Transnational Finance Regulation and the Global Economy

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National and international finance have become dramatically more globalized and interdependent over the last several generations.[1] Government oversight, regulation, support, and bailouts are increasingly important too. We benefit from a revolution in computers, speedy communications, transport, and surveillance that enables more sophisticated teamwork, collaboration, and governance. Market forces are better understood and kept within reasonable harness most of the time. And yet, the global financial crises of 1929-38, and more recently, since 2007, placed very heavy stress upon these financial networks. Because mutual prosperity is now so enmeshed, contemporary global finances are increasingly transnational in their character and regulatory traditions.[2]

I. EVOLUTION OF GLOBALIZED FINANCE AND REGULATION

Transnational commerce, finance, and credit have been long established, going back to the Middle Ages.[3] While government finance, spending, and taxes were entangled among different states, cities, and

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1. *See* JEFERY A. FRIEDEN, GLOBAL CAPITALISM: ITS FALL AND RISE IN THE TWENTIETH CENTURY, at xv (2006); ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW, at v (2d ed. 2008); ROBERT O'BRIEN & MARC WILLIAMS, GLOBAL POLITICAL ECONOMY: EVOLUTION AND DYNAMICS 9-10 (2d ed. 2007).

2. *See* sources cited *supra* note 1; *see also* CHARLES P. KINDLEBERGER, A FINANCIAL HISTORY OF WESTERN EUROPE (2d ed. 1993).

3. *See* KINDLEBERGER, *supra* note 2; CTR. FOR MEDIEVAL & RENAISSANCE STUDIES, UCLA, THE DAWN OF MODERN BANKING (1979); GEOFFREY JONES, BRITISH MULTINATIONAL BANKING, 1830-1990, at 5 (1993).

national and imperial territories, the growth of powerful nation states provided much more opportunity and security for trade and finance. Early national banks increased the potential for credit growth and an enlarged money supply. Bigger governments, armies, and navies could be maintained. With central bank support and supervision, private merchant family banking gradually evolved into the enlarged corporate and national banking systems of the last two centuries.[4]

National and imperial credit-finance systems form the pillars of modern economic strength and growth. They reflect national rivalries, but welcome, within limits, the depositors, traders, and customers from other nations, as well as their own compatriots. Therefore, like their medieval and early modern forbearers, some banking activities are transnational. Customary law and practice, together with market forces, provide transnational law guidance as well.

Regulation has certainly become more important, technical, and globalized.[5] This financial regulation occurs within national and international markets. It is conducted by executive leaders (presidents and prime ministers), legislatures, finance ministers, central banks, and various specialized agencies, commissions, and trade associations. Multinational and regional institutions play important roles. Traditions of finance experts, bankers, economists, insurers, lawyers, and accountants have spread across international markets and are now indispensable elements in the globalized system of finance and financial markets. Some of this tradition is legal and regulatory and reflects an art of practiced judgment in business and marketplace activities, along with appropriate public policies.

Before World War I, Great Britain's (Edwardian Era) leadership of the first global economy, financial teamwork, and regulation were more informal and trade custom oriented.[6] Financial reputations and their disciplines were vital. Sound governmental finance and responsible banking could be summarized as: (1) government finances required

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4. *See* sources cited *supra* note 3; WILLIAM A. LOVETT, BANKING AND FINANCIAL INSTITUTIONS LAW chs. 1-3 (7th ed. 2009); *see also* PAUL STUDENSKI & HERMAN E. KROOSS, FINANCIAL HISTORY OF THE UNITED STATES 10-11 (2d ed. 1963); BRAY HAMMOND, BANKS AND POLITICS IN AMERICA: FROM THE REVOLUTION TO THE CIVIL WAR 192, 696 (1957); INTERNATIONAL BANKING, 1870-1914, at vi (Rondo Cameron et al. eds., 1991).

5. *See* LOVETT, *supra* note 4, at 125; LOWENFELD, *supra* note 1, at 474; RALPH H. FOLSOM, PRINCIPLES OF EUROPEAN UNION LAW 141 (2005); *see also* MICHAEL P. MALLOY, BANKING LAW AND REGULATION § 1.1 (2d ed. 1994 & Supp. 2010); MICHAEL P. MALLOY, PRINCIPLES OF BANK REGULATION 13-19 (2d ed. 2003); MICHAEL P. MALLOY, INTERNATIONAL BANKING REGULATION: CASES, MATERIALS, AND PROBLEMS 3-18 (2d ed. 2005).

6. *See* INTERNATIONAL BANKING, 1870-1914, *supra* note 4, at 47; STUDENSKI & KROOSS, *supra* note 4; KINDLEBERGER, *supra* note 2, at 81-82.

mostly balanced budgets (or surpluses) where government spending normally did not exceed reasonable tax revenues; only in wartime or during major national emergencies would significant government budget deficits be acceptable;[7] and (2) responsible banking required sufficient money and credit to meet the needs of trade and industrial growth, backed by sufficient specie, equity capital, and liquidity reserves.[8] Careful and regular examination of balance sheets was important to maintain reserves and capital and to minimize failures. Living within these guidelines, nations could prosper, avoid inflation, and flourish over the long run. Sound banking regulation would also involve "leaning against the breeze," i.e., somewhat higher bank loan rates to cool booms and lower bank loan rates in a slump to promote recovery.[9]

World War I destabilized global prosperity.[10] Government deficits surged greatly with unsustainable debt burdens unevenly shared. The U.S. economy boomed during the War (protected by 2.5 years of neutrality) and on into the 1920s. Unfortunately, many war debts were left unresolved, and the U.S. boom collapsed in 1929 after a big stock market bubble. Global depression followed, and many banks failed. The slump lasted into the late 1930s. Many international debts were repudiated. Mass unemployment and slow recovery crippled the global economy. World War II followed, with more disruption and heavy costs.

After World War II, the United States, British Commonwealth, and allies tried to rebuild a more resilient global economy with the Bretton Woods arrangements (1944-47).[11] The International Monetary Fund

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7. *See* JOHN KENNETH GALBRAITH, MONEY: WHENCE IT CAME, WHERE IT WENT 142-43 (1975); ROBERT SKIDELSKY, JOHN MAYNARD KEYNES: HOPES BETRAYED, 1883-1920 (1983); ROBERT SKIDELSKY, FIGHTING FOR FREEDOM, 1937-1946 (2001); STUDENSKI & KROOSS, *supra* note 4, at xv-xxii.

8. *See* GALBRAITH, *supra* note 7; LOVETT, *supra* note 4; STUDENSKI & KROOSS, *supra* note 4, at 334.

9. James S. Duesenberry, *Tactics and Targets of Monetary Policy*, *in* CONTROLLING MONETARY AGGREGATES 83-90 (1969).

10. *See* STUDENSKI & KROOSS, *supra* note 4, at 281-83; KINDLEBERGER, *supra* note 2, at 289; SKIDELSKY, *supra* note 7; JOHN MAYNARD KEYNES, ECONOMIC CONSEQUENCES OF THE PEACE 24-26 (1920); *see also* ROY JENKINS, CHURCHILL, A BIOGRAPHY (2001); KEITH MIDDLEMAS & JOHN BARNES, BALDWIN, A BIOGRAPHY 127-48 (1969); WILLIAM L. SHIRER, THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY 937, 943-46 (1960); THE EUROPEAN ECONOMY BETWEEN THE WARS 1-5 (Charles H. Feinstein et al. eds., 1997); ARTHUR M. SCHLESINGER, JR., THE POLITICS OF UPHEAVAL (1960).

11. *See* SKIDELSKY, *supra* note 7; RAYMOND F. MIKESELL, THE BRETTON WOODS DEBATES: A MEMOIR 1-4 (1994); A RETROSPECTIVE ON THE BRETTON WOODS SYSTEM: LESSONS FOR INTERNATIONAL MONETARY REFORM, at xi (Michael D. Bordo & Barry Eichengreen eds., 1993); Barry Eichengereen & Peter B. Kenen, *Managing the World Economy Under the Bretton Woods System: An Overview*, *in* MANAGING THE WORLD ECONOMY: FIFTY YEARS AFTER BRETTON WOODS 3-8 (Peter B. Kenen ed., 1994); CHARLES L. MEE, JR., THE MARSHALL PLAN 9-17 (1984);

(IMF), the International Bank for Reconstruction and Development (the World Bank), and the General Agreement on Tariffs and Trade (GATT) established a supportive framework for global finance, tariff reductions, and more open trading. Combined with foreign aid flows from the United States and other affluent nations, as well as a network of defense and national security arrangements (NATO, OAS, and bilateral pacts), the foundations were established for a more secure, freer world economy. This became exemplified by the Organization for Economic Cooperation and Development (OECD) alliance.

From the 1940s to 1960s, Keynesian economics (government deficits to offset recessions, slumps, and underutilization of industrial capacity) became the new, revised consensus in the political economy.[12] In modern macroeconomic thinking, the scope for "emergency" national deficits was broadened to relieve slumps, backwardness, and insufficient economic growth. But this wider latitude for government deficit spending brought a risk of inflation pressure. Aggravated inflation could do more harm than good. Higher interest rates, capital flight, weakened growth, and/or currency devaluations were common results of excessive inflation. Developing countries often got into serious trouble this way, but the IMF and World Bank offered short- and long-term credit facilities to ease adjustment problems and promote successful development and economic growth.[13] Gradually, many developing countries, especially

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KINDLEBERGER, *supra* note 2, at 427-28; CHARLES P. KINDLEBERGER, EUROPE AND THE DOLLAR 206 (1966); ROBERT SOLOMON, THE INTERNATIONAL MONETARY SYSTEM, 1945-1976: AN INSIDER'S VIEW 11 (1977); LOWENFELD, *supra* note 1, at 18-23.

12. Keynesian thinking dominated post-World War II economics until a more conservative, freer market thinking gained more influence in the 1980s. *See* GALBRAITH, *supra* note 7, at 238, 273; John Maynard Keynes, *Economic Possibilities for Our Grandchildren*, *in* READINGS & ECONOMICS 379-84 (Paul A. Samuelson ed., 7th ed. 1973); HERBERT STEIN, THE FISCAL REVOLUTION IN AMERICA (rev. ed. 1990); PETER H. LINDERT & CHARLES P. KINDLEBERGER, INTERNATIONAL ECONOMICS 301-02, 328 (7th ed. 1982); WALLACE C. PETERSON & PAUL S. ESTENSON, INCOME, EMPLOYMENT, AND ECONOMIC GROWTH 34 (7th ed. 1992); W.H. HUTT, THE KEYNESIAN EPISODE: A REASSESSMENT 26 (1979); MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, THE GREAT CONTRACTION 1929-1933 (2008); KINDLEBERGER, *supra* note 2, at 280-81.

13. *See* sources cited *supra* note 11; *see also* ROBERT V. ROOSA, MONETARY REFORM FOR THE WORLD ECONOMY 12-14, 32-36 (1965); PETER B. KENEN, THE INTERNATIONAL FINANCIAL ARCHITECTURE: WHAT'S NEW? WHAT'S MISSING? 4 (2001); RICHARD F. HERRING & ROBERT E. LITAN, FINANCIAL REGULATION IN THE GLOBAL ECONOMY, at viii, xvii-xix, 76-78 (1995); CARLA HILLS & PETER PETERSON, SAFEGUARDING PROSPERITY IN A GLOBAL FINANCIAL SYSTEM: THE FUTURE INTERNATIONAL ARCHITECTURE 17 (1999); THE UNITED STATES AND THE WORLD ECONOMY: FOREIGN ECONOMIC POLICY FOR THE NEXT DECADE 373-74 (C. Fred Bergsten ed., 2005); BEN STEIL & ROBERT E. LITAN, FINANCIAL STATECRAFT: THE ROLE OF FINANCIAL MARKETS IN AMERICAN FOREIGN POLICY 142-46 (2006); REFORMING THE IMF FOR THE 21ST CENTURY 1 (Edwin M. Truman ed., 2006); KENNETH W. DAM, THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM 249-51 (1982); 50 YEARS IS ENOUGH:

those with improved credit ratings, assumed larger debts and welcomed foreign investment.

By the 1970s, inflation pressures and resource bottlenecks were building up for many countries. Organization of the Petroleum Exporting Countries (OPEC) I and II oil price shocks (1973-74 and 1978-80) added substantially to global inflationary momentum.[14] IMF adjustment assistance was broadened, and more countries sought assistance and wider access to credit. Multinational bank and corporate investment activities played an increasing role too. Petrodollar earnings from oil producing states were routed through the multinational banking system. Resource surplus countries became capital exporters to some extent, along with the most successful manufacturing and service providers (including the United States, West Germany, Switzerland, and Japan).

But in 1980-82, leading creditor nations (including the United States, Japan, West Germany, Switzerland, and the United Kingdom) cracked down on inflation.[15] Monetary growth slowed and interest rates increased sharply. An inflationary boom turned into a serious global recession. Unemployment surged briefly, but a rapid recovery (with greatly reduced inflation) improved prosperity in the United States, Japan, parts of Europe, and some newly industrialized countries (NICs) and least-developed countries (LDCs).

And yet, at least seventy developing countries took on too much debt (much of it at high interest rates) in the 1970s. A very serious debt overload crisis squeezed many developing nations between 1982-90.[16]

THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND 1-5, 29 (Kevin Danaher ed., 1994); MICHAEL MOFFIT, THE WORLD'S MONEY: INTERNATIONAL BANKING FROM BRETTON WOODS TO THE BRINK OF INSOLVENCY 99-100, 122 (1983).

14. *See* GARDINER C. MEANS ET AL., THE ROOTS OF INFLATION: THE INTERNATIONAL CRISIS 23-26 (1975); WORLDWIDE INFLATION: THEORY AND RECENT EXPERIENCE 250-51, 264-65 (Lawrence B. Krause & Walter S. Salant eds., 1977); CURING CHRONIC INFLATION 1-2, 24 (Arthur M. Okun & George L. Perry eds., 1978); RICHARD ROSE & GUY PETERS, CAN GOVERNMENT GO BANKRUPT? 178-85 (1978); WILLIAM A. LOVETT, INFLATION AND POLITICS: FISCAL, MONETARY, AND WAGE-PRICE DISCIPLINE, at xi, 65-69 (1982).

15. *See* JOSEPH B. TREASTER, PAUL VOLCKER: THE MAKING OF A FINANCIAL LEGEND 149-59 (2004); LOVETT, *supra* note 14, at 284-85; Charles S. Maier, *Inflation and Stagnation as Politics in History*, *in* THE POLITICS OF INFLATION AND ECONOMIC STAGNATION 3 (Leon N. Lindberg & Charles S. Maier eds., 1985); LOVETT, *supra* note 4, at 68-124; *see also* THE REAGAN EXPERIMENT (John Palmer & Isabel Sawhill eds., 1982); PAUL CRAIG ROBERTS, THE SUPPLY-SIDE REVOLUTION: AN INSIDER'S ACCOUNT OF POLICY MAKING IN WASHINGTON 1 (1984); ALAN WALTERS, BRITAIN'S ECONOMIC RENAISSANCE: MARGARET THATCHER'S REFORMS, 1979-1984, at 4 (1986); WILLIAM A. NISKANEN, REAGANOMICS: AN INSIDER'S ACCOUNT OF THE POLICIES AND THE PEOPLE 225-41 (1988).

16. *See* WILLIAM A. LOVETT, WORLD TRADE RIVALRY: TRADE EQUITY AND COMPETING INDUSTRIAL POLICIES 137-66 (1987); *see also* A RETROSPECTIVE ON THE BRETTON WOODS

Fortunately, the IMF, the United States, and other major creditor nations led the way toward stretching out or rescheduling these debt overloads. Gradually, some of these governmental debts were switched into equity ownership in privatized companies, and under IMF pressure, many excessive debts were written off in various forms of debt relief.

The collapse of Communism in Russia and Eastern Europe in 1989-91 also encouraged a freer market restructuring process and economic integration.[17] At the regional level, the European Union (EU), North American Free Trade Area (NAFTA), Association of Southeast Nations (ASEAN), Pacific Rim, Mercosur, Andean bloc, Central American groupings, and the Arab League, along with OPEC, tried to promote integration and development.

Interestingly, a wave of U.S. bank and savings and loan (S&L) failures occurred in the mid-late 1980s.[18] Some aggressive and risky loan activities developed in the inflation surge of 1969-82, and in the related oil boom, sunbelt sections of the country. As inflation slowed and interest rates came back down, some financial institutions suffered reduced earnings or losses. Regulators in the major banking nations tightened up and raised capital and reserve requirements through the Bank for International Settlements (BIS), a "club" for central banks established by the League of Nations in 1930. The BIS and its Concordats for supervision and required capital have played an important role as an international banking regulator since the mid-1970s.[19]

SYSTEM: LESSONS FOR INTERNATIONAL MONETARY REFORM, *supra* note 11, at 443-44; MANAGING THE WORLD ECONOMY: FIFTY YEARS AFTER BRETTON WOODS, *supra* note 11; LOWENFELD, *supra* note 1, at 668-99, 719-48.

17. MIKHAIL GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD 83-84 (1987); JAMES A. BAKER, III, WITH THOMAS M. DEFRANK, THE POLITICS OF DIPLOMACY: REVOLUTION, WAR AND PEACE, 1989-1992, at 400, 477 (1995); MIKHAIL GORBACHEV, MEMOIRS 608 (1995); LEON ARON, YELTSIN: A REVOLUTIONARY LIFE 400-06 (2000); GEORGE BUSH & BRENT SCOWCROFT, A WORLD TRANSFORMED 14 (1998); JULIET JOHNSON, A FISTFUL OF RUBLES: THE RISE AND FALL OF THE RUSSIAN BANKING SYSTEM, at ix-x (2000); LOWENFELD, *supra* note 1, at 669-718.

18. *See* LOVETT, *supra* note 4, at 77-91, 125-66, 194-207, and 248-309; *see also* MARK SINGER, FUNNY MONEY 153 (1985); EDWARD J. KANE, THE GATHERING CRISIS IN FEDERAL DEPOSIT INSURANCE 2-3 (1985); NATIONAL COMMISSION ON FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT, ORIGINS AND CAUSES OF THE S&L DEBACLE: A BLUEPRINT FOR REFORM 2-3 (1993); THE CRISIS IN AMERICAN BANKING 3 (Lawrence H. White ed., 1993).

19. LOVETT, *supra* note 4, at 222-47, 445-63; LOWENFELD, *supra* note 4, at 811-44; THE BANK FOR INTERNATIONAL SETTLEMENTS AND THE BASLE MEETINGS, PUBLISHED ON THE OCCASION OF THE FIFTIETH ANNIVERSARY 1930-1980, at 16 (1980); RICHARD DALE, THE REGULATION OF INTERNATIONAL BANKING 171-74 (1984); MARK POTTS ET AL., DIRTY MONEY: BCCI: THE INSIDE STORY OF THE WORLD'S SLEAZIEST BANK (1992); RAJ K. BHALA, FOREIGN BANK REGULATION AFTER BCCI 204-07 (1994); MORRIS GOLDSTEIN, THE CASE FOR AN INTERNATIONAL BANKING STANDARD 9-24 (1997); Karen Ballesteros Sigmond, Mexican Banking Laws: Evolution into NAFTA and the Global Economy 237-46 (Mar. 19, 2007) (unpublished

Multinational institutions and efforts toward economic and developmental harmonization were fostered. Regular summit meetings among leading nations (the G-5, G-7, G-8, G-10, and recently, the G-20) serve as networks to provide mutual understanding and collaboration. Meanwhile, the IMF, BIS, World Bank, International Organization and Securities Commission (IOSCO), International Association of Insurance Supervisors (IAIS), and International Accounting Standards Board (IASB) were more specialized forums for economic finance, banking, securities, insurance, and accounting cooperation. While many problems, imbalances, and market strains could never be eliminated completely, the presently established institutions are greatly superior to the failed London Economic Conference of 1933 as frameworks for mutual understanding and harmonized action.[20]

The largely successful improvement in U.S. and global capital and supervision standards of the mid-1980s to early 1990s, together with the successful rescheduling of developing country debts (1982-90), led to what was characterized as the "Washington Consensus" in the 1990s.[21] Respect for the integrity of markets, greater transparency, healthy diversification, and reduced inflation were highlights, along with capital adequacy requirements and limitations on excessive leveraging.

Economic growth, spreading prosperity, computerization, improved infrastructure, and technological progress sped up in many parts of the globe. Optimism flourished, boom mentalities emerged, and speculative bubbles arose in various countries during the late 1980s until 2008. Significant overleveraging among banks and financial institutions cropped up. In some bubbles, there were banking crises or frequent failures. In the United States between 1983-91, financial regulators, led by Federal Reserve Board Chairman Paul Volcker, intervened in time with tougher capital requirements.[22] Leading U.S. banks cut capital down

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Ph.D. dissertation, Tulane University) (on file with author); DAVID K. TARULLO, BANKING ON BASEL: THE FUTURE OF INTERNATIONAL FINANCIAL REGULATION, at xi (2008). *But see* Marc Levinson, *Faulty Basel: Why More Diplomacy Won't Keep the Financial System Safe*, 89 FOREIGN AFFS. 76, 78-84 (2010).

20. *See* CHARLES LOCH MOWAT, BRITAIN BETWEEN THE WARS, 1918-1940, at 440-44 (1955); GALBRAITH, *supra* note 7, at 202-07; SCHLESINGER, *supra* note 10, at 404, 653; *see also* THE LESSONS OF MONETARY EXPERIENCE: ESSAYS IN HONOR OF IRVING FISHER 164-65 (A.D. Gayer ed., 1937).

21. *See* KENEN, *supra* note 13, at 4; STEIL & LITAN, *supra* note 13; REFORMING THE IMF FOR THE 21ST CENTURY, *supra* note 13, at 6; THE UNITED STATES AND THE WORLD ECONOMY, *supra* note 13; *see also* C. FRED BERGSTON, AMERICA IN THE WORLD ECONOMY: A STRATEGY FOR THE 1990S, at 158 (1988).

22. *See* TREASTER, *supra* note 15, at 149-59; CHARLES R. MORRIS, THE SAGES: WARREN BUFFET, GEORGE SOROS, PAUL VOLCKER, AND THE MAELSTROM OF MARKETS 143-49 (2009); LOVETT, *supra* note 4, at 76-124, 135-40, 146-49.

3.5 to 4.0% of total assets by 1982, and many loans to Latin America and other LDCs became questionable. From 1983-87, most of the top ten U.S. banks approached insolvency, until their capital was replenished. Scandinavia also suffered banking and real estate bubble problems in the early 1990s with government recapitalization loans as a necessary remedy.

Meanwhile, Japan's long economic boom, with outstanding economic growth between 1950-90, finally peaked. Then Japan slumped with a large decline in many stocks and overvalued real estate. Even so, Japan kept up strong industrial exports (automobiles, appliances, machinery, electronics, and so forth), and its unemployment increased only moderately. An entrenched policy of low interest rates and government industrial support had to be continued. In these circumstances, Japan limited its trade opening, in spite of complaints from the United States and Europe about Japanese neo-mercantilism. Japan suffered slowed growth, large budget deficits, and unease, but avoided any major unemployment, recession, or inflation.[23]

Mexico developed a strong economic recovery between 1983-90 that became a boom-bubble in 1993-94.[24] Mexico borrowed too much in the 1970s, expecting that rising oil prices and exports would continue indefinitely and became the leading debt overload country by 1982. Drastic peso devaluation and belt-tightening was needed. Mexico used this hardship skillfully and offered to open up its protected economy to imports from abroad under NAFTA. A prompt recovery followed for Mexico in 1989-93.[25] In fact, Mexico became the world's largest beneficiary of foreign private investment between 1990-94, as multinational corporations (MNCs) saw excellent investment potential. Mexico was the favored child of globalization between 1989 and the mid-1990s. Although another Mexican devaluation crisis occurred in 1993-94, this devaluation was successful in promptly restoring Mexican exports and growth. A $50 billion emergency loan from the United States, IMF, BIS, and Canada helped Mexico to get through this crisis.

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23. *See* POSTWAR JAPAN: 1945 TO THE PRESENT, at i-xxi (Jon Livingston et al. eds., 1973); AMERICA VERSUS JAPAN 313 (Thomas K. McCraw ed., 1986); JAMES FALLOWS, LOOKING AT THE SUN: THE RISE OF THE NEW EAST ASIAN ECONOMIC AND POLITICAL SYSTEM 14 (1994); R. TAGGART MURPHY, THE WEIGHT OF THE YEN: HOW DENIAL IMPERILS AMERICA'S FUTURE AND RUINS AN ALLIANCE 35 (1996); C. FRED BERGSTEN ET AL., NO MORE BASHING: BUILDING A NEW JAPAN-UNITED STATES ECONOMIC RELATIONSHIP 62 (2001); Tetsuji Okazaki, *The Government-Firm Relationship in Postwar Japan: The Success and Failure of Bureau Pluralism*, *in* RETHINKING THE EAST ASIA MIRACLE (Joseph E. Stiglitz & Shahid Yusuf eds., 2001); HENRY LAURENCE, MONE¥ RU£ES: THE NEW POLITICS OF FINANCE IN BRITAIN AND JAPAN, at vii (2001).

24. *See* LOWENFELD, *supra* note 1, at 667-93; *see also* SIGMOND, *supra* note 19, at 241-43.

25. *See* LOWENFELD, *supra* note 1, at 694-98.

This worked, and within several years, Mexico promptly repaid its emergency borrowing. Other Latin American countries suffered boom-bubble strains in the late 1990s with mixed results. Brazil, Venezuela, Ecuador, and Argentina were among the most important.

Other countries in Asia suffered boom-bubbles in the late 1990s, including Thailand, Malaysia, Philippines, Indonesia, and more briefly, South Korea.[26] IMF lending and support packages were organized for most of these countries, and within a few years reasonable growth resumed. Very importantly, China's long modernization and export boom, that began in the late 1970s with a selective welcome for foreign companies, picked up great momentum too. China's massive development boom, however, was more closely regulated. The Chinese currency was pegged sufficiently low to assure that their export boom and spreading prosperity continued.[27]

Viewed long term, the post-World War II era (1945-2007) was a great success.[28] It nurtured a strong economic and financial recovery from the Great Depression and slump of the 1930s. Modern social welfare states with strong commitments to fuller employment and economic growth were the model for social development. But along with the growth of successful nation-states, a gradual opening of markets with freer trade and investment flows was a complementary evolution.[29] Increased competition, efficiency, and networking for transnational business followed. Sound finance and responsible banking continued as fundamental supports for prosperity. But governmental finance became more nuanced with a need to avoid excessive budget deficits. Also, banking needed more careful supervision, sufficient liquidity and reserve assets, and adequate capital to cover losses on or off the balance sheets.

A collateral development, very important in broadening multilateral momentum and globalization, was European unification.[30] From its early

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26. LOWENFELD, *supra* note 1, at 694-98, 719-48; *see also* KENEN, *supra* note 13, at 6-7; *infra* Table 2.

27. *See* FRIEDEN, *supra* note 1, at 470-75; LOVETT, *supra* note 16; LOWENFELD, *supra* note 1, at 334-45; *see also* BARRY EICHENGREEN, GLOBALIZING CAPITAL: A HISTORY OF THE INTERNATIONAL MONETARY SYSTEM 3-5 (1996).

28. *See* sources cited *supra* note 27. Exchange rates, pegging, partial floating, and disruptive crises remain a problem. *See* EICHENGREEN, *supra* note 27, at 4.

29. *See* sources *supra* cited notes 1, 2, 4, 11, 13, and 19; *see also infra* Table 1.

30. HANS VON DER GROEBEN, THE EUROPEAN COMMUNITY: THE FORMATIVE YEARS: THE STRUGGLE TO ESTABLISH THE COMMON MARKET AND THE POLITICAL UNION (1958-66), at 164 (1982); FOLSOM, *supra* note 5, at 5, 15-17; STEPHEN FRANK OVERTURF, MONEY AND THE EUROPEAN UNION 179-83 (1997); Juergen Stark, *Genesis of a Pact*, *in* THE STABILITY AND GROWTH PACT: THE ARCHITECTURE OF FISCAL POLICY IN EMU 77-78 (Anne Brunila et al. eds., 2001); Christopher Taylor, *Introduction: The Economics and Politics of the EMU*, *in* EMU EXPLAINED: MARKETS AND MONETARY UNION 20-25 (Ruth Pitchford & Adam Cox eds., 1997);

beginnings in the late 1940s, the European Coal and Steel Community (ECSC), the European Common Market of 1957 (ECM) (France, Italy, West Germany, and Benelux), gradual expansion of the European Economic Community (EEC) (Britain, Ireland, Denmark and later Sweden, Spain, Portugal, and Greece), and then the Maastricht Treaty of 1992 forged a closer EU. More countries joined from Central and Eastern Europe (Finland, Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Slovenia, Estonia, Latvia, Lithuania, Malta, and Cyprus). Starting in the late 1990s, a European Monetary Union (EMU) got going with a new joint currency (euro) that was launched in 2002. The euro replaced previous national currencies (like the German Deutsch mark, French franc, Dutch guilder, Italian lire, or Spanish peseta). Only a few Member States stood aside from the EMU. Norway and Switzerland have not yet joined the EU. The new euro and EMU area came into operation in 2002, and it now serves as a more equal, comparable reserve currency relative to the United States and its dollar. But the United Kingdom, Sweden, and Denmark still prefer their own important currencies that float independently of both the U.S. dollar and the EMU's euro. Most other countries peg their currencies to the dollar, the euro, and/or a basket of currencies that fluctuate less widely and achieve greater stability for macroeconomic policy purposes. Most experts believe the EMU and the euro strengthened global finance and eased pressure on the dollar.[31] But if the dollar weakens substantially, the euro could gain in relative use as a reserve currency.

Among the most important, unresolved problems in global finance and trade are stubborn trade and current account deficits.[32] These imbalance problems are rooted in significant tariffs, restrictions, and undervalued currencies that some NICs have employed since the 1980s to sustain exports and surpluses. Unfortunately, the United States and several other Mature Industrial Countries (MICs) do not enforce sufficient reciprocity in trading and have been running significant trade

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EUROPEAN MONETARY UNION AND ITS MEANING FOR THE UNITED STATES, at x (Lawrence B. Krause & Walter S. Salant eds., 1973); THE EURO AT FIVE: READY FOR A GLOBAL ROLE, at vii, 4-6 (Adam S. Posen ed., 2005); *see also* LOWENFELD, *supra* note 1, at 771-803.

31. *See* sources cited *supra* note 30; *see also* sources cited *supra* note 21.

32. *See* LOVETT, *supra* note 16; ANTHONY HARRIGAN & WILLIAM R. HAWKINS, AMERICAN ECONOMIC PRE-EMINENCE: GOALS FOR THE 1990S, at i-iii (1989); THOMAS O. BAYARD & KIMBERLY ANN ELLIOTT, RECIPROCITY & RETALIATION IN U.S. TRADE POLICY 12 (1994); Robert A. Blecker, *Trade Deficit and U.S. Competitiveness*, *in* U.S. TRADE POLICY AND GLOBAL GROWTH: NEW DIRECTIONS IN THE INTERNATIONAL ECONOMY 179-80 (Robert A. Blecker ed. 1996); WILLIAM A. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO 5, 136 (2004); MIDDLEMAS & BARNES, *supra* note 10; *see also* KEVIN PHILLIPS, BAD MONEY: RECKLESS FINANCE, FAILED POLITICS, AND THE GLOBAL CRISIS OF AMERICAN CAPITALISM, at viii (2008).

and current account deficits. In addition, the United States has been the leading reserve currency nation since at least the early 1940s (some might say since 1917). For several generations, U.S. dollar assets have been used by most nations as major reserve assets in currency, bank deposits, T-bills, public and corporate bonds, or even equity securities. This gave the United States, its MNCs, and the general population a continuing bonus of somewhat greater income and purchasing power. During the 1980s, the United States–Japan trade imbalances were the chief imbalance problem, but this was relieved as Japan regularized large lending and investment (and brought many manufacturing jobs into the United States). Since the late 1990s, China's imbalances, along with India, ASEAN, Brazil, and other trade partners, have been more troubling. Most observers agree that such big U.S. trade and current account deficits are unsustainable over the long run. EU nations and Japan, however, have been reluctant to assume the burdens of the dominant reserve currency (euro or yen), and NICs (China, India, ASEAN, or Saudi Arabia) are not yet strong enough for this role. This leaves an awkward financial impasse—somewhat unresolved.[33] But tolerating this imbalance in key export surplus countries, including West Germany and Switzerland in the 1960s and 1970s, Japan in the 1980s and 1990s, and China from 1995–2010, has allowed the United States and its trade partners leeway to continue, somewhat longer, such "unsustainable" deficits and surpluses. But a sudden loss of world market confidence in the dollar, or major trade-finance policy changes among the United States and major partners, could bring a "hard landing," i.e., a really disruptive change in currency values, trade flows, and/or asset reevaluations.

II. CURRENT WORLD CRISIS, SUPERVISION, AND TRANSNATIONAL FINANCE

Globalization extends the activities and reach of government agencies and financial institutions from "home" state markets into other

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33. Neo-Mercantilist industrial trade policies, together with somewhat undervalued currencies, following the Japan model (from 1950-1990s), have become fashionable in many NICs and LDCs. China, India, ASEAN, South Korea, Taiwan, Brazil, and others have used this strategy to improve growth and trade balances and accumulate international reserves.

In 2009, large or disproportionate reserves had been accumulated (in billions of Special Drawing Rights (SDRs)) by China, 1475b; Japan, 651b; Hong Kong, 159b; Taiwan, 216b; Singapore, 117b; and Korea, 168b. By contrast, the United States held only 86b, and the entire Euro area only 191b (note that in April 2010, one SDR equaled $1.33). Ironically, the U.S. dollar and the EU euro were still the major reserve currencies in 2009. ECONOMIC REPORT OF THE PRESIDENT 457 tbl.B-111 (2010).

"host" states.[34] Supervision and accountability for these government agencies and private sector financial enterprises should occur both at the "home" state and "host" state levels. Overlapping jurisdiction is unavoidable, but the recent Bank of Credit and Commerce International (BCCI) affair (1991) taught financial regulators that fraudulent, irresponsible, and even terrorist activities can easily exploit the netherworld of unsupervised electronic data, financial flows, tax havens, and potential wildness.[35] Nonetheless, many international banks, securities, and business people grew increasingly confident about globalization and its benefits. Governmental finance had become a reliable source of stimulus in successful nations, with extra support in periods of emergency or strain. Well-supervised financial institutions and banks with adequate capital and reserves sustained global prosperity as well. Meanwhile, tax policies gathered necessary resources to finance all public sector activities, and selective tax relief was a major incentive in most countries (even though difficult to harmonize).[36]

Governmental finance is largely reserved to sovereign states, which properly understand macroeconomic policies, growth, employment, and limited inflation as vital national interests and political responsibilities.[37]

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34. This is the logic of international banking and financial institutions. The strong and safe countries collect liquidity and hold savings and investment finance, often at low interest rates, and financial institutions and MNC's invest in NICs and LDCs (often at greater risk with higher interest rates and returns). Even the wealthy and entrepreneurial class in developing countries hold much of their liquid savings and accounts in more secure OECD banks and accounts. But if the United States and other leaders should lose their reputations for safe and responsible fiduciary conduct, through foolish subprime investments, unsound securitization, and toxic derivative transactions, the responsible core of international finance could be threatened. *See* sources cited *supra* note 19, sources cited *infra* notes 40-43.

35. *See* sources cited *supra* note 19; MATHIAS DEWATRIPONT ET AL., BALANCING THE BANKS: GLOBAL LESSONS FROM THE FINANCIAL CRISIS 10 (Keith Tribe trans., 2010); *see also* LOVETT, *supra* note 4, at 24, 28-29, 171-75, 189-91, 222-47, 456-63 (fraud and tax havens); William Le Gro Richards, Jr., Offshore Financial Centers and Tax Havens (Jan. 17, 1996) (unpublished S.J.D. dissertation, Tulane University Law School) (on file with author); J. CHRISTOPHER WESTLAND & THEODORE H.K. CLARK, GLOBAL ELECTRONIC COMMERCE: THEORY AND CASE STUDIES 380-81 (1999).

36. Fiscal policies (spending, taxes, and borrowing) are at the heart of political, legal, and economic sovereignty. The political process in every country or nation constantly adjusts these resources and outlays. Sub-federal governments (like the U.S. states and local municipalities) also share this activity. Confederations like the EU increasingly influence and guide their Member States, along with subnational states, provinces, and local municipalities (that share regional and local roles). Unitary states rely on stronger central governments but may also delegate some roles to local governance institutions with some of their own financing as well.

37. Public finance is the branch of institutional economic policy that deals with fiscal, tax, and borrowing measures. For standard treatments, see JAMES M. BUCHANAN & MARILYN R. FLOWERS, THE PUBLIC FINANCES: AN INTRODUCTORY TEXTBOOK 16-17 (4th ed. 1975); BERNARD P. HERBER, MODERN PUBLIC FINANCE: THE STUDY OF PUBLIC SECTOR ECONOMICS (3d ed. 1975); HENRY S. REUSS, REVENUE SHARING: CRUTCH OR CATALYST FOR STATE AND LOCAL GOVERN-

Strong federations like the United States or EU should use fiscal stimulus and/or discipline. Substantial fiscal roles are also played by subnational states, provinces, and municipalities, which need continuing supervision.[38]

Central banks, corporate banks, savings institutions, securities firms, mutual funds, hedge funds, insurance companies, pensions, and other outfits also mobilize large savings and extend loans and credits.[39] The majority of private sector activities are financed this way or through internal saving within families, firms, and MNCs. Regulation, supervision, and surveillance are essential for these institutions. Most important are capital and reserve requirements and continued oversight for balance sheets. This means that "off balance sheet" activities must be closely supervised as well.[40] Thus, good accountability in public and private sectors are vital requirements for both national and international finance and modern globalized societies.

Unfortunately, spreading global prosperity, viewed cumulatively, led to a broad, increasing faith that major disruptions or great depressions were no longer likely to occur in a computerized world.[41] This led to a renewed confidence in financial laissez-faire. Unduly relaxed supervision followed for giant global financial institutions and many innovative securitized instruments, transactions, and investment opportunities. An increasing volume of sliced and diced derivative

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MENTS?, at xiii (1970); JAMES M. BUCHANAN, THE DEMAND AND SUPPLY OF PUBLIC GOODS 8-9 (1968); PLANNING PROGRAMMING BUDGETING: A SYSTEMS APPROACH TO MANAGEMENT (Fremont J. Lyden & Ernest G. Miller eds., 2d ed. 1973).

38. Subnational (state, provincial, and local) governments can also borrow and spend excessively.

39. *See* Lovett, *supra* note 4, chs. 1-3; *see also* STEPHEN H. AXILROD, INSIDE THE FED: MONETARY POLICY AND ITS MANAGEMENT, MARTIN THROUGH GREENSPAN TO BERNANKE 4 (rev. ed. 2009); HOWARD DAVIES & DAVID GREEN, BANKING ON THE FUTURE: THE FALL AND RISE OF CENTRAL BANKING 7 (2010); RICHARD A. POSNER, THE CRISIS OF CAPITALIST DEMOCRACY 7 (2010).

40. Equity capital should be eight to ten percent of the institution's risk assets, that is, loans and securities that could turn into losses become charges against the equity capital and subordinated debt serving the capital function. Liquidity reserves should be comparable as well, so that losses and withdrawals can be covered. Off-balance sheet liabilities and risk assets undermine and erode the capital and liquidity provided in the balance sheet and make financial institutions more vulnerable to failure and/or bailout.

41. *See* BOB WOODWARD, MAESTRO: GREENSPAN'S FED AND THE AMERICAN BOOM 211 (2000); CARMEN M. REINHART & KENNETH S. ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY 203-10 (2009); ROBERT J. SHILLER, THE SUBPRIME SOLUTION: HOW TODAY'S GLOBAL FINANCIAL CRISIS HAPPENED, AND WHAT TO DO ABOUT IT 10 (2008); CHARLES P. KINDLEBERGER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES 15-16 (1978); *see also* ASSET PRICE BUBBLES: THE IMPLICATIONS FOR MONETARY, REGULATORY, AND INTERNATIONAL POLICIES, at xiv (William C. Hunter et al. eds., 2003); DEWATRIPONT ET AL., *supra* note 35, at 10.

obligations, options, and complex securities were generated, often with quasi-insurance features. While future markets, hedging, and other innovations could have many positive benefits, they also generate risks. With hindsight's wisdom, the risk elements of many derivative securities were not fully appreciated. We heard warnings from prominent experts like Warren Buffet: "Derivatives are financial weapons of mass destruction," but many risks were not properly understood.[42] Also, the leading private ratings agencies, like Moody's, Standard & Poors, and Fitch, made widespread mispricing and overvaluation mistakes.[43]

Tragically, this relaxed supervision and faith in giant multilateral firms led to a widespread boom-bubble in the United States, parts of Europe, and some other markets in 2005-08.[44] Then, as the U.S. subprime mortgage market and many mortgage-backed securities slumped badly in 2007-08, the stage was set for a big collapse in value.[45] Counter party obligations became widely insecure among U.S. and European financial giants. Bear Stearns, the fifth largest U.S. investment bank, failed in March 2008 and needed a U.S.-government-assisted bailout merger with J.P. Morgan Chase, at a drastic discount.[46] Then in September 2008, the giant U.S. mortgage guarantors, Fannie Mae and Freddie Mac, along with American Insurance Group (AIG), the giant U.S. insurer, needed big

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42. *See* ANDREW ROSS SORKIN, TOO BIG TO FAIL: THE INSIDE STORY OF HOW WALL STREET AND WASHINGTON FOUGHT TO SAVE THE FINANCIAL SYSTEM FROM CRISIS—AND THEMSELVES 156 (2009); *see* MORRIS, *supra* note 22, at 106-07. For quote source, see Letter from Warren Buffet, Chairman of the Bd., Berkshire Hathaway Inc., to Shareholders, Berkshire Hathaway, Inc. (Feb. 13, 2003) (on file with author); *see also* CHARLES R. MORRIS, THE TRILLION DOLLAR MELTDOWN: EASY MONEY, HIGH ROLLERS, AND THE GREAT CRASH, at xiv, 23 (2008); John C. Coffee, Jr., *Remarks: What Went Wrong? A Tragedy in Three Acts*, 6 UNIV. OF ST. THOMAS L. REV. 403, 403-20 (2008); GILLIAN TETT, FOOL'S GOLD: HOW THE BOLD DREAM OF A SMALL TRIBE AT J.P. MORGAN WAS CORRUPTED BY WALL STREET GREED AND UNLEASHED A CATASTROPHE, at ix-x (2009); JOHN BELLAMY FOSTER & FRED MAGDOFF, THE GREAT FINANCIAL CRISIS: CAUSES AND CONSEQUENCES 52-58 (2009); DEWATRIPONT ET AL., *supra* note 35, at 10; POSNER, *supra* note 39, at 7.

43. *See* HENRY M. PAULSON, JR., ON THE BRINK: INSIDE THE RACE TO STOP THE COLLAPSE OF THE GLOBAL FINANCIAL SYSTEM 436 (2010); *see also* Stephanie Kirchgaessner & Kevin Sieff, *Moody's Chief Admits to Failings in Run-Up to Financial Crisis*, FIN. TIMES, Apr. 24, 2010, (London ed.) at 1; Sam Jones & Stephanie Kirchgaessner, *Ratings Agencies' Nixon Moment*, FIN. TIMES, Apr. 24, 2010, (London ed.) at 15; CHARLES A. E. GOODHARDT, THE REGULATORY RESPONSE TO THE FINANCIAL CRISIS 17 (2009).

44. *See* sources cited *supra* notes 42-43; DAVID WESSEL, IN FED WE TRUST: BEN BERNANKE'S WAR ON THE GREAT PANIC 2-8 (2009); *see also* REINHART & ROGOFF, *supra* note 41, at 13; POSNER, *supra* note 39, at 7; PAUL KRUGMAN, THE RETURN OF DEPRESSION ECONOMICS AND THE CRISIS OF 2008, at 168, 174-78, 185 (2009).

45. *See* REINHART & ROGOFF, *supra* note 41, at 13; sources cited *supra* notes 42-44; DEWATRIPONT ET AL., *supra* note 35, at 10.

46. *See* PAULSON, *supra* note 43, at 436; SORKIN, *supra* note 42, at 156; WESSEL, *supra* note 44, at 2-8.

bailouts from the U.S. government.[47] A week later, Lehman Brothers, the fourth largest U.S. investment banker, had to declare bankruptcy when no bailout merger partner could be found.[48] Counterparty liabilities and massive vulnerability were now threatening a global collapse.

Suddenly, the majority of U.S. financial giants were vulnerable and needed U.S. government support. Merrill Lynch and Morgan Stanley (second and third largest investment bankers, respectively), Citigroup, Bank of America, and Wachovia (giant commercial banks), and AIG (insurance giant) all needed bailout support to some degree. Only J.P. Morgan Chase (the leading U.S. commercial bank) and Goldman Sachs (the leading U.S. investment bank) seemed stronger. But even these giants would have failed without massive U.S. government guarantees, prompt assistance, and/or rapid bailout mergers. Had the U.S. financial giants fallen, a financial meltdown would have spread rapidly throughout the United States and global marketplace.[49] The global economy faced a catastrophic world depression in late September 2008.

Financial vulnerability occurred in many European countries as well. Excessive borrowing, lending, overleveraging, real estate, and property bubbles were common. Disrupted countries included Iceland, Greece, Ireland, the United Kingdom, Portugal, Spain, and Italy. Some of their biggest financial institutions were at risk, with many bad loans and big losses. Large government bailouts, support, and guarantees were needed.

Fortunately, the lessons of Depression finance in the 1930s allowed a more concerted, parallel response toward recapitalization of banks and other financial institutions, at least initially.[50] Stimulus packages were designed to promote economic recoveries, improve employment, and limit disruptions to trade and credit. Recapitalization of banks received top priority, along with guarantees of bank accounts, money market funds, and other liquid assets and securities. Mortgage relief was widely attempted, but was a lot more difficult to achieve, especially for families losing jobs and substantial income. Keynesian deficit finance was generally accepted in principle, but the scale, time flow, and productivity

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47. *See* SORKIN, *supra* note 42, at 5; *see also* PAULSON, *supra* note 43, at 433.

48. *See* SORKIN, *supra* note 42, at 221; *see also* PAULSON, *supra* note 43, at 436.

49. *See* sources cited *supra* notes 41-44; *see also* GEORGE SOROS, THE NEW PARADIGM FOR FINANCIAL MARKETS: THE CREDIT CRISIS OF 2008 AND WHAT IT MEANS, at xxi (2008).

50. *See* SORKIN, *supra* note 42, at 4; sources cited *supra* notes 43-44; *see also* Hyman P. Minsky, *Foreword* to RONNIE J. PHILLIPS, THE CHICAGO PLAN & NEW DEAL BANKING REFORM, at xi-xiii (1995).

of government deficits remain very controversial in many countries.[51] Most countries wanted to avoid any widespread collapse in international trade, but some reductions in imports, exports, and protectionist relief could not be entirely avoided. Perhaps most important, the G-20 international conferences provided mutual understanding of the strains that most governments were suffering. Multinational institutions (the IMF, World Bank, BIS, World Trade Organization (WTO), IOSCO, IAIS, and IASB) also responded to the global finance crisis and major recession with sensible recommendations and warnings against "beggar thy neighbor" policies that were widely used in the 1930s.[52]

How soon economic recovery could be achieved was still uncertain in the summer of 2011. But an important goal in many countries was to put together a more complete financial accounting for the balance sheets and income statements of financial institutions and especially the off balance sheet securities and derivatives. A large part of the global financial fragility came from misuse of these instruments and transactions.[53] Cleaning up the mess and sharing out losses and toxic assets would be difficult. It would take years of coordinated action by major financial countries. But clearly, the most important source of the global financial crisis of 2007-11 and beyond was a breakdown in market

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51. Not surprisingly, experts divided on at least four major dimensions of the guarantees, recapitalization, and stimulus programs that should be implemented for recovery from the global crisis and recession of 2007-10: (i) *How broad an effort (1%, 2% or 5%) as a share of the economy?*; (ii) *How long an effort (one year, three years, five years)?*; (iii) *How much should be funded with extra currency printed, enlarged bank money, or additional governmental borrowing?*; and (iv) *how productive the outlays can be in generating jobs, spending, tax relief, etc.* The Bush and Obama responses have been criticized as too narrow, too slow, too weak, insufficiently productive with excess public borrowing, and/or too heavily focused on bank bailouts and guarantees rather than jobs and output and yet by 2011-12 much larger government debt loads accumulated. By 2011-12, excess debt loads were now very controversial in the United States, Europe, and many other nations.

Many critics complain of partisanship and constituency pork. Most observers, however, note a lot of excess capacity and little inflation pressure until recoveries broaden, so that relief should have been front-loaded rather than slow and timid. Funding should have emphasized more bank money and currency rather than government borrowing (so long as minimal inflation governed). Replacing destroyed bank liquidity deposits is a high priority in financial meltdowns. *See* Minsky, *supra* note 50, at xi-xiii.

52. A key role has been played by G-20 summit meetings and mutual reporting frameworks. Most countries pledged to "limit protectionism," and have done so. Sensible contributions have been made by the IMF, World Bank, and BIS, and could be made by the IOSCO, IAIS, and IASB. The WTO is more controversial with the Doha Round of trade negotiations caught in a logjam of conflicting national interest. Many now expect more trade progress with bilateral free trade agreements that encourage more equal sharing of export and import gains. The WTO may have become too unwieldy now with approximately 190 members.

53. *See* MORRIS, *supra* note 42, at xiv; MAGDOFF, *supra* note 42, at 56; SORKIN, *supra* note 42; TETT, *supra* note 42, at ix.

surveillance and a failure of supervision in the United States and Europe. Capital requirements were neglected, and overleveraging hit many banks, securities firms, insurers, and other financial institutions. Excessive faith in the skill of giant conglomerates was also a critical weakness. World press and international media were quick at the blame game *after the crisis blossomed*, but watchdog coverage and early risk assessments were needed badly in the boom and bubble years.[54]

III. BEYOND TERRITORIALITY: FINANCIAL AND LEGAL CHALLENGES INTO THE FUTURE

Sovereign states have primary roles in framing government tax revenues, budget allocations, and the use of deficits (or surplus) as a part of national finance. Federations with strong subnational and local governments (like the United States, the EU, China, India, Brazil, Argentina, Australia, Canada, and Russia) also need improved oversight at this level.[55] In the private sector, banks, securities firms, investment and mutual funds, insurers, and pensions operate under national laws for licensing, consumer protection, soundness, and solvency supervision. But surveillance and supervision are critical needs in private finance too.

Under the Basle Concordat's minimum standards and capital requirements, the "home" governments are primarily responsible for general solvency and deposit insurance.[56] But "host" governments have overlapping authority to supervise liquidity, depositor protection, and responsible behavior for affiliates, branches, and offices within their territories. Consolidated accounting for balance sheets and income statements of banks and other financial institutions is a matter for "home" governments to supervise, but "host" governments should enjoy access to these consolidated accounts as well.

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54. During the spring of 2010, the U.S. Congress was moving close to enacting a broad financial reform package. The most important features were enhanced financial surveillance, stronger capital requirements and leverage restrictions, broader resolution authorities for failing financial conglomerates, and greatly increased supervision for markets involving derivatives. *See* Martin Wolf, *The Challenge of Halting the Financial Doomsday Machine*, FIN. TIMES, Apr. 21, 2010, (London ed.) at 11.

In the summer of 2010, Congress passed the Dodd Frank Wall Street Reform and Consumer Protection Act. A compromise effort, it left many ambiguities and unresolved issues. *See* Brady Dennis, *Congress Passes Financial Reform Bill*, WASH. POST, July 16, 2010, http://www.washingtonpost.com/wp/dyn/content/article/2010/07/15/AR2010071506385.html. Some thought it weak; others too strong.

55. Most of the world's population now lives in big federations with strong subnational state, regional, and local governing components (e.g., China, India, United States, EU, Brazil, Russia, Canada, and Australia). In many of these countries, states and local governments play large roles in spending, borrowing, and taxation.

56. *See* sources cited *supra* note 19.

Globalization must resolve a crucial issue: How much social guarantee and national resources will countries put behind their government banks, financial institutions, and liabilities in the world marketplace? How creditworthy are these countries and their institutions? To the extent that countries and institutions enjoy good ratings, they obtain credit on lower interest rates and better terms. But as countries and/or their institutions become doubtful, their access to credit and capital becomes more expensive and difficult and presents a serious problem for international relations. Weakened finance reduces prosperity, jobs, and family incomes.

Sovereign risk is an important aspect of risk management in global capital markets.[57] This applies equally to national public finance, subnational and local government finance, central banks, private-sector finance, banking, and the many financial enterprises in a complex modern economy. The need for stronger accountability is an obvious imperative that we can draw from the global crisis of 2007-11 and beyond.[58]

The global financial crisis of 2007-11 is forcing expensive bailouts, guarantees, and support measures for many countries. In the short and medium run, government budget deficits are increased substantially.[59] These emergency outlays are unavoidable, but financial reforms (comprehensive surveillance and improved capital and reserves with no gaps in supervision) are essential to prevent a recurrence of this mess. In the United States, these budget deficit challenges are unusually awkward, especially when Keynesian stimulus packages are needed on a large scale

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57. Financial strains hit nations that suffer costly wars, revolutions, depressions, aggravated inflation, or other disasters. Sovereign risks and losses were common among them. Waves of such misfortunes impacted many countries during and after World War I, the Great Depression, and World War II. Some suffered strains during Cold War conflicts. Many developing nations suffered debt overloads along with stagflation in the later 1970s and 1980s. Restructuring external debts and debt relief were often needed. Unfortunately, many OECD nations now suffer major increases in debt loads as a result of the 2007-10 banking crises, very large budget deficits, reduced growth, and heavy unemployment.

58. In both public finance and private finance the lessons are that improved accountability and surveillance are crucial. The banking and financial crises of 2007-11 and beyond were enabled by loose supervision of housing and other activities that boomed into bubbles of excess, major losses, slowed economies, increased unemployment, and distress. *See* Jennifer Hughes & Rachel Sanderson, *Carried Forward*, FIN. TIMES, Apr. 20, 2010, (London ed.) at 7.

59. Most OECD countries have been hit with greatly enlarged public sector debt loads, nearing 100% of GDP. Economists are calling these burdens that flow from big Keynesian deficit spending as the "ball and chain problem." Debt loads of this magnitude are hard to service with healthy economic growth, unless these public debts are restructured, stretched out, or result in costly inflation or partial defaults. Most OECD nations are unprepared for these painful dilemmas when globalization promised general prosperity.

to renew prosperity and fuller employment.[60] Meanwhile, efforts toward health care reform (universal coverage and improved benefits) add substantially to government deficit burdens and complicate the task of maintaining a political consensus for financial reform and fiscal discipline. Additionally, increased longevity burdens health care and retirement incomes; retirement ages need to be increased gradually as well.

In Europe, big financial bailouts and supports were also needed, but their social safety net and health care are already wider so that most European budget deficit problems were not so severe (for example, Germany, Scandinavia, Netherlands, Belgium, and France). But Greece, and to a lesser extent, Italy, Spain, and Portugal still suffer heavier strains. The United Kingdom and Ireland had lower debt loads before the crisis, but have accrued new large deficits. Awkward challenges flow from these unequal burdens.[61] Greece approached debt default in the spring of 2011, but most EU partners preferred limited assistance and a tough recovery discipline. But Greece, and other heavier deficit countries, will suffer high interest rates, depressed property values, and a squeeze on their domestic incomes.[62]

In Asia, the slump has been less severe and perhaps not as long lasting. This good fortune could benefit recovery in the United States, Europe, and other areas. On the other hand, some see a bubble economy in China, which may present a hardship for them and other linked

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60. In most modern countries, by the later 1990s and into the twenty-first century, expectations had been building up that broader prosperity was achievable. If China and India could achieve middle incomes, when just fifty years ago they were badly overpopulated and extremely poor per capita (*see infra* Table 1), then the "economic problem" was soluble for many other nations. But when widespread financial foolishness and needless waste could cause major, long lasting recessions and doubled unemployment, public confidence has eroded. In many countries (like in the 1930s), global economic challenges are very complex, disturbing, and tricky. *See infra* Table 2.

61. *See infra* Table 2.

62. *See* Alan Beattie & Kerin Hope, *Difficult Balancing Act Over Greek Bail-Out*, FIN. TIMES, Apr. 19, 2010, (London ed.) at 4; Wolfgang Münchau, *Greece's Bail-Out Only Delays the Inevitable*, FIN. TIMES, Apr. 19, 2010, (London ed.) at 11; *Greece's Debt Crisis: Three Years To Save the Euro*, ECONOMIST, Apr. 17, 2010, at 12, 78-80; *EU Sees Wider Greek Deficit, Roiling Markets*, WALL ST. J., Apr. 23, 2010, at A10; *see also* WILLIAM R. CLINE, THE UNITED STATES AS A DEBTOR NATION 223-24 (2005); Roger Altman, *America's Disastrous Debt Is Obama's Biggest Test*, FIN. TIMES, Apr. 20, 2010, (London ed.) at 9; Ambrose Evans-Pritchard, *Sovereign Debt Crisis at 'Boiling Point', Warns Bank for International Settlements*, TELEGRAPH (Apr. 8, 2010), http://www.telegraph.co.uk/finance/economics/7564748/sovereign-debt-crisis-at-boiling-point-worns-Bank-for-International-Settlements.html.

economies. A slump in China, India, or elsewhere could weaken the recovery of 2011-12.[63]

The G-20, IMF, BIS, WTO, and other multilateral institutions are trying to encourage a broader, sustained recovery. In this regard, the recent subprime mortgage bubble and foolishness, compounded by misuse of derivative securities, needs to be studied carefully and more fully explained. Most nations in the world see these recent financial blunders as the result of naïve arrogance and overconfidence.[64]

During the 1980s and 1990s, U.S. financial leadership enjoyed global respect. Federal Reserve Chairman Volcker's leadership broke inflation in 1979-82, and he rebuilt capital for major U.S. banks in 1983-87.[65] This brought renewed global confidence in U.S. finance. Federal Reserve Chairman Greenspan's policies added momentum and popularity to Volcker's recovery. Greenspan, however, neglected the need for continued, close public supervision. Greenspan allowed a financial boom to get out of hand in 2004-07.

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63. So far, China has had a quicker recovery with less severe disruption. *See Trade, Exchange Rates, Budget Balances and Interest Rates*, ECONOMIST, Apr. 24, 2010, at 94; *infra* Table 2. Economic growth is estimated as follows (in gross domestic product):

	2008	2009	2010
Advanced Economies	.5	-3.2	2.1
United States	.4	-2.5	2.7
Japan	-1.2	-5.3	1.7
United Kingdom	.5	-4.8	1.3
Euro area	.6	-3.9	1.0
China	9.6	8.7	10.0
India	7.3	5.6	7.7
Brazil	5.1	-.4	4.7
Mexico	1.3	-6.8	4.0

ECONOMIC REPORT OF THE PRESIDENT, *supra* note 33; *see also* Sophie He, *Only Yuan Way for Currency Says Father of Euro*, STANDARD (Apr. 19, 2010), http://www.thestandard.com.hk/news_detail.asp?we_cat=2&art_id=97097&sid=27777949&con_type=1&d+str=20100419&fc=1 ("It is time for the yuan to have a stronger influence in the global arena . . . ."); MICHAEL W. KLEIN & JAY C. SHAMBAUGH, EXCHANGE RATE REGIMES IN THE MODERN ERA 20 (2010).

64. Widespread financial euphoria hit the United States, parts of Europe, most of Asia, and some other countries in 2004-07. *See* ECONOMIC REPORT OF THE PRESIDENT, *supra* note 33. Many financial experts felt that "finance and services" had become the U.S. and British comparative advantage. Unfortunately, the spreading financial crisis of 2008-09 has greatly reduced international confidence in many securitized instruments and derivative securities. Big increases in U.S. and British budget deficits and national debts are also reducing confidence in their financial savvy and leadership. How quickly, if at all, can their finance ascendancy be rebuilt?

65. *See* TREASTER, *supra* note 15, at 149-59; MORRIS, *supra* note 42, at xiv; LOVETT, *supra* note 4, at 76-124, 134-49, 175-81, 216-19, 241-47, 328-31, 404, 445-465.

Finally, we return to a central theme of this survey. Strong public accountability and market realism anchor sound finance, responsible banking, and good supervision. As global technology and prosperity spread in the world economy, finance and banking must now be regulated in a multinational way.[66] Eras of hegemonic leadership—1830-1931 for Great Britain, and 1946-2007 for the United States—no longer apply.[67] The crisis of 2007-11 and beyond requires more successful teamwork and joint understanding. We must now have a broader appreciation of financial market realities. Globalization still makes sense overall, but requires collaboration and shared surveillance, together with some rebalancing.

Table 1
Per Capita GDP, by Country 1950-2003

Country	1950	1980	2003
U.S.	$1,867	$11,990	$37,313
Nor.	1,226	11,404	34,528
Switz.	1,820	12,952	31,297
U.K.	1,268	8,558	28,101
Fr.	977	9,711	27,653
Germ.	___	9,688	27,090
Japan	371	8,675	25,526
Russia	___	___	12,217
S. Africa	684	4,508	9,630
Mex.	468	4,164	8,484
Braz.	293	3,831	7,800
China	67*	452	5,321
India	120	717	3,212

Source: Alan Heston et al., Penn World Table Version 6.2, Univ. of Pa. Ctr. for Int'l Comparisons of Prod., Income and Prices (Sept. 2006).
*China for 1955.

66. Financial markets and regulations are complex for national governments of the larger countries. Broad freedom to move capital, invest, and carry on commerce multiply complexity. And yet, finance should be closely supervised by expert and well informed talent and institutions. Ultimately, this requires a shared professionalism, market savvy, and collaboration among the relevant agencies nationally and internationally. Gaps in accountability and supervision can be dangerous.

67. Great Britain enjoyed a long lasting or at least recurrent financial ascendancy that began in the 1700s. Their British lead grew in the Napoleonic Wars, and flourished in the Victorian and Edwardian eras. Great Britain retained a kind of special savvy about international finance through World Wars I and II. But after World War II, the United States gradually took the lead in finance. More recently, in the 1990s, the United States has had to share collective leadership with the British Commonwealth, the Europeans, the Japanese, and other OECD countries. Now the "sharing" is even broader with the G-20 nations and near universal membership of the IMF, BIS, IOSCO, IAIS, IASB, and the WTO.

Table 2
Trade, Balances, Debts and Interest Rates

	Current Account Balance	Budget 2010 Balance (% GDP)	10 year Gov. bonds (%)	Gov. Debt Loads 2009 (%GDP)*
U.S.	$-420b.	- 11.1	3.73	90.8
Japan	$+157b.	- 8.0	1.33	192.1
China	$+284b.	- 2.9	3.28	18.2
Britain	$-29b.	- 12.8	4.08	68.5
Euro Area	$-63b.	- 7.2	3.77	n.a.
Germany	$+199b.	- 5.6	3.07	77.2
France	$-58b.	- 8.6	3.38	79.7
Greece	$-41b.	- 13.6	8.07	108.1
Italy	$-67b.	- 5.3	3.89	115.2
Spain	$-80b.	- 11.5	3.86	59.5
Poland	$-8b.	- 2.8	5.47	47.5
Russia	$+73b.	- 4.0	5.99	6.9
Norway	$+53b.	- 9.4	3.72	60.2
Sweden	$+29b.	- 3.0	3.14	43.2
Switz.	$+48b.	- 1.3	1.77	43.5
Australia	$-42b.	- 3.3	5.86	80.0
India	$-31b.	- 3.0	8.34	60.1
S. Korea	$+40b.	- 4.1	4.86	28.0
Brazil	$-28b.	- 2.4	6.16	46.8
Mexico	$-5b	- 1.6	7.29	42.6
Egypt	$-3b	- 9.4	1.29	79.8
S. Arabia	$+20b	+ 1.3	n.a.	20.3
S. Africa	$-11b	- 6.6	8.39	35.7

Sources: *Trade, Exchange Rates, Budget Balances and Interest Rates*, ECONOMIST, Apr. 24, 2010, at 94; *Budget Deficit in Greece*, WALL ST. J., Apr. 23, 2010, at A6.

* For debt load estimates, see *World Factbook: Public Debt*, CIA, http://www.cia.gov/library/publications/the-world-factbook-rankorder/2186rank.html.