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Lawyers, Gender, and Money: Consensus, Closure, and Conflict in the Global Financial Crisis

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Whether cast as a "Washington Consensus" or a "Great Moderation," a policy accord on deregulation and monetary fine-tuning limited economic debate from the 1990s through the global financial crisis. Over the bubbles of the 1990s, a widespread intellectual overconfidence inhibited efforts at regulatory restraint. For example, in the late 1990s, Federal Reserve Chairman Alan Greenspan, Treasury Secretary Robert Rubin, and Deputy Treasury Secretary Lawrence Summers were lauded as a "Committee to Save the World" for their macroeconomic acumen. Even after the crash, policymakers resisted rethinking prior beliefs: in 2010, even while Federal Reserve Chairman Ben Bernanke would concede that "economists have much to learn from this crisis," he insisted that "calls for a radical reworking of the field go too far."[1] Similarly, those who had promoted deregulation refused to admit error. In preparing Timothy Geithner for confirmation hearings, Summers

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1. Bernanke (2010) specifically distinguished the merit of reflecting on institutions and policies, just not deeper ideas.

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urged him to stonewall regarding 1990s deregulation, warning that he should not "admit we did anything wrong" (Suskind 2011, 163–64). Yet, even amidst this consensus, opposition persisted. In particular, three officials stand out: Brooksley Born, who ran the Commodity Futures Trading Commission (CFTC) from 1996 to 1999; Sheila Bair, who chaired the Federal Deposit Insurance Corporation (FDIC) from 2006 to 2011; and Elizabeth Warren, who presided over the Congressional Oversight Panel of the Troubled Asset Relief Program (TARP) from 2008 to 2010 and the creation of the Consumer Financial Protection Bureau (CFPB). Each clashed with key colleagues as they favored increased regulation, taking professional and intellectual risks as they advanced arguments that conflicted with the prevailing conventional wisdom.

In this article, I draw on historical institutionalist (Fioretos 2011; Mahoney and Thelen 2010) and feminist institutionalist (Chappell 2002; Gheradi and Poggio 2001; Krook and MacKay 2011; Waylen 2009) insights to highlight the sources of such consensus and the role of gender and professional socialization in enabling resistance to prevailing beliefs.[2] Countering views of women as innately risk averse or redemptive of markets, I offer a framework contrasting the intellectual pressures to policy consensus with the gender- and profession-based sources of resistance.[3] First, drawing on historical institutionalism, I argue that policy success can spur not only what Mahoney and Thelen (2010, 17–18) term the "conversion" of ideas into intellectual frameworks, but also do so in ways that give rise to overconfidence, as what Schmidt (2010) terms "principled ideas" are reduced to "causal beliefs." Secondly, drawing on feminist institutionalism, I argue that gender norms — defined as standards of behavior associated with sexual difference — can combine with professional values to enable resistance to intellectual consensus.[4] Regarding gender's impact, I posit that where men and women enjoy differing access to professional networks, this can lead them to "position themselves" (Gheradi and Poggio 2001, 247) differently in debates: in short — as Bjarnegård (2009) suggests — while men in patronage networks may be more risk averse, women outside such networks may be more prone to challenge conventional wisdoms.

2. On the GFC, De Goede (2005) stresses the gendered vocabulary of finance, and Montgomerie and Young (2011) stress the gendered nature of practices like predatory lending. On gender in public policy, see Annesley and Gains (2010). On homosocial capital and networks that prize predictability over efficiency, see Bjarnegård (2009).

3. For a neurological analysis, see Barber and Odean (2001). For critiques, see Nelson (2012a; 2012b). On narratives of female virtue and male redemption in the GFC, see Prügl (2012)

4. Barker and Feiner (2004, 7) define gender as the "social organization of sexual difference."

In professional settings, these positional differences can reinforce disciplinary attachments (e.g., as gender dynamics may strengthen concern for procedural fairness among lawyers, in contrast with those for efficiency among economists).[5] Empirically, I apply these insights to trace the interplay of intellectual hubris and opposition through to the GFC, as Born, Bair, and Warren engaged in debates over regulation and reform. I conclude by addressing overlooked implications for gender and risk.

THEORETICAL PERSPECTIVES: RATIONAL EFFICIENCIES OR INSTITUTIONAL INEFFICIENCIES?

In developing a theory explaining acquiescence or resistance to a prevailing consensus, I integrate historical and feminist institutionalist insights to argue that the intellectualization of debate can engender groupthink-styled epistemic closure, but that such trends can be undercut given variation in gender and professional socialization. First, drawing on historical institutionalist insights, I argue that policy success may obscure the need to update paradigmatic beliefs, as agents reduce principled ideas to intellectual frameworks in ways that fuel overconfidence. As Minsky (1975) argued, stability can itself cause instability. Secondly, drawing on feminist institutionalist insights, I argue that such closure does not negate all sources of opposition. Instead, attitudes shaped in gender socialization influence how agents align themselves in debates, with differences of professional socialization reinforcing the willingness of agents to challenge consensus.

Historical Institutionalism, Inefficiency, and Misplaced Consensus

In political economy debates, where scholars employ rationalist assumptions that agents make efficient use of information, they risk overrating the scope for stability and obscuring key sources of change. More specifically, where theorists assume that agents can employ information efficiently, they must treat crises as "exogenous shocks" — otherwise agents would anticipate and negate them.[6] While such rationalist analyses have merit, they remain incomplete where they overrate the scope for stability, obscuring the inefficiencies that can

5. On professions, see Engelen et al. (2012); Fourcade (2009); Seabrooke and Tsingou (2009).
6. On rationalism, see Fearon and Wendt (2002); Finnemore and Sikkink (1998); Muth (1961).

endogenously cause instability. To redress these oversights, historical institutionalist scholars like Mahoney and Thelen (2008, 15–18, 22) have emphasized the role of "ambiguity" — defined broadly as the ability of ideas and interests to be interpreted in varied ways (Best 2008, 356) — as a potential source of incremental change.[7] Given ambiguity, they posit that intellectual agents can engage in the "conversion," or reinterpretation of ideas, in ways that in turn enable the institutional "displacement" of outmoded bureaucratic arrangements. Yet, even while Mahoney and Thelen are correct that conversion or displacement may enable efficient adjustment, they underrate the ways in which such mechanisms can *reduce* efficiency. This can occur as the refinement of ideas engenders groupthink-styled pressures (Janis 1972, 9–10) to ignore unwanted information and alternative values. Such possibilities have been highlighted recently in the work of scholars like Schmidt (2008), who advances a discursive institutionalist approach to stress the costs of reducing principled beliefs to causal models. In this light, where the construction of a stable order yields to its intellectual conversion, intellectual consensus can provide an endogenous source of crisis.

In economic policy settings, such tendencies can be seen as agents gradually abstract away from the principled bases of economic orders, or sets of ideas and interests, and so reduce economic beliefs to causal models to enable more precise control.[8] For example, economists often reduce principled debates over growth or inequality to macroeconomic frameworks like the Phillips curve or Taylor Rule trade-offs between inflation and unemployment, obscuring concerns for the market power of financial firms or unions. Building on such intellectual efforts, bureaucratic agents may seek to displace institutional rivals as the Council of Economic Advisers sought in the 1960s to limit the scope for wage-price controls and the Federal Reserve sought in the 1990s to limit regulatory oversight at the Commodities Futures Trading Commission. More formally, I posit that this intellectualization of ideas can impede efficiency through two avenues. First, in institutional contexts, the intellectualization of principled beliefs can reduce the efficiency with which agents form expectations. For example, where models highlighting the existence of market power are eclipsed by those stressing the scope for perfect competition, policy makers may overlook the imperfections that can engender crisis. Secondly, where econometric

7. On ambiguity, see also Percy (2007).
8. On order development and decline, see Skowronek (2011).

models posit the existence of enduring relationships between economic variables, the public use of such relationships as a guide to policy may "feed back" on markets, giving rise to new patterns of behavior that invalidate past correlations. This possibility was noted by rational expectations theorists in critiques of mid-1960s Phillips curve models, as the formalization of trade-offs induced new behaviors that undermined those trade-offs. Writ large, where principled beliefs are reduced to intellectual frameworks, intellectual consensus may help cause instability. This raises the question of what conditions might counter such trends.

Feminist Institutionalism, Efficiency, and Resisting Consensus

While not denying the importance of intellectual conversion, such mechanisms are not unqualified in the effects. To highlight their limits, I build on feminist institutionalist insights to stress gendered and professional norms that can sustain deliberative pluralism. In contrast to historical institutionalist insights, feminist institutionalist perspectives look beyond the context of formal rules to enable a focus on the informal gendered and professional attachments that can sustain or undermine institutional efficiency. Building on a baseline view of gender as encompassing standards of behavior associated with sexual difference, Silvia Gheradi and Barbara Poggio (2001, 247) argue that in institutional settings, gender "may be viewed as . . . a set of practices, which jointly define the relations between men and women" as agents "position themselves by aligning themselves according to the positionings of others within situated discourses."[9] Similarly emphasizing the ways in which structures shape institutional, ideational, and interest-based interactions, Krook and MacKay (2011, 1) suggest that the core questions for feminist institutionalists pertain to the interplay of "formal structures and informal 'rules of the game'" and to the "processes and mechanisms" by which such institutions are produced."

In characterizing such interactions, I juxtapose the positioning of agents both in the "internal" context of professional settings and in "external" interactions with other professions, highlighting the factors that enable agents to resist groupthink-styled pressures for consensus. First, in focusing on intraprofession debates, I argue that while gender has no necessary implications for the *content* of issue-specific policy beliefs, it

9. On gender, see also Barker and Feiner (2004, 7)

can shape the *confidence* of agents in specific ideas, facilitating resistance to intellectual closure. More specifically, countering claims for male predispositions to risk taking, I suggest that mentoring structures that can favor men in institutional contexts may inhibit their risk taking if it gives men "more to lose," particularly in the transactional context of mentor-protégé relations. Rather than seek to maximize efficiency in the use of information, they aim — as Bjarnegård (2009, 192–94) argues — to maximize predictability via the maintenance of gendered social networks. Consider the case of Treasury Secretary Timothy Geithner, whose prominent mentors included Henry Kissinger, Robert Rubin, and Paul Volcker. Geithner (2014) sustained ties with such figures to the point that, even as treasury secretary, he would "check in" with Rubin and Volcker. The point here is not that Geithner is lacking in intellect or to suggest that it was unwise to maintain a sense of elite opinion, but rather to highlight the potential for such dependence on patrons to limit ideational flexibility. Similarly, as noted below, Rubin would in turn stress the extent to which he felt constrained by policy and market sentiment in regulating derivatives over the 1990s. In this light, even as Rubin and Geithner were at the "top of their games" in terms of power and position, their transactional reliance on network patronage rendered them unwilling to support policy adjustment.

In contrast, where attracting such "transactional" network support may be more difficult, "outsider" agents may become more willing to support "transformative" challenges to ideas and interests. In applied terms, the need for professional women to overcome barriers to inclusion in social networks can render them *less* sensitive to social pressures and so — inverting Bjarnegård's argument regarding male networks — *more* willing to risk challenging conventional wisdoms.[10] For example, looking back on the ostensibly "gender neutral" nature of "models and mentors" across their experiences as law students and professors in an important mid-1990s study, Guinier, Fine, and Balin (1997, 90–91) stressed the ways in which mentoring interactions often restricted the scope for a range of views. To overcome such pressures for consensus, they instead urged a more communicative, transformative approach to mentoring — lest,

10. In the financial context, JP Morgan Chase executive Lesley Daniels Webster argued that "[w]omen in business often grow from the bottom up, learning all the complicated ins and outs rather than coming in at a higher level." Referring to her colleague Ina Drew, who was fired for having failed to limit risk taking in the "London Whale" scandal, Daniels Webster suggested that "Nobody plucked [Drew] out and said, 'Oh, she looks and sounds just like me at this age, so I'm going to have her move from division to division every three years so she can build up her resume.' No, women succeed by building a steady string of successes." See Bjarnegård (2009); Dominus (2012).

as they put it, transactionally oriented mentors "grant a passport to power or status to people" who would then be inclined to "take no account of how they arrived at their destination." Moreover, in the absence of transactional supports, transformative discourses might by contrast acquire both a practical appeal — as the only way to "make one's mark" and so reshape professional relations and norms.[11] Not coincidentally, such techniques in "going public" would be employed to varied degrees by Bair and Warren — as Bair developed a profile as an issue-advocate in urging support for mortgage refinancing, while Warren developed a profile as a public intellectual and social critic. Taken together, the contrast between Geithner and Rubin's caution with Bair's and Warren's suggests that sustained professional support may inhibit agents from challenging prevailing practices, while its absence may result in more critical attitudes.

Secondly, regarding the interplay of gender and professional positioning in extraprofessional interactions, I argue that gender socialization leads agents to resist consensus emanating from *other* professional discourses. Perhaps the most important such distinction in recent public policy debates has pitted economists' concerns for utilitarian outputs against lawyers' concerns for procedural fairness. Characterizing economists' values, Fourcade (2009, 9) argued that "economics has produced a vast array of practical instruments that are widely used in policy and business," which feed back "into the intellectual process itself, by fostering a form of 'intellectual imperialism' whereby any social object becomes available for an economic analysis." In terms of such utilitarian abstractions, as Summers and Geithner put it in early Obama-era debates, policy should first and foremost "do no harm." Summers elaborated that policy makers "need to show overwhelming evidence that a market is not functioning, in a profound and disastrous way, to merit an intervention" (Suskind 2011, 182–83, 200). In contrast, from a legal perspective, the main priority is for fairness or justice — even if the result

11. To the extent that groupthink is less likely in diverse groups, one might suggest that "as women make gains in … representation," they may "lose their outsider status" in ways that limit these cognitive effects (Morgan and Buice 2013, 660). This is certainly a possibility, as gender roles have a dynamic character. However, in the legal profession, while there is reason to suspect that the more egregious practices limiting female professional development have been limited in law schools (e.g., access to law review), limits to advancement in professional contexts themselves remain (e.g., with respect to promotion and pay equity). These continued limitations suggest that the transition from "outsider" to "insider" status remains an ongoing, incomplete one. On gender disparities in the 1990s, see Guinier, Fine, and Balin (1997). For subsequent qualified progress, see American Bar Association Commission on Women in the Profession (2013).

is to lower output. Not coincidentally, over the 1990s and 2000s, confidence in the importance of legal and regulatory norms was greatest less on the part of female policy makers writ large — many of whom supported financial liberalization — so much as on the part of female *lawyers*. It was in large part owing to their legal socialization that Born, Bair, and Warren found themselves in conflict with economists who often framed policy debates in utilitarian terms. Indeed, Born (2009) later suggested that the 1998 Long Term Capital Management (LTCM) crisis had "disproved" the arguments of opponents of regulation, elaborating that "I think anybody who has been a lawyer practicing in areas involving business regulation realizes that the public interest is not fully protected by the marketplace and the participants in the marketplace." Building on these contrasts, the challenge is now to show how gender and professional socialization shape both confidence in challenging prevailing beliefs and struggles with advocates of alternative professional perspectives.

Case Selection and Methodological Implications

Over the following case studies, I develop these insights, juxtaposing intellectual pressures for groupthink with gender and professional sources of resistance. The selection of Born, Bair, and Warren as representative agents — in addition to their shared socialization to gender and legal norms — is justified by their similar institutional positions of authority. Indeed, through the onset of the global financial crisis, they were not just "any" agents engaged in debate. Each headed, or helped develop, a key public agency: Born led the Commodity Futures Trading Commission, which held key responsibility for regulating derivatives; Bair led the Federal Deposit Insurance Corporation, which had significant financial resources and responsibility for closing down insolvent banks; and Warren provided the blueprint for a new agency in the Consumer Financial Protection Bureau as well as leadership in the early crisis as chair of the Troubled Asset Relief Program Congressional Oversight Panel. To the extent that no other females held these levels of responsibility, Bair, Born, and Warren provide key cases for the analysis of the interplay of gender and professional socialization.[12]

12. In terms of other key agencies, the Federal Reserve, Treasury, Office of Thrift Supervision, Comptroller of the Currency, and Securities and Exchange Commission had no female leadership.

To be sure, there exist admitted limits in deriving general theoretical conclusions from a limited number of cases. However, one can still identify implications for the *relative* utility of *either* rationalist assumptions that agents use information efficiently *or* institutionalist views that stress the limits to cognitive efficiencies. In this light, to the extent that the economic issue area provides what John Odell terms a "most likely" setting for a rationalist approach — as agents possess access to near-perfect information and clear preferences — the ability of a socially grounded institutionalist analysis to highlight otherwise inexplicable pathologies suggests the merit in paying greater heed to social and institutional variables.[13] More directly speaking to concerns for research design, to the extent that this analysis highlights the role of gender socialization, the primary focus on the proclivity of Born, Bair, and Warren to *increased* risk taking can be reinforced by a parallel focus on male tendencies to *reduced* risk taking. In particular, I highlight the ways in which similarly situated agents like Treasury Secretary Rubin and Special Master for Executive Compensation Kenneth Feinberg shared legal backgrounds with Born and Warren but refrained from challenging prevailing beliefs — despite their respective doubts about derivatives and executive pay. Similarly, with respect to Bair, I highlight the case of Federal Reserve Board member Edward Gramlich, who investigated subprime abuses as Chair of the Fed's Committee on Consumer and Community Affairs. Though not a lawyer like Bair, Gramlich shared her concerns for subprime abuses. Unlike Bair, however, he refrained from pressuring Greenspan to strengthen the Fed's regulatory guidelines. Where Rubin, Gramlich, and Feinberg refrained from acting on policy doubts, their examples show the effects of gender socialization in limiting risk taking and sustaining consensus.[14]

In terms of competing approaches, there also exist alternative perspectives that similarly question rationalist assumptions. Perhaps most obviously, one might also object that "bureaucratic politics" concerns influenced the views of Born and Bair, as each advanced CFTC and FDIC interests in regulation. Yet, such objections can be countered to

13. On "most likely" cases, Odell (2001, 166) argues that "even though conditions seem to make the case unusually favourable" for a theory, if it fails, "even in a most-likely case, this evidence would provide strong support for the expectation that it will fail even more clearly in less hospitable circumstances."

14. Following the crisis, opposition to neoliberalism increased across gender and professional lines — with key agents including Gary Gensler (who led the CFTC under Obama) and Neil Barofsky (as special treasury department inspector general overseeing the Troubled Assets Relief Program [TARP]). Yet, neither enjoyed the track record of Warren in particular from before the crisis, and their opposition to neoliberal views was less professionally risky.

the extent that bureaucratic interests are themselves shaped by professional socialization. Consider that one of Born's processors as CFTC chair — George H. W. Bush appointee Wendy Gramm — played a key role in the *liberalization* of derivatives markets. Whichever of these two leaders — whether Gramm or Born — "correctly" identified the CFTC's interests cannot be identified in abstraction from their differing professional beliefs. In this light, while Born held a law degree, Gramm possessed a Ph.D. in economics, and so their differing professional attachments shaped divergent concerns for procedural fairness or utilitarian efficiency.[15] Highlighting the deeper importance of profession and gender, one could also "control" for bureaucratic politics by addressing their implications of gender and profession for *private sector* debates. Such influences could be seen in the approach to the "dot-com" collapse of the early 2000s, as gender and professional socialization facilitated opposition to groupthink *within* private firms. In particular, risk taking at Enron and WorldCom had been justified with respect to efficient markets-styled assumptions. Yet, the failure of such models would be exposed within these firms by female *accountants*, as Vice President of Corporate Development Sherron Watkins publicized malfeasance at Enron, and Vice President of Internal Audits Cynthia Cooper exposed abuses at WorldCom. Where accountants and lawyers equally value due process-styled concerns for fairness, the parallel socialization of Bair, Born, Warren, Watkins, and Cooper speaks to the importance of not simply bureaucratic politics, but rather more pervasive gender and professional norms. Developing these insights, I now provide three "structured, focused" analyses (George and Bennett 2005), tracing the biography and backgrounds of Born, Bair, and Warren, and in turn implications for their involvement in policy debates and willingness to oppose the conventional wisdom.

BORN AND THE FREEMARKET CONSENSUS

Over the late-1990s, increasing economic policy success fueled increases in policy confidence, particularly at the Treasury and Federal Reserve. Through this period, financial markets were marked by a conventional

15. The ambiguity of institutional interests could also be seen at the Office of Thrift Supervision (OTS), where dependence on fees from regulated firms led to its lax approach at firms like Washington Mutual and AIG. Even as the OTS acted on perceived interests in deregulation, its laxity ultimately led to the agency's post-crisis dismantling.

wisdom regarding monetary fine tuning and deregulation, as recurrent success in monetary "mopping up" after crises suggested that regulation was unnecessary. This consensus limited the scope for the regulation of derivatives, as regulators held that market abuses were best contained by counterparty surveillance and market forces. Yet, in this midst of this neoliberal consensus, Brooksley Born was appointed in August 1996 to head the Commodity Futures Trading Commission (CFTC) where she would — as had been the case over her career — prove often immune to censure. Speaking to her lack of policy support or mentoring, Born had been one of the early female students at Stanford, encountering resistance not least on the grounds that she was "was taking up space in the class for a man who undoubtedly was being drafted to go to Vietnam." In classes, she would be alternatingly grilled for entire sessions or ignored entirely (Roig-Franzia 2009). Nevertheless, Born would become the first president of the Stanford Law Review and graduate first in her class. Yet, she would still be denied access to key networks: while the norm was that the top Stanford graduate would clerk for a Supreme Court justice, the school recommended two male students. Born proceeded on her own initiative to meet with Justice Potter Stewart, who declared that he "wasn't ready" to have a female law clerk. Having previously met Justice Arthur Goldberg, she obtained his recommendation for a federal clerkship — in a letter that she recalled said "something like, 'Of course, I can't have a woman law clerk, but she seems well qualified.'" Over her private career, Born went on to teach at Georgetown and made partner at the Washington-based firm of Arnold and Porter, where she oversaw the firm's derivatives practice. In 1993, she would be shortlisted as the Clinton administration's choice for Attorney General, before moving to the CFTC.[16]

In the 1990s, as efficient markets certainties hardened, Born encountered mounting resistance in her stress on legal norms. Upon taking charge at the CFTC, Born would be surprised by the intensity of opposition to regulation — even regarding fraud. Holding forth at one early meeting, Greenspan argued against regulation to limit fraud on the grounds that even "if a floor broker was committing fraud, the customer would figure it out and stop doing business with him." Born rejected this view, reflecting her professional socialization in responding, "I'm a lawyer, and I think the existence of fraud prohibitions is critically important," to which Greenspan replied, "I guess you and I will never

16. The above discussion draws on McLean and Nocera (2010, 100–103) and Roig-Franzia (2009).

agree about fraud" (Roig-Franzia 2009). Indeed, the issue of fraud was itself a key justification for Born's regulatory appeals. Born (2009) would note that even when the CFTC had previously enabled the growth of derivatives markets, "they had retained fraud and manipulation prohibitions against the market." In this light, she argued that "when I got into office … I realized there was no record-keeping requirement imposed on participants in the market ... We had no information," and so cast antifraud requirements as justifying regulation.

This legally driven stress on the need to penetrate the opacity of derivatives markets would fuel Born's efforts to expand the scope of regulatory efforts. In December 1997, when the Securities and Exchange Commission (SEC) proffered a "Broker Dealer Lite" regime entailing voluntary disclosure by banks, Born saw the opportunity to broaden the dialogue and had the CFTC draft a "concept release" posing questions regarding transparency, clearing facilities, and capital requirements. In March 1998, this prompted one of the more notable exchanges of the 1990s, as Larry Summers telephoned Born to warn her that he had spoken with a group of bankers who had threatened to move their business to London (McLean and Nocera 2010, 104). Yet, perhaps the starkest demonstration of the prevailing groupthink would come in an April 21, 1998, session of the President's Working Group (PWG) on Financial Markets, which met to challenge Born's proposed concept release. The Working Group included an array of officials but was dominated by the heads of the Federal Reserve, Treasury, and Federal Reserve Bank of New York. At the meeting, Rubin and Greenspan directly challenged Born, stressing the potential weight of legal uncertainties in spurring the loss of U.S. business. Even as Rubin had been a skeptic of derivatives within the Treasury, he argued that the CFTC had "no jurisdiction" in these matters, leading Born to reply, "our view is that we have exclusive jurisdiction" — though also agreeing with Rubin on the merit of discussions with Treasury's counsel (McLean and Nocera 2010, 104–105). Greenspan followed by reiterating Summers' concerns from the "thirteen bankers" phone call, emphasizing the dangers of uncertainty and arguing that "merely inquiring about the field would drive important and expanding and creative financial business offshore" (Schmitt 2009). Highlighting tendencies to groupthink, SEC Chair Arthur Levitt (2009) later recalled the dynamic in the Working Group as being one in which the Treasury, Federal Reserve, and Federal Reserve Bank of New York dominated, leading "the group … to follow the leadership of those all-powerful financial officers. Levitt (2009) was particularly self-critical as he stressed his own closed-mindedness with respect to arguments that Born's release would cause market uncertainty, recalling that the "tight-knit group persuaded me that we really would face a situation of financial turmoil if we tried to undo these existing contracts." Similarly, Levitt later argued that Greenspan intimidated congressional representatives in hearings, suggesting that "the titans of our legislature didn't want to reveal their own inability to understand some of the concepts that Mr. Greenspan was setting forth … I don't recall anyone ever saying, 'What do you mean by that, Alan?'" (Goodman 2008).

Two weeks after the meeting — having received no response from Treasury — the CFTC published its concept release. In response, Rubin, Greenspan, and Levitt issued a rare joint press release condemning the move, highlighting the implications for uncertainty and announcing that they would seek legislation to clarify the legal status of derivatives — limiting the ability of the CFTC to advance a regulatory agenda. Over the next several months, Born responded across repeated congressional hearings. Greenspan (1998) would, for example, suggest that the unlimited scope for issuing derivatives precluded monopolistic abuses and ensured efficiency in competition. In late July, he asserted, "It is not possible to corner a market for financial futures where the underlying asset or its equivalent is in essentially unlimited supply … [as] large inventories held throughout the world are immediately available to be offered in markets if traders endeavor to create an artificial shortage." Such arguments obscured the oligopolistic nature of these markets, dominated by "too big to fail" firms, which might spur speculative manias, collusion to sustain their asset values, and, as Born (1998) stressed in her testimony, excessive "systemic risk."

However, beginning in August 1998, criticisms of Born would be temporarily muted by the onset of the Long-Term Capital Management (LTCM) crisis. In August, the Russian default had spurred a decline in the U.S. stock market, threatening LTCM — to which leading banks had lent more than a half trillion dollars — with insolvency. In response, in 1998, New York Federal Reserve President Bill McDonough would organize a "bail-in" by major banks to keep LTCM afloat. In the aftermath of the LTCM debacle, Senate Banking Committee Chairman Republican Jim Leach conceded to Born, "We owe you an apology" (McClean and Nocera 2010, 107). Nevertheless, the urgency would soon dissipate. Born (2009) later argued that it was because "everything was all right … the big banks did step in and solve the problem by taking over LTCM and incurring losses themselves." Moreover, legislators were soon persuaded "that this was an anomaly" and so "not indicative of dangers in the market." In this context, a deregulatory ethos would reemerge. In November 1999, Greenspan and Rubin recommended that Congress permanently strip the CFTC of authority over derivatives, and in December 2000, President Clinton signed the Commodity Futures Modernization Act of 2000, preventing the CFTC and the SEC from regulating derivatives.

To highlight the interplay of gender and professional socialization, it is worth briefly comparing Born's position with that of her colleague Rubin. Each shared a legal background: Rubin had graduated with an LLB from Yale and practiced in the 1960s before joining Goldman Sachs where he rose to the level of CEO, while also developing a wariness toward derivatives. Yet, once installed as Treasury secretary, Rubin found that his colleagues did not share his concerns and, so, arguably succumbed to groupthink. As Rubin later recalled, colleagues like Summers "thought I was overly concerned with the risks of derivatives." However, Rubin remained fearful that "many people who used derivatives didn't fully understand the risks" and argued that proponents did not "take into account what might happen under extraordinary circumstances" (Rubin and Weisberg 2003, 288). In this light, while Rubin's and Born's concerns were similar in content, the two policymakers most importantly differed in confidence. Rubin would later justify his silence by pointing to social pressures. He argued that "[a]ll of the forces in the system were arrayed against [regulation]," as the financial industry "didn't want … these requirements" and discounted the "potential for mobilizing public opinion" (Goodman 2008). Finally, demonstrating the effect of gender bias within the administration, Rubin's supporters would later stress Born's abrasiveness and argue that "If she had just been more collaborative … Rubin might have been her ally" (McLean and Nocera 2010, 108). In this way, gender socialization shaped not only Born's attitudes, but also the responses of key colleagues.

BAIR AND THE ONSET OF CRISIS

Over the next decade, Born's experiences would be paralleled, despite differences in party affiliation, by those of Sheila Bair at the FDIC. Like Born, Bair manifested a concern for regulation and reform and an immunity to censure that would fuel a willingness to take disputes into the public realm. This would eventually prove a point of influence with Bair in both the Bush and Obama administrations, where she would clash on similar grounds with Treasury Secretaries Paulson and Geithner. More specifically, Bair would seek to limit precrisis predatory lending, encourage a more conditional approach to bail-outs, promote postcrisis reform through the strengthening of the resolution process for "too big to fail" firms, and encourage greater attention to mortgage refinancing. Significantly, while her resistance to consensus may have been sustained by her own experiences in being on the "losing side" in debates over the regulation since the early 1990s, her legal background would provide a basis for her concrete views, as she stressed a recurring concern for fairness in competition.

In terms of her background, Bair did not face struggles as intense as those of Born in part because the Civil Rights Act of 1964 had combined with societal shifts to reduce overt discrimination. Bair studied philosophy and went to law school at the University of Kansas in the mid-1970s, where she also worked as a teller at a small-town bank, recalling, "Everybody had a thirty-year fixed-rate mortgage back then … There was a kind of pride in living up to your obligations, and, on the lender side, in making loans that people could understand and afford" (Lizza 2009). In the late 1970s, Bair went to Washington to work at the Department of Health, Education, and Welfare, later joining the staff of Kansas Senator Bob Dole. This would be followed in turn by an unsuccessful congressional campaign — a loss that Dole himself later suggested had been partly attributable to her unmarried status. Dole later supported Bair's appointment to the CFTC. However, she soon found herself at odds with the prevailing antiregulatory ethos, most notably in 1993 when she lost a two-to-one vote to exempt energy futures contracts from antifraud protections — an exemption granted at the behest of the rising Enron corporation. Paralleling Born's stress on legal concerns for fraud, Bair would term the ruling a "dangerous precedent" and singled out arguments that the sophistication of firms reduced the need for regulation, arguing, "If we are to rationalize exemptions from antifraud and other components of our regulatory scheme on the basis of the 'sophistication' of market users, we might as well close our doors tomorrow" (Suskind 2011, 204–205). In this way, her legal background presaged her views of economic issues.

When her term at the CFTC ended in 1995, Bair left government for the private sector, returning to Washington in 2001 as assistant secretary of the Treasury for Financial Markets. During this period, she developed her initial concerns for predatory lending. Instead of the "plain vanilla" thirty-year packages that had characterized her youth in Kansas, these complex offerings would be securitized, sold off within months. To be sure, this practice seemed sustainable — so long as housing values continued to rise. However, Bair would later criticize what she saw as a lax attitude at the Federal Reserve, which she held was "really the only authority that could set lending standards across the board — banks, nonbank lenders, any mortgagor … And it affirmatively did not do that" (Lizza 2009). Following a stint teaching at the University of Massachusetts, Bair returned to Washington in 2006 when Bush appointed her to lead the FDIC.

In her first days at the FDIC, Bair came to recognize the weight of the deregulatory consensus as a force that had not only contributed to an extensive downsizing at the agency, but also given rise to a broader misplaced certainty. As she later put it,

> The groupthink was that technological innovation, coupled with the Fed's seeming mastery of maintaining an easy monetary policy without inflation meant an end to the economic cycles of good times and bad that had characterized our financial system in the past. The golden age of banking was here and would last forever. We didn't need regulation any more (Bair 2012, 17).

Confronting this consensus, Bair would not only seek to strengthen regulations, but also to do what the New York Federal Reserve had done in the LTCM crisis — appeal to the enlightened self interest of lenders to stave off a further collapse. However, following an unsuccessful effort to pull lenders together privately, Bair "went public" in a *New York Times* op-ed that proposed an industry-wide adjustment of payment standards. Highlighting the collective dilemma, Bair (2007) argued that the collapse of housing prices meant that "widespread foreclosures [would] only maximize losses." Bair therefore argued for a global reset in which lenders would convert rising variable rate loans "to fixed-rate loans at the starter rate."[17] To support this effort, Bair urged the administration to establish a fund, but her efforts were resisted by Treasury Secretary Paulson (Lizza 2009).

Ironically, the direction of requests would be increasingly reversed as the market slid and the Treasury sought access to FDIC funds. In October 2008, as credit markets seized up, Paulson summoned Bair and

17. See also Nocera (2011).

requested that the FDIC lend its resources to a $13 trillion guarantee of all debts in the U.S. banking system — a request Bair evaded on grounds that she needed the authority of her Board, buying time to reach a more modest agreement with Paulson to guarantee only new debt. On October 13, in keeping with her new importance, Bair attended the key meeting of Paulson, Geithner, and Bernanke with the heads of the leading banks, who were told that that the U.S. government was "going to forcibly inject $125 billion" of capital into each of them, as Bair later put it, "to make sure they all stayed afloat" (Bair 2012, 5). Looking back, Bair recalled that "the mammoth assistance to these big institutions seemed like overkill," noting that she "never saw a good analysis to back it up." However, she also recognized that "that was a big part of the problem: lack of information. When you are in a crisis, you err on the side of doing more, because if you come up short, the consequences can be disastrous" (Bair 2012, 6).

With the ascension of the Obama administration, Bair would be surprised to find that many of the Bush-Paulson policies — and so her tensions with administration officials — would be sustained, particularly as Geithner would shift from his post at the New York Federal Reserve to the Obama Treasury. Perhaps the most significant initial point of tension pertained to mortgage modifications. In October 2008, congressional Democrats had conditioned their support for TARP on the promise that $50 billion of the $700 billion in bailout money go to mortgage modification. The Paulson Treasury essentially ignored that commitment, a stance that the Geithner Treasury sustained. Indeed, in a January 5, 2009, meeting with Congressional Republicans, President-Elect Obama himself affirmed, "We will not roll out an aggressive housing plan" (Woodward 2012, 8). In this setting, even while the administration suggested that HAMP might help three to four million homeowners, foot-dragging by the banks and Treasury would leave beneficiaries numbering less than a million. Bair was shown the administration's limited plan only hours before it was announced by the president and agreed to refrain from protesting in public while noting, "I don't think it will work" (Nocera 2011). In implementation, Treasury and private financial opposition would continue to limit HAMP's effectiveness, with private banks simply "losing" thousands of HAMP applications (Scheiber 2012, 237–39).

Bair would prove more successful in shaping Obama administration policies on the establishment of a resolution authority in shutting down large financial institutions. In the midst of the March 2009 controversies over AIG bonuses, Bair met with Obama and stressed the merit of FDIC processes, arguing that "when we put a bank into receivership, we have the right to break all contracts, we can fire people, we can take away bonuses and we don't get into this kind of problem" (Nocera 2011). Yet, even after Obama endorsed building similar authority into Dodd-Frank, Bair would encounter Treasury resistance, leading Bair to seek support from congressional allies (Nocera 2011; Scheiber 2012, 176–77). Voicing his objections to an FDIC-Federal Reserve joint authority, Geithner asserted at one May 2009 meeting with industry lobbyists, "[t]here isn't going to be any fucking council." Nevertheless, the administration sided with Bair (Scheiber 2012, 176–79).

An illustrative contrast can be drawn with Bair's activism in the case of Edward Gramlich, a Federal Reserve board member who investigated subprime abuses as chair of the Federal Reserve Committee on Consumer and Community Affairs but did not press Alan Greenspan to act. While Gramlich was very much an activist in seeking to identify subprime abuses, he did not publicize or use the results of his investigation to advance reform. This reluctance was noted by McLean and Nocera (2010, 91), who singled out Gramlich for praise with respect to the *content* of his beliefs, but also implicitly conceded his lack of *confidence* in acting on them:

> Not long before he died, Gramlich, upset at the criticism Greenspan was starting to receive [for having failed to act on subprime warnings], penned a note to his old boss. "What happened was a small incident . . . and as I think you know, if I had felt that strongly at the time, I would have made a bigger stink." But he hadn't made a stink. That was the point. Making a stink was simply not how Gramlich led his life, even with something that mattered to him as much as subprime lending.

In this sense, even while Gramlich shared Bair's policy views, he lacked her "outsider" socialization that might have predisposed him to press his case. While not a lawyer, to the extent that Gramlich shared Bair's skepticism toward subprime abuses, his unwillingness to risk alienating patrons shows the importance of gender socialization in sustaining consensus.

Later, looking back at her struggles, Bair stressed the extent to which rhetorical force — "going public" — had become necessary, even at the cost of incurring social sanction. Summing up her stance, Bair recalled that she "didn't start off being assertive and going public with concerns . . . But we were being ignored, and we had something to bring to the table." To the extent that gender bias motivated some of the tensions with key colleagues, Bair conceded the possibility, noting that "[t]here's been speculation: maybe it was gender or that I'm not an Ivy League person. It could be; everybody has their biases." From the vantage of this framework, however, it was the interplay of gender — which led Bair, as she put it, to "become assertive when they just wouldn't listen" — combined with her legal background that explains her persistent focus on strengthening the legal foundations of the postcrisis regime, even as colleagues like Geithner stressed the implications for business confidence (Nocera 2011). Indeed, overlapping with Bair in the Obama era, such tensions would be experienced by Warren, as she clashed with Geithner in overseeing TARP and creating the Consumer Financial Protection Bureau.

ELIZABETH WARREN AND REFORMIST DEBATES

Continuing in the vein of Born and Bair — as a lawyer who often "went over the heads" of professional and policy colleagues to go directly to the public — Elizabeth Warren would, as chair of the Congressional Oversight Panel on TARP, oppose the Treasury's handling of the program as not simply too generous toward larger banks, but more broadly as lacking in transparency. More broadly, through the 2000s, Warren established for herself a position as a public intellectual, working not from an institutional position of influence, but rather seeking to reshape the views of the general public and advance arguments for the establishment of Consumer Financial Protection Bureau. To be sure, Warren also differed in her background from Born and Bair in a key way, as prior to her ascension to a position of governing responsibility, she had pursued policy influence initially in the absence of any official or governmental position, rather rising to prominence as a law professor and scholar. Similarly differing from Born and Bair, Warren would — after having been passed over to head her own brainchild in the Consumer Financial Protection Bureau — move into the realm of electoral politics, securing election as a Democratic Senator representing Massachusetts.

Nevertheless, these differences do not negate deeper commonalities, as Warren shared a background as a female lawyer and resisted pressures from many of the same bureaucratic sources. With Bair in particular, Born shared a Midwestern background, one marked by an ongoing concern for economic security, later recalling, "I worried about money from the time I was a little kid," recounting that — when she was ill — her

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mother would weigh her temperature against the family's debt to the doctor before deciding whether to schedule an appointment (McGinn 2009). Having won a debating scholarship at George Washington University, she shifted to Rutgers Law where she went on to teach in its graduate program. Over the next three decades, Warren would make her academic mark through research challenging the stereotype of bankruptcy as a function of personal irresponsibility, instead highlighting the role of divorce, job loss, medical debts, and broader economic downturns (Suskind 2011, 77–79). By 1995, having secured a position at Harvard, Warren began to increasingly assume the role of a public intellectual, stressing the interplay of falling wages and rising child care and educational costs (McGinn 2009). In 2003, Warren would author a mass-oriented tome, *The Two-Income Trap*, developing these themes, appearing on outlets like *Dr. Phil* to publicize her claims (Warren and Tiyagi 2003). In this way, as her analysis was at the level of the household — if not community — it provided a basis for a perspective at odds with the stress placed by economists on individual choice, a tension that would shape her subsequent debates with economist colleagues in legal contexts.

By 2007, in the context of the subprime bubble and concerns for abusive lending, Warren would move to offer a more institutional critique of predatory abuses, stressing the importance of access to information to the functioning of markets. In an influential article, she pressed to make the case for a consumer protection agency in the financial realm, noting the irony that while "[i]t is impossible to buy a toaster that has a one-in-five chance of bursting into flames and burning down your house . . . it is possible to refinance an existing home with a mortgage that has the same one-in-five chance of putting the family out on the street — and the mortgage won't even carry a disclosure of that fact to the homeowner." Highlighting further the consequences of the "resetting" 2/28 and 3/27 loans that had concerned Bair, Warren noted that while it was similarly "impossible to change the price on a toaster once it has been purchased," it was possible "long after the papers have been signed . . . to triple the price of the credit used to finance the purchase of that appliance, even if the customer meets all the credit terms, in full and on time" (Warren 2007, 8).

By the fall 2008 onset of crisis, Warren had ascended to a new level of public authority, leading Senate Majority Leader Harry Reid to appoint her to head the Congressional Oversight Panel keeping tabs on the TARP program (McGinn 2009). In this context, Warren continued to publicize her efforts, going on programs like *The Daily Show* and at times criticizing the Obama administration — including Treasury Secretary Geithner and Obama himself — for an insufficient attention to reform. In her hearings with Geithner a particular sticking point for Warren would be the lack of transparency with respect to TARP disbursements and the provision of 100% repayment to AIG's counterparties — each steps that Geithner saw as politically necessary in order to avoid a collapse of market confidence.[18] With respect to Obama, Warren accused him of having squandered his credibility, lamenting to reporters a year after the initiation of the TARP program,

I don't know what the president is thinking. I don't see the president . . . But. . . he's got to know that his angry words at Wall Street, at their recklessness and dangerous incentives in compensation . . . that he can't just say that sort of thing, and then dump money in their laps and be credible (Suskind 2011, 344–45).

In response, as Warren demonstrated a willingness to take on administration figures, she arguably alienated both Geithner and Obama. Indeed, Geithner's interrogations before Warren's Committee prompted his development of an "Elizabeth Warren strategy" to insulate himself from her charges. In the end, there would be a degree of payback, as Warren would be made an advisor in efforts to establish the Consumer Financial Protection Bureau, but she would not be appointed its first director. Obama made this point clear in the August 2009 Oval Office meeting, informing Warren, "This isn't a job interview" (Suskind 2011, 5–6). In light of this experience, Warren would continue her move into the public sphere, seeking election to the Senate on a platform urging further reform.

In terms of contrasting these positions with those of similarly situated male colleagues, it is worth noting one useful Obama-era contrast with Bair and Warren, in Washington lawyer Kenneth Feinberg as TARP Special Master for Executive Compensation — or "Pay Czar." Loosely paralleling Warren's role, Feinberg was charged with addressing pay abuses at TARP recipient firms. Yet, despite the early-2009 public outrage over bonuses, Feinberg was also tasked with maintaining the competitiveness of the firms and, so, their abilities to repay the Treasury. In meeting with Geithner, Feinberg recalled that the Treasury secretary stressed "the need to keep the seven companies in business so that the

18. On the payments to AIG counterparties, see Financial Crisis Inquiry Commission (2011, 344–51).

taxpayers could eventually get their money back" (Brill 2010). To be sure, Geithner also "expressed the hope that ... I could build in some new substantive criteria for compensation" (Brill 2010). However, to the extent that the Treasury pressed Feinberg to permit large bonuses even at AIG, such enduring criteria were unlikely to persist. In this way, Feinberg can be seen as akin to Rubin, a lawyer whose instincts had been to contain market abuses but who ultimately acceded to a deregulatory ethos.

CONCLUSIONS: REGULATING AND TAKING RISKS

Looking back on the global financial crisis, Alan Greenspan (2008) cast it as "the type of wrenching financial crisis that comes along only once in a century." In contrast, Sheila Bair (2011) suggested that "Too many … compare the crisis to a 100-year flood [and say] … 'Nobody saw this coming.' The truth is, some of us did see this coming. We tried to stop the excessive risk-taking that was fueling the housing bubble and turning our financial markets into gambling parlors." In this light, this effort highlights the intellectual sources of both Greenspan-styled groupthink — as reinforced by social networks that, as Elin Bjarnegård (2009) argues, prize predictability over efficiency — and the interplay of gender and professional socialization in enabling Bair-styled resistance. Put more formally, I have drawn on historical and feminist institutionalist insights to highlight not only key sources of consensus, but also the potential limits to such pressures — as gender and professional socialization combined to limit risk taking by agents like Greenspan, Rubin, and Levitt — and enabled greater policy risk taking by Born, Bair, and Warren. It should be stressed that these insights do not amount to a suggestion that gender has any a priori implications for the content of beliefs so much as they support a view of gender socialization as having implications for the *confidence* with which agents hold more specific professional beliefs. Where Treasury Secretary Robert Rubin and Federal Reserve Board member Edward Gramlich proved unwilling to act on their doubts regarding regulation — lest they be perceived as "rocking the boat" and disrupting a prevailing consensus — Bair, Born, and Warren stood as outsiders with no networks to disrupt and were more willing to advocate for change.

Taken as a whole, this analysis has both theoretical and policy implications. First, it calls into question rationalist approaches that stress

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the efficiency with which agents use information, countering that the conversion of principled beliefs into intellectual abstractions can prove an ironic source of policy inefficiency. Where intellectual "flights into certainty" inhibit the efficient use of information, they can even provide endogenous sources of exogenous shocks. Such was the case in the run-up to the global financial crisis, as it spurred an ongoing deregulatory ethos, one which fueled destabilizing increases in risk taking. Indeed, to the extent that postcrisis reform has been frustrating, Bair- and Warren-styled efforts at public regulation have been limited by a utilitarian emphasis on recovery at the expense of reform. Nevertheless, this opposition shows that even as consensus mounts, it can be challenged in ways that shape evolving debates.

Secondly, while essentialist views of gender often stress the greater willingness of men to take risks, this analysis suggests that social contexts may often incline women to greater professional or intellectual risk taking. Countering the claims of approaches, which argue that women are more risk averse than men, this analysis suggests that male colleagues who benefitted from social supports — like Rubin, Gramlich, and Feinberg — may grow risk averse. In contrast, to the extent that women like Born, Bair, and Warren lacked social supports, they grew less concerned with "getting along" with transactional career sponsors and more with transformative policy accomplishments. For this reason, they were more likely to risk challenging prevailing conventional wisdoms to "go public" in ways that shaped broader debates. Taken as a whole, this analysis highlights not only the limits to efficiency in the use of information, but also the role of gender and professional socialization in explaining variation in such efficiency and, so, key endogenous sources of instability and crisis.

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