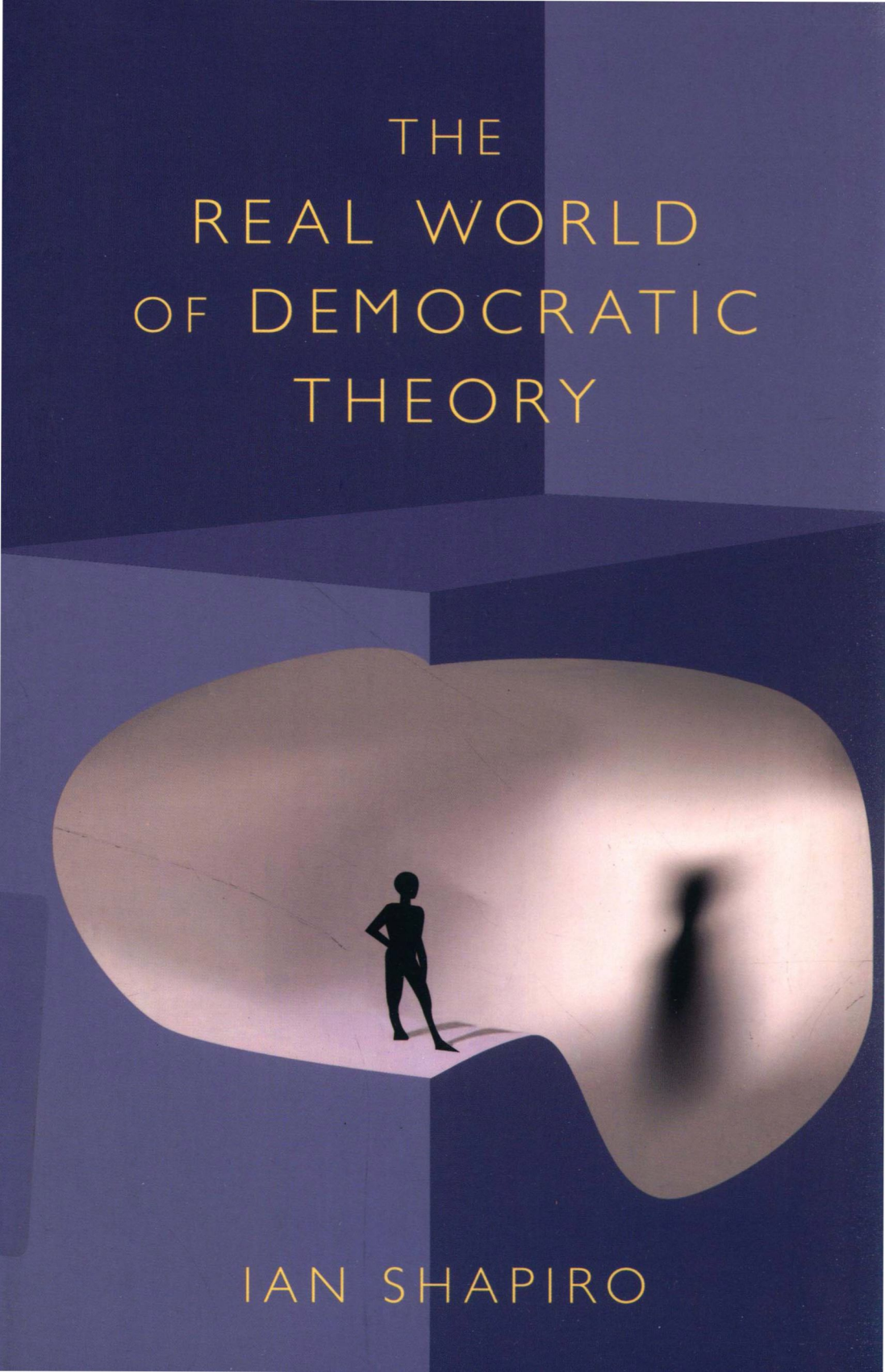
THE REAL WORLD OF DEMOCRATIC THEORY



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The Real World of Democratic Theory

For Douglas Rae

Preface

THIS BOOK is conceived as a sequel and complement to an earlier volume, *Democracy's Place*, which was first published in 1996. As with the earlier collection, its chapters were originally written as freestanding essays over the preceding decade, and they range from theoretical arguments to concrete applications. I have added an extended introduction in which the essays are located in the changing, not to say tumultuous, global political climate since 1996—during which democracy's fortunes have ebbed and flowed in dramatically unforeseeable ways. I also spell out the connections among the essays, and their relations to my larger ongoing endeavor to develop an appealing democratic account of justice. The volume is intended to stand on its own as an integrated whole, but it is also, therefore, an interim report on what Isaiah Berlin might have described as the journey of an aspiring hedgehog.

If the reader concludes that I am chasing my shadow, or that the journey is for some other reason hopeless or ill-conceived, this should not reflect adversely on the many people who have tried to help me along the way. Foremost among these are my coauthors of chapters 3, 4, and 6: Courtney Jung, Ellen Lust, Mayling Birney, and Michael Graetz. They gave generously of their time in the revising of our joint contributions. Needless to say, none of them is implicated in the chapters of which they are not coauthors or in my larger enterprise—of which they might not approve.

I will not try to list the many people who have commented helpfully on the particular essays in forums too numerous to recall. You know who you are. I should, however, mention those who have read part or all of the present manuscript and offered much good advice, some of which has been heeded. These are Lisa Ellis, David Mayhew, Nicoli Nattrass, Andrzej Rapaczynski, Frances Rosenbluth, David Runciman, and Sue Stokes. Their help is thankfully acknowledged, and where their advice has been ignored the usual caveats apply. Thanks are also due to Ian Malcolm, who continues to do his best to keep the hedgehog on its path. I owe an enormous debt of gratitude to Ana Arjona, who is the Platonic form of a research assistant. She has worked tirelessly on this project with amazing efficiency, dedication, and good cheer while teaching, writing her dissertation, and raising her twins—not to mention responding swiftly to a host of other research tasks on my behalf. The funds to employ her were provided by Yale University, whose support is noted with appreciation. These acknowledgments would be incomplete if I did not

take due account of Lauren Lepow's skill, unsurpassed, in my experience, as a manuscript editor.

The chapters that follow found their way into the present volume by various routes. Chapters 4 and 5 are previously unpublished in English, though an earlier version of chapter 5 has appeared in Spanish as "Contención y cosmopolitismo democrático," in *Foro Internacional* 193, vol. 48, no. 3 (2008). The other chapters have all been published in English in some form, though most have been substantially revised for the present purpose. Chapter 1 originally appeared in an edition of Locke's *Two Treatises of Government* and *A Letter Concerning Toleration* that I edited for the Yale University Press series Rethinking the Western Tradition in 2003. Chapter 2 builds from a review essay on recent work in democratic theory that first appeared in *Government and Opposition* 43, no. 3 (Summer 2008). An earlier version of chapter 3 appeared in *Politics and Society* 33, no. 2 (June 2005). It has been revised and updated; changes include the addition of a new afterword dealing with developments in South Africa, the Middle East, and Northern Ireland over the past five years. A shorter version of chapter 6 first appeared in the *National Tax Journal* 59, no. 3 (September 2006), and was expanded into something close to its present form in *Divide and Deal: The Politics of Distribution in Democracies,* edited by Ian Shapiro, Peter Swenson, and Daniela Donno (New York: New York University Press, 2008). Chapter 7 is adapted, updated, and expanded from my introduction to *Abortion: The Supreme Court Decisions*, 3rd ed. (Indianapolis: Hackett, 2007). It has not appeared in English in its present form, though a similar version appeared in Spanish as "El derecho constitucional del aborto en los Estados Unidos," in *Doxa* 31 (2008). Chapter 8 combines and builds from replies to critics of *Democratic Justice* and *The State of Democratic Theory* that appeared, respectively, in *The Good Society* 11, no. 2 (June 2006), and *Critical Review of International Social and Political Philosophy* 8, no. 1 (March 2005). Copyright material has been reprinted with appropriate permission.

The Real World of Democratic Theory

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INTRODUCTION

Revisiting *Democracy's Place*

Democracy in 1996

Democracy's Place appeared in 1996, a heady moment for democracy's partisans in many parts of the world.[1] Five years had passed since the Soviet Union's collapse, long enough for people to believe that it was real. The Russian disenchantment with the West that would follow NATO's bombing of Kosovo and subsequent expansion lay in the future, as did the creeping revival of Russian authoritarianism that we have witnessed in recent years. It was not yet clear that most of the Asiatic republics of the former Soviet Union would fail to replicate the comparatively easy Eastern European transitions to democracy. Russia was still giddy in the wake of the dramatic transition from Gorbachev to Yeltsin, and much of its population remained in the magnetic thrall of Western consumerism. China might not yet be showing signs of a political transition, but there, too, central planning was giving way to market capitalism—fostering much speculation that democratization might not be far behind. Democracy seemed to be on the march in the former communist world.

No less striking than the largely bloodless transitions in the former Soviet bloc were developments in southern Africa. Against all predictions, in 1990 F. W. de Klerk's apartheid government had freed all political prisoners, unbanned the African National Congress, and agreed to the elections that installed Nelson Mandela as president in April of 1994. Close observers of South Africa's spiraling economic and political decline during the 1980s would have given heavy odds against any such outcome—had it occurred to anyone to ask. By December of 1996 the provisional constitution had been replaced by a permanent one that was widely recognized as one of the most progressive constitutions in the world, though not before it had been sent back to Parliament for a variety of changes by the new Constitutional Court. This procedural probity suggested that the new democratic South Africa would be respectful of the rule of law. To the north, the appalling

[1] Ian Shapiro, *Democracy's Place* (Ithaca: Cornell University Press, 1996).

Rwandan genocide that had killed more than 800,000 people had subsided. Robert Mugabe, who had just been reelected president of Zimbabwe, was yet to atrophy into the corrupt dictator he would become. South African deputy president Thabo Mbeki declared that an African Renaissance was in the offing.[2]

If democracy and the rule of law were entrenching themselves in the postcommunist world and South Africa, the picture elsewhere was more mixed. In the Middle East, promising negotiations between Israel and the PLO that had produced the Oslo Accords on a two-state solution in August of 1993 had been blown apart by Yitzhak Rabin's assassination at the hands of a disgruntled right-winger in November of 1995. In 1996 it was not yet clear how big the missed opportunity was, or how badly the conflict would deteriorate into a second major intifada five years later and massive escalations of conflicts with Hezbollah in Lebanon and Hamas in Gaza and the West Bank after that. The huge loss of American prestige across the region that would follow George W. Bush's invasion of Iraq in March of 2003 had not yet occurred, making it still plausible that, with a bit of luck, the United States might yet broker a settlement.

Latin America also presented a mixed picture for democrats in 1996. The breakdown of democracy across the region in the 1960s and 1970s had been followed by an era of redemocratization, despite the "lost decade" of economic crises in the 1980s. There had been democratic transitions in several Southern Cone countries as well as El Salvador, yet authoritarian legacies had not been entirely dispatched. Augusto Pinochet, the architect of Chile's 1973 coup and then its authoritarian dictator, was still commander-in-chief of the army—a position he would retain until retiring to the Senate in 1998. In 1992 Peruvian president Alberto Fujimori had shut down Congress, suspended the constitution, and purged the judiciary. Fujimori had nonetheless been comfortably reelected with almost two-thirds of the vote in 1995—a less than prepossessing development for those who see fidelity to the rule of law as integral to democracy's health in the longer run. There was cause for cautious optimism in Venezuela. Hugo Chavez's coup attempt had failed in 1992, and his election as president lay in the future. In Mexico, fragile democratic institutions had survived the 1994 peso crisis, suggesting that Mexican democracy might be more deeply rooted than many had thought. This supposition would turn out to be correct in the 2000 election. Outgoing President

[2] Thabo Mbeki, "I Am an African," speech on the adoption of the South African Constitution Bill, May 8, 1996, http://www.polity.org.za/article/mbeki-i-am-an-african-adoption-of-sa-constitution-bill-1996-08051996-2004-01-01 [07-22-2009].

Zedillo conceded his Institutional Revolutionary Party's defeat, leading the PRI voluntarily to relinquish power after more than seven decades in office.

Democratic political competition seemed to be alive and kicking in many older democracies in 1996. Italy and Japan had recently instituted major electoral reforms, replacing systems that had been widely seen as fostering corruption with mixed systems combining proportional representation and single-member districts. New Zealand had adopted a similar system, with an eye to producing governments that better reflect voters' preferences.[3] In the United States two years earlier the Democrats had lost control of both houses of Congress for the first time in a generation, yet Bill Clinton comfortably defeated Bob Dole in 1996 and returned to the White House. In Britain, the corrupt and dispirited Tories whom John Major had inherited from Margaret Thatcher were on their last legs, and a charismatic new leader of a reinvented Labour Party was waiting in the wings. Long-dominant monolithic parties had lost their political monopolies in Japan and India. It seemed that political scientists might soon be able to dispense with the rather awkward category of "single-party dominant democracies" that had been invented to accommodate them. For those who saw political competition and alternation in power as a vital ingredient of democratic politics, this was poignant—if anecdotal—evidence of democratic vitality.

More systematic data were also encouraging. By 1996 there were 81 democracies in the world, up from 59 at the start of the decade—a number that had itself represented a substantial recent increase. From 1960 through the mid-1980s democracies in the world had numbered in the 30s. Though this was close to a doubling of the 19 democracies that existed at the end of World War II, the number of democracies in the world seemed to have plateaued. In 1984 Samuel Huntington expressed the conventional wisdom in asserting that it was unlikely that many more democracies would come into being.[4] By 1996 events had proved Huntington clearly wrong. Not only had the number of democracies doubled; for the first time democracies outstripped nondemocracies. In 1974, when there were 36 democracies, 100 countries were nondemocracies. The number of nondemocracies had fallen to 85 by 1990, whereas democracies had risen to 59. The balance had shifted by 1996 to 79 nondemocracies as against 81 democracies. Most of the world's population continued

[3] See Takayuki Sakamoto, "Explaining Electoral Reform: Japan versus Italy and New Zealand," *Party Politics* 5, no. 4 (1999): 419–38.

[4] Samuel Huntington "Will More Countries Become Democratic?" *Political Science Quarterly* 99, no. 2 (1984): 193–218.

to live under nondemocratic regimes, but for the first time most political systems were democracies.[5]

Pyrrhic Victory?

Despite democracy's recent triumphs and what plausibly seemed to be encouraging trends, democracy's partisans had cause for concern in 1996. It was far from clear how much difference democracy actually made in people's lives. Notably more consequential than democracy seemed to be the growing pressure on governments, of whatever stripe, to embrace an emerging economic orthodoxy known as neoliberalism. Implementing neoliberal policies involved granting unprecedented authority to technically well-schooled economic elites who promised to liberate their economies from stultifying regulators and open them to the widely touted benefits of free trade. With communism off the table everywhere except in such vestigial outposts as Cuba and North Korea (and somewhat ambiguously in China), it was becoming virtually impossible for governments to resist the pro-market, antiregulatory, and antiredistributive policies that traveled under the neoliberal banner. Poverty, inequality, and the inherited injustices that so often motivate people to demand democracy would be tackled, on this view, but improvements in these areas would be by-products of the rising tide that neoliberal policies promised.

Technocratic faith in the prevailing market wisdom was ascendant. Political economists and prognosticators of many ideological stripes were voluble about the virtues of "shock therapy" in the transition from communism to capitalism, despite its manifest human costs.[6] Indeed, one

[5] These data are taken from "Polity IV Project: Political Regime Characteristics and Transitions, 1800–2007," http://www.systemicpeace.org/polity/polity4.htm [06-02-2009]. Following convention here, a country is considered a democracy if it has a score of 6 or higher on the Polity scale.

[6] Jeffrey Sachs and Wing Thye Woo, "Structural Factors in the Economic Reforms of China, Eastern Europe, and the Former Soviet Union," *Economic Policy* 9, no. 18 (April 1994): 102–45; Jeffrey Sachs, "Privatization in Russia: Some Lessons from Eastern Europe," *American Economic Review* 82, no. 2 (1992): 43–48; David Lipton and Jeffrey Sachs, "Creating a Market Economy in Eastern Europe: The Case of Poland," *Brookings Papers on Economic Activity* 1 (1990): 75–133; Juan Antonio Morales and Jeffrey Sachs, "Bolivia's Economic Crisis," in *Developing Country Debt and Economic Performance*, ed. Jeffrey Sachs, vol. 2 (Chicago: University of Chicago Press, 1990), pp. 159–266; and Janos Kornai, *The Road to a Free Economy* (New York: W. W. Norton, 1990). For a discussion of other neoliberal economists of the period, see Ganez Venelin, "The 'Triumph of Neoliberalism' Reconsidered: Critical Remarks on Ideas-Centered Analyses of Political and Economic Change in Post-Communism," *East European Politics and Societies* 19, no. 3 (2005): 343–78.

influential commentator from the political left had argued that market reforms should be rammed through before democratization, lest those harmed by the reforms deploy their newfound political strength to block them.[7] This was at a time when the widely touted "East Asian miracles" had occurred either in authoritarian countries like Hong Kong, Singapore, South Korea, Indonesia, Thailand, and Taiwan, in the partial democracy in Malaysia, or in the dubiously democratic Japan that had been continuously governed by the Liberal Democratic Party since its founding in 1955. True, these economies had often been protectionist, and they were managed by activist states whose decisions bred major market distortions. But the costly dimensions of these choices would not become evident until the Asian bubble burst later in the decade.[8] In 1996, the name of the game was economic growth, to which democracy was widely seen as at best irrelevant and quite possibly an irritant.

Developing country governments, keen to elide local opposition to the policies that might attract international investors, went so far as to ask the IMF and World Bank to tie their hands with even more draconian austerity packages than were deemed necessary by those institutions.[9] The new ANC government in South Africa began distancing itself from its frankly redistributive Reconstruction and Redevelopment Programme (RDP) almost as soon as it took office in 1994. By 1996, RDP had been unceremoniously dumped in favor of GEAR. The order of the nouns in its title made GEAR's neoliberal priorities clear. *Growth, Employment, and Redistribution* meant reversing RDP's logic (which had been couched in a pastiche of post-Marxist and Keynesian rhetoric) in favor of pro-growth incentives for market actors. These, it was said, would produce employment that would in turn generate redistribution.[10]

By the mid-1990s a comparable dynamic had been observed in Latin American country after Latin American country. Pro-labor and populist governments had come into office in the late 1980s in Argentina, Mexico, and Venezuela. Once in power, they quickly reversed their protectionist and interventionist policies, opened their economies internationally, and

[7] Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), pp. 136–87.

[8] They were, for example, entirely opaque to Joseph Stiglitz at the time. See his "Some Lessons from the East Asian Miracle," *World Bank Research Observer* 11, no. 2 (August 1996): 151–77, http://wbro.oxfordjournals.org/cgi/reprint/11/2/151 [06-09-2009].

[9] See James R. Vreeland, *The IMF and Economic Development* (Cambridge: Cambridge University Press, 2003).

[10] Asghar Adelzadeh, "From RDP to GEAR: The Gradual Embracing of Neo-Liberalism in Economic Policy," *Transformation* 31 (1996): 66–95. As Nicoli Nattrass has pointed out to me, GEAR was never fully implemented.

reduced state intervention.[11] True, there had been some resistance to the wave of neoliberal policies. Venezuela's Carlos Andrés Pérez had faced two coup attempts in 1992 before being impeached the following year. In Ecuador, President Abdalá Bucaram's austerity measures led to street riots that forced him from office in 1996. There was considerable social unrest in parts of Argentina. But for the most part the reversals had been accepted as necessary. Indeed, many of the leftist governments that engaged in radical policy-switches to implement them were subsequently reelected.[12]

Nor was the ascendant faith in neoliberalism limited to the postcommunist and developing worlds. In Britain and the United States, "New" Labour and the Democratic Leadership Council (DLC) had reinvented their respective parties to an extent that would have been unimaginable a decade earlier. The Labour Party debate had centered on whether Clause IV of its constitution calling for nationalization of the means of production, drafted by Sidney Webb in 1917 and adopted by the party the following year, should be abolished. For the New Labourites, Clause IV was an antediluvian albatross. They saw it as emblematic of everything that had rendered James Callaghan's government vulnerable to defeat by Margaret Thatcher in 1979 and kept Labour, first under Michael Foot's left-wing leadership and then amid the timid tinkerings of Neil Kinnock and John Smith, in the political wilderness ever since. When Tony Blair ascended to the Labour leadership in 1994, it was clear that Clause IV, which he had long opposed, was on the way out.

On the western side of the Atlantic, the Democrats' historic drubbing in the 1994 congressional elections had empowered the DLC, which Bill Clinton had led for the two years prior to his election as president in 1992. Any doubts about where the New Democrats were heading ideologically were put to rest by their majority support for the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which had been designed, as President Clinton said in his 1996 reelection campaign, to "end welfare as we know it."[13] Aid to Families with Dependent Children, a stalwart of the New Deal enacted in 1935, was abolished. The idea of welfare as an entitlement was replaced by time-limited programs linked

[11] See Victoria Murillo, *Labor Unions, Partisan Coalitions and Market Reforms in Latin America* (Cambridge: Cambridge University Press, 2001).

[12] See Susan C. Stokes, *Mandates and Democracy: Neoliberalism by Surprise in Latin America* (Cambridge: Cambridge University Press, 2001).

[13] House Democrats voted for the final bill by a majority of 98 to 97, with two not voting. In the Senate the Democrats divided 25 to 21 with one not voting. Since all Senate Republicans and all but five House Republicans voted for it, the bill passed in a landslide. See "Vote Tallies: 1996 Welfare Amendments," http://www.ssa.gov/history/tally1996.html [06-08-2009].

to work and with a two-year lifetime cap. The market reigned supreme; henceforth people would have to sink or swim in it. The toothless rage that erupted on the left of the Democratic Party confirmed, to the New Democrats, that they were on the right track.[14]

In politics few things beat success, or at least the appearance of success. It was far from clear in 1996 what tangible results, if any, would stem from the attempts by New Labour and the New Democrats to reinvent themselves. Tony Blair's electoral ascendancy lay in the future, and the Democrats would be kept at bay on Capitol Hill for the next dozen years. But it was testimony to the perceived success of the emerging neoliberal orthodoxy that Blair and Clinton had thrown their lots in with it. On coming into office President Clinton had created a new National Economic Council to direct economic policy out of the White House under the supervision of Robert Rubin, a man who had spent the preceding twenty-six years rising through the ranks at Goldman Sachs. First at the NEC and then as treasury secretary, Rubin partnered with Federal Reserve chairman Alan Greenspan (whom Clinton had inherited from Ronald Reagan and reappointed) to reduce deficits, regulation, and trade barriers. The Greenspan-Rubin approach gained credibility as the deficits that had called forth doomsday scenarios from groups like the Concord Coalition in the early 1990s began trending downward—from above 4.5 percent of GDP in 1992 to below 1.5 percent by 1996, and a projected surplus (which did, indeed, eventuate) two years later.[15] Market deregulation was a general motif on the legislative front during the Clinton years. NAFTA passed in 1993 and was signed into law in the face of opposition by majorities of Democrats in both houses of Congress.[16] Telecommunications deregulation followed three years later[17]

[14] See Barbara Vobejda and Dan Balz, "President Seeks Balm for Anger over Welfare Bill," *Washington Post*, August 22, 1996, p. A1, http://www.washingtonpost.com/wp-srv/politics/special/welfare/stories/wf082296.htm [06-08-2009].

[15] See usgovernmentspending.com, http://www.usgovernmentspending.com/federal_deficit_chart.html [06-08-2009].

[16] The House of Representatives approved NAFTA on November 17, 1993, by a vote of 234 to 200. Democrats opposed the bill with 156 votes in favor and 102 against it. http://clerk.house.gov/evs/1993/roll575.xml [12-22-2009]. The Senate approved the bill a few days later, with 61 to 38 votes. Democrats cast 28 votes against it and 27 supporting it. http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=103&session=1&vote=00395 [12-22-2009].

[17] The Telecommunications Act was approved in 1996 in the House of Representatives by a vote of 414 to 16, and in the Senate by a vote of 91 to 5. "The Fallout from the Telecommunications Act of 1996: Unintended Consequences and Lessons Learned," *Common Cause Education Fund Report*, May 9, 2005, http://www.commoncause.org/atf/cf/%7B8A2D1D15-C65A-46D4-8CBB-2073440751B5%7D/FALLOUT_FROM_THE_TELECOMM_ACT_5-9-05.PDF [12-22-2009].

and banking deregulation three years after that—both with bipartisan backing.[18]

By 1996 the Clinton administration was also taking bold steps to advance neoliberal policies internationally. Its strong support for replacing the half-century-old General Agreement on Tariffs and Trade with the World Trade Organization (dedicated to promoting growth through free trade) in 1995 made clear that the U.S. agenda to liberalize world trade went well beyond regional agreements like NAFTA. The administration's management of the Mexican currency crisis cemented its reputation for deft handling of the global macroeconomy. Contrary to the apocalyptic predictions of Republicans who had fought the $20 billion in cash and loan guarantees the United States offered as part of a $50 billion international plan to forestall a contagious collapse of the peso, Mexico's Zedillo government repaid the United States three years ahead of schedule.[19] The stock of the neoliberals at the helm was high, along with the Dow Jones Industrial Average—which had more than doubled during Clinton's first term.[20]

The United States and the world were in the midst, and under the spell, of the biggest economic boom in history. Parties, and even political institutions, seemed increasingly irrelevant to the policies that would be adopted to ensure stable growth and full employment. So long as smart pragmatic hands were on the tiller, crises could be managed, if not averted, and prosperity guaranteed. In his 1992 election campaign candidate Bill Clinton had lambasted then president Bush for "coddling aging rulers with undisguised contempt for democracy." Exhibit A was China, from which Clinton insisted that all trade privileges would be withdrawn, if he were elected, pending significant improvements in their human rights record.[21] Yet within four months of taking office President Clinton had unilaterally reversed himself. The administration renewed China's coveted Most Favored Nation (MFN) trading status with the assertion that "we are hopeful that China's process of development and economic reform will be accompanied by greater political freedom." But Clinton left no doubt that China's size and importance for the world

[18] The Senate passed the law with 90 to 8 votes. David Leonhart, "Washington's Invisible Hand," *New York Times*, September 26, 2008, http://www.nytimes.com/2008/09/28/magazine/28wwln-reconsider.html [12-22-2009].

[19] David Sanger, "Mexico Repays Bailout by U.S. Ahead of Time," *New York Times*, January 16, 1997, http://www.nytimes.com/1997/01/16/business/mexico-repays-bailout-by-us-ahead-of-time.html?pagewanted=all [06-08-2009].

[20] "Dow Jones Industrial Average (DJIA) History," http://www.nyse.tv/dow-jones-industrial-average-history-djia.htm [06-09-2009].

[21] Jacob Weisberg, "Republicans, Democrats, and China: On Human Rights, Both Parties Talk the Talk but Don't Wok the Wok," *Slate*, June 13, 1998, http://www.slate.com/id/2318/ [06-09-2009].