilian government and J&F Investimentos SA, a privately-held company ultimately owned by the wealthy family of serial entrepreneur Eike Batista via a holding company in the Cayman Islands.[397]

Another supermarket chain, Waitrose, removed the JBS brand of corn beef from shelves after an investigative report revealed that the products could contain meat linked to debt bondage on Brazilian cattle farms. According to official documents, JBS allegedly paid more than 2 million USD between 2013 and 2016 for Brazilian cattle reared on a farm where workers were forced to live in inhumane and degrading conditions with no shelter, toilets, or drinking water. JBS claimed that the farm was not included in the government's official list of prohibited companies known to use slave labor and that it had ceased buying from the farm following raids by law enforcement.[398]

Adding to its litany of misconduct, JBS was found to be part of a major, sprawling corruption scandal in 2018, commonly known as the "Car Wash." Former JBS managers and board members admitted to bribing 1,800 politicians from 28 different political parties in Brazil with at least 180 million USD over 15 years. The Ethical Council of the Norwegian GPFG, a trillion-dollar fund managed by Norges Bank and the world's largest sovereign wealth fund, divested from JBS finding "an unacceptable risk" because it "contribut[ed] to or is itself responsible for gross corruption." Brazilian authorities say the scandal may have ultimately led to a loss of 390 million USD in public funds.[399]

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Private equity, deforestation, and climate impacts in Brazil

An August 2019 report by *The Intercept* raised serious concerns about the investments of behemoth private equity firm Blackstone Group in two companies driving climate risks and deforestation in the Amazon.[400] Blackstone's investee companies in Brazil cleared hundreds of miles of forestland to modernize a controversial highway that leads to a company-owned export terminal.[401] Indirectly, the highway further escalated deforestation by increasing demand for exports such as grains and soy, which require the clearing of Amazon forestland.[402]

This is a dire situation as "(T)he Amazon rainforest accounts for a quarter of the carbon absorbed by global forests annually, and it has sequestered as much as 140 billion tons of carbon in the ground." If the same level of clear-cutting remains, "the rainforest could release the equivalent of up to 140 years of human carbon emissions," according to a December 2019 letter to Blackstone chairman, CEO, and co-founder Stephen Schwarzman from U.S. Senator Elizabeth Warren (D-MA) and six other Congressional members.[403] The letter explains that "[b]y financing the company that profits from this destruction Blackstone's investments appear to pave the way for further deforestation and an exacerbated climate crisis." It also states that, instead of taking responsibility for its role in threatening indigenous communities and deforestation, Blackstone is deflecting. The members of Congress make clear that this is not Blackstone's only controversial investment exacerbating the global climate crisis.[404]

Private equity and public water in the U.S.

When traditional project financing dried-up amidst the GFC in 2007, new sources appeared, including from insurance, pension, sovereign wealth, private equity, and hedge funds. Similarly, new financial instruments were created to facilitate investment in infrastructure, which is recognized as its own asset class. Debt instruments were bundled and equity investments pooled, including in publicly-traded funds, enabling investors looking for high returns to own a slice of infrastructure assets.[405]

The disastrous results of this kind of investment are evident in Bayonne, New Jersey, where water rates rose 28% after private equity firm Kohlberg Kravis Roberts (KKR) began managing the water system. KKR's contract guaranteed returns of more than half-a-billion dollars over 40 years. But unexpected infrastructure upgrades, combined with a decrease in residential water usage, led to rate hikes to offset the subsequent difference for KKR's guaranteed earnings. And, despite assurances from city officials, residents never benefited from a promised four-year rate freeze.[406] As some residents fell behind on their bills, the city placed liens

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against their homes, which led to foreclosures. Tax records showed that, in 2012, water payment delinquencies led to 200 liens against local properties. That figure tripled the following year and, by 2015, reached 465 liens.[407]

Research from *The New York Times* showed that, in a typical private equity water deal, higher rates help the firm earn returns anywhere from 8-18%, which are much more than a regular for-profit water company could expect. Some private equity firms seek to quickly maximize returns by flipping their investments to other firms.

REITs own U.S. farmland

Real estate investment trusts (REITs) generate income, in part, by leasing land or space and collecting rent, which is distributed to shareholders as dividends.[408] In the U.S., farmland is an asset class of its own as its value has steadily increased. Several REITs, including Gladstone Land, Farmland Partners, and the American Farmland Company, were formed exclusively to purchase farmland. In 2017, the latter two merged and, in 2018, held close to 150,000 acres of farmland across 16 states.[409]

As these REITs buy up land, U.S. farmers struggle to remain competitive and turn a profit. To continue working the land, they become renters and landownership quickly becomes concentrated among a few wealthy entities. Under this structure, farmers bear the costs and risks of agriculture production as investors — and public shareholders — benefit from appreciating land values.[410]

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SECTOR: HEALTH

Hedge funds invest in COVID-19 vaccines

Operation Warp Speed is a flagship initiative of the U.S. government to quickly develop drugs to treat and prevent COVID-19. In June 2020, Vaxart, a small San Francisco company, made a big announcement that it had been selected by the program to advance a coronavirus vaccine. Shortly after, its shares soared, leaving company officials and its hedge fund owner with huge profits.[411] Three months prior, Vaxart made public positive preliminary data for a vaccine and a partnership for manufacturing, causing its stock price to reach 3.66 USD. Then, once Vaxart announced it had been selected for Warp Speed, its shares instantly doubled and, at one point, reached 14 USD.[412]

Armistice Capital, the hedge fund that partially controlled Vaxart, took this moment as a perfect opportunity to exercise rights to buy 21 million additional shares under an agreement with Vaxart that it had modified just weeks before announcing the work with Warp Speed. Those rights guaranteed the fund a share purchase price of just 30 cents, which naturally positioned it to sell later at a premium. Armistice instantly profited to the tune of 200 million USD on the overall deal.[413]

Weeks before the Warp Speed announcement, company insiders also received stock options worth a few million dollars, which resulted in a six-fold increase in value. Meanwhile, eleven other investors in Vaxart made well over 1 billion USD since March 2020 from the company's participation in the program.[414] These sudden windfalls highlight the powerful financial incentives of generating positive headlines in the race for coronavirus treatments even if the drugs never pan out. Moreover, even though Vaxart did not receive significant financial support from Warp Speed, the hedge fund and corporate insiders still profited handsomely from associating themselves with the program and reconfiguring their rights just before they knew big news was coming.[415]

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Private equity and surprise medical billing in the U.S.

Private equity funds are behind the national surprise billing epidemic, made evident during the COVID-19 pandemic. Increasingly they buy medical practice groups, ambulance firms, hospitals, nursing homes, and other health care companies. Since 2010, private equity firms have bundled medical practices and physician groups into large companies that rely on patients paying out-of-pocket surprise bills to generate profits. Between 2017 and 2018, private equity bought nearly 200 medical practice groups.[416]

In November 2019, *ProPublica* released a story about a Tennessee woman who received bills from an entity she had never heard of for emergency room visits. Eventually, the unpaid bills went to a collections agency that demanded 500 USD, which she was unable to afford. She was later sued by a physician staffing firm that contracts with doctors who treat patients in emergency rooms for more than 8,500 USD — a third of what her husband made per year as a cook.[417]

This was only one of 4,800 lawsuits filed between 2017-19 against patients by that physician staffing firm, which ultimately is owned by the private equity firm Blackstone Group.[418] According to another report, one in four Tennessee residents had a medical debt on their credit report, the tenth-highest rate in the nation. At the time, Memphis was the second-poorest large metropolitan area in the U.S., making the impact of surprise medical billing and related lawsuits for unpaid bills more acute.[419]

Another patient, a 62-year-old woman, visited a Memphis hospital staffed by Blackstone's firm with flu symptoms. Unable to negotiate a manageable payment plan for that visit, her bill went to collections and she was eventually sued for nearly 1,300 USD, not including court costs and attorney fees. Struggling to make ends meet with her small lawn care business, financial help from a friend got her out of the bind. A year later, she found herself again in the emergency room with flu symptoms and a renewed cycle of unmanageable medical bills.[420]

Incidentally, as this book went to publication, Congress ended surprise medical billing only after physicians won concessions allowing them to charge insurance companies higher prices. The No Surprises Act (2021) was part of an end-of-the-year COVID-19 relief package and is similar to an earlier bill that was defeated following intense lobbying by private equity groups, led by Blackstone and KKR.[421]

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Hedge fund drives up medicine prices

We are a for-profit business, and we have a commitment to shareholders."

This is how Mylan CEO Heather Bresch responded when the company received blowback for overcharging for two EpiPens — a device that contains about one dollar's worth of medicine. An EpiPen is an auto-injectable device that delivers the lifesaving drug epinephrine to someone experiencing a severe allergic reaction.422

The drastic price increase of an EpiPen embodied the hedge fund-fueled wave seen within the pharmaceutical industry. With more than 90% of market share for EpiPens, drug maker Mylan became a prime target for hedge funds. After half a dozen such funds bought shares of the company, Mylan began a price-spiking spree that drove the cost of a box of two EpiPens to over 600 USD.[423]

In May 2017, the U.S. government claimed that Mylan had overcharged Medicaid to the tune of 1.27 billion USD. In response to public outrage over price gouging, then-Mylan CEO Robert Coury famously gave two middle fingers at a board meeting, cursing critics and parents of allergy sufferers alike.[424] This illustrates how Americans pay a high price because of the outsized influence of hedge funds and the corporate policy of putting shareholder interests first, even when it comes to health care.[425]

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SECTOR: DATA AND TECHNOLOGY

Market concentration and the power of Big Tech in the U.S.

In the U.S., a small number of technology companies — Amazon, Google, Facebook, and Apple — not only dominate the market but also control platforms that are central to communications and a growing share of commercial operations.[426] These companies ultimately act as "gatekeeper firms" with control over key distribution networks, while using their power to leverage these platforms into new lines of business, including fintech.[427]

In October 2020, a U.S. House of Representatives subcommittee identified that market concentration in tech and digital markets had a significant impact on democracy and the economy and that tech giants consistently implemented anticompetitive and abusive practices.[428] Their market power has also translated into political power, which allows them to largely avoid regulation and scrutiny. Additionally, platform market concentration has curtailed technological innovation, particularly in the Internet economy. According to the subcommittee report, the number of new technology firms declined from 2013 to 2020, and early-stage funding for technology startups decreased since 2015, as did the share of startups and young firms in the industry, reaching a low of 38% since 2011.[429] These declines were partly due to the lack of competition but also because of acquisitions by tech-giants of startups considered "would-be rivals."[430]

One of these tech giants is Amazon, which operates as a "retailer,... a marketing platform, a delivery and logistics network, a payment service, a credit lender, an auction house, a major book publisher, a producer of television and films, a fashion designer, a hardware manufacturer, and a leading host of cloud server space" — all while escaping antitrust scrutiny.[431] As a cloud server host, Amazon also provides essential infrastructure for ecommerce and other businesses, including government services and law enforcement. In June 2020, Amazon announced it would launch a 2 billion USD venture capital fund — called The Climate Pledge Fund — to invest in clean energy in transportation, energy, food, and other industries.[432] As of 2020, over 50% of Amazon's shares were held by asset managers and, of these, The Vanguard Group and BlackRock owned 12%.[433]

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Gig economy and worker organization in the U.K.

Private equity — often in the form of venture capital — increasingly invests in digital platform companies. Platform capitalism refers to "the rise of a distinctive and powerful mode of capitalist intermediation made possible by a host of socio-technical achievements" in which a wide variety of organizations participate: start-ups, early-career firms, Big Tech companies, and banks.[434] However, these business models rely on the idea of intermediation between services and — falsely labeled — self-employed workers who "bear the risk of entrepreneurs, but rarely actually have any control over the means of production and distribution."[435]

Since 2016, there has been growing global discontent among workers in platform businesses, as reflected by the Leeds Index of Platform Labour Protest in the U.K. Working conditions in platform work are often characterized by "low pay or non-payment, a lack of work or overwork, irregular hours, constant pressure from customer ratings, the risk of sudden 'deactivation' by the platform algorithm, a lack of transparency or accountability in platform decision-making, and reduced social and employment protections."[436] In Western Europe, mainstream trade unions play a "vital role in defending platform workers' interests," while in the global South "protests are much more likely to be led by grassroots unions."[437] Gig economy workers are slowly organizing. The Independent Workers Union of Great Britain, created in 2012, leads efforts there to increase protections for these workers.[438]

AI and its human rights impact in the U.S.

Equity investment in artificial intelligence (AI) technology and startups has been steadily rising from private equity venture capital funds and institutional investors. According to an OECD study, AI start-ups attracted close to 12% of all worldwide private equity investment in the first half of 2018.[439] The number of investments increased from less than 200 in 2011 to over 1,400 by 2017.[440] Between 2016 and 2018, countries such as Israel (Voyager Labs), Switzerland (Mindmaze), Canada (LeddarTech and Element AI), and the U.K. (Oaknorth and Benevolent AI) registered deals worth over 100 million USD, which indicates a burgeoning market outside of the U.S. and China.[441]

AI technologies — founded on increasing capabilities of processing big data — have certain appeal in intelligence, military, and law enforcement circles for their alleged potential in improving accuracy, predictive analytics, and data-driven decision-making methods.[442] However, the use of AI and big data analytics in security has significant ramifications, especially when issues of public concern, such as development and migration, are increasingly framed as matters of national security.

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For instance, Palantir Technologies' data analysis tools have contributed to surveillance-related human rights violations on behalf of U.S. Immigration and Customs Enforcement (ICE), which is responsible for mass deportations, including workplace raids throughout 2019 and the arrest of hundreds of people in an operation targeting caregivers of unaccompanied migrant children in 2017.[443] In September 2020, Palantir went public through a direct public offering, although three of its founders retained most of the corporate voting power.[444]

In addition to the potential abuse of AI technology in surveillance security, the impact of algorithmic and artificial intelligence bias is less known. Built-in biases — such as racial bias — could exacerbate existing inequalities and institutionalize discrimination or racial profiling, including in public policies and practices around security, employment, migration, and development.[445] The notion of algorithmic transparency and accountability is being proposed to intersect technology development and human rights.[446]

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SECTOR: BANKING AND FINANCE

Financialization of poverty and the limits of microfinance

Under the banner of financial inclusion, development finance and international financial institutions support and advocate for policies and business models that facilitate lending to poor and rural populations. Microfinance, microcredit, and fintech companies have surged thanks to these policies and the decreasing cost of financial intermediation provided by technology and increased competition.[447] In the global South, microfinance has been fundamental for pushing the "frontier of financial accumulation" into the economic activities and everyday lives of poor people.[448] However, four concerns related to the incorporation of financial inclusion as public policy stand out:

- It implies turning poverty into a problem of finance instead of recognizing it as the outcome of an unjust economic system, diverting funds from public services to financial institutions;
- It can have a regressive character when the poor pay the wealthy high fees and interest rates;
- There are built-in risks and harms, including the socio-economic vulnerability of borrowers, bloated informal sectors, intra-community stress, and household violence; and
- It has been linked to systemic predatory lending, land-grabbing, underage labor indenture, and other social issues.[449]

In India, where microlenders were known to collaborate with loan sharks, the 2010 microfinance crisis was marked by over-indebtedness and a surge in suicides and violence.[450] In the state of Andhra Pradesh, non-profit organizations spearheading microfinance lending in the region later transformed into commercial microfinance institutions (MFIs), reporting surging growth rates — partly fueled by foundations, venture capitalists, and the World Bank, which funneled significant funds into the sector.[451] In 2010, the state government was pressured to suspend all MFI operations and halt all loan payments due to exorbitant interest rates and coercive collection practices, which were partially linked to surging suicide rates.[452]

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Social sorting and deepening segregation in South Africa

Fintech and microfinance rely on infrastructure that collects personal data, which companies monetize and governments use to track, surveill, and tax their populations.[453] In this regard, microfinance facilitates a form of "governmentality via credit" of vulnerable and historically excluded populations.[454] Furthermore, the collection of data (financial or otherwise) to score the "credit invisible" is not always conducted with the user's informed consent.[455] Particularly in developing countries, the State deploys surveillance infrastructure in the name of financial inclusion.[456] Without adequate regulation, big data poses a threat due to its potential use for discrimination and exclusion.

The GFC of 2007, alongside the introduction of stricter lending criteria for financial institutions, ended the property boom in South Africa.[457] Between 2001 and 2007, the ratio of mortgage debt to GDP increased from 20% to a peak of 42%, only to decline to 22% in 2014 before rising again to 30.6% in 2016.[458] By 2012, the housing stock had been progressively privatized, and the priority in policy shifted towards extending housing finance.[459] Although significant government subsidies continued to exist, they incorporated financial logics and depended on the financial products designed by real estate companies and financial institutions, exemplifying a "shift from state-driven housing to state-supported private finance."[460] Since then, financial actors have relied on credit scoring to renew conservative lending practices, making mortgages a highly selective product.

This has important implications in terms of how certain groups are included or excluded, which becomes a method of social sorting, particularly whenever microfinance and financial inclusion are central to welfare policies and programs, as is often the case in South Africa.[461] In Cape Town, financialization unfolded through the classification of people through credit scoring and the selection of spaces, essentially renewing urban patterns of apartheid and social sorting. Landlords and mortgage lenders targeted specific areas in the post-apartheid city to develop residential portfolios and allocate mortgages, reinforcing segregation and inequalities.[462] Financialization operates by "staying away from the urban poor and precarious neighborhoods, as market actors target the middle- and upper-income sections of society, where public servants and white residents are overrepresented."[463] This consolidates a combination of "place-based" and "race-based" patterns of exclusion in the city.[464]

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States subordinated to financialization in the international system

The role of States in financialization is increasingly studied.[465] They facilitate the expansion of financial markets through policy, as well as actively participate in them (by marketing sovereign debt, for example).[466] States have further adopted financial logics and turned to finance to provide public goods and services and promote growth through which financialization has become "a rising paradigm of governance and a new form of statecraft."[467]

However, financialization is an uneven process across geographies. Processes in the peripheries are subordinated to those in the center, partly determined by the position of domestic economies in the global financial system and global production.[468] Rather than financialized capitalism as a means for States to "catch up" in the path toward development, financialization has deepened inequalities between and within States. This is particularly evident in relations of indebtedness between States and financial actors and the increased exposure of some States to risk and volatility. An emerging capitalist economy's "subordinate position in relation to money and capital markets means that capital inflows are predominantly short-term, seeking financial yields rather than assuming productive risk."[469]

Economic crises and externally imposed emergency measures extenuate these risks and often deepen financialization processes through bondholder-value disciplines.[470] For instance, after entering bankruptcy in 2013, the Detroit city government prioritized the city's exchange value over its use value, excluding entire neighborhoods from city services.[471] Institutional investors — particularly vulture funds[472] — willing to ride out volatility have channeled excess liquidity to public debt, ranging from municipal bonds in the U.S.[473] to the sovereign debt of countries like Argentina and Zambia.[474] Credit rating agencies act as financial gatekeepers in the generation of these "debt-machine dynamics."[475] While the financialization literature is only beginning to link economic inequality, sovereign debt crises, and human rights, the area of development studies has already been exploring these connections.[476]

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SECTOR: MANUFACTURING

Activist hedge funds cost U.S. taxpayers and workers billions

In 2015, General Motors (GM) announced a 5 billion USD stock buyback as part of a plan to return more cash to investors. This was part of a deal with Harry Wilson, a former member of the U.S. government task force that restructured GM following its 2009 bankruptcy. Wilson represented four hedge funds that owned about 2% of the company at the time. These were considered "activist shareholders" that agreed to forego a bid for a board seat in exchange for the buyback — the effective release of profits to Wall Street hedge fund investors. From 2015 to 2018, GM gave 25 million USD to hedge funds and other investors, including over 10 billion USD in controversial stock buybacks, according to the advocacy group Hedge Clippers.[477]

Hedge Clippers reported that these hedge funds mounted a successful attack through paid agents, harassing proxy measures, and public threats resulting in billions in buybacks. These funds focused on short-term returns and pushed companies to pay dividends instead of holding cash in reserves to weather potential economic downturns. A buyback strategy tends to raise share values for existing shareholders, including hedge funds, but does little to advance the company's long-term viability. As demonstrated in GM's case, this is a cyclical strategy for hedge funds that go on the attack when denied what they want.[478]

As GM faced dire circumstances in 2009, the U.S. government provided it with a bailout at a loss to taxpayers of approximately 10.5 billion USD. A decade later the company had yet to find its feet and return to profitability. Nonetheless, the economic impact of hedge fund efforts hit middle-America hard. By 2018, GM announced that it was closing five facilities, including one Ohio plant that provided over 1,600 jobs and 250 million USD annually in wages. In total, GM cut 14,000 jobs by closing those plants.[479]

Private equity and worker rights tech manufacturing in Southeast Asia

The powerhouse Dutch company NXP Semiconductors NV is at the forefront of technology advances by supplying chips and semiconductors used in passports, mobile phones, tablets, and cars globally and co-inventing a new wireless technology involved in the revolutionary "Internet of Things." In 2014, Apple selected NXP to supply essential technology for its digital wallet service, Apple Pay, leading to 45% value growth and a 54% increase in net income for the supplier.[480]

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In 2006, facing a billion-dollar debt amidst an economic crisis and waning demand for its technology (which resulted in 4,500 job cuts in 2008), NXP spun off from Philips and was purchased by a private equity consortium. The firms bought 81% of shares in a 9.4 billion USD leveraged buyout. Philips retained the remaining 20% interest. Following the take-over, NXP was incorporated as a Dutch private company with a limited liability holding company. By 2014, the private equity consortium began selling off its interests to institutional investors, while several of its members continued to sit on NXP's board.[481]

The advocacy coalition GoodElectronics published research in 2015 showing that NXP violated workers' rights established by International Labor Organization Conventions regarding working hours and freedom of association. Labor disputes were reportedly occurring in the company's Thai and Philippines back-end facilities, where the company had set up shop in order to remain competitive with low wages and increased flexibility. According to the research, the involvement of private equity drove short-term interests in yielding high returns, which often resulted in negative pressure on trade union demands and worker satisfaction.[482]

Impunity for private equity-owned apparel factory worker´s loss in India

The Worker Rights Consortium (WRC) investigated the July 2014 death of a garment worker's child at her employer-run nursery in a factory in Bangalore, India. Though the child appeared to have died of respiratory causes, the WRC found indications that the factory failed to comply with national laws requiring that it have an emergency medical clinic staffed full-time by a licensed medical doctor, a medical ambulance for transporting victims of serious accident or illness, and an on-site nursery for employee's children that is under the direction of a caregiver with prior pediatric healthcare training.[483]

The facility in question operated India's largest garment manufacturer and supplied Adidas and Puma, two of the world's leading athletic apparel companies. Gokaldas Exports, Ltd. was owned by the U.S. private equity firm Blackstone Group and ran the Gokaldas India factory, the site of the tragedy, where more than 32,000 workers were employed. The company's other Indian factories supplied brands such as Columbia, Nike, Gap, H&M, Levi's, and Marks and Spencer.[484]

The WRC found that, had Gokaldas Exports complied with legal requirements, the child's death could have been avoided as the supervising caregiver lacked training in nursing or pediatric healthcare. Additionally, as there was no ambulance on site,

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the child was taken to the hospital in a manager's private car without receiving any medical care while in transit. Finally, although a well-equipped government hospital was only two kilometers away, the child was taken to two less-equipped private healthcare centers. Both centers refused to admit the child resulting in him being transported 30 kilometers away, where he was pronounced dead on arrival.[485]

According to the WRC, the child's mother was compensated with 2,400 USD or about two years' wages. In response to the WRC's inquiries, the company denied deficiencies, refused to provide the mother with further compensation, and suggested the worker was at fault by implying that she knowingly placed an ill child in the factory's care. The WRC recommended that the worker receive additional compensation for her loss from Gokaldas and its multi-billion-dollar private equity owner as well as from the brands and retailers whose codes of conduct were supposed to ensure that the factory complied with local labor laws. The WRC estimates that reasonable compensation, in this case, should have been 40,000 USD.[486]

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SECTOR: TOURISM

REITs and private equity investments impacting workers globally

The hotel, catering, and tourism business ownership structures are experiencing major changes. On one hand, hotel chains concentrate on their core activities while, on the other, private equity funds have become significant if not major shareholders and also key decision-makers.[487] For example, hotel chains traditionally held significant real estate assets in addition to managing the core business. However, as global financial markets became unstable, investment in real estate became more attractive. This raised the value of hotel chains' physical assets and led them to shed properties while maintaining business management operations.[488]

New relationships between ownership and management have emerged in the hotel industry, such as management contracts, lease agreements, franchise agreements, REITs, and private equity involvement. Hotel chains often sell hotel real estate properties to REITs while retaining long-term management contracts. This separation between ownership and management has increased the rate of mergers and acquisitions in the hotel, catering, and tourism sector.[489]

Private equity investors in the hotel industry tend to rely on short-term investments returning high profits by focusing on portfolio companies' rapid business development or buyouts. Related implications in international hotel chains may be employers' avoidance of responsibilities to workers driven by short-termism and the pursuit of excessive profits. Those profits tend to come from wage and expense cuts or theft. Workers' collective bargaining opportunities are often affected by less transparent management and ownership structures. Employment can become less secure, and responsibilities may be outsourced. Workers' right to be heard on changing ownership issues may be further deteriorated by increased franchise contracts, outsourcing, or subcontracting.[490]

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Private investors, tourism, and rising rents throughout Spain

Many Spanish cities have long been major tourist destinations. In 2013, Barcelona experienced a 25% surge in average rental prices that didn't stabilize until 2017, reflecting a recovery from the GFC. City residents unable to cope with rising rents were forced out during a major gentrification campaign led by mixed-capital companies dedicated to urban development. Public capital was used to remodel the city while favoring the profitability of private capital investments and those with greater purchasing power — a dynamic that is accentuated by tourism.[491]

As of 2017, one-third of home purchases in Barcelona were financed by investment funds, generally by the Spanish equivalent of a U.S. real estate investment fund, which heavily relies on tax advantages. Downtown neighborhoods in Barcelona enjoyed significant global interest from investors looking to purchase whole buildings for use as tourist rentals.[492]

A central feature of tourism in Barcelona is temporary rental accommodations, facilitated by companies such as Airbnb, where a new floating population substitutes permanent residents in city neighborhoods. Despite the fact that this "non-community" of temporary travelers neither work in nor participate in neighborhood daily life, the city's commercial landscape is changing to fit their needs, serving as a showcase for tourists. Residents' support for this model is divided. While rental prices have risen, displacing some residents and putting a strain on their economic power, tourism has boosted the local economy to some degree.[493]

Private equity-owned motels invade guests´ privacy resulting in immigration consequences

In November 2019, Motel 6 – owned by the private equity firm Blackstone Group – agreed to pay 9 million USD to Latino guests to settle a proposed class-action lawsuit in Arizona claiming that it violated their privacy by regularly providing guest lists to ICE agents. The Mexican American Legal Defense and Educational Fund filed the lawsuit after the *Phoenix New Times* reported that ICE agents arrested 20 people over six months at Motel 6s in Arizona, targeting people by national origin.[494]

Motel employees at some Washington state locations were reportedly trained to prepare forms for the agents to sign once guest lists were handed over. According to the attorney general, one man who spent the night at a motel near the Seattle airport to wrap Christmas presents for his children was approached by ICE agents in the parking lot and subsequently deported.[495]

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SECTOR: TOURISM

In Arizona, up to 5.6 million USD was earmarked for Motel 6 guests who faced immigration removal proceedings after their personal information was shared. Each guest was eligible to receive 7,500 USD. Those who were questioned or interrogated by ICE agents would each receive 1,000 USD, and those whose information was shared with authorities over a specific period would receive 50 USD each.[496]

During the period in question, when employees at seven motels gave information about 80,000 guests to agents, Blackstone outsourced motel management to a separate company and failed to provide oversight regarding the aforementioned violations. Motel 6 has since signed a legally binding commitment to stop volunteering guest information absent a warrant anywhere in the U.S.[497]

SECTOR: CONSTRUCTION AND INFRASTRUCTURE

Financialization of construction and the transfer of risk to migrant workers

Since the GFC, private equity funds, asset managers, and other institutional investors have viewed construction and infrastructure as a source of stable, long-term returns. This has transformed the industry from an urban planning tool with positive externalities into a stand-alone private asset class.[498]

The financialization of commercial construction has had significant implications for the nature of work contracts, work intensification, and occupational safety and health outcomes. While builders have transitioned to become international property developers and financial services companies, the construction supply chain has incorporated layers of contractors and subcontractors, ultimately transforming the most vulnerable and lowest-paid workers into "entrepreneurs."[499] Work is "increasingly contracted on a task and output basis and increasingly also on an as needs (contingent) basis," while individual workers "are required to manage the risks of rectification, continuity, injury, superannuation, public liability and their associated financial contracts"[500] — which limits the developers' ultimate responsibility for the working conditions in their projects.

According to the AFL-CIO, between 2014 and 2017, work-related deaths among Latinos in the U.S. increased from 804 to 903, with more than 280 deaths in the building trade.[501] In addition to poor working conditions, there were widespread abusive practices by contractors targeting migrant workers, such as wage theft and even cases of human trafficking.[502] In September 2018, for instance, Minneapolis-based *Centro de Trabajadores Unidos en Lucha* helped bring a criminal complaint charging a local contractor and his construction firm with labor trafficking, theft of public funds, and insurance fraud.[503]

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Infrastructure financing linked to deforestation in the Amazon

In August 2019, *The Intercept* published an article linking Blackstone Group to deforestation in Brazil through two highly controversial infrastructure projects: a terminal and a highway in the Amazon region.[504] The new shipping terminal is located in Miritituba, Pará, and is run by Hidrovias do Brasil, a company owned in large part by Blackstone. This terminal will serve the grain and soybean export industry — which is fueling the transformation of the Amazon from jungle to farmland.

Private equity funds have increasingly invested directly in concessionaires' land for commercial use (such as oil and gas, mining, agriculture, timber, or other activities) in emerging or frontier markets (EFMs).[505] Asset managers in equities also have significant indirect interest via shareholdings in brands that depend on supply from these concessions.[506] Yet the land designated for concessions is often populated by thousands of people — often indigenous communities — who are rarely informed about the arrangement.

The largest U.S. asset managers — BlackRock, State Street, and Vanguard — hold significant investments in companies linked to deforestation and severe environmental damage in Brazil and Indonesia. Their investments not only undermine forest conservation and climate change efforts but also have been directly linked to land grabbing issues and violence against human rights defenders.[507] According to Global Witness, in 2019, four land and environmental defenders were killed each week globally.[508] Over two-thirds of these killings took place in Latin America, while 33 deaths were registered in the Amazon region alone.[509] Companies such as ADM, Bunge, Cargill, and JBS have been linked to deforestation-induced fires in the Amazon, while BlackRock, State Street, and Vanguard are shareholders in companies throughout the value chain.[510]

Private investment in hydropower and impacts on human rights

Hydropower is often framed as a green energy source and an essential motor for development.[511] Moreover, hydropower companies' ability to absorb excess liquidity has made their infrastructure an attractive investment for private capital.[512] The financialization of hydroelectric utility companies has also been associated with the financialization of public sector management, local governments, and basic public services more broadly.[513]

Some of the primary promoters of private participation in big infrastructure projects have been the World Bank and regional development banks, through the financing of projects that incorporate public-private partnerships (PPPs) whereby investments are anchored through risk hedging and accreditation.[514] Private participation in infrastructure goes beyond PPPs, concessions, and direct ownership and has become increasingly complex and secretive to protect financiers — largely private equity firms — from liability for the social and environmental impacts of their investments.[515] This process secures investors with relatively short-term returns, often prioritized over the positive economic and social externalities of infrastructure.[516] Finally, in mega-infrastructure projects, there is a common assumption that the State will ultimately guarantee investments, which incentivizes unacceptable moral hazards and rewards opportunism over long-term investment.[517]

More importantly, dams and hydropower plants have been linked to significant human and social impacts due to the reordering of landscapes (dam construction often requires resettlement of local communities), loss or decline of livelihoods, and the centralization of land and water rights.[518] The implementation of environmental and social guidelines for dams by development banks and IFIs, however, has fallen short in protecting local communities.[519]

Reports on the human rights and environmental implications of global hydropower dams are extensive. Notable examples include the Bakun Dam in Malaysia, which faced significant social opposition;[520] the Tozzi Green Dam in Madagascar;[521] the Grand Ethiopian Renaissance Dam in Ethiopia, which displaced nearly 20,000 people; and the construction of the Upper Atbara and Setit Dam Complex in Uganda, which displaced nearly 30,000 people.[522]

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SECTOR: EXTRACTIVES

Dakota Access Pipeline and its impact on indigenous rights in the U.S.

The Dakota Access Pipeline (DAPL) is a 3.8 billion USD, 1,170-mile pipeline development project to transport 570,000 barrels of oil per day from North Dakota to Illinois. The pipeline is operated by the company Energy Transfer Partners (ETP), which is owned by the publicly-listed company Energy Transfer LP (ET). Traditional investment managers hold over 50% of ET's common stock.[523]

The DAPL pipeline began operating in 2017, though it was emptied as of August 2020 due to a federal court decision regarding irregularities with its environmental impact assessment.[524] This significantly affected North Dakota's Bakken shale producers dependent on oil supply from the pipeline, as well as ETP and its affiliates' access to credit after the rating agency Moody's downgraded their score.[525]

The project received significant opposition from indigenous and environmental activists since it runs close to the Standing Rock Sioux reservation in North Dakota. Opposition efforts included the encampment of thousands to halt construction — which led to frequent clashes with law enforcement and private security guards — and a high-level, somewhat successful defunding campaign targeted at investors and financiers (such as Wells Fargo and Bank of America) in 2017.[526] Throughout that same year, several banks and investors — including DNB, ING, Odin Fund Management, BNP Paribas, and Storebrand — divested or sold off their loans.[527] In response, in August 2017, ETP filed lawsuits against protesters and CSOs supporting the efforts, accusing them of violating the Racketeer Influenced and Corrupt Organizations Act (RICO Act) through "criminal activity and misinformation."[528]

Donald Trump was also linked to the project after it was identified that he held a stake in ETP and affiliated companies (Phillips 66) and had received political donations from ETP's CEO.[529]

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IFC financing of coal-fired power plant linked to environmental damage in India

In 2015, villagers in Gujarat, India, with the support of EarthRights International, sued the IFC — part of the World Bank Group — in the U.S. to hold it responsible for environmental damage linked to a coal power plant it financed.[530] The IFC's own Compliance Advisor Ombudsman (CAO) issued a report concluding that "the IFC had failed to ensure the project met the applicable Environmental and Social Standards necessary for IFC projects."[531] According to the villagers, water discharge from the plant's cooling system and coal dust had completely devastated the local environment and significantly reduced marine life, affecting their livelihoods.[532]

In 2008, the IFC provided 450 million USD in loans to construct the coal-fired Tata Mundra Power Plant in Gujarat. Coastal Gujarat Power, a wholly-owned subsidiary of the holding company Tata Power, is the developer and operator of the plant. Other financing came from the Asian Development Bank (450 million USD), the Export Credit Agency of Korea (800 million USD), and a Tata subsidiary that raised around 35 million USD from Indian banks through debt.[533]

BlackRock´s unchecked global influence

BlackRock Inc. is the largest asset manager in the world, with operations in close to 100 countries. In March 2020, with the beginning of the COVID-19 pandemic and the threat of economic recession in the U.S., BlackRock was commissioned by the Federal Reserve, much like it did during the GFC,[534] to advise it on the purchase of billions of dollars in bonds and securities — mainly ETFs — in an effort to stabilize the bond market.[535] BlackRock essentially dispensed the Fed's funds through eleven special purpose vehicles authorized under the CARES Act (2020).[536] In October 2020, BlackRock reported that it had 7.8 trillion USD in assets under management, which represented an increase of 12% compared to 2019.[537] The arrangements between the U.S. government and BlackRock reflect the asset manager's political influence. This influence extends beyond the U.S., given its size and the scope of its financial assets and activities.[538] With investments in agribusiness, real estate, infrastructure, energy, and mining, BlackRock "has been called the world's largest shadow bank."[539]

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For example, in September 2017, BlackRock was considered the largest institutional investor in the Mexican Stock Exchange (BMV), with "passive" investments in over 60 companies valued at 2.365 billion USD.[540] Its growth in the country evolved alongside its political connections and influence, as well as the liberalization of Mexico's energy sector.[541] Many of BlackRock's investments in Mexico, however, have been linked to corruption and human rights abuses.

By 2018, BlackRock indirectly controlled six oil exploration blocks and five energy infrastructure projects in Mexico.[24] In 2015, BlackRock and private equity firm First Reserve — which it would purchase in 2017 — acquired a 45% stake in the natural gas pipeline project Los Ramones (I and II) from a wholly-owned subsidiary of State-controlled Petróleos Mexicanos (Pemex).[542] Los Ramones connects the massive shale gas reserves in southern Texas to central Mexico and was built in three phases: Ramones I, Ramones II North, and Ramones II South. A key partner in Ramones I and Ramones II North is Ienova, a company controlled by former Pemex director Carlos Ruíz Sacristán.[543] TAG Pipelines, a Pemex subsidiary, hired a consortium involving Odebrecht, the Brazilian company widely investigated for bribery and corruption throughout the Americas, to construct Ramones II North.[544] High-ranking Mexican public servants have also been linked to corruption schemes involving Odebrecht in the energy sector, the investigations of which are ongoing as of 2020.[545]

24 BlackRock was also a key financier of the controversial new Mexico City airport, which was subsequently canceled, through the purchase of bonds. In addition to receiving significant scrutiny over corruption and financial irregularities, the airport project was linked to land grabbing and attacks against environmental and human rights defenders. *Ibid.*; Félix Farachala, "La guerra financiera con los bonos del nuevo aeropuerto," Project on Organizing, Development, Education, and Research (PODER), 13 December 2018, poderlatam.org/2018/12/la-guerra-financiera-con-los-bonos-del-aeropuerto; "Torre de Control," Project on Organizing, Development, Education, and Research (PODER), 2018, torredecontrol.projectpoder.org/index.html; and, "Afectaciones del NAICM," #YoPrefieroElLago, 2018, yoprefieroellago.org/afectaciones.

V. ACCOUNTABILITY OPPORTUNITIES

V. ACCOUNTABILITY OPPORTUNITIES

Like any system, the railway system — our grand metaphor throughout this book — has choke points where the track narrows, passes through a tunnel, crosses a bridge, or intersects with another track. As the train passes these points, it must signal, slow down, and recalibrate course and speed if it is to avoid crashing. The runaway train of advanced capitalism is no exception. Despite its power, excess velocity, constituent parts, and privileged passenger — private capital, who dines exclusively in the luxury car while dictating commands to the locomotive — it remains exposed and vulnerable at key points in the system.

On its current course, the train could continue careening out of control as it gains speed until it eventually crashes and burns — a fiery train wreck — which would no doubt delight some, dismay others, but generally wreak havoc for everyone on board. Another option is that the self-centered passenger and object of this book — private capital — reaches a bargain of sorts with those elements that are necessary for the optimal functioning of the train (the conductor, engineer, steam engines, and mechanical engineering) to limit its power and speed in exchange for maintaining a course favorable to those in control — a win-win for the status quo. A third option — our favorite[546] — is that the cars and passengers ordered towards the rear in second- and third-class discover the train's vulnerabilities

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(particularly at the choke points), learn to exploit them, and bring the train under control, eventually reversing course and reclaiming the common good. At this moment in time, the fate of the train — our fate — is uncertain.

The *raison d'être* of this book and that of Empower are one and the same: identify vulnerabilities in the corporate and economic phenomena that affect human rights and the environment so that rightsholders and advocates can convert them into opportunities to organize collectively and press for accountability. In this chapter, we discuss twelve areas across the investment chain of private capital where corporate accountability advocates and other readers can track down the runaway train and expose its vulnerabilities, deprive it of equity and debt investment, regulate and hold it accountable, and decapture the State from corporate and financial interests.

The challenges we face are significant. How do we understand and confront something we can barely detect if we are to slow it, if not reverse its course? Perhaps due to the train's velocity or the position of private capital in a luxury car unto itself, this particular form of advanced capitalism represents a blind spot for corporate accountability advocates, CSOs, researchers and scholars, funders, journalists, investors and pensioners, like-minded regulators and politicians, and the public alike. Increasingly, it also poses a threat to basic human rights protections and efforts to hold corporations and capital accountable.

As advocates, we have developed expertise campaigning around banks, publicly-traded companies, and State-based capital, such as DFIs and even IFIs, and we've won significant victories. However, there is a paucity of expertise in our sector about financialization and private capital, which can cause our efforts to run into a brick wall of impunity — namely private equity and hedge funds, but also other types of private capital. Sometimes, a media exposé, call for divestment, or well-intentioned legislation can have the unintended consequence of hastening the capital shift into private markets where we lose leverage.

If we can harness the collective energy and talents of a seemingly disparate group — including pension fund members, endowment and foundation trustees, publicly-traded companies affected by unfair competition from private markets, and progressive regulators and politicians — we can halt or reverse the advancement of private capital and its deleterious effects on the common good. Our main challenge is to get in front of private capital before it careens out of control or simply runs on autopilot.

We — corporate accountability advocates and the rightsholders, social movements, and CSOs that we accompany — are well positioned to drive the development of an evidence-based narrative about financialization and the harm caused by private capital to people and planet across key sectors and geographies, as well as mainstream alternatives and solutions. A shared understanding of privatization, financialization, and private capital — including how this is occurring on our watch, where specific actors fit into the investment chain, and how they affect human rights

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and the environment — has the potential to spur urgent action among rightsholders, advocates, the media, and stakeholders. Essential to this will be justifying the urgency and feasibility of solutions to policymakers, regulators, institutional investors, and other stakeholders. Ultimately we should track and expose private capital, hold its owners and investors to account, advocate for necessary legislative and regulatory changes, and build power among affected and interested stakeholders.

As the world recovers from the pandemic there is an opportunity to advance this work through rights-based policies instituted during the economic recovery. We can enforce laws and close loopholes while leveraging emerging corporate disclosure requirements, due diligence guidelines, and developing movements across the world. There is a clamor at grassroots and policy levels — which has only grown louder during the pandemic — to address the role of private capital in surprise medical billing, predatory lending, housing evictions, deforestation, and fossil fuels. We're unlikely to get this opportunity again during our lifetimes.

Another opportunity is for cross-fertilization between movements and organizations, most of whom face or will face the effects of financialization on their work. For example, in 2020, climate justice campaigners made previously unimaginable gains by convincing large asset managers and insurance companies to ringfence or divest from coal and other fossil fuels. Those learnings can be applied horizontally to other movements campaigning against those same actors. Similarly, some pension funds have divested themselves of private prisons or harmful technology companies, while other advocates have targeted these same funds for their limited partnerships in private equity and hedge funds preying on single-family rental housing. Private capital is at once ubiquitous and pernicious and, from our unique vantage point as corporate accountability advocates, we can guide rightsholders, partners, and funders to efficiently use limited global resources and capacities as we learn from and collaborate with each other to rein it in.

If we act upon these opportunities now, within a relatively short period of time the phenomena of financialization and private capital can become demystified among grassroots and advocacy organizations and funders alike. This will make information and expertise to track and expose private capital increasingly available within civil society and media. We will also see early results from public policy reforms and strategic litigation that seek to bring transparency and accountability to private capital. And pension funds and others will begin to reallocate their portfolios away from private capital to focus on responsible investments. These efforts will bring initial changes to the sector as the norm for governments facing budget deficits will begin to shift from privatization towards local financial control. Our objective is nothing less than achieving economic justice in a stakeholder economy that prioritizes the common good.

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CIVIL SOCIETY INNOVATIONS

The challenges posed by private capital must be faced together. However, with notable exceptions (many of whom we interviewed for this book and whose innovations we mention in this section), few organizations, think tanks, scholars, or other social sector practitioners have researched financialization and private capital. Information about these phenomena — particularly the beneficial owners of private capital — is scant, diffuse, and anecdotal. Of course, this is understandable as, by definition, private capital is opaque, fungible, and sinister as it lurks near and feeds upon distressed companies and securities, often in obscure corporate forms, investment vehicles, and locations. In order to address this blind spot for advocates, donors, scholars, and civil society, we must work together to build out our field from a position of strength, beginning with those groups already working on some aspect of private capital.[25]

In the global corporate accountability, climate, human rights, and anti-corruption fields, the notable civil society initiatives and innovations currently addressing this matter are as follows (in alphabetical order). Needless to say, there are other strategies — many of which are used successfully regarding publicly-traded companies and public markets — not discussed here that deserve exploration for their potential vis-à-vis private capital, such as consumer organizing, one-on-one corporate engagement, advocacy focused on banks, strategic litigation, and shareholder activism.

Committee on Workers' Capital

Sector	Geographical coverage	Initiative / Innovation
Global union federation	Operation: Global Coordination: Canada	The Asset Manager Accountability Initiative organizes asset owners of union pension funds to hold their asset managers accountable. Its focus from within trade unionism on the inherent power of pensioners and trustees targets the main source of investment for private capital.
Website	www.workerscapital.org/asset-manager-accountability	

25 For reasons of confidentiality and security, we have omitted from the public version of this book the names of individuals responsible for the initiatives and innovations listed here unless they're already explicitly and publicly linked to these efforts through their representative institutions and organizations. We appreciate the trust placed in us by the experts and stakeholders we interviewed or corresponded with who shared their data, documents, candid opinions, expertise, and contacts.

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Empower

Sector	Geographical coverage	Initiative / Innovation
Worker-owned social enterprise	Operation: Americas, Western Europe Coordination: Mexico	Corporate accountability research firm with private capital focus that accompanies grass-roots, advocacy, and corporate engagement efforts. This book is an example of its approach.
Website	https://empowerllc.net/eng	

GRAIN

Sector	Geographical coverage	Initiative / Innovation
Decentralized civil society organization	Operation: Global Coordination: Diffuse	Researches asset management and pension holdings in agricultural land and accompanies related campaigning. Successfully pressured pension funds not to invest in farmland through TIAA and published three reports linking pensions and private capital to farmland.
Website	https://grain.org/e/6533	

Inclusive Development International

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Asia, Sub-Saharan Africa Coordination: U.S.	Employs research of development finance intermediaries and litigation with affected communities. Also, together with IIED, published an investment chain campaigning guide, including a section on Chinese investments.
Website	www.inclusivedevelopment.net/policy-advocacy/financial-intermediary-lending	

The Shift

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: Canada	Provokes action regarding the financialization of housing using a human rights lens. Documentary film Push brings popular attention to the issue.
Website	www.make-the-shift.org	

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The Sunrise Project

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: Australia	Employs research and campaigning on climate and fossil fuel divestment. Successfully targeted insurers and reinsurers regarding coal financing, and expanded its focus to include BlackRock and other managers of coal, oil, and gas assets.
Website	https://sunriseproject.org.au/project/shifting-global-finance	

Tax Justice Network

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: U.K.	Employs research and campaigning on tax evasion and beneficial ownership. Examines the incorporation and taxation strategies of private capital.
Website	www.taxjustice.net/focus	

The following organizations working globally — while not focused on private capital per se — have programming that examines or addresses the impacts of private capital on human rights, the environment, and corruption, both directly and indirectly:

Amazon Watch

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: South America Coordination: U.S.	Employs research and campaigning on climate finance and deforestation, and has documented private capital in the infrastructure, commodities, and extractive sectors.
Website	https://amazonwatch.org	

Business and Human Rights Resource Centre

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: U.K.	Among its Big Issues is monitoring of state-based capital by China and Gulf countries overseas.
Website	www.business-humanrights.org/en/big-issues	

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CIVIL SOCIETY INNOVATIONS

Bretton Woods Project

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.K. mostly Coordination: U.K.	Employs research on development finance intermediaries and financialization.
Website	www.brettonwoodsproject.org	

Friends of the Earth

Sector	Geographical coverage	Initiative / Innovation
Decentralized civil society organization	Operation: Global Coordination: Diffuse	Employs research and campaigning on climate finance and deforestation.
Website	https://foe.org	

OpenOwnership

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: U.K.	Employs research and technology to expand beneficial ownership disclosure.
Website	www.openownership.org	

Rights and Accountability in Development

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: DRC, Asia somewhat Coordination: U.K.	Employs research and advocacy on private capital and sanctions compliance.
Website	www.raid-uk.org	

Rainforest Action Network

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: Global Coordination: U.S.	Employs research on climate finance and deforestation.
Website	www.ran.org	

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ShareAction

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.K. Coordination: U.K.	Employs research, campaigning, and organizing on pension funds.
Website	https://shareaction.org/pensions	

In the United States, there are several organizations across the human and labor rights, racial justice, corporate accountability, and anti-corruption fields also working on some aspect of private capital:

Action Center on Race & the Economy

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.S.	Research and campaigning group working on racial justice and Wall Street accountability. Publishes extensively on housing, debt, public services, and other issues, including links to private equity and hedge funds. Is a member of key coalitions and supporter of progressive movements in California and nationally.
Website	https://acrecampaigns.org	

Americans for Financial Reform

Sector	Geographical coverage	Initiative / Innovation
Civil society coalition	Operation: U.S.	Washington, D.C.-based research and advocacy coalition working on Wall Street accountability. Tracks private equity and advocates for public policy reforms and economic alternatives.
Website	https://ourfinancialsecurity.org	

Anti-Corruption Data Collective

Sector	Geographical coverage	Initiative / Innovation
Civil society initiative	Operation: U.S., Western Europe Coordination: U.S.	Mostly U.S.-based anti-corruption and data journalism collective working on private equity investment in real estate as well as opaque financial flows generally.
Website	www.acdatacollective.org	

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Human Rights Watch

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.S., global Coordination: U.S.	Employs research and public campaigning on predatory finance in health care, consumer lending, and the criminal justice system.
Website	www.hrw.org	

Private Equity Stakeholder Project

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.S.	Washington, D.C.-based research, organizing, and advocacy project focused on the impact of private equity.
Website	https://pestakeholder.org	

Service Employees International Union

Sector	Geographical coverage	Initiative / Innovation
Trade union	Operation: U.S., global Coordination: U.S.	Its Capital Stewardship, Research, and Strategic Initiatives programs leverage research, organizing, and public campaigning against private capital.
Website	https://seiu.org	

These U.S. organizations — while not focused on private capital per se — have programming that examines or addresses the impacts of private capital on human rights, the environment, and corruption, both directly and indirectly:

Majority Action

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.S.	National group that uses shareholder activism and corporate engagement vis-à-vis asset managers to improve ESG and climate issues.
Website	www.majorityaction.us	

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National Consumer Law Center

Sector	Geographical coverage	Initiative / Innovation
Civil society organization	Operation: U.S.	National public policy advocacy and legal group that tracks private capital impacts on housing and other issues.
Website	www.nclc.org	

An analysis of the aforementioned civil society initiatives and innovations indicates existing capacity to campaign and organize vis-à-vis private capital in the home capital countries of the U.S., Canada, Australia, the U.K., and parts of Western Europe; nascent capacity to campaign and organize in the host capital countries of Eastern Europe, the Middle East and North Africa (MENA), Sub-Saharan Africa, South and Southeast Asia, and Latin America; and limited capacity to intervene or influence home capital in China, East Asia, and the Gulf countries. Similarly, from a research perspective, mostly Western universities, think tanks, and research-based organizations — versus those from other regions of the world — have existing capacity to track private capital (see more in **Academic innovations**). Also, most research, organizing, and engagement capacity with regard to pension funds — the most important institutional investors in private capital — exists in the U.S., Canada, Australia, and the U.K., as compared with most of Europe, China, East Asia, and the Gulf where there's a dearth of capacity regarding pension and sovereign wealth funds.

ACADEMIC INNOVATIONS

The academic literature on financialization has flourished since the global financial crisis and has been unvaryingly critical of the expansion of finance into historically non-financial sectors.[547] It has also helped demystify financialization for students and policymakers alike, thrusting this engine of advanced capitalism towards the forefront of scholarship in this larger field of study. While certainly a step forward in our collective understanding, most scholars have focused on processes taking place in developed economies, and only recently have they begun to examine the variegated manifestations of financialization in emerging economies or the global South.[548] Similarly, this scholarship has examined the methods and technologies of financialization but has dealt less with its human, social, and environmental impacts and resistance to financialization. This section discusses the innovations in academia meant to regulate or temper the effects of financialization. Regarding private capital, the extant scholarship — as noted throughout this book — is scant and limited to a small number of notable contributions.

The first area of policy research has to do with taxes and the (ab)use of complex corporate structures incorporated across offshore and secrecy jurisdictions to avoid paying them. Arguably, the most well-known scholar in this field is economist Thomas Piketty who has promoted a global wealth tax on capital income and inheritance to reduce inequality.[549] Other scholars have focused on better regulation of the mechanisms and methods used by corporations to limit liability, evade taxes, obscure ownership, and accumulate wealth.[550] One such mechanism that has been widely used by both corporations and the global elite to limit liability and the impact of crises is the trust — an asset-holding legal structure usually based in a secrecy jurisdiction.[551]

The second area of policy interest is the monetary system, the conceptualization of new forms of money (including digital currencies), and the role of central banks in the shadow banking system (see **State capture, central banks, and economic policy**). Robert Hockett, for instance, holds one of the most critical views on the role of central banks and the current system of money/credit creation. He argues the need to move beyond the "intermediated scarce private capital" orthodoxy — both the notions of private supply and inherent scarcity owing to dependence on preaccumulated investment capital — towards a "credit-generation model" of finance in which private capital is "generated" and indefinitely extensible as endogenous credit-money rather than "intermediated" or "multiplied" by lending institutions.[552] Most investment capital generated in developed nations by publicly licensed banks and lending institutions is, he says, publicly underwritten finance.553 Rather than having publicly generated capital privately managed and misallocated away from long-term productive investment, Hockett argues for improving central banking through the creation of a central bank balance sheet, the redistribution of public liabilities, and greater collective action.[554]

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Benjamin Braun and Daniela Gabor extend the analysis of central banks as catalysts of the rise and resilience of shadow banking and market-based finance.[555] Public actors "do not just govern private financial markets through rules and regulations," but they "often actively participate in those markets, which provide the governance infrastructure through which public actors seek to govern the economy."[556] As actors in market-based finance, central banks also drive private monetary innovation and shape the structure of the financial system,[557] including shadow banking and "the development of deep, liquid, and transnationally integrated repo markets."[558] The disentanglement of the State and finance is ultimately necessary to curb finance's infrastructural influence.[559]

Finally, Desiree Fields studied the strategies used by civil society and community groups to contest the advancement of predatory private equity in rental housing in New York City, of which she highlights three: advancing critical narratives, producing quantitative and geographic data to document poor investments, and reworking the sites, spaces, and structures of finance.[560] All three strategies strive to scale activism and ultimately shift power relations beyond the local. Particularly regarding the first and second, Fields highlights the need for alternative knowledge production and the development of metrics, accurate databases, and empirical evidence to counter the logics that facilitate the securitization and risk valuation of investments by financial actors.[561] For instance, the Building Indicator Project, developed by the non-profit University Neighborhood Housing Program, provided "a holistic indicator of potential physical and/or financial distress for all multifamily rental buildings in New York City," which was used to pressure banks and influence city policy.[562]

What follows are the notable (albeit limited) scholarly initiatives and innovations currently addressing private capital and, to a certain extent, financialization more broadly (in alphabetical order). While we do not include corporate-driven scholarship or corporate think tanks here, many of these actors have produced useful information, research, and statistics about private capital, some of which we have used and cited throughout this book and in **Chapter VII. References**.

Bargaining for the Common Good

Sector	Geographical coverage	Initiative / Innovation
Think tank	U.S.	BCG is a national project of the Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University to leverage collective bargaining against financialization and the role of private capital and for public budget campaigns.
Website	https://lwp.georgetown.edu/bcg/#	

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Columbia University

Sector	Geographical coverage	Initiative / Innovation
University	U.S.	Professor Saskia Sassen is arguably the leading scholar on financialization and — by extension — a significant asset class of private capital: housing. From her early work on global cities to her broader work on advanced capitalism, the financialization of housing, and their impacts on people and planet — particularly at the peripheries of economic and political systems — Prof. Sassen has become a harbinger of scholarship in these fields.
Website	https://cgt.columbia.edu/about/people/committee-faculty/saskia-sassen	

Economic Policy Institute

Sector	Geographical coverage	Initiative / Innovation
Think tank	U.S.	Professor Eileen Appelbaum co-directs the Center for Economic and Policy Research, which tracks privatization, financialization, and private equity. Her work examining the effects of the Wall Street economy on Main Street lives and livelihoods is foundational and stands alone among scholars for its focus on the ill effects of private capital.
Website	www.epi.org/people/eileen-appelbaum	

Investing in a Just Transition

Sector	Geographical coverage	Initiative / Innovation
Think tank	U.K., U.S.	"Investing in a Just Transition" is a project of the Grantham Institute at the London School of Economics and the Initiative for Responsible Investment at the Harvard Kennedy School, as well as U.N. PRI and the International Trade Union Confederation. It guides investors in the transition from high- to low-carbon economies and supports community and labor engagement with investors in public and private markets.
Website	www.lse.ac.uk/GranthamInstitute/investing-in-a-just-transition-global-project https://iri.hks.harvard.edu/just-transition	

KU Leuven

Sector	Geographical coverage	Initiative / Innovation
University	Belgium	Professor Manuel Aalbers focuses on the financialization of housing, including the role of private capital. His work in this field is considered foundational, critical, and propositional.
Website	www.kuleuven.be/wieiswie/en/person/00087619	

New York University

Sector	Geographical coverage	Initiative / Innovation
University	U.S.	While the university is not known for its academic work in these fields, some NYU professors have contributed significantly to private capital and privatization studies. Sabrina Howell (Stern School of Business) has written about fintech, private equity, and the education, health care, and energy sectors. And Philip Alston (Center for Human Rights and Global Justice at the School of Law) has written about housing, poverty, and privatization — including as Special Rapporteur on economic, social, and cultural rights, and later on extreme poverty.
Website	www.sabrina-howell.com https://chrgj.org/people/philip-alston	

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University of Oxford

Sector	Geographical coverage	Initiative / Innovation
University	U.K.	Professor Ludovic Phalippou at Saïd Business School is the most prolific writer — across all fields and mediums — about private equity. His work is considered foundational and critical, demystifying private capital and disproving its claims of consistent alpha returns.
Website	www.sbs.ox.ac.uk/about-us/people/ludovic-phalippou	

Roosevelt Institute

Sector	Geographical coverage	Initiative / Innovation
Think tank	U.S.	Its Corporate Power and Progressive Thought programs launched a project on financialization, which we consider foundational in this field.
Website	https://rooseveltinstitute.org/think-tank/corporate-power https://rooseveltinstitute.org/think-tank/progressive-thought	

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POLICY INNOVATIONS

Across all aspects and typologies of private capital, legislative reform and strict regulation are needed to bring it into the light and hold investors accountable. A broad gamut of reforms — from insisting upon disclosure to closing tax loopholes, from creating beneficial ownership registries to prohibiting revolving door practices — is where stakeholders can gain traction. See Economic policy and cheap credit for a list of top policy ideas in this regard, mainly focused on the U.S.

Rightsholders, as well as human rights and environmental advocates, lack information, expertise, and resources to track private capital, link it to rights violations, and make the business or legal case for engagement, divestment, or remedy. This scarcity largely thwarts accountability efforts. Currently, advocates are limited to identifying the faint trail of private capital, largely ineffective attempts to name and shame it or elevate reputational risk, or general campaigning or loose calls for public policy reform.

After the GFC, governments around the world discussed how to set stricter regulations on the banking and finance sector. The U.S. Dodd-Frank Act (2010) was one of the most disruptive, containing numerous provisions for banks, insurance companies, mortgage lenders, and credit rating agencies to increase financial stability, reduce speculative trading, and improve oversight of shadow banking — namely, derivatives and consumer lending.[563] Dodd-Frank also expanded the whistleblower program created by the Sarbanes-Oxley Act (2002).[564] However, in May 2018, the Trump administration passed a new law rolling back significant portions of Dodd-Frank.[565]

In July 2019, Senator Elizabeth Warren and allies proposed a bill called the Stop Wall Street Looting Act (SWSLA), which would essentially reform the private equity industry "by closing the legal, tax, and regulatory loopholes that allow private equity firms to capture all the rewards of their investments while insulating themselves from risk."[566] The bill would further increase protection for workers, prioritizing them in the bankruptcy process so that they are more likely to receive severance, pensions, and other payments.[567] Finally, the bill would have reinstated some Dodd-Frank provisions "that require[d] arrangers of corporate debt securitization to retain some of the risk."[568] Another central issue in the debate over the regulation of asset managers and private equity is the so-called carried interest loophole, which mistreats the onerous fees charged by private equity and hedge funds as capital gains (to be taxed at a long-term capital gains rate) rather than as ordinary income.[569]

Other policy innovations regarding private capital have centered around disclosure requirements — such as beneficial ownership registries, the U.K. Modern Slavery Act, and the Dutch Child Labor Due Diligence Law — and mandatory human rights due diligence — such as the directive currently being discussed by the European Commission.[570] New regulations also strive to ensure labor rights for gig economy

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workers who are often viewed as "independent contractors." A key example is California Assembly Bill 5 (AB5), passed in September 2019, which requires companies that hire independent contractors to reclassify them as employees; some companies, such as Uber and Lyft, initiated legal processes to exempt themselves from the law.[571]

A U.S. law — The Holding Foreign Companies Accountable Act (2020), which amends Sarbanes–Oxley to require companies that publicly list in the U.S. to disclose to the SEC that they are not owned or controlled by any foreign government[572] — innovates on the concept of ownership disclosure to ensure that opaque State-based companies, such as those from China and the Gulf countries, cannot raise capital from public markets. Naturally, as these companies delist from the U.S. markets in response to this legislation, they will instead seek private capital in secondary markets. Another legislation of note in the U.S. — The Corporate Transparency Act (2020), which requires corporations and LLCs to disclose their beneficial owners — survived a presidential veto of the annual defense spending bill, of which it was a rider, to become law.[573]

In October 2020, the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary in the U.S. House of Representatives published a report calling for greater regulation of digital markets and the strengthening of antitrust laws in the country to curtail Big Tech giants.[574] And, as 2020 came to a close, the U.S., the E.U., and even China opened antitrust investigations against Big Tech firms in the East and the West, including the role of venture capital.[575]

Closing legal loopholes

In addition to bringing private capital into the light, we must close legal loopholes that have allowed it to become opaque and escape disclosure, regulation, and taxation in the first place. According to Americans for Tax Fairness, examples of loopholes in the U.S. include:[576]

- "Tax avoidance through offshore tax loopholes is a significant reason why corporations, which paid one-third of federal revenues 60 years ago, now pay one-tenth of federal revenues."
- "U.S. corporations dodge 90 billion USD a year in income taxes by shifting profits to subsidiaries — often no more than a post office box — in tax havens."
- "U.S. corporations hold 2.1 trillion USD in profits offshore — much in tax havens — that have not been taxed in the U.S."
- "Apple made 74 billion USD from 2009-12 on worldwide sales (excluding the Americas) and paid almost nothing in taxes to any country."
- "26 profitable Fortune 500 firms paid no federal income taxes from 2008-12. 111 large, profitable corporations paid zero federal income taxes in at least one of those five years."

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Across the world, private capital investors exploit regulatory and industry-specific loopholes while harming people and planet. Generally, they seek to avoid being separated from profits — for example, by being held to tax obligations — or to avoid accountability for unethical or illegal acts in the pursuit of returns. In either case, these harms, whether caused directly or indirectly, are exacerbated by unpaid taxes and corporate bailouts[577] — money that governments could otherwise use to fund basic public services, such as health care and education.

One of the most lucrative legal loopholes involves carried interest in the U.S. tax code. Wealthy Wall Street investment firms — such as private equity and hedge funds and their general partners — pay a lower percentage of taxes than schoolteachers or truck drivers. These firms charge limited partners high fees to manage their money but classify the fees received as "capital gains" and not income, which allows them to pay a lower rate.[578] By paying taxes on the profit from the sale of an investment, these firms and their general partners incur the capital gains tax rate of 20% instead of the ordinary income tax rate of 37% for HNWIs. Scholars estimate that the annual tax revenue lost from the carried interest loophole amounts to 18 billion USD.[579]

The Organization for Economic Cooperation and Development's common reporting system (CRS) rules are being adopted by more than 100 countries to track wealthy individuals' money. CRS requires an actual person to be associated with every account or entity they hold, though it can be a trustee of a trust or an officer of a corporation.[580] However, the CRS system exempts many developing countries and thus prevents them from using this mechanism to stop looting stashed offshore. The system works under the principle of reciprocity, meaning that the poorest and most vulnerable are not equipped or resourced to collect the information and therefore may choose not to participate.[581]

Advocates, the media, and policymakers[582] continue to explain, assess, and propose solutions to the loopholes that undermine accountability, corporate responsibility, and States meeting obligations to rightsholders. More mapping of specific loopholes is needed — especially those facilitating tax avoidance and evasion between mature financial markets and emerging ones and tax havens — to prioritize those that should be closed based on areas of greatest potential success and impact.

Nonetheless, one of the most comprehensive legislative proposals — the SWSLA[583] — seeks to reform private equity by closing regulatory and tax loopholes that allow mainly private equity firms to capture all the rewards of their investments with impunity. The bill seeks to overhaul how private equity collects fees, who is responsible for an acquired company's debt, how stakeholders are paid if the company goes bankrupt, and close the carried interest loophole. These changes would drastically shift the incentives structure in private equity.[584]

While several congressional members support the Act, there is significant opposition — largely led by the U.S. Chamber of Commerce.[585] The Chamber, which is the

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largest lobbying group in the country, claims that the bill would result in the loss of 6.9 to 26.3 million jobs across the U.S. while reducing government tax receipts and the investment returns of public pension funds and other investors.[586]

As a baseline, advocates argue that greater transparency among private capital investors and investments (bringing them, at a minimum, in line with reporting requirements for publicly-traded entities) would generate greater accountability and go a long way towards identifying and prioritizing loopholes for immediate attention. For example, over 100 countries require the disclosure of the ultimate owners of companies to some extent, though not all apply to private capital investors and entities. Moreover, the enablers of private capital investments, such as investment advisors that work closely for the ultimate asset owners, are poorly regulated and facilitate the exploitation of all types of loopholes.[587]

Another potential starting point for corporate reporting can be found in the E.U.'s non-financial reporting requirements, which to some extent include private capital investors. Nevertheless, closing ESG disclosure loopholes, including under proposed requirements in the U.S., has attracted negative reactions from large investment firms.[588]

According to *Naked Capitalism*, "The simplest solution is to end tax 'deferral.' Corporations would pay taxes on offshore income the year it is earned, rather than indefinitely avoid paying U.S. income taxes. This would also remove incentives to shift U.S. profits to tax havens, and it would raise 600 billion USD over 10 years. ... Senators Elizabeth Warren and Bernie Sanders have called for a wealth tax. Elizabeth Warren proposed that households should pay an annual 2% tax on their net worth above 50 million USD, and a 3% tax on every dollar of net worth above 1 billion USD. She recently added possibly raising the billionaire wealth tax rate to 6% instead of 3% to help pay for 'Medicare for All.' Note that the working poor and the middle class do not pay higher taxes. The wealth tax is only paid by very rich. Another solution is to raise the estate tax. Wealthy persons need a plan describing how their wealth should be divided upon their death. They cannot be allowed to avoid paying estate taxes on their wealth. Married couples won't pay any inheritance tax on the first 22.36 million USD in exemptions. The tax on the remaining wealth after exemption is 40%. The estate tax could yield more if two changes occurred: lower the tax-exempt amount to a much lower number, and increase the tax rate on the remaining amount from 40% to a much higher number — say 70%. The government should increase the estate tax rate in a further effort to reduce the growing concentration of wealth in the U.S."[589]

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DEBT CAPITAL AND CREDIT FACILITIES

> **MARTY**
> 'What are these things anyway?'"

> **DOC**
> 'My own version of Presto Logs,' the inventor replied as he stacked the red cylinder next to the other two in a corner of the cab. 'Compressed wood with anthracite dust, chemically treated to burn hotter and longer. I use 'em in my forge so I don't have to stoke it.' He pointed at the large number 3 on the red log. 'These three in the furnace will ignite sequentially, make the fire burn hotter, kick up the boiler pressure and make the train go faster.'"

— Movie scene from Back to the Future Part III (1990)[590]

In the section **State capture, central banks, and economic policy**, we discuss how corporations and investors have effectively captured the State, including central banks, due to their outsized role in setting economic policy. Central banking is critical to capital markets and financialization because it both enables the risky leverage rates characteristic of private capital and uses taxpayer money to bail out banks and non-bank financial institutions when the risks become too much for the system to bear. Arguably, the key policy decision of central bankers has been to facilitate credit and provide lending guidelines that favor extremely low interest rates, which in turn allows lenders (see the **Golden inputs of private capital**) to effectively underwrite the universe of private capital. Another way to put it, using our runaway train metaphor and a concept from the film classic *Back to the Future Part III*, leverage is akin to Doc's Presto Logs that "...kick up the boiler pressure and make the train go faster."

In this regard, given that private equity and hedge funds depend upon huge amounts of leverage (6x is standard, but on extreme occasions, the limit can be as high as 40x) to juice their returns, the roles of central banks, banks, NBFIs, and other lenders — as well as bondholders and credit rating agencies — are fundamental for their continued success. Simply put: without privileged access to debt capital, private equity and hedge funds would cease to exist.

Central bank-determined credit eligibility guidelines, in particular, determine which debt ratings are assigned by banks, rating agencies, and other credit risk analysts to bonds, derivative products, and debt tranches. These ratings are fundamental

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for determining the overall and all-important creditworthiness of private equity and hedge funds, among others. Since the global financial crisis, and again during the pandemic, Western governments relaxed these guidelines, in some cases permanently. "The Federal Reserve's historic decisions to cut interest rates to zero, and buy investment grade bonds and exchange traded funds that own riskier junk debt, gave companies a lifeline — and ensured private equity's continued access to cheap debt for new deals. Many could also access bailout loans — after a protracted and highly controversial but ultimately successful lobbying effort, in the case of the U.K. — and furlough funds for portfolio companies. The idea that deep-pocketed buyout groups should be bailed out raised serious public policy questions, as did the topic of carried interest, private equity's lucrative tax break."[591]

As investors, private equity and hedge funds benefit from consistently low interest rates as both borrowers and lenders. The "dry powder problem" of these funds — whereby, as of 2020, as much as 2.5 trillion USD of raised but uncommitted private capital burned a hole in their deep pockets — means that they've borrowed more money than they can invest in equity. As a consequence, they increasingly opt to re-lend this money — which was essentially free in the first place — to other private companies and investments in secondary markets. The private credit market has become so robust that even traditional asset managers now devote significant capital to lending.[592]

As credit facilities reached historic lows and credit guidelines became even more flexible during the pandemic, many thought that the leverage party would never end. However, a bankruptcy ruling — albeit preliminary and subject to trial or settlement — by Judge Jed Rakoff of the U.S. Southern District of New York offered hope for change, stating that creditors can sue the previous board of directors following a leveraged buyout if the debt levels cause misconduct. The *Financial Times* reflected that "The ruling's 'direction to corporate decision makers is seemingly at odds with their concurrent duty to maximise value for corporate stakeholders — typically satisfied by obtaining the highest possible price from a putative buyer', the (Ropes & Gray law firm) wrote. The Nine West bankruptcy has been contentious, with its private equity owner facing accusations of asset-stripping. As part of the 2014 buyout, it sold two of the company's top brands, Stuart Weitzman and Kurt Geiger, to a Sycamore affiliate in a side deal at what creditors later argued was too low a price, leaving the remaining Nine West brands unable to shoulder the LBO debt. Junior creditors argued the Nine West board had been told by investment bankers that the company could only withstand a debt to cash flow ratio of 5.1 times, but the Sycamore LBO they approved raised leverage to 7.8 times."[593]

Cheap debt and, particularly, central banks' credit facilities are arguably *the* choke point for the runaway train of advanced capitalism. For rightsholders, advocates, regulators, and other corporate stakeholders, we must examine the role of central bank regulators and their public and/or private shareholders, governors, and trustees if we are to rein in the Presto Logs of leverage from private capital partners and investors. In the U.S., for example, the Federal Open Market Committee (FOMC) is the branch of the Federal Reserve that determines monetary policy, including interest rates. It's comprised of "twelve members — the seven members of the Board of Governors of the Federal Reserve System; the president of the Federal Reserve Bank of New York; and four of the remaining eleven Reserve Bank presidents, who serve one-year terms on a rotating basis."[594] While some evidence indicates that the FOMC would be an ideal target for transparency and accountability advocacy in the U.S.,[595] other countries' central banking systems vary and require further analysis.

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RATINGS INDUSTRY

Like Debt capital and credit facilities, the ratings industry — a spectrum of actors from credit rating agencies on the debt side, such as Moody's, to index providers on the equity side, such as MSCI — is generally a choke point looming in the path of private capital. Ratings agencies and index providers produce key benchmarks for investors and regulators to understand the risks of virtually any and all investment propositions. Key inputs for their product offerings are the very credit facilities and lending guidelines mentioned in the previous section. Similar to central banks, the ratings industry has received virtually no advocacy or accountability attention despite its critical role in financialization and economic systems.

Since the GFC, it's become clear that ratings agencies and index providers are inherently conflicted — the asset and securities owners and managers who benefit from positive ratings and listings are also the main clients of these firms. If not literally a pay-to-play scheme, it's at most one step removed from being one. On the debt side, credit rating agencies are financial gatekeepers, essentially producing new assets out of thin air — or at least on paper — through the financial engineering of debt tranches and derivative products while simultaneously determining — rating — the creditworthiness of these products and, by extension, their issuers.[596,597] For example, in the financialization of U.K. housing associations, credit rating agencies act as "gateway constructor" by expanding finance further into the real estate market.[598]

Another well-known example from the financialization of housing occurred in the U.S. "As Blackstone's property empire grew and grew, it managed to convince regulators in the U.S. to allow it to transform part of that empire into rent-backed structured securities. It paid Moody's, Kroll, and Morningstar lucrative fees to rate a large chunk of those securities AAA. And when the securities began to sour just a few years later after a Blackstone securitization saw a big drop in rental income, Blackstone managed to convince the Obama administration to bail it out by providing explicit government guarantees for the higher-rated tranches."[599]

On the equity side, as we discuss subsequently in **ESG linkage to private investment**, the index makers or providers that determine which securities to include or exclude from the all-important indices used by passive investors also act as financial gatekeepers. Since the GFC, "...globally at least 3,200 billion USD of investments have exited actively managed equity funds, while concomitantly more than 3,100 billion USD have entered index equity funds... One crucial characteristic of this new era of global finance is the new relationship of funds and providers. Index funds in effect delegate their investment decisions to index providers. Index providers are the companies that create and maintain the indices on which passive funds are built. They profit nicely from the new status quo, because asset managers have to pay fees if they replicate them."[600] *Naked Capitalism* explains in greater detail:

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While the decisions of index providers had some influence on actively managed funds, the recent rise of passive investing transformed their role profoundly. Today, they are 'steering' funds, via their selective inclusions of companies or countries. Appearing in key indices can cause inflows of many billions of USD, while conversely exclusions can lead to large quasi-automatic outflows. Enrichment (such as that enjoyed this year by Elon Musk) or ruin can depend on index entries. Rather than 'the market', it is increasingly index committees that make financial investment decisions, shaping the fate and fortunes of listed companies. Index providers have therefore become powerful actors in the fabric of U.S. capitalism, playing a newfound role as kingmaker. ...

Put simply indices are numerical tools that allow for the comparative evaluation of groups of assets over time. The purpose of indices is to display the performance of a specific economic entity in one single number — for example, a nation's stock market (S&P 500). This makes the fortunes of a given basket of companies relatively easy to understand, and also comparable over time. ...

But rather than a purely technical exercise, constructing indices is inherently political. They represent 'deliberate decisions', as every index is a managed portfolio whose composition is decided by the respective index provider. The committees at index providers decide inclusions and exclusions, and as such they have 'enormous discretion' in these decisions. In fact, processes of index production are inherently subjective activities. ...

Take for example the well known MSCI World Index. For many retail investors, this index is synonymous with a globally diversified asset allocation, but actually the weight of U.S. stocks is over 66%. Similarly, the result of buying a fund that tracks the MSCI Emerging Markets Index is a portfolio that is 41% invested in China, whose weight has surged from 18% in 2014. In the U.S., the all-important S&P 500 index has become much less diversified. The weight of just the top five big tech companies has doubled from 11% in 2014 to 22% in 2020. By contrast, the share of the bottom 300 companies has declined from 20%, to under 15%. ...

The most prominent example of such numerical evaluation measures in global finance are credit rating agencies, which can shift the asset allocation of billions of USD by up- or downgrading firms and countries. In a similar vein, by deciding what to include or to exclude from an index, providers make assessments about the investment-worthiness of firms and entire countries (e.g. the pivotal MSCI World and Emerging Markets indices) and can move financial flows. The same is true for how inclusion decisions are calculated. The best example is the recent inclusion of China in all key emerging markets indices. This decision alone is expected to result in long-term inflows from foreign investors of up to 400 billion USD. Arguably, in this new age of passive asset management index providers are to equity markets what credit rating agencies are to bond markets — critical gatekeepers that exert de facto regulatory power...

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> This changed fundamentally with the global financial crisis, which triggered two reinforcing trends: concentration, and the rise of passive investment. Together, these transformed index providers from merely supplying information to exerting power over asset allocation in capital markets. First, the index industry concentrated — not least because banks sold non-core businesses to raise cash, as they tried to stay afloat during the financial meltdown that engulfed their industry. By 2017, the three indices S&P DJI, MSCI and FTSE Russell accounted for 27%, 26% and 25% of global revenues in the index industry, respectively. This market concentration led to a growing power position of the few index providers that had historically positioned themselves and their brands in financial markets. With profit margins averaging between 60-70%, they operate in a quasi-oligopolistic market structure. ...
>
> The 'new permanent universal owners' BlackRock, Vanguard and State Street that dominate the index funds industry as the 'Big Three' are exempt from this rule, however. These three 'universal owners' share many characteristics of long-term blockholders. Especially, the shares they hold in passive funds are not readily available for trading. Finally, index providers have become central actors in a green economic restructuring, as they positioned themselves as key standard-setters for ESG funds (environmental, social and governance). For this reason, index providers have an important effect on setting corporate governance standards, as they increasingly define 'the norms of what's considered acceptable in international finance'.[601]

Without favorable ratings for their debt offerings and inclusion into passive investing indices for their publicly-traded equity offerings, private equity, hedge funds, and other private capital investors would be unable to borrow at the excessive 6-40x leverage rates mentioned in this book or tap the capital reservoirs of asset managers and real investors alike. This choke point — the gatekeeping roles played by ratings agencies and index providers — deserves critical attention and campaigning by advocates, regulators, and other corporate stakeholders if we are to rein in private capital. On occasion, advocates have already succeeded in convincing ratings agencies to downgrade bad debt, such as ETP and Bakken shale producers following obstruction of the DAPL.[602]

One way to reform the ratings industry is to push for representative public participation in and oversight of the Fed's supervisory and regulatory functions, specifically the credit risk management functions that monitor the guidelines that banks and NBFIs — as well as credit rating agencies — use as benchmarks for the out-of-control leverage in our financial system. In this regard, a campaign around central banks and credit guidelines could also include credit rating agencies.

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ESG linkage to private investment

Since the GFC and with renewed intensity during the pandemic, the ratings industry began integrating ESG factors and performance into credit assessments and equity indices. While arguably a positive step towards responsible investing, the problem is that these agencies are setting their own ESG targets without industry-wide standardization or participation of affected stakeholders. Consequently, there's a real risk that these ratings could inadvertently reward green-, blue-, and transparency washing. Though public markets have begun integrating ESG factors into investing and reporting, private capital entities — which receive financing and investment from banks, institutional investors, and other adherents to soft laws, multi-stakeholder initiatives, and ESG standards — generally have not.

Notwithstanding, the majority of ESG or responsible investing monitoring and reporting does include private equity and debt.[603] U.N. PRI is arguably the driver of education and information sharing among those in alternative investments, providing guidance documents, surveys, and case studies.[604] Additionally, climate impacts and investors' responses to them are among the few ESG issues covered by PRI that specifically mention private investing. In September 2020, PRI issued an open call for signatories to contribute to the strategy and execution of its private equity program through its Private Equity Advisory Committee.[605] Increased attention to ESG issues — at least in private equity — is likely albeit mostly focused on European and U.S. investors.

Some SWFs, such as Norges Bank Investment Management (NBIM) (which is also the world's largest), increasingly cite ESG concerns as a reason for divesting in companies. According to NBIM, its risk-based divestments actually helped improve its returns in recent years. NBIM's chief executive said that the fund planned to continue to use ESG risk considerations in making additional divestments. In 2019, for example, it dumped holdings in 42 companies following such risk assessments, largely in power and mining companies.[606] Similarly, pension funds globally tend to lead on ESG-driven investment decisions and policies, including from the U.S., Japan, and Scandinavian countries.

Institutional investors — namely sovereign wealth and pension funds — are potential targets for stakeholder advocacy efforts given that they tend to prioritize engaging with investees for improvement and use divestment as a last resort. For example, advocates can build upon public campaigns targeting banks and asset managers that have limited their exposure to investments that worsen the climate crisis by insisting that their debtors and investees — private equity and hedge funds and their limited partners — also adopt ESG norms.

One of the biggest obstacles to gathering data on ESG integration into private capital is the lack of public disclosure. In June 2020, *Institutional Investor* analyzed private equity firms that were also PRI signatories and found that factors accounting for

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the "intention-versus-action gap" include: short holding periods, lack of incentives, difficulties quantifying returns linked to ESG considerations, the challenge of distinguishing between causation and correlation, lack of expertise, few resources or little inclination to prepare sustainability reports, and difficulty defining ESG commitments, quality, and accounting.[607] This gap appears to apply to wealthy individuals, as well. According to a different survey, by Canaccord Genuity Wealth Management, out of 500 U.K.-based HNWIs, 76% reported that ESG is important, but only 12% sought out companies and funds with good ESG integration. Even more telling, 28% were happy to seek returns from completely unrestricted investments.[608]

Ratings agencies and index providers seek to fill the void of ESG data. "A recent study by the CFA Institute, the group for investment professionals, found that 73 per cent of U.K. investment professionals used ESG ratings in company analysis. In response, big groups such as MSCI and S&P have invested heavily in their ESG ratings businesses, including buying up rivals, in a bid to cement their position as a trusted provider. In some cases, these ratings form the cornerstone of how a fund invests. Many asset managers sell funds that track, for example, MSCI indices that focus on stocks with good ESG ratings or exclude those with bad scores."[609]

Despite its attempts, the ratings industry continues to fail at providing consistently accurate ratings or standards. "Earlier this year, MSCI came under scrutiny after it emerged it had given fast-fashion retailer Boohoo an AA score, despite years of media reports alleging that workers in its supply chain were being treated unfairly. In other cases, it is possible for a company to score well overall even if there are concerns about some aspects of the business. … ESG ratings providers, however, use different methodologies to develop their rankings. A study this year by academics at Massachusetts Institute of Technology and the University of Zurich found the correlation among scores from six providers was on average just 0.54 — which suggests only a moderate similarity in the ratings. 'The ambiguity around ESG ratings represents a challenge for decision makers trying to contribute to an environmentally sustainable and socially just economy,' the academics said."[610]

In June 2020, the ESG industry experienced an unanticipated roadblock from the Trump administration: the U.S. Department of Labor (DOL) attempted to rewrite rules for ESG investing that would have prohibited retirement funds of all types from interpreting their fiduciary duty as anything other than that of profit optimization. Interestingly, to date, there is no evidence that private equity or hedge funds attempted to influence this process. While the final rule — called "Financial Factors in Selecting Plan Investments" and issued in October 2020 — was less harsh than anticipated, industry observers were nevertheless concerned that the process would have a "chilling effect on ESG investing and factor integration" going forward.[611,612]

If anything, the DOL process marked another gulf in the ongoing tension between intentionality and action surrounding ESG investing. If advocates join the U.N. PRI and (mostly) European calls for linking fiduciary duty and stakeholder capitalism to private capital,[613] we will have an opportunity to press for "less bad" private investments in the future.

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INSURANCE POLICIES AND FINANCING GUARANTEES

In a strategy largely without precedent, one climate action group — The Sunrise Project in Australia — pressured the weakest link in the investment chain for the financing of coal companies, projects, and suppliers: insurers and reinsurers.[614] "While the industry sees itself as part of the solution to climate change, the reality is that the insurance industry is continuing to provide insurance to coal, oil and gas projects that are at the core of the problem. At the same time, insurance companies manage roughly one third of institutional capital in the global economy and many companies continue to invest in these vast pools of capital in fossil fuel companies. As the ultimate managers of risk in the global financial system, insurance companies are considered intellectual leaders by other investors, regulators and observers."[615]

The Sunrise Project settled on this ultimately successful strategy in part because it realized that, while insurance companies are investors in coal companies as well as critical underwriters of financing (lenders and investors do not provide project financing without insurance or a guarantee that due diligence passes muster, especially for risky projects), coal per se is not a core business segment for insurers. In other words, it became easier for insurance and reinsurance companies to accede to the campaigners' demands than resist them by holding onto the small portion of their overall business.

A similar situation occurred in Mexico in 2013 when an export credit agency that had provided an original loan guarantee to Latin America's largest renewable energy project questioned the underlying environmental and social due diligence,[616] leading a major equity investor to withdraw and the project to fold (it was eventually renamed, relocated, resold, and brought on line ten years behind schedule).[617] Subsequently, the Inter-American Development Bank determined that free, prior, and informed consent documents had been falsified by the original developer.[618] Once the equity and debt investors learned that the original loan guarantor had doubts, they began to fall like dominoes.

If advocates can study the financing of specific private equity investments, for example, including where collateral and loan guarantees come from to obtain the huge amounts of leverage that are so critical to the industry, they can adapt the aforementioned calls for divestment to the universe of private capital. Before issuing debt financing for private investments, banks, other lenders, underwriters, and credit intermediaries conduct due diligence of creditworthiness — particularly for emerging markets — and require an array of guarantees to ensure repayment, including asset-backed assurances, loan guarantees from development banks and export credit agencies, insurance policies, and syndicated lenders. The inability to obtain a key prerequisite can cut off a borrower's access to capital.

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PENSION FUND FIDUCIARIES

Pension funds — worth nearly 50 trillion USD worldwide, as of 2019, between defined benefit and defined contribution assets — are the single largest source of buy-side investment for private capital.[619] Since the late 1970s, they have been considered the ideal limited partner for private equity and hedge funds as their original asset owners — pensioners from the private and public sectors, often trade union retirees expecting defined benefits upon retirement — are long-term investors with relatively patient capital.

In the U.S., pension funds — such as the humongous California Public Employees' Retirement System (CalPERS) — began investing in private equity after the DOL amended the Employee Retirement Income Security Act's (1974) "prudent man rule" to allow them to invest up to 10% of AUM in leveraged buyouts and venture capital. Britain, Japan, Canada, and 25 other countries' funds followed suit and, by the early 2000s, it became standard practice for pension funds to split the 10-25% of their assets dedicated to alternative investments between private equity, hedge funds, real estate, and infrastructure.[620]

To optimize returns, the guiding management directives of pension funds — determined by law — are to diversify holdings so as to spread risk and prudently invest on behalf of the best interests of pensioners. While each fund is distinct, with notable differences in management styles and investment strategies between Canada, the Scandinavian countries, and the U.S., for example, ultimately its trustees — typically appointed or elected fiduciaries representing the membership base of pensioners — decide whether to manage investments internally (as is typical in Canada) or hire external asset or investment managers (as is more common in the U.S.).[621]

Increasingly, pension fund trustees turn to investment advisors and consultants — often culled from the universe of private capital — for advice, a practice that, over time, has undermined the fiduciary duties of trustees to pensioners. Despite evidence that private equity and hedge funds no longer return alpha gains to limited partners,[622] many pension funds remain as invested as ever in these alternative strategies and the shared logic of the private investment managers and advisory consultants — whose ample marketing materials disingenuously represent private capital[623] — who promote them.[624]

In recent years, it became more common for advocates to organize pensioners, unions, and internal pension stakeholders (such as employees of retirement funds themselves) to pressure appointed or elected trustees to screen out certain asset classes, funds, or specific companies from investment. One notable example is the work of the organization GRAIN regarding TIAA and Harvard's harmful farmland investments in Brazil through private equity funds and other alternative ve-

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hicles.[625] The argument is simple but effective: without institutional investors as limited partners or co-investors, private equity and hedge funds lose their largest source of capital.

For advocates, our opportunity is to organize pension fund trustees, members, and stakeholders in key countries — namely public pension funds in North America and Western Europe — and across multiple funds to take collective action to constructively engage portfolio companies where private capital has caused harm to people and planet, divest where appropriate, and insist upon environmentally, socially, and financially responsible investing moving forward. One compelling idea is to take the worker-driven social responsibility model that dairy, farm, garment, hotel, and other workers have applied to their workplaces and adapt it to funds and trustees so that pensioners can directly monitor investments and hold employers and trustees accountable.[626] This concept of internal pension fund organizing — which is already employed by organizations such as the **Committee on Workers' Capital**, **GRAIN**, and **The Sunrise Project** (as well as sporadically within pension funds such as CalPERS and the California State Teachers' Retirement System, or CalSTRS[627]) — holds the power through adaptation and scale to become a huge force capable of steering institutional investments from private markets back to public markets.

Similarly, as we discuss in the next section, there is an opportunity for pension funds to not only rein in their alternative investments but also steer them towards economic sovereignty proposals that seek to shift the center of finance back to the local and worker control from whence their membership came.

Economic sovereignty

Regarding private capital, one half of the analysis is how it harms people, planet, and the common good. But what of the other half, which is whether there's an alternative or solution to private capital within the public realm? In this vein, consumers, workers and unions, advocates, and even local governments have developed myriad proposals for regaining public or worker control over capital flows, including through worker buyouts of distressed companies, municipal government banks, and postal banking. Again, the argument is simple but effective: workers within unions, pensioners within pension funds, and taxpayers vis-à-vis sovereign wealth funds, among other examples, have the power to withdraw their money from harmful investments and instead focus on proposals for the greater good. What follows are but a few examples of economic sovereignty ideas in the U.S. whose time has come:

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Project Equity

Sector	Location	Initiative / Innovation
Employee ownership	U.S.	Driving the movement to "harness employee ownership to maintain thriving local business communities, honor selling owners' legacies, and address income and wealth inequality," Project Equity promotes worker buyouts whereby employees assume control of sound but currently distressed businesses.
Website	https://project-equity.org	

"A World-Class City: A Financial Blueprint for the City that Chicagoans Deserve"

Sector	Location	Initiative / Innovation
Public banking	U.S.	Establish a public bank so that Chicago, in this example, "can declare independence from Wall Street and save more than a billion dollars a year on banking fees and interest payments," among other ideas for public control of finance.
Website	https://acrecampaigns.org/research_post/a-world-class-city	

Campaign for Postal Banking

Sector	Location	Initiative / Innovation
Postal banking	U.S.	Borrowing from an idea that already exists in 139 countries around the world, the Campaign promotes "the provision of financial services via the Postal Service...calling for low-cost, consumer-driven products and services that could range from check cashing to bill payment to savings accounts to small-dollar loans."
Website	www.campaignforpostalbanking.org	

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MEDIA ATTENTION

Media attention is critical for building a common understanding among divere stakeholders and the general public about the negative impacts of private capital. A few well-reported examples can lay the groundwork for understanding and underscore the need for urgent solutions. In 2019, for example, members of the U.S. Congress and other public officials wrote letters and reports and held hearings on harms caused by private capital in the health care, housing, and farmland sectors.[628]

While exposés highlighting the negative impacts of private capital and the bad actors involved are becoming more common, media coverage should be increased and tied to current events that shine a light on the related stories, problems, and solutions and put real faces to both victim and victimizer. CSOs can educate and partner with credible news outlets to support the publication of influential stories that can be used in policy advocacy and campaigning.

For example, *The New York Times* exposed the growing influence of private equity investors in daily life in a 2016 series titled "Bottom Line Nation." The first article in the nine-part series offered a primer on private equity and was followed by one that highlighted the role private equity plays in the provision of public services, such as ambulances and firefighting. Another article covered how private equity firms were repeating the mistakes that banks committed during the housing crisis of 2007 with quick foreclosures, lost mortgage paperwork, and little protection for struggling homeowners, while yet another explained how these firms earn huge profits while driving up the cost of public water services for residential users unable to pay their water bills.[629]

In 2019, *ProPublica* published a groundbreaking investigation about a physician staffing firm owned by the private equity firm Blackstone Group, which, following publication, abandoned lawsuits against customers with unpaid medical bills and implemented a new financial assistance policy. This was the second time in five months that a major health care entity in Tennessee had overhauled its practices as a result of journalistic inquiries.[630]

These examples offer a pathway for advocates to seek similar media coverage about the negative impacts on people and planet of private capital investments in specific sectors or countries where accountability, regulatory, or legislative action is most feasible. Media coverage can be channeled into mainstream outrage to inform constituents and push for policy changes at local, national, international, and even corporate levels. What's need are more champions of rightsholders affected by private capital to influence decision-makers and win support for solutions and alternatives.

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INROADS INTO PRIVATE CAPITAL

As of 2020, the relationships between diverse actors in the universe of private capital and rightsholders and advocates were nascent at best. Going forward we should ensure that these relationships are deepened as our work advances. There are several reasons for opening dialogue between stakeholders at various levels — from project sites on the ground to high-level decision-making spaces. Deeper connections with private capital investors globally would provide CSOs with insights into investment activities, decision-making, and trends. Civil society should also be curious about what we do not know or currently track about private capital but should be learning in the future.

Engaging private capital investors can help CSOs develop unlikely champions of policies and other solutions and ideally forge alliances for advancing advocacy efforts. For example, a common strategy among CSOs has been to organize institutional investors around a common goal — such as divestment from companies profiting from apartheid, genocide,[631] the climate crisis,[632] or refining corporate responsibility to respect human rights in all sectors[633] — whereby a rising tide of progressive policies and procedures compels wayward peers to keep up so as to remain competitive.

Multi-stakeholder initiatives or roundtables provide potential opportunities for civil society to engage diverse actors in alternative investing. Many factors can improve the success of these initiatives, such as diversity, balance of real power, respect for and tolerance of different viewpoints, demonstrated commitment to progress, and a common goal. One such dialogue — perhaps the only of its kind — was initiated in 2018 by Rights CoLab and the Institute for the Study of Human Rights at Columbia University and remained ongoing as of 2020. The objective of the dialogues — which involved individual civil society advocates and investment professionals from pension funds, banks, insurance companies, private equity, and hedge funds in New York City — was to produce effective collaboration on human rights by building trust between financial professionals and human rights advocates.[634]

A greater understanding of the field of private capital investors is also an opportunity to map opponents and their arguments and positions against advocates' demands. Finally, source development from within the universe of private capital and sectors impacted by it is important for investigative research and reporting as well as strategic planning.

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VI. RECOMMENDATIONS

VI. RECOMMENDATIONS

I don't mind stealing bread from the mouths of decadents. But I can't feed on the powerless when my cup's already overfilled.”

— Chris Cornell, “Hunger Strike” (1990)

When we set out to document private capital, our intention was not to end this book by quoting song lyrics. But, as the music of the late Soundgarden, Audioslave, and Temple of the Dog singer, songwriter, and guitarist inspired us, it also spoke to us. Shouldn't a public conversation about private capital stem from outrage that a small group of decadents has filled and overfilled its cups with the money of rightsholders, taxpayers, consumers, workers, pensioners, and users of public goods and services? How is it that the powerful can still feed on the powerless — and get away with it? At what point will we declare *¡ya basta!*? And what are we prepared to do about it?

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We wrote this book to identify the vulnerabilities of a crucial but shadowy and unappreciated aspect of advanced capitalism that affects people and planet from Myanmar to Mexico and every point in between — private capital. With these recommendations, we intend to aid rightsholders, advocates, and other corporate stakeholders in converting the vulnerabilities discussed in **Chapter V. Accountability Opportunities** into opportunities to organize collectively and press for accountability. If we are to prevent the decay and deepening of capitalism from further affecting human rights, the environment, and the common good and reassert public decision-making over our economic systems, we must join forces across the frontiers that separate us.

Together, we first must act to demystify private capital among grassroots and advocacy organizations. This will produce the information and expertise needed within civil society and the media to track and expose private capital. Then we must push strategic litigation and public policy reforms to bring transparency and accountability to private capital. Pension funds and other institutional investors must begin to reallocate their portfolios away from private capital to focus on responsible investments. These steps will bring initial changes and — with our collective and continued push for reform — governments, pension funds, and other economic participants can slow down the runaway train of advanced capitalism. Finally, together we can reverse course away from privatization, financialization, and the capital shift to private markets and back towards local, grassroots, and workplace-based financial control and economic alternatives.

In what follows, we offer recommendations to four specific groups of stakeholders that hold the potential to spark the push for transparency and accountability vis-à-vis private capital.

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FOR RESEARCHERS AND SCHOLARS

- **Private capital deserves more attention — period:** Significantly more inquiry is needed regarding private capital across all points of view, including theory, description and explanation, and a prescription for change. The extant information is scant, diffuse, and terminologically confusing and overlapping across typologies and asset classes, sectors and geographies, and sources.[26] The main reasons for this are that private capital is by definition opaque, has an almost non-existent bar for disclosure, and the limited data that exists is often too anecdotal or specific to draw accurate conclusions.

- **We're a small group — join us!:** A relatively small number of academics and think tanks have commented on the increase and expansion of private capital, though mainly with regards to financialization. An even smaller group of mostly CSOs has documented the impacts of specific private equity and hedge fund investments on human and labor rights, the environment, and public goods and services. And just two handfuls of scholars have documented the decline in public markets, the rise of private markets, and the drivers linking the two. More research and scholarship is needed across the board.[27]

- **Emphasize the capital shift from public to private markets:** There is very little research on the capital shift from public to private markets (Elisabeth de Fontenay's regulatory analysis at Duke University School of Law stands out[635]) and virtually none on how much it's increasing and the rate at which it's accelerating. Why does this matter? Some observers argue that we will reach a tipping point where the economy will be hopelessly lost to the interests of Wall Street. It's a matter of public interest to gauge if and when this will happen. (See **Increase and acceleration of private capital**.)

- **Examine the impacts of private capital on people and planet — not just returns on investment:** Information about the human rights and environmental impacts of private capital is almost entirely anecdotal and mostly found in journalistic reporting. Much more inquiry, data, comparison, and prescription for change are needed within typologies (private equity and, to an extent, hedge funds have received disproportionate attention) and asset classes, sectors, geographies (especially emerging markets), and specific categories of rights. A handful of scholars — notably Saskia Sassen, Eileen Appelbaum, Sabrina Howell, and Manuel Aalbers — stand out for their research on impacts, despite scholarly dismissals of their work as too heavy on case studies or lacking comparability across investments and sectors.

- **Expand inquiry and analysis across the investment chain of private capital:** Drawing a line between public and private markets or State and non-State actors ignores important details about whose money is invested (where it comes from), how it's invested (the corporate forms and investment vehicles), which asset classes receive investment, and which markets facilitate these investments. We propose using an investment

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26 The vast majority of extant research examines publicly-traded assets and securities, state-based financial actors, or international financial institutions.

27 See **Universe of private capital** and **Increase and acceleration of private capital**.

analysis continuum whereby the presence of private capital is identified at each link of the chain, from the original asset owner to the ultimate market where investments are converted back into liquidity. (See **Universe of private capital**.)

- **Study the incentive structures for private investment:** Private capital does not and would not exist without significant incentives in the form of structural, legal and regulatory, and economic drivers that propel it forward. One investor's incentives are an advocate's strategic roadmap to accountability. (See **Increase and acceleration of private capital** and **Golden inputs of private capital**.)

- **Go beyond the role of the State to grasp the bigger picture:** In general, scholars cling to theories centered on the role of the State and this myopia limits their purview. By definition private capital is a universe that exists outside disclosure, regulatory, and taxation frameworks. If we are to subject it to public decision-making, we must expand our field of vision. Complementary fields of study — including privatization, financialization, and State capture — must adapt accordingly.

- **Economics, meet existentialism:** In one of his final speeches as chairman of the U.S. Federal Reserve, Ben Bernanke warned of the "so-called shadow banking sector" and the importance of regulating NBFIs, which include private equity and hedge funds.[636] He noted the "regulatory gap" with respect to these financial institutions and their role in the global financial crisis. Seven years later, it's impossible to argue that meaningful progress has been made to rein them in. Rather, it's the opposite — shadow banks now represent a greater systemic risk than ever, as seen with the highly-leveraged hedge funds stuck holding worthless Treasury securities at the beginning of the pandemic and the Fed's subsequent bailout.

- **Decapture academia from private equity:** A major debate in private equity studies is between skeptics of its returns — performance adjusted for risk and fees when compared to public markets is equivalent or worse over the same period — and their staunch defenders. By most accounts, Ludovic Phalippou toes the line for the critical point of view,[637,638] while Josh Lerner and Victoria Ivashina,[639] for example, are more tempered in their viewpoints.[640] Others still are far more solicitous towards the group-think of general and limited partners.[641] However, Lerner stands out both for rejecting the *carte blanche* notion that private equity is a net positive for limited partners[642] as well as for his work on the overall impact of private equity on jobs and wages.[643] Appelbaum[644] and Howell[645] have also examined private equity's dubious performance and questionable impacts. Aside from these notable exceptions, "Sadly, private equity academics are almost entirely captured; they make far more money consulting to private equity firms than they do from their day jobs."[646] To counter this, we must lift up the work of independent scholars and support new scholarship.

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FOR ADVOCATES AND CAMPAIGNERS

- **Ouch, does your head hurt, too?:** It's likely because, as rightsholders and advocates, we've been banging our heads against the glass ceiling of impunity for too long. On one hand, we've developed significant expertise campaigning around banks, publicly-traded companies, and DFIs and IFIs and have won important victories. On the other hand, there's a dearth of expertise in our sector about private capital. Consequently, our advocacy efforts increasingly run into a glass ceiling — namely private equity and hedge funds.

- **Time to adjust our rearview mirrors:** We clearly have a blind spot when it comes to private capital. It generally evades detection and understanding by corporate accountability advocates, CSOs, the media, and other stakeholders. If we adjust our mirrors and know what to look for, we can begin to learn and develop expertise, share knowledge within civil society and the media, track private capital and link it to rights violations, and make the business or legal case for accountability, remedy, or divestment. This includes understanding the drivers and incentives behind private capital, the typologies of capital and financial flows, the different actors involved, their alternating roles at different stages of financing, where harms are most likely to occur, and which pressure points and vulnerabilities of private capital can be converted into opportunities. Demystification should be our first step. However, transparency itself is not a goal but rather a means to an end — accountability.

As mentioned in **Challenges for transparency and accountability**, we must also push strategic litigation and public policy reforms and make common cause with pension funds and other institutional investors. Collectively, if we're bold, creative, well-informed, organized, and willing to engage with unlikely bedfellows — including endowment and foundation trustees, publicly-traded companies affected by unfair competition from private markets, and progressive regulators and politicians — we can stop private capital in its tracks if not reverse its harmful effects. While our objective is to achieve economic justice in a stakeholder economy that prioritizes the common good, we're still a long way off, and much learning and campaigning remain.

- **Generate a common understanding and shared strategy:** For CSOs, success must include a common understanding among stakeholders of the problem — the worst types of private capital actors in specific industries and geographies, where they fit into value chains, and their links to negative impacts on people and planet. Credible recommendations and use cases of bad actors held to account and policy solutions will demonstrate that change is possible and necessary. Also, an organized approach among stakeholders globally will better enable the efficient use of resources and capacities as well as strengthen learning, the exchange of information, and strategies. However, the implementation and enforcement of meaningful accountability measures most certainly will not keep pace with the high-speed evolution of alternative investment strategies. We must keep abreast of private capital and avoid complacency.

- **Together we can stop the runaway train:** Readers, particularly corporate accountability advocates, should consult **Chapter V. Accountability Opportunities** for twelve categories of ideas ranging from research to legislation to slow down and stop the runaway train of advanced capitalism and ideally reverse the capital shift from public to private markets. If we are to prevent further harm to human rights, the environment, and the common good and re-

assert public decision-making over our economic systems, we must join forces across the frontiers that separate us. This book also speaks to researchers and scholars, advocates and campaigners, funders, journalists, investors and pensioners, and even like-minded regulators and politicians.

- **Corporate capture of the State deserves more attention:** While the most useful explanation for the rise of private capital is arguably the corporate capture of the State, too few CSOs, scholars, media, and stakeholders are tuned into its presence and effects, especially on central banking and economic policy. We argue that privatization, financialization, and ultimately private capital are the results of design choices by elite architects of advanced (crony) capitalism. ESCR-Net's Corporate Capture Project has begun to document corporate capture around the world,[647] but much more participation, research, and analysis is needed.

- **Innovate upon campaigns against banks, asset managers, and pension funds:** Advocacy campaigns are already targeting banks and assets managers and, to some extent, pension funds — particularly regarding the climate crisis. However, these efforts ignore the role of these institutions as significant lenders to and investors in private capital. With a bit of coordination and some innovation, existing advocacy efforts regarding banks, asset managers, and pension funds — which together represent over two-thirds of global financial assets — can include demands to engage with or divest from private capital as well as to reverse the capital shift to private markets.

Beyond divestment

- **To engage or divest, and then what?:** In December 2020, the New York State Common Retirement Fund — the third-largest pension fund in the U.S. — announced it would "purge its portfolio of energy companies that do not have a plan to cut emissions and transition away from fossil fuels."[648] This move, and similar divestments throughout the year, were heralded by investors and advocates alike,[649] including the authors of this book. However, monitoring of the capital shift from public to private markets indicates cause for concern. What becomes of assets that aren't yet stranded? Frighteningly, the answer is likely private equity funds that specialize in investing in distressed assets — virtually none of which are exposed to public equity markets or vulnerable to reputational risk. In fact, they fall far outside the purview and understanding of most advocates and campaigners. The research consultancy Wood MacKenzie highlighted an example of this in the waters between the U.K. and Denmark, "With North Sea investment by the (oil and gas majors) falling 60% since 2013, private equity-backed companies are entering the fray, drawn in by widespread cost reductions, particularly in supply chain."[650] Many of these private investors were

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active in shale gas and pipeline investments in the U.S. as well. Arguably, the answer to the climate crisis might not be divesting from fossil fuels and risk losing all leverage over these investments in private markets but rather engaging with investors and extractive sector investees in public markets to transition to renewable sources.

- **Watch what you ask for:** While the OECD Guidelines for Multinational Enterprises acknowledge that divestment is an "appropriate response once adverse impacts have been identified" following "failed attempts at mitigation, where the investor deems mitigation unfeasible, where the investor policy dictates exclusion, or simply because of the severity of the adverse impact,"[651] and while rightsholders and advocates may prefer this option, it's unwise to build a campaign exclusively around divestment. The main reason is the risk of unintended consequences whereby a call for divestment inadvertently causes an investor or investee to hasten the capital shift into private markets where stakeholders have less leverage. Tactically, of course, divestment may be necessary as part of a larger strategy to secure rights. In such cases, research that informs this decision should go beyond divestment to understand how an asset will perform following a divestment, sale, or takeover.

FOR PHILANTHROPIC FUNDERS

- **Can we afford to focus on the global economy at the expense of crises at home and abroad?:** During the pandemic, with so much loss and suffering on a massive scale, it's understandable that funders questioned whether the time was right to support corporate accountability and human rights. Like the global financial crisis before it, the pandemic brought hardship on a scale that many had never seen before, while also providing a unique opportunity for wealthy individuals and companies to greatly expand their economic interests. With tax revenues down, governments again heed calls to implement austerity and privatization programs. But with bond yields and interest rates also down and distressed businesses, securities, and local governments and emerging markets clamoring for relief, the perfect storm of financialization came upon us. Private equity funds alone have been unable to put their limited partners' capital to work fast enough. Something has to give.

- **It's time to expand corporate accountability philanthropy — the economy is changing:** The U.N. Guiding Principles on Business and Human Rights provide a useful framework to discuss State obligations and corporate responsibilities in terms of pre-

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venting and remedying human rights abuses committed in business operations. However, they consume significant stakeholder attention and resources and, consequently, the field's focus on the State and public markets is too narrow. The shift in global finance from publicly-traded securities to privately-held capital is an opportunity to achieve further impact in the corporate accountability, human rights, climate, and related fields. Funders can add value by continuing to support evidence-based, follow-the-money organizations and strategies. This should build upon learnings from the past decade and innovate to reverse the trend of financialization and hold private capital investors accountable. Let's expand our field before private capital renders our work moot.

- **Target private capital, eliminate a blind spot:** Private capital is a blind spot for rightsholders, advocates, and funders. Increasingly, it threatens basic human rights protections and current efforts to hold corporations and capital accountable. While we have developed expertise campaigning around publicly-traded companies — including banks, DFIs, and IFIs — there is a dearth of knowledge in our sector about privatization, financialization, and the capital shift from public to private markets. The shadow economy increasingly captures greater flows and — with it — power over jobs, public goods, and the State.

- **The corporate accountability and human rights fields are on the cusp of change:** On one hand, arguably the most significant pressure on business has come from the climate justice and environmental movements. They have convinced central banks, asset managers, insurance companies, and other institutional investors to ringfence and even divest completely from fossil fuels and related infrastructure. On the other hand, the struggle for racial justice, Black lives, immigrant rights, and similar movements have reinvigorated progressives and shown new possibilities for direct action and political activism. Moving forward, funders should explore cross-fertilization between the corporate accountability, human and labor rights, climate, economic justice, and equity fields. Increasingly, private capital is a juggernaut in each of these and, divided, little we do will matter. However, united our possibilities are bright.

- **Start with peer learning, common target-setting, and field building:** Climate campaigners with divestment experience, for example, can train human rights advocates focused on mining companies. Researchers with expertise on privatization or financialization can build power with racial justice organizations fighting evictions by private equity funds, or with women's rights groups fighting land grabs. Latinx groups can partner with communities in Latin America to jointly campaign against pernicious hedge funds. Together, we can track private capital and coordinate global campaigns while drawing from our own areas of expertise. We can make ours a broad movement for change and justice to re-territorialize the landscape with alternatives to global capital.

- **How bold will funders be?:** A key dynamic moving forward will be donors' risk tolerance for making grants that seek to attenuate the human rights effects of private capital, if not reverse financialization altogether. Given the prominent role of institutional investors — including foundations and endowments — as limited partners in private capital partnerships, this could be an elephant in the room. All the same, the pandemic made it painfully clear that human rights, if not human lives, are not a priority compared to saving the Wall Street economy. If there was ever a time to convince risk-averse funders to make common cause on this issue, it is now.

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FOR INSTITUTIONAL INVESTORS

- **Dump private capital:** Without access to this golden input of private capital investment, private equity, hedge funds, and similar asset classes would lose their limited partners and essentially stop cold in their tracks. As mentioned in **Economic sovereignty**, investors and society at large have plenty of alternatives for growing the Main Street economy and regaining local financial control and public decision-making over our futures.

- **Engage actively, exit responsibly:** Dumping private capital shouldn't happen over night. Why? For starters, millions of jobs depend upon portfolio companies and other assets owned by private capital. Instead, institutional investors should conduct ongoing due diligence and actively engage with investment partners to ensure that both general partners and investees adhere to international business and human rights standards. This includes disclosing the adverse impacts of investments on people and planet and the steps taken to address corporate-sponsored human rights violations across the investment chain.[652]

As soon as private capital investments can return to or become part of the public domain, institutional investors should exit responsibly by ensuring their stakes are sold to engaged buyers that insist upon robust ESG performance. Due to the size, common ownership, and influence of institutional investors, shareholder activism is found to improve the overall state of corporate ESG performance.[653] However, much more is needed to insist upon responsible investment as, according to ShareAction, "...the majority of managers appear to be addressing human rights in an ad-hoc and reactive fashion, and only where they consider it financially material."[654]

According to the Investor Alliance for Human Rights (IAHR), "By fueling the economy and businesses within it, shareholders pose risks to the broader interests of society in the same way portfolio companies might. In response, authoritative global standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises have since 2011 established that all companies, including investors, have a responsibility to respect human rights throughout their operations and broader value chains. Investors also have fiduciary responsibilities for ensuring that portfolio companies respect human rights since where there are the most severe risks to people and planet, there are material risks to business, including reputational harm, financial loss, and legal liabilities.

A distinctive characteristic of institutional investors is that they may hold shares in a wide range of companies, across many sectors and different regions. This increases the risk that investors may be directly linked or contribute to a wide range of adverse human rights impacts. While investors are not responsible for providing remedy when only directly linked to human rights harms, they in all cases have a responsibility to: (1) develop and embed their own human rights policies, (2) assess and prioritize the most severe risks to people throughout the investment lifecycle, (3) build and use their leverage to influence investee companies to prevent, mitigate, and where appropriate address adverse impacts, (4) track outcomes, (5) disclose their policies and practices, (6) provide remedy when they have caused or contributed to abuses, and (7) engage with impacted stakeholders (meaning rights-holders, their credible representatives, and expert organizations) all along the way.

Investor leverage can be exercised in a number of ways, including through investment decision-making that factors in environmental, social, and governance (ESG) performance; positive and negative screens; engaging in company dialogues and multi-stakeholder platforms; filing shareholder proposals that seek to promote responsible business conduct and voting in favor of such proposals when put forth by other investors; and engaging government institutions and other standard-setting bodies on policies and standards that create enabling environments for responsible business conduct."[655]

- **Keep the "Investor Toolkit on Human Rights" under your pillows:** This unique publication by the IAHR provides orientation, guidance, and concrete actions steps that institutional investors — including limited partners in private equity — can take to adhere to international business and human rights standards.[656] For example, it cites the Private Equity Corporate Social Responsibility Policy[657] of Danish private equity firm Polaris Management A/S to show "how investment-level commitments on human rights can be applied across asset classes and how those commitments can be applied to private equity funds." This commitment and many others are what responsible investors should insist upon as standard practice for asset owners, managers, and investees alike, especially as 2021 marks the tenth anniversary of the U.N. Guiding Principles on Business and Human Rights.

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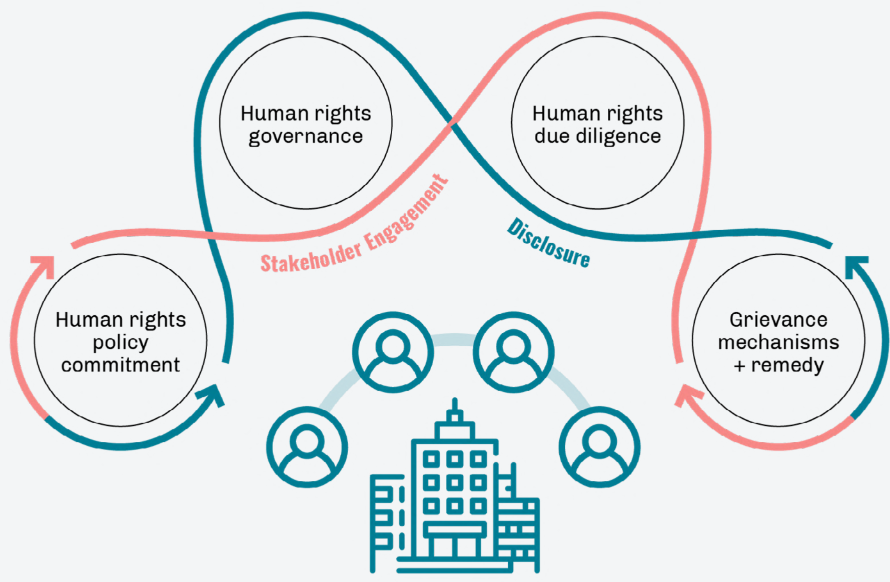
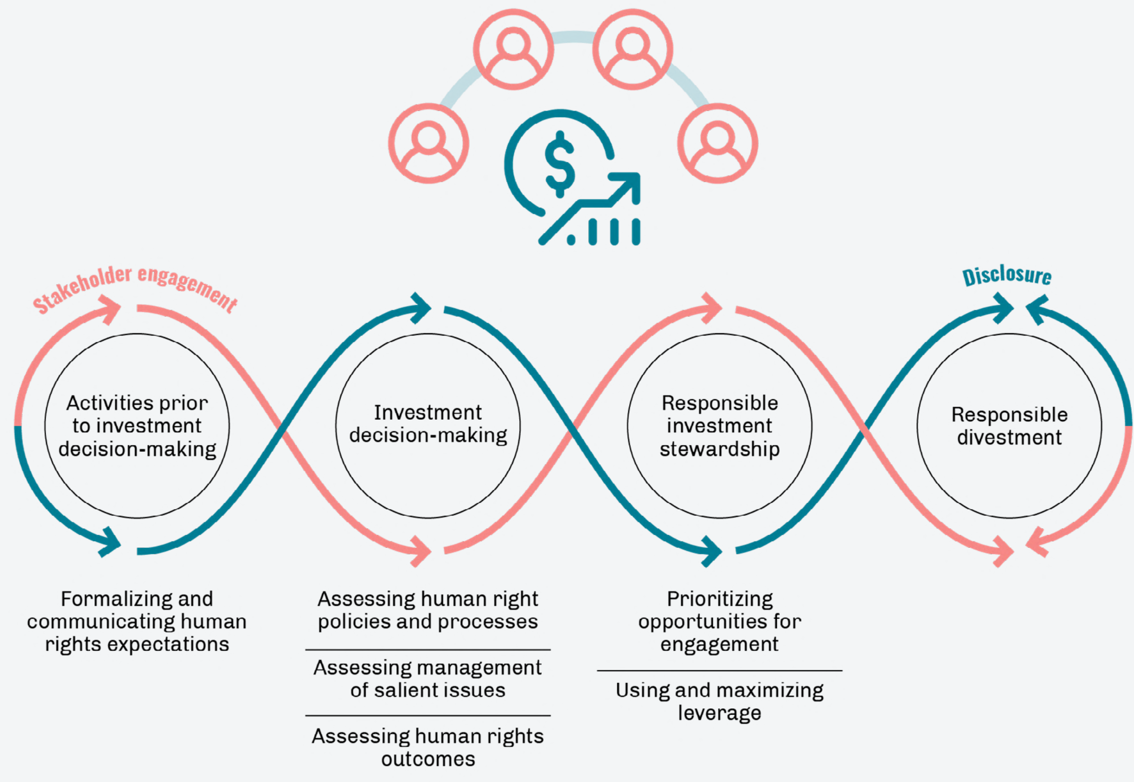
Figure 10
Putting the Investor Responsibility into Practice

At the Institutional Level



At the Investment Level



Source: "Investor Toolkit on Human Rights," Investor Alliance for Human Rights, *op.cit.*

For pension funds

- **Lead the charge to dump private capital:** Pension funds have an advantage over other institutional investors, as workers' capital and, particularly, defined-benefit plans are inherently amenable to collective organizing and responsible investing. If any investor class can understand the perniciousness of private capital, it's pension funds and their enormous wealth. However, they also have a disadvantage — many are underfunded and have been unable to secure intergenerational solidarity, which has led them to seek alpha returns in limited partnerships and other private capital investments. While at least 75% of private equity funds have fallen behind public market-indexed returns over the past two decades, pension funds remain very much invested in alternative strategies.[658] If pension funds — especially those comprised of public workers — are to lead the charge in dumping private capital, they will need internal accountability, new organizing strategies, and better investing options.

- **It's time for internal accountability and new organizing:** Pensioners —union members in particular— must hold their trustees accountable to fiduciary standards of stakeholder capitalism versus the traditional model of shareholder primacy. Borrowing a page from the worker-driven social responsibility playbook that dairy, farm, garment, hotel, and other workers have applied to organize their workplaces, pension fund members should directly elect their own trustees, monitor investments, and hold their employers, unions, and trustees accountable.[659] This concept of internal pension fund organizing already exists across the work of the **Committee on Workers' Capital**, **GRAIN**, and **The Sunrise Project**, as well as sporadically within some pension funds themselves. In this regard, pension funds should also make common cause with rightsholders, advocates, and corporate stakeholders more broadly to rein in their investments from private markets.

- **Lead new investments in economic sovereignty — and public markets:** Using their tens of trillions of dollars of assets under management, pension funds must lead by steering investment towards economic sovereignty proposals that shift the center of finance back to local, union, and worker control and the Main Street economy overall. (See **Economic sovereignty**.)

CONCLUSION

The Yatai New City project in Myanmar lies halfway around the world from Wall Street in New York.[28] In many ways, it's a world apart from the bustling financial center and concrete jungle of advanced capitalism. Near an actual jungle along the Myanmar-Thailand border, cranes busily erect the 15 billion USD destination to house casinos on the ground and host gambling online[660] — a private capital paradise built with concrete, steel, blockchain technology, and cryptocurrency to launder gambling profits, evade Chinese law enforcement, and exist without regulation, taxation, or scrutiny.

But how different is Wall Street really? Increasingly, it's more than financial towers in downtown Manhattan. It's a hub for financial transactions of all kinds, for all assets, using all technologies, all the time. While physically housed in financial centers around the world and legally accountable to authorities and taxpayers insofar as it's regulated, the Wall Street economy is a catch-all marketplace for public and private investment, real and financial assets, and legal and illicit transactions. If anything, Yatai New City is merely replicating the model of casino capitalism, crony capitalism, or Wall Street itself.

Since the 1970s, the corporate capture of the State, privatization, and financialization have accelerated the relocation of capital from State control, regulated markets, and public scrutiny to private markets, deepening the divide between the Main Street and Wall Street economies. This process relies on the continuing expansion of finance through the creation of asset classes, historically outside financial markets, that have the capacity to absorb rapidly increasing global pools of wealth. The revenue streams from private equity-owned single-family rental homes in the U.S. or public utilities in the U.K, for example, are bundled and disconnected from their social purpose or location-specific value. The only way to really tell anything is changing is the resulting dislocation, unemployment, environmental consequences, or human rights violations felt in our lives and livelihoods — oh, and the massive accumulation of wealth generated by high-net-worth individuals worldwide.

The deepening and broadening of market liquidity have accelerated the shift in financial intermediation and investing towards alternative models known as shadow banking and alternative investments known as private capital. This decline of public markets and monies has created significant obstacles for transparency and accountability. Furthermore, financialization and private capital reward opportunism over long-term investment, and investors' incentives — including those of pension funds, sovereign wealth funds, endowments, and foundations — often diverge from the public interest.

28 Geographically, the Uzgen District of Kyrgyzstan is exactly Wall Street's opposite.

The Yatai and Wall Street economies are arguably one and the same. To the extent that financialization and advanced capitalism foster the proliferation of private capital and the capital shift from public to private markets outside the purview of public decision-making, the futures of these economies are intertwined — as are our futures as workers, pensioners, taxpayers, rightsholders, consumers, and stakeholders of the global economy. The “deepening of advanced capitalism” is upon us.[661] It’s time we took notice and took action.

As advocates, our work is at a crossroads. One path leads us to expand our transparency and accountability efforts to the universe of private capital, incorporating analyses of power, corporate capture, privatization, and financialization into our work, thereby refining and enhancing our accountability efforts at home and abroad. Another path — the one we’ve followed so far — leads us to more of the same: diminishing returns in our national strategies as declining sovereignty and increasing transnational corporate power render our efforts irrelevant. We propose the former.

We must learn from and build power with social movements that seek equality and justice, including communities, workers, climate change activists, indigenous peoples, activists for racial equity, feminists, and many more. We must change the social norm for expectations of corporate accountability, away from technocratic fixes and domestic government engagement to a wider embrace of research, organizing, and accountability efforts about the universe of private capital.

We must make ours a cultural movement for change to re-territorialize the global landscape with postmodern alternatives to global and private capital. We must think and act globally, as global citizens. We must reassert public decision-making over both the Main Street and Wall Street economies.

We must also engage critically, though constructively, with one another to ensure that our efforts do not unwittingly play into the hands of private capital, a system that has proven itself masterful at creating, adapting to, and benefiting from social division and tension. If we’re smart, we will learn to use a variety of tools, including many contained within capitalism, as weapons in our fight.[662]

This book posits that the runaway train of advanced capitalism has left the station but that we still have a chance to catch up, slow it down, perhaps stop it, and even reverse course. Our objective is nothing less than to achieve economic justice in a stakeholder economy that prioritizes the common good.

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