Too big to jail

Joseph Kishore
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In testimony before the Senate Judiciary Committee last week, US Attorney General Eric Holder made an extraordinary admission.

Responding to questioning from Republican Senator Chuck Grassley, who noted that there had been no major prosecutions of financial institutions or executives by the Obama administration, Holder said: "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them, when we are hit with indications that if we do prosecute—if we do bring a criminal charge—it will have a negative impact on the national economy, perhaps even the world economy…"

In other words, major banks are so economically important that, according to Holder, it is impossible to prosecute them for criminal activity. They are above the law.

This exchange occurred during a discussion of the Justice Department's settlement last year with British-based HSBC, the world's third-largest bank. HSBC had been charged with laundering billions of dollars for Mexican and Colombian drug cartels. In exchange for avoiding charges, HSBC agreed to pay $1.9 billion, or roughly two months' profits. Top US officials explicitly vetoed any criminal charges, even on lesser counts than money laundering.

HSBC is only the latest bank to have received a free pass. Earlier this year, ten financial firms agreed to pay $3.3 billion in cash to settle charges of mortgage fraud: amid the housing market collapse, they had employees fraudulently sign off on thousands of mortgage foreclosures a month.

Last year, the government ended an investigation into Goldman Sachs without charges over its promotion of mortgage-backed securities at the height of the speculative bubble—even as Goldman Sachs bet against the assets itself.

In 2010, the Obama administration reached a settlement with Wachovia Bank on similar charges as those brought against HSBC: laundering billions of dollars of drug money, in this case for the Sinaloa Cartel. The fine was $160 million, less than 2 percent of the previous year's profits.

Many similar arrangements could be cited. In each case, a check is signed—if there is any punishment at all—and business goes on as usual. Whatever money the financial institutions lose is more than balanced by their take of the $85 billion funneled into the markets every month by the US Federal Reserve.

In justifying the administration's refusal to prosecute, Holder cites the banks' immense power over economic life. That these institutions exercise dictatorial control over the economy and engage in unchecked criminal behavior is not an argument for refusing to prosecute them, however. Rather, it is an argument for expropriating them, taking them out of the hands of the criminals that run them, and placing them under the democratic control of the working class.

In its dealings with these institutions, however, the government acts as a direct representative of the financial aristocracy. First Bush and then Obama justified the bank bailouts after the 2008 crash by citing the need to "save the economy." Since then, millions of jobs have disappeared. To pay for such bank bailouts, governments around the world are implementing brutal austerity measures, wiping out public education, health care, retirement and other social programs.

A stench of corruption hangs over the whole process. There is hardly a single Obama administration official in a position important to the banks who does not have previous ties to Wall Street.

Jacob Lew was confirmed this month by the Senate as Obama's new treasury secretary. Lew, Obama's former chief of staff, is also the former chief operating officer of Citigroup's Alternative Investment Unit, which bet against the housing market as it collapsed.

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Mary Jo White is Obama's pick to head the Securities and Exchange Commission. White, who will likely be confirmed easily after hearings scheduled for today, is a former attorney at the corporate law firm Debevoise & Pimpleton, where she defended Wall Street banks and executives, often against investigations by the SEC itself.

Then there is the extraordinary case of **David S. Cohen** and **Stuart Levey**. As members of corporate law firm Miller Cassidy in the 1990s, they defended banks and other corporations from white-collar criminal charges, including money laundering. They passed in and out of the Treasury Department and private practice.

In 2004, Levey joined the Bush administration as undersecretary for terrorism and financial intelligence, responsible for overseeing narcotics trafficking and money laundering. He left in March 2011 to become HSBC's chief legal officer. His deputy at the Treasury Department, and his successor, was none other than David S. Cohen. The two ex-colleagues would have both been heavily involved in forging the recent deal to settle HSBC's money-laundering charges.

No banks or executives are prosecuted because the individuals who would do the prosecuting and the individuals who would be prosecuted are, more or less, the same people.

Holder made his statements on the banks at the same hearing in which he laid out the Obama administration's position that it has the authority to assassinate citizens within the United States without judicial review.

The coming together of these two statements is not simply coincidental. There is a class logic at work. With the active assistance of the state, the financial aristocracy is engaged in a looting operation, and criminality has become an integral part of the mode of wealth accumulation.

Anticipating social opposition, this same aristocracy is engaged in a conspiracy against democratic rights. While the banks and executives cannot be touched, anyone opposing these policies will face repressive police state methods.

The political and economic system is rotten to the core. The only rational and appropriate response to such a state of affairs is to overturn this system, capitalism, and institute a new form of social organization based on the principle of social need—that is, socialism.

The active involvement of the state and all its institutions and parties in the criminal operation makes clear that the interests of the working class cannot be advanced except through a mass social and political movement, which aims to replace the government of the banks with a government of, by and for the working class.

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