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New Financial Architectures and Legal Infrastructures: Toward a Corrected and Compensated International Monetary System

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Abstract

The international monetary system features a powerful subsystem of nations with an organized polyarchic economy—in other words, a market economy adjusted and balanced by government authorities to protect the market against forces operating within it but failing to abide by the rules (as in the defense of fair competition), in which excessive asymmetry runs the risk of toppling the system. The central bank is the body guaranteeing both stability and the system. However, globalization prevents the central banks from controlling the massive flows of derivatives. In the absence of a supranational authority, the only remedy realistically feasible today lies in the network of informal agreements among the leading economic powers—the G-7, G-8, and G-20 countries. These countries, on the one hand, intervene on a case-by-case (or crisis-by-crisis) basis and, on the other, strive to bring chaotic corrective and compensatory measures into a market dominated by "turbocapitalism" to ward off future crises. Their actions thus strengthen legal infrastructures and the information flows that ensure transparency and involve financially sound nations, weak nations, international organizations, assorted classes of operators, and major private institutions.

Introduction

I am indebted to David Llewellyn's article (this volume) for the reference to infrastructure (formerly referable to Babylon or to Adam Smith and to Immanuel Kant) (Kant, 1798), whether as a metaphor or a widening of the field of semantics, from which I have taken my cue since I am a strong upholder of the theory that it is the nation's duty to supply infrastructures. By this I mean that combination of capital goods (in other words, results that can be and are used from a previously accomplished work) (Braudel, 1985, p. 52) that are not used directly in the productive system but that provide a series of services to producers of goods and services as well as to consumers.[1] Such infrastructures, with respect to the market and the production system, bear positive externalities (for instance, lighthouses, beacons, roads, and so forth) enjoyed by those who do not take part in the production or distribution of such goods and

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reduce negative externalities. These services are considered indispensable for the functioning of the economic system in a specific historical moment. The droughts and floods that the monarchies of waterworks (Wittfogel, 1957) had to face in a world that had only just attained the agriculture of the higher neolithic age required infrastructural remedies in defense of socioeconomic aggregates, just as in this day and age monetary and bank crises require them in defense of the *politeia* of an organized polyarchic economy in its version of financial capitalism.

The father of economics identified an invisible hand but also the insuppressible function of a nation to vouch for property and to produce regulations that allow various aspects of society to prosper—trading, the distribution of work, to politics, public allocations, national decision making and sovereignty, ethics, and justice (Eschilo, verse 604). Smith undertakes the building of infrastructures as his third task, which, after defense and internal safeguard against unfairness and oppression, he assigns to the nation (Smith, 1776, bk. 5, ch. 1; Hume, 1995). "The third and last duty of a sovereign is to create and uphold those public institutions and public works which—while seeming to be of great advantage to the whole of society—are of such a nature whereby the profit could never repay the expenses to any individual or to a small number of individuals, and that consequently can never be borne by a single individual or a small group of individuals." The use of the metaphor seems appropriate if we put together the necessity of providing infrastructures with the opinions of Adam Smith, who asked for government intervention to avoid altering the optimum proportion between paper money and full gold standard circulation. Furthermore, he thought that the nation should establish the maximum interest rate to prevent an overly high rate from causing that the largest part of the money loaned should go (Smith, bk. 2, ch. 4) "to squanderers and speculators who would be the only ones willing to pay it. Cautious persons who are willing to give for the use of money no more than a part of what they will presumably obtain from its use would not venture into competition. A large part of the nation's capital would thus be removed from the hands of those who would presumably use it in a profitable and advantageous way, and would fall into the hands of those who would probably waste it or destroy it." Adam Smith also stressed that the speedy growth of the wealth of nations in the vital sector of agriculture was due more to the establishment and the contract system and less to the abundance and fertility of the land.[2]

1. The architecture and the system

In our first conference, last year, there was much discussion of Professor. Hamada's (1999, *Open Economics Review* 9 (Supplement 1):417–445) assertion about the nonsystem in his paper on "The Choice of International Monetary Regimes in a Context of Repeated Games." Robert Triffin (1986) defined the nonsystem as "maze," "disorder," or, more blatantly, scandal. A different opinion is expressed by Dominick Salvatore (1992, esp. p. 20), as well as the Task

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Force created by the U.S. Council of Foreign Relations, mentioned by Michele Fratianni (this volume), which deals with reform of the international financial system (Institute for International Economics, 1999). Salvatore (to remain among the participants in our proceedings) describes a monetary system's operation and underlines its problems, such as rules, habits, instruments, and organization by which international payments are made distinguishing the systems according to interest rates, alternatively according to the different forms whereby international reserve activities are held.

I do not intend to enter into a discussion of Hamada's political economy ideas or of tactics theory (Gilpin, 1987). I merely repeat the measured words of the governor of the Bank of Italy, Antonio Fazio (1998, p. 5): "the system is not governed, it has no anchor." For those who don't deny the existence of the system, there is a subsystem in the system (according to Salvatore) in the architecture of the markets and practices used by governments, firms, and individuals when performing economic and financial activities according to the IMF definition. This definition is in part the object of international agreements and in part the object of the World Trade Organization (WTO) expectations. It appears held together by a combination of homogeneous principles whose consolidation is somehow guaranteed by the procedures of the organizations for conflict resolution (Mengozzi, 1999, p. 3).[3]

At this point conceptual and semantic arguments come out. Fabrizio Saccomanni (this volume) at our meeting said that the "international monetary system (IMS) is a macroeconomic concept that encompasses the foreign-exchange regulations, the capital movement system, all 'the rules of the game' for the adjustment of international payment imbalances. The international financial architecture (IFA) is, in contrast, a microeconomic concept and should not be considered synonymous with the IMS. The IFA is one element of the IMS" (Saccomanni, this volume). Operators of this system work with their subsystems, which are, in the European and Western case, reconnectable to the type of economy of a market heterocorrected by the nation by means of the subsystem or instrument of the central bank. But subsystems aren't homogeneous to the system, which knows a market economy that has only clues of heterocorrection and heterocompensation and in which monetary movements can't be known for what concerns derivatives.

The great distinction is the role that the central bank could play in its function as a decision-making body guaranteeing price stability directly and indirectly according to the law books of economics.

The international financial architecture is an element of the system. A game of reciprocal interference opens up, and how it is carried out can improve the functioning of architectural infrastructures.

2. The market as a system

In polyarchic economies, the objective is to increase competition, decrease imperfections, forbid dangerous businesses, and reduce externalities. They

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must be heterocompensated by public resources to reduce differences that are prejudicial for coexistence and to increase the excessively low incomes of certain subjects who are at a disadvantage due to external diseconomy or factual situations, with an often long-lasting effect. The market is the means of establishing prices, but government allocation, gifts, and self-production are elements of the nation's economy in its corrective and compensating functions. The market is in the system, but it isn't the whole system. Society needs to look for economic and social efficiency, which the market can ensure when it is a matter of producing and distributing goods, but the market doesn't go any further.

If the market is chaotic action that is in part balanced by the market itself with its stability and creativity, then by passing from chaos to the constitutive order of a new order in times of failure and crisis *ex post* it is balanced by the nation, with the arrangement of the structures necessary for setting down rules and applying them, to heal crises and try to avoid them.

Compensation works in society to modify diseconomic or distorting market results, most of the time by taking measures *after* the market. Instead, correction works *in* the market within its procedures—in particular the procedure for establishing prices. As we have often repeated, the market is regulated because without heteronomously regulations and without public institutions there would be no markets or property rights,[4] just as no programming can take into consideration the market or the relations between the market and a polyarchy.

3. Polyarchic system and stability

In polyarchic economic systems, the central bank controls fundamental economic functions. Currency is ruled by a constitutional machine that maintains stability by alternating public power and maneuvres of the market and that seems shaped by the nation and the *politeia* and therefore essential to its organization. When the government or public power is an element or factor of the economy, institutional inefficiencies are macroeconomic inefficiencies, even though the government no longer claims to be the ethical bearer of its absolute values but recognizes values, principles, and basic rights above, beyond, and preceding it and its duty to defend them and lends its instruments to their service. It becomes the only justified guarantee of the efficiency but coauthor of the inefficiency. Crises are caused by perverse synergies and by nonperceivable factors where nonetheless the lack of regulating power is always present though not always determining; Llewellyn's (this volume) contribution is pertinent.

Stability appears the aim and essential value of the *politeia* in the organized economy of the market and the nation. Goals change as we talk about the international monetary system. Historically, it can be oriented to instability, as long as it can be in a market economy. Stability is a choice: in certain times instability has been the rule and stability has been disliked because of social goals. Stability is the essential function in governing the market, which is not

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the replacement of strategies for market strategies but a supplementary measure, for "the modern model of unbalance considers that measures of political economics are necessary to compensate the failings of the market and rigidity in prices" (Henin, 1986, p. 20). This cannot work "if the currency on which their stability is based does not inspire trust," as John Maynard Keynes (1975, p. 7) says. He went on to say that "unemployment, precariousness of the workers' life, disappointment of legitimate hopes, sudden loss of savings, excessive earnings of certain individuals, speculators, profiteers, all of this derives mainly from monetary instability."

Stability means that the system should not itself produce a shock or enlarge the ones produced outside and combines with flexibility (the ability to operate in all circumstances and to adapt to market conditions) and resilience (the ability to continue operating faced with external shocks). The task of guaranteeing stability is a fundamental government function. Stability, though not forming a subjective right and though appearing foreign to the Bill of Rights (this is confirmed by the German constitutional court in the ruling of March 31 1998),[5] operates at the constitutional level at least for a constitutional body inserted in the plan of government, such as the central bank. Stability is embedded in the social contract, which little by little will be translated into legislation in a number of constitutional countries, following the German example. It will become a regulation for the European Union, with ultraconstitutional validity for member states. The aim is reasserted as having value in the Declaration of the Group of Seven (G-7) (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States) in October 1998 (point 20). However, there is divergence among the positions of the different leaders who have such an obligation constitutionally and those who do not: both will converge in the European Union policies of the G-7 or Group of 20 (G-20) (the G-7 and 11 major emerging economies—Argentina, Australia, Brazil, China, India, Mexico, Russia, Saudi Arabia, South Africa, Korea, and Turkey—plus two institutional representations—the European Union and the IMF/World Bank).

4. Stability in the economic system as a primary goal

The government's power and duty to maintain price stability are a basis for self-regulation and a part of economic stability (it could not be otherwise, since domestic and foreign prices are correlated to *trade off* between their stabilities). Likewise, there is a social compensation power and duty regarding the negative effects that the market, even though corrected, can cause (a firm can observe the rules of competition but still pollute) and regarding asymmetry in incomes. Stability in the framework of correction is dependent on the hypertext of the social contract (the same as compensation). *Hypertext* is used not in the computer science meaning but in the meaning of literary critics when they say that the hypertext of Joyce's *Ulysses* is the *Odyssey* or that of Italo Calvino's *Cavaliere Inesistente* is Ludovico Ariosto's *Orlando Furioso*. Consequently, as

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is openly stated in the reconstruction of the system made by the German constitutional court in the ruling of October 12 1993,[6] stability becomes the regular assumption of freedom, at least economic freedom, and therefore the primary aim of the state or European Union metastate, binding all national and European Union agencies.

Price stability is an objective that must be attained within the framework of economic stability. In general, it is based on domestic and foreign price stability, which is therefore also financial. This stability is a constitutional value for the nations that recognize it in their constitution, which all the nation's agencies, not merely its central bank, must uphold. In other words, it takes on a role similar to the one held by proprietorship in nineteenth-century law, with a collective, general guarantee managed dynamically by public authorities, in place of the individual, subjective, static one that was recognized and protected though not managed by public authorities. The German Model—established by ordinary German law in 1924, taken up again after World War II, and adopted by the European Union—has been confirmed by Article 88 of the German constitution. It inaugurated an important innovation in Western constitutionalism. It is the clear introduction of a new stabilizing *constitutional objective* that ensures stability and that assigns policy authority to the central bank. These policies modify the model of the democratic state, since they entrust the task of decision making to a subject that is outside of it. In practice, the economic constitution introduces a system of balances that supports the traditional one, with a model that assigns a function of political decision making that is important for the *politeia* to an agency that is alien to the linear system flowing from electoral body to parliament to government. It is independent of the system and simultaneously is the guardian of the economic constitution.

Consequently, when there was a transfer of powers from the central bank of the member countries of the European Union to the Central European Bank and to the European system of central banks, stability remained the objective of the national agencies that did not lose their powers following the transfer of those remaining powers. Thus, for instance, the Ministry of the Treasury continues to exercise its powers. When ministers or directors perform their duties with greater or lesser discretion according to the circumstances or when they participate in the G-7 meetings, they remain bound by their duty to pursue stability.

Likewise, the Italian central bank has lost the powers of a central bank regarding stability but has maintained the powers that ensure prudential stability, which are different from the powers pertaining to monetary policy. Prudential supervision is structured "by different kinds of risk: credit risk, market risk, regulation risk, legal risk, and so on" (Padoa-Schioppa, 1996, p. 63). It involves a limited discretionary power and by its subjection to the law of the controlling body differs substantially from the discretionary power of a political decision maker such as the Central European Bank. As with the terms *macroeconomic* and *microeconomic*, there are coincidences and differences between these

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notions and the macrolegal ones. In my opinion, the microlegal area directly involves legal situations of the subjects, which are justice, rights, and duties. Macrolegal concerns involve relations between public constitutional bodies, the dynamic reconstruction of methods and systems of checks and balances, and the coherence of the legal and constitutional systems. The new architecture is microlegal because it proposes rules related to duties undertaken in relation to intercurrent agreements.

Macrojuridical refers to the behaviors of offices, bodies, and operators that are not prejudicial or beneficial to the rights of private parties but that are guided by rules and evaluations of lawfulness and legitimacy. Therefore, macroeconomic control may largely coincide with a macrojuridical area, while microprecautionary may, similarly, coincide with the microjuridical. The macrojuridical and the microjuridical interweave with reference to the instrument used (contract), the exercise of financial activities (behavior), and the qualification of the operator (subjectivity) (Carbone, 1998). To complicate matters, we must add the complex intersection among the present functions of the state, which in the first session of our conference I tried to individualize with the words *lose, transfer, negotiate,* and *network*. These signify for our country a particular series of problems. Control was already in the hands of the central bank, but some functions (especially concerning monetary policy) were transferred to the European Union. Precautionary microstability functions were left to our central bank, maintaining a function of corporate stability.[7] In particular, the reference to transferring emphasizes other interventions suggested by the emerging new duties of the state.[8]

5. The culture of stability

Stability and the culture of stability are extremely important as elements of the social contract. They are shaped by the *politeia* system and the culture in the sense of taking on theoretical reconstructions of events. The facts about the essence of economics and cycles make up the basis on which to make decisions about directions to be taken. By interpreting facts in a way that interprets the rules of this culture, the economist must have cross-disciplinary knowledge if he is talking about systems or balance, even though his balance is not the same as that of the sociologists. Culture is also culture in a sociological sense—a general way of feeling of a particular society at a particular moment. Stability and balance become the information (and beliefs) of that fundamental and pervasive culture. Culture should be understood in its widest possible meaning. It must be taken as a guarantee of the basic regulations of freedom for the members, who need the stability that the government must provide to ensure orderly cohabitation, which is the premise for the assertion of constitutionally guaranteed rights. These rights consent the realization of the social contract hypertext that I mentioned above.

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We might go as far as to state that the decisions that guarantee a firm basis for cohabitation *ne cives ad arma veniant*. The jurisdictional function guarantees stability of relations in the legal system creating them and avoids its collapse by not allowing members to take the law into their own hands. The guarantee function of price stability ensures the economic stability indispensable to the preservation of cohabitation organized by the legal system, avoiding its collapse by making the best of the market, avoiding civil war, and producing essential services such as the collective asset of price stability. For this reason the fundamental market in the *politeia* system must be corrected to the extent that if, due to its incentives, prices increase, the central bank should make corrective measures. In a market of financial capitalism, correction is operated by financial measures and not by productive measures. A mixed economy proceeds by means of the authority of the central bank and not that of public enterprise or that of the government or enterprise of the industrial nation that Galbraith wrote about (thinking of the United States, not the Italian or more generally European public enterprise). The public authority's support measures—not chance, exceptional measures, or a government becoming entrepreneur or banker out of despair—are those of a government that is constitutionally institutional in the steps it takes as expected *a priori*, whether in a supplementary or merely sanctionary form. They will make rules and use legal power to have them observed, and they will basically be the same whether dealing with the central bank or a public enterprise, keeping in mind that the central bank, to attain its objectives, operates as an enterprise in the open market with the instruments of private management, even though it is a public body operating for constitutionally provided public purposes.

6. Globalization, international financial markets, and derivatives

The market that is without a guarantee of price stability is without control on the part of the central bank. It is opposed to the market economy model. Correction and compensation needs, which overcome the unbalances (from asymmetries), prevent development as we get into the international area. Stability correlated to an organized economy isn't related to the international monetary system. Referring to Fabrizio Saccomanni's work, it means the contrary. Stability is a constitutional duty for the European System of Central Banks (Consolidated Treaty, Article 105). The Council "manages the ECU exchange rates and according to BCE and the Commission, deliberates in qualified majority, to adopt or change the ECU central rates" (Article 111 of the Treaty). It is still a Council task to formulate "the general principles of exchange policy." In other words, community law pursues its own price-stability policy, which is a limitation of its discretion. If an instability system is preferred, traumatic crises are not necessarily desired. Diversity between the international and domestic areas corresponds to different countries' policy management. In the domestic area there is discretion bearishness and a prudential monitoring, while in the international side the need for a wide discretion is strong.

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The contrast of the two models can be horizontal—between countries with the monetary- and financial-market model corrected by the central bank and countries that do not follow it. Or it can be vertical—between areas where heterocorrection is operated and those where it is not. This is a symptom, one might say, of a system that waives the logic of any top level and is left with a network logic that "has neither head nor tail, with a plurality of connections that increase possible interaction among the network components. There is no central executive authority controlling the system from the top" (Pagels, 1989, p. 50). That might have the functions of differential correction and compensation, which the nation can exercise in an organized polyarchic economy. Besides the state and the metastate, there is only the archipelago—the world of interplay. The abilities and deficiencies of systems and operators in evaluating the consequences of actions accurately and far-sightedly are sifted with different values—from defending one's property to achieving power. That's the world of international economic relations, opposed to the organized polyarchic economy working for stability.

In this chaotic and faulty international system, globalization did not seem to extend to a planetary level. The metaphor of market principles would have led globalization to request "more extensive liberalization in order to increase the productivity of a world market which is put into action by competition and not exploited and made instrumental by government control" so as to "gradually reduce the control of the perverse logic of friend-enemy ... substituting it rather with emulation and with peaceable cooperation" (Zanfarino, 1998, p. 21).[9] It has made its appearance as a different entity—neither command nor market. This new form of hypercapitalism (Colcker, 1998) or of turbocapitalism (Luttwak, 1998) does not juxtapose one against the other because globalization refuses traditional juxtaposition by innovating and networking everything. A number of times, particularly in ancient times, nations have divided the world into "us" and "them"—an evil chaos or open space for conquest. From the *Two Cities* by St. Augustine one route would lead us to the *aut aut* of the house of Islam[10] and the territory of war (or also, with a different formula, the territory of justice and that of impiety).

Globalization, in unifying the world, interiorizes chaos, just as order is inside and is not outside. Globalization, neither market nor command (and also neither *status quo* nor reform), seems like a new route that up to now has been unknown in history. Although theorized by some people as optimum spontaneous self-regulation, emphatic demonstrations preach the omnipotence of the laws of the market, refusing corrections by the state (the euro has side-stepped a central bank system by rebelling against Regulation Q). Crises and protests continue to require homogenizing the two worlds, and this is the ordinary mark of a market that exercises differentiated correction and compensation by a higher power. In the present, the country's aim is different from the past. Now the aim is losing power, transferring power, negotiating new power aggregations, and building flexible network systems. As we look for ways to carry out our aim in the international markets, we encounter difficulties.

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7. Derivatives, regulation, and risks

The market that the central banks correct has been deeply altered by the explosion of derivatives—"those contracts whose value derives from the price of an underlying financial activity, or rather from the value of the corresponding financial indicators: stock market index, interest rate, exchange" (Caputo Nassetti, 1997). These include futures (standardized future contracts), forwards, options, interest-rate swaps, currency swaps,[11] and other instruments that favor greater availability of funds in financial markets, development of trade, coverage of a position, or undertaking risks with the objective of making a profit (Carbone, this volume). These are the increasingly sophisticated instruments of financial engineering. These instruments, historically, are built on contract models that normally are used in practice but whose most significant characteristic is that they go beyond specific national regulations (Carbone, this volume).[12] I omit any mention of the private international right problems, which are increased because of the Internet and the electronic commerce. Financial instruments demonstrate the wide "self-governing power, of contractual reference indicators that may not necessarily fit into a specific national system, of rules and venues for the resolution of conflicts coherently with the expectations of the subjects who have drafted the 'contract program' of the economic operation, and also of the deferment to national regulations selected according to their compliance with the solutions adopted in the contractual rules and regulations of the relationship rather than to their connections to it." Conforming to these standards is Article 4 of Law 218/95, which is inspired to "the mandatory parameters related to the exercise of the laws in force in the so-called European legal system; it recognizes ample operativeness of the clause derogation to the Italian jurisdiction in all those cases dealing with controversies about available rights and the willingness of the parties in this regard results as proven in writing', provided that the derogatory effect is related with the actual exercise of jurisdiction on the part of the judge appointed by the parties"[12] (Carbone, this issue, p. 236).

These instruments make the financial system is more complete because they divide or group the risks. The instruments are an answer, in part, to the risks related to financial assets or loans used by dealers to create investment or indebtedness. They partly meet an insurance requirement that is typical of a contemporary "society of risks" whose financial markets have become the risk bazaar and are constantly searching for financial innovation. These instruments, however, have proven to be ineffective against chain collapses deriving from the failures of large-scale debtors (Brazil, Mexico, Argentina, and Poland).

The system becomes more complete because to know the price trend (thanks to networking, also in real time) of each individual risk and each financial activity means to possess the best information about the present economic situation on the international level. Derivatives themselves "not only do not generate new risks but consent (though do not ensure) a better distribution of the existing

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ones. In this as in other aspects they do not belong to the sphere of gambling but to that of insurance—a field of economy and finance without which neither families nor enterprises could prosper" (Padoa Schioppa, 1996, p. 61).[13] Dealers, and especially central banks, thus operate in a market that is made more transparent but are in a position better to perceive how the market reacts to their monetary policies and therefore to correct this policy, if necessary: in these terms, the effectiveness of economic and monetary policies can be considered increased.

In the first session of our conference last year, the governor of the Bank of Italy, Antonio Fazio, in speaking about derivatives ("probably the most 'magical' financial instruments of this century, which have increased their value six times from 1990 to 1997, with a national value—the value whereby are calculated the interests exchanged among opposite parties—of about 60,000 billion dollars, and characterized by a huge 'leverage' that considerably extends the possibilities of gain or loss" (Pollio Salimbeni, 1999, p. 32) said that they are such complex instruments that it is "hard for the dealer himself to estimate the total risk to which he is exposed in particular in the event of price fluctuations in financial activities that, in size and simultaneity, differ from previous experiences" (Fazio, 1998, p. 61).

I do not intend to follow the pessimistic comment of Antonio Pollio Salimbeni (1999, p. 32), to whom "when one no longer has the feeling of risking, it means that one is approaching a crash." However, in the area of derivatives, nations have lost the ability to control the monetary basis that they once had.[14] This loss of the ability to control in the short period is relative to administrative measures taken in the previous period of gold adjustment, which left the market with the task of finding stability. Over two-thirds of the banks' activities with nonresidents have brokers as their counterparts. Interbank activity supplies the forming of international liquidity, which is not subject to the direct control of any monetary authority. With an amount of derivatives large enough to have decisive influence on prices of all financial activities, it can expand to such an extent as to cause financial and inflationary turbulence.

Savona and Maccario (1998) refer to this subject extensively in their report to this conference (Savona, Maccario, and Oldani, this volume). In the previous conference they noted a disturbing reversal: the intermediary objective of monetary policy should be the interest rate (or asset price) and not the amount of currency if instability derives from the financial system (the shock on the function of the demand for currency); the objective should be the amount of currency if instability derives from the real sector. The desirability of the asset price as a middle-term goal is not so clear, since the new financial instruments, by allowing the stabilization of payment flows and the reduction of exposure to interest-rate shocks, also influence the function of the demand for investments and the function of the demand for currency. The consequence is that the net effect on the desirability of the asset price as a middle-term goal, in turn, is not very clear. This situation, in which determining the objective is

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difficult, lowers the effectiveness of the monetary policy. Faced with market speculation caused by improper use of derivatives, the real effect in the short term of monetary expansion is hard to determine. The ties between currency and inflation are loosened. Otherwise, the nature and operations of financial markets are altered (Von Hagen and Fender, 1998) due to the risk connected with the unstable evolution of exchange and interest rates, subjecting business as well as financial operations to an unbearable insecurity that might slow down the flow of current transactions, which in turn has an influence on the risk market.

"Savona, Maccario and Oldani remark that "a significant step forward was made recently (1998) by the IMF Committee on Balance-of-Payment Statistics, which has introduced new rules to make the balance of payments coherent with financial innovations. The new rules state that derivatives are part of national capital resources and must be counted in the balance as financial assets and liabilities."

The "new" market might appear not as a flow within embankments (which generally follows typical patterns, even though innovation is always present) but rather as imagination, invention, and noncontrol. With wide propagation of movements with the emergence of colossal institutions of the *politeia*, such as institutional investors, "decisions depend the destination of funds estimated around 28,000 billion dollars, which is exactly the amount of a year's world product" (Pollio Salimbeni, 1999, p. 19).

"Compared to 1987 the speed of exchanges in financial activities has multiplied ten times. According to the president of the Federal Reserve, Alan Greenspan, 'the effectiveness of financial markets consists in their ability to convey errors faster than anyone might have imagined a generation ago.' Taking risks 'is a necessary condition to create wealth, but the highest grade of aversion to risk should be supported by rational evaluation on the situation of the market and not by the fear of avoiding the fire of selling' " (Pollio Salimbeni, 1999, p. 24). "The 'financialization' of the economy has made the balance on which the entire mechanism of accumulation is based more fragile. In other words, it has created the conditions to destabilize the value of money. Investments, employment levels, and revenues have become hostages of currency fluctuations and stock market turnovers. Money has become an unpredictable raw material. In the past twenty years the jolts in currency exchange rates have been so strong as to appear totally irrational. The dollar was worth 260 yen in 1985, the following year it was worth 130, in 1990 160, in 1995 80, and a few months later 100. There was nothing in the reality of economics to justify such violent movement: the United States did not suddenly become a declining power, nor as suddenly become productive" (Pollio Salimbeni, 1999, p. 20). The organized market-economy model (in which the central bank is the fundamental, establishing, constitutional organ) contrasts and clashes with the activity of hypercapitalism, which refuses it and with this refusal alternates profits in its favor and crises to its detriment.

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8. Derivatives' effects on monetary policy

Control of the national or central bank system, as outlined at the beginning of the derivatives era, was composed of three types: one was microprecautionary, directed at market stability; the second was macroprecautionary, directed at market stability; and the third, macroeconomic, directed at the stability of the entire economy. These still hold even though the market has changed, and control, to a great extent, has disappeared. The first type sees new problems with the "possibility of transferring the risk to different operators from the ones where it originates (as in the cases of swaps and securitization) and the possibility of its growing concentration with a limited number of large-scale institutions to state problems of a new kind" (Padoa Schioppa, 1996, p. 62). The second includes the relationship between derivative market and underlying markets, the relationship between regulated markets and over-the-counter (OTC) markets—the regulating phase. The third assigns the possible influence of derivative circulation on monetary policy, which also assigns the regulation of monetary and financial markets in their interaction. "There is definitely an effect on the transmission mechanism of monetary impulses, since derivative markets are more liquid and relative and they influence the underlying markets rapidly altering interest-rate structure according to expiration. Other effects are identified in the possibility that, by facilitating alternative financing for enterprises—that is, direct financing—the derivatives may reduce the effectiveness of the credit channel, or in the possibility that they influence the demand for currency since they are capable of modifying the characteristics of liquidity of the other financial instruments and thus their replaceability relationship with the currency itself. The monetary policy—commented Padoa Schioppa (1996, p. 71) whom I have been broadly following—does not seem less effective due to the presence of derivatives, since the latter cause redistribution of the rate risk and not cancellation of the risk. Consequently, one could only argue that that the monetary effect retains its value, though influencing different categories of economic subjects."

Needless to say, at the macroeconomic level there can be other retroactions. The presence of derivative instruments may increase "price volatility of the underlying activities; this is a concern that is expressed by observers of financial circles, by dealers in this sector, and it is often shared by the central banks themselves" (Padoa Schioppa, 1996, p. 65).[15] However, the credit channel loses importance in actual fact. "Just as derivative products enhance replaceability between bank credit and securities, in bank assets as well as in corporate financing the credit channel tends to lose importance. For instance, the risk of an investment in securities issued by enterprises can be met, as far as the component of the market trend is concerned, by stock market futures, and, for the specific component of each individual enterprise, by the use of derivatives on the specific securities" (Padoa Schioppa, 1996, p. 69).

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9. The juridical problem of international financial markets

The unified objective of nations contrasts with the diversity of the objectives of financial operators, which are private subjects aiming first of all at profit and power maximization (typical of oligopolies), of international public bodies or domestic public law bodies, and of lesser nongovernment organizations, which are bodies of uncertain and maybe temporary or changing placement. An example of this might be the Paris Club, an international organization not established by charter (Abi Saab, 1998). It is a soft organization acting as a match for soft law, located between law and not law. Thus, even an organization may, in part by law and in part not by law, produce an aura of moral suasion and of influence. It is often no less important (or even more so in some cases) than its legal production. Two centuries of central bank experience are telling.

Each one of the subjects will move, within the microlaw, with its legal instruments, keeping in mind that among the operators we have public agencies that work with private instruments in the open market, like the central banks. We have seen that the central banks are institutionally amphibious between the public and the private, as was public enterprise—or as it should have been, at least according to the founders of the Italian system. The logical consequence is that remedies always tend to move in a setting where amphibians are at home, in a continuous mix of private-law activity for public purposes and private-law activity for private purposes but with effects that are prevalently due to the dimension in the public area. Countries will move domestically with normative and precautionary acts that are binding and absolute and will move internationally with agreements and contracts that are in a position to operate fully or in part as binding and absolute acts of an international order. Acts and instruments of general, regional, or sectorial (including the highly important OMC) international organizations, some binding and others not (such as recommendations),[16] can also operate internationally—though with unequal effectiveness. They also can operate with informal agreements, which seem to be recalled on account of their difference in the Treaty on the European Union, Article 19, dealing with "mysterious category of 'formal agreements.' ... It was introduced in spite of all the criticism that had already been expressed at the time of negotiation, and forced the annexation to the Treaty of an ad hoc declaration to specify that these agreements are no more than normal international agreements" (Tizzano, 1997, p. 459).[17] National acts can develop through the rich series of instruments that the law, particularly economic law, offers to employ basic authoritative mechanisms of doing or not doing, of giving or not giving. The acts of international organizations express decisions made by a majority or by consensus.

Private persons will contract with private instruments, including frame contracts and standard contracts, whose effects actually come near to those of regulating acts. A specific example would be the Basle code of laws, which is followed not only by the contracting parties but by subjects who did not participate in the agreement and therefore are not bound by it. The defense of private persons against their counterparts in the event of default or interruption

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of contractual balance can be approached from several directions. In particular, when trying to select the basic essential or procedural rules (whether before a judge or arbitrator) that correspond more closely to their interests in the event of litigation, they are not exempt from conflict with their country's laws. Inquiring into the best way to enact a typical principle of international relations, even though not exclusive to this, the *rebus sic stantibus* clause guarantees fulfillment of the established balance when this is lacking due to occurrences that are not ascribable to a party. The contractual clauses are perfected. The typical distinction between long-term financing and short-term financing loses significance when in certain long-term international bonds issued by Southeast Asian countries at the end of the 1990s certain clauses were introduced that changed the bonds in the event of a crisis into short-term instruments, since the possibility of immediate reimbursement was scheduled as soon as evaluation of the country's solvency had fallen below a given level.

10. Globalization and the lack of uniformity

We know that globalization has not made the social foundation of the world homogeneous, nor has it unified an economic reality. Nations are still profoundly different, and these differences are not comparable to the ones among European countries or Western countries. There is no world community of systems, of social contracts, of hypertexts. It is not possible to imagine corrections based on a metastate of the European Union kind or of some other type. Corrections should be made not only on a world basis but with instruments that necessarily operate at this level and can be established only with cooperation, which isn't still institutionalized. This means overcoming the requirement of intergovernmental agreement on every decision and allowing the ordinary agencies of authority to make certain decisions, even important and qualifying ones. We should start preparing for change with a network of relations that are the alternative to an order that no longer exists (it hasn't been overwhelmed by external causes, as wars or revolutions, but from within). A new institutional order needs to be designed to be long-lasting and universal. A remedy cannot wait, and the return to an outline of market stability, like the one on which Bretton Woods was founded, doesn't seem possible.

The international community, in this age of globalization more than ever before, must protect itself against those inside the market that alter it and thereby increase the risks of financial crises and instability and against (Saccomanni, this volume) the superpower masters of international trade that have changed, in some instances, the structure and foundations of certain nations. In the oil-producing countries, for example, relations and social contracts are all outside of the country, between the prince and the oil companies from which the country derives huge profits but on which it depends. The new financial feudalities and the new feudal-financial nations have no boundaries. The community itself is bound in a network of mutual relations and must defend its weaker parts from the tyranny of its stronger parts. We know that the geopolitics of power

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preceding World War II have been substituted by geopolitics of hunger (Brunel and Bodin, 1998) and of chaos (Ramonet, 1998). We know that we are living in a world where the fortunes of the three largest private groups exceeded the gross domestic product of the 48 poorest nations (Ramonet, 1998, 1). Asymmetries are realistically evaluated interests; firm beliefs and ethics are conducive to overcoming dangerous targets.

11. The G-7: An example of international organization

The best-known and most outstanding example of a network organization that is flexible to the point of almost being a nonorganization, with conspicuous informal real powers, is the G-7 (and soon to be G-20). The G-7 came out of that deinstitutionalization (which I already discussed) that results in economic powers increasing their power and reducing their responsibilities. It is not an international organization that can produce binding international acts or nonbinding recommendations. Strictly speaking, it is not even an intergovernmental organization. The G-7 is not a collective joint subject, a decision-making body with legal effects attributable to it. The policy decisions are equal, in fact, for the individual states, but remain acts that are not attributable to one subject or even more generically to a subjective figure but are attributable as programs or self-limitations, as unilateral commitments. For instance in the G-7 document of October 1998, point 8 states: "we undertake to strive to guarantee that the private institutions of our Countries respect these principles, standards, and behavior codes," which corresponds to an obligation to act, going as far as mandatory instructions, for instance, to supervising organs of banks and financial brokers. Point 19 of the same document states: "we agree to immediately take all those measures to keep our commitments. These measures will strengthen the foundations of the international financial system and will consent to help those nations that are hit by crises to come through their difficulties." Equally binding, if not even more so, are the commitments made within the G-7 for payments in favor of the IMF or other similar institutions.

In general, it may be said that these commitments have been made simultaneously but are not conditioned to fulfillment on the part of the others (except for the application of the principle *inadimplenti non est adimplendum*). They are valid according to the regulations of one's individual legal system and justifiable according to these (for instance, in the case of Italy, by violation of the law or by excess of power), but it's not easy to imagine concrete actions. These complex relationships, with their lack of rights to stability and with the risk that the matter will become over looked, are in reality networks and not loose organizations.

We have already mentioned the need to overcome the two worlds and to succeed in expressing globalization as a heterocorrected and heterocompensated market system as requested by countless observers. With inadequate institutions and faced with a dangerous chain of crises, the retroaction was to

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undertake exceptional tasks of heterocorrection and heterocorrection *in desperation* on the part of those who hold the greatest power—the G-3, G-7, and G-20. At home this organization already exercises heterocorrection, and even—more or less successfully—heterocompensation and cannot avoid in its own interest using, if not the same instruments, similar ones to the ones it uses at home to maintain the system according to a hypertext, in an attempt to widen its basis, consensus, and contributions. These types of actions should be considered individually and not in a program, unless it is one for the construction or development of infrastructures, acquisition of knowledge, supervision or monitoring, control, or management of a penalty or award legal system (in the latter case awarding prizes or incentives), but they can be referred to the classifications mentioned. Therefore, the development of the IMF procedures for the enforcement of transparency or mandatory communication may be classified as heterocorrection, differentiating debtors according to the country's poverty conditions (already ventured in 1984 with the Baker plan first and later the Brady plan), which afterwards was the object of a general principle resolution at the Venice summit and later led to the resolution of September 25, 1999.

The G-7 and G-20 are not international organs. They do not use, nor can they use, binding instruments or even nonbinding instruments: if they make recommendations, these do not pertain to international law. They do not make majority decisions, even though the consensus that seems to have been used in the G-7 Venice summit consequently is the result of laborious compromise though stimulated by urgency. In point of fact, the G-7 has powers of coordination that functionally and structurally are no different, at least in tendency, from the powers that are exercised by interdepartmental committees. The G-7 cannot be assigned functions that may be typical of an individual country because the G-7 is not an international body producing mandatory decrees. Policy making is made by the appropriate agencies of the individual state (Ministry of the Treasury or similar).

Informal activity increases the risks that choices might not be put into effect due to the arising of obstacles on the part of constitutional organs, such as the parliament of the nation itself. The highly political character of international relations has caused serious conflict (for instance, with the North American congress) relative to the IMF. Camdessus, general manager of the IMF, clearly stated that 84 percent of the shareholders have consented to an increase in dues while 16 percent (including the United States) have not given. The United States, as usual, "represents the hardest nut to crack. Reaching an agreement with them is never easy, particularly on account of Congress is resistance, which has its reasons in domestic policy and not always noble objectives" (Calderoni, 1998, 3). Proposals to give operative roles to the IMF in crises, turning it into a bankruptcy court or an official receiver, have been met with the objection that in cases of insolvency it is a creditor (Holmgren, 1998, p. 283).

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12. Financial crises and regulation

The succession and frequency of crises have highlighted a number of troublesome weak points in the system, making it necessary to search for that anchor that Fazio talked about and to look for alternatives. Management is primarily oriented toward the function of *losing*, faced by the crises of the system's self-defense and the failure of the market. Therefore, there is a need for the strong intervention of the principle of subsidiariness, with the advent of *negotiating* and *networking* functions, since it is not possible to *transfer* until the time when networking and negotiating will lead to new institutions, as was the case with WTO. If monetary crises are triggered by short-term capital movements (Aliber, this volume), the bank crises and the crisis chains that influence enterprises and their clients are always and everywhere the result of a mix of economic, financial, and structural weak points. The real causes of the crisis are in any case not imputable merely to macroeconomy problems, as is customary, but rather to serious shortcomings within the banking system. In pointing out the mixed characteristics of the origins of bank crises, Llewellyn underlined the importance of a lack of standards and therefore of appropriate regulations and adequate controls.[18] The Summit in Cologne had the same position. The crucial point of Llewellyn's work is that a "regulated regime" must be conceived on a wider scale with respect to regulations enforced from outside on financial institutions. Regulations are only the first of six key components. The others are control, supervision (private and national), incentive structures, intervention and sanctions, market regulation, and company control.

13. A way to strengthen international financial markets

The text of the meeting of the G-7 of October 30, 1998, has been important in identifying objectives for international financial architecture reform and for heterocorrection. The text publicly tackled a preliminary policy of infrastructures for financial crises with a bland formula that in some points (though not all) was comparable to international recommendations (in the case of the Common Market and domestic ones) (Predieri, 1992, p. 696), which are not binding, though not devoid of legal effects (Malaguti, 2000). The text of the Summit of G-7 in Cologne of June 1999 approved a report prepared by the finance ministers, titled "Strengthening of International Financial Architecture," which individualized the main components of strengthening the international financial system and which is auxiliary to the objective of founding a financial system "that may profit from all the benefits of global markets and capital flows, to minimize crisis risks, more effectively protect the weaker classes and promote international monetary stability which is an element of a stable financial system" point 20. The text made the following recommendations:

- *Broaden transparency.* The program points out the basic need to turn international markets into markets governed by transparency regarding public

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institutions. Examples include the standards regarding fiscal transparency in the International Monetary Fund (point 6), private institutions (particularly points 7 and 18 to 20a), self-regulation (points 7 to 20), and technical regulations. These should be linked with public institutions that create the same type of regulations.

- *Reinforce financial regulations for industrialized countries by strengthening prohibitions.* The program proposes a system that will provide supervision (point 11a), monitoring (point 14a), supervision (point 15), precautionary rules (point 20h), coordination (point 11b), general principles of the management of social policies (point 16), measures of heterocorrection (point 13), and agreements on terms of insolvency (point 14b). It would involve the private sector in the activity of selfregulation, in particular the issue of national or quasi-national bonds (point 14a), the mechanisms of financing in the event of adverse market conditions (point 14d), the management and solution of crises (point 14d), and the stability of nations and of the system in general (point 20c).
- *Strengthen macroeconomic policies and financial systems in developing markets*. The International Monetary Fund will emerge stronger, with measures that must be indicated and evaluated (point 21) and with an increase in the tasks of its several components, such as the Interim Committee. The statement does not go into detail about the latter, while the French motion spoke of it as a body that was destined to become the actual board of directors, going back to the provisions of the articles of association. Also according to the French proposal, the finance ministers of member countries representing the entire international community, including developing countries, should establish the strategic guidelines of the Fund by means of their resolutions, when voted.
- *Improve heterocorrection of the market*. This includes the prevention and management of crises with an updating of legislation affecting the microlegal area, prevention of crises facilitating shocks, innovative financial agreements (including rollover options), using clauses of joint action in domestic bonded contracts, provisions to facilitate creditors' coordination, reliable bankruptcy proceedings, strong judicial systems, predictability, and impartiality.
- *Promote social policies of etherocompensation to protect the poorest*.
- *Increase autoregulation*. This involves promoting behavior codes applicable to countries, banks, financial intermediaries, and societies that reflect official statistics of economic and financial growth, accountancy methods, society management, accounting controls, policy elaboration, and execution (Saccomanni, this volume).

The program intends to promote the conditions of a market that is capable of self-discipline, mainly through continued and systematic recourse to transparency to supply information. The program promotes requests for monitoring data and information, market self-discipline (point 14), self-management of crises (points 14a and 20d), policy coordination for the exchange mainly of

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information (point 11b), precautionary standards in financial institutions to establish standards on an international level and to stimulate through international cooperation (point 13) compliance with these regulations, greater strength and range of precautionary vigilance (point 20a) and market discipline (point 20b), and introduction of a system of self-controls (points 14c and 18b) as far as the International Monetary Fund is concerned. A series of measures of market *correction* accompanied by specific measures of *compensation* are designed for "minimizing the human cost of financial crises and encouraging the adoption of policies protecting the more vulnerable persons" (point 20f) and "more effectively protecting the weaker persons and promoting international monetary stability, which is an element of a stable financial system" (point 20), as well as of general heterocompensation of the system.

14. Standard principles and codes of conduct

Going into further detail, the 1998 text contained an indication of purposes (points 3 and 20) (that is, financial stability of our economies) and indicated various means to attain these purposes, involving governments, public organizations, public subjects operating in areas in which nongovernment organizations operate (such as the Club of Paris) (Holmgren, 1998). It follows that, in the event of a crisis or of crisis prevention, the response to different perverse synergies must be equally synergetic.

The G-7 program moves in anticipation of standard principles and codes of conduct that have a public origin. IMF (points 6a and 6b) has the commitment to respect nations (point 6). A code of principles on corporate governance led to the OECD. The World Bank supported general principles of conduct in social policies in the cases of crises that the World Bank will need to solve (point 16). The G-7 made a commitment that "the countries that are part of global capital markets likewise undertake to follow these codes and standards agreed on internationally" (point 9).

The program anticipated that the "IASC (International Accounting Standard Committee) would propound for early 1999 a complete range of accounting standards agreed on internationally. The International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS), and the Basle Committee should complete a timely review of these standards" (point 7b). It also stated that "the appropriate committees registered with the BIS, together with new markets, national authorities, and the public and private organizations, should examine the problem of appropriate transparency and of openness standards for the private financial institutions involve in international capital flows: investment banks, hedge funds, and other institutional investors" (point 7c).

These codes and standards, the program suggested, should be followed and their enactment verified. In point 9b it added that "the International Monetary

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Fund should verify the enactment of these codes and standards within the scope of regular surveillance according to Article IV; c) that the IMF should publish in a timely and systematic manner, by means of a Report on Transparency, the results of the control on the degree to which each member country meets the codes and standards of transparency and openness; d) we request that the IMF, the World Bank, the OECD, and the international regulation and supervision organizations work together to advise and, where necessary, supply assistance to the Countries in complying wit these codes."

Simultaneously, the G-7 anticipated improvement in the procedures, in particular regarding a widespread "publication of information, except in the event that this would clash with the problem of privacy" (point 18a), widening the field to the consideration "of the possibility of strengthening precautionary measures in industrial countries to encourage sensible analysis and weighing risks and benefits, including the appropriate transparency for all participants in the markets." The "strengthening of precautionary rules and of financial systems in new markets by means of the control of possible measures to increase the flexibility of financial systems and promote the adoption of international and conduct standards, for instance by maximizing market disciplines and other legal measures in an attempt to encourage the countries to adopt and verify international practices and standards" (points 20a and 20b). This improvement in adjustments was supposed to be achieved "in particular by verifying the implications arising from the activity of speculative financial organizations, including hedge funds and offshore institutions. Appropriate means should be identified to encourage offshore centres to observe the standards that have been agreed on internationally" (point 13). Here again the G-7 confirmed the commitment of acting toward having "the countries taking part in global capital markets adopt similar action" (point 13) to obtain similar action.

The G-7 also anticipated control procedures "intended to strengthen surveillance in the financial sector and for international financial institutions, working in close cooperation with international supervision and regulation organizations, to carry out surveillance of national financial sectors and their supervision and regulation systems with all the information accessible to them" (point 10). The G-7 was thereby undertaking to support the establishment of a procedure for the strengthening of surveillance in the financial sector using national and international expertise on regulation and supervision and the continuous surveillance of the Monetary Fund on member countries, according to Article IVb). To this end it would bring together the international institutions and national authorities involved in the stability of the financial sector to better coordinate their activities in the conduct and development of such policies as would add to the stability and reduce the systemic risk in the international financial system. This would allow them to exchange information about the risks of the international financial system in a more methodical way, starting from the assumption that "the opening of capital markets in newly formed economies should take place

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in a cautious and gradual manner if the countries are to gain benefits from integration of global economy. In particular, financial sectors and the supervision and regulation systems must be solid and adequate to deal with these risks. International financial institutions must have a constructive role in the orderly openness of capitals" (point 15). Consequently, the development of the IMF appeared necessary. This would involve a "large number of reforms to improve IMF effectiveness including transparency, to change loan policies, terms, and conditions for credits" (point 17) and the request that the IMF "develop a formal procedure for systematic evaluation, including the input form outside, on the effectiveness of its transactions, of its programs, its policies and its procedures" (point 18b). The Fund would continue its policies regarding particular surveillance conditions on a case-by-case basis (points 14b and 14c). At the same time, the commitment to require the countries that "participate in the global capital market to give their support to the formation and enactment of this procedure" was ensured (point 12).

Also the private sector was requested to "facilitate the 'collective action clauses' in an attempt to find the most orderly procedures and we intend to consider the use of such clauses when issuing national and quasi-national bonds" (point 14a). The private sector was asked to "develop, thanks to its experience in new markets, financing procedures with conditions that should provide for greater flexibility in payments, or the assurance of new financing in the event of adverse market conditions. The private sector must also be involved in the conduct and solution of crises" (point 14d).

15. Strengthening international organizations: IMF and World Bank

In 1998 the G-7 spoke of "development of new measures to meet the crises by means of investigation of new structures for official financing ... and the examination of new procedures for the coordination of all the international institutions involved and national authorities, and for greater participation of the private sector in the control and resolution of crises, even by means of innovative financing techniques; e) verification of the proposals to strengthen the IMF, in order to improve its programs and procedures to anticipate and resolve crises; as well as verification of the proposals to strengthen interim and development committees of the IMF and the World Bank; f) minimizing the human cost of financial crises and encouraging the adoption of policies to protect the more vulnerable parties" (point 20). At present the IMF still represents the heart of the scheme, although from time to time it has been accused of contributing to the overthrow and waste of spendthrift countries that live above their means, while developing countries see it as the secular arm of capitalism imposing its rules and starving those who have nothing. "This must surely have been the point of view of the Reagan administration until 1982, when it understood that it needed the IMF to save the American banking system, which at the time was threatened by the crisis of the world debt" (Gilpin, 1990, p. 418).

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The main debtors are the nations, as always: "Beginning with bankers in the Middle Ages as well as those of the Renaissance, the nations' need for financing offered much more advantageous profits than economic and trading activity. And as early as the eve of World War I the great majority of capital movements corresponded to subscription of long-term loans issued by the governments which in this way financed industrialisation and armies" (Pollio Salimbeni, 1999, p. 30).[19] The strengthening of the financial systems of individual countries has been pursued by the IMF and by the World Bank with the creation "of a committee linking the two institutions ... an experimental program for the evaluation of the financial sector," while the "forum for financial stability has created three groups to examine the implications for the high financial leverage broker market, capital flows, and offshore financial centers" (Sarcinelli, 1999, p. 7).

16. Codes of best practices: An example of private autonomy

It is no easy job to summarize the 1998 and 1999 program. The work to prepare the codes has been carried on together with "the special one for the circulation of data on international reserves and on foreign debt," to which should be added "the Code of good practice for fiscal transparency and the one ... for transparency in monetary and financial policies .... The OECD has published the principles of corporate governance, and before that the BIS defined the basic rules for efficient banking supervision. Banks are against discretional interventions. Nevertheless, the discussion about the introduction of prudential rules is always open.[20] Codes of law are voluntary and should therefore be applied and especially verified. The also have to provide a uniform regulation: "the financial stability itself risks being compromised, instead of strengthened, if microprudential rules are different, concerning the same operations (derivatives, in our case), in different places for different institutions" (Padoa Schioppa, 1996, p. 63). The IMF is endeavoring, by means of technical assistance, to encourage its circulation and has experimentally begun the task of evaluating it" (Sarcinelli, 1999). However, the response cannot be entrusted solely to the authority of private interests and their representatives (with the production of private autonomy deeds along the lines of the *lex mercatoria*, which for certain is a primary source and which, we repeat, we have excluded)[21] or solely to public authority (though structured on a representative basis). In point 8 of the program the following is stated: "we undertake to do our utmost to ensure that private institutions in our countries respect these principles, standards, and codes of conduct." Mention is made of requests "to the World Bank in cooperation with the IMF and other multilateral development banks to work with its members to introduce insolvency systems and new debtor/creditor relations" (point 14b). Agreement requires greater recognition of autonomy and binding technical regulations (Predieri, 1996a, 1996b, p. 251).[22] Rules of conduct are produced by confirming terms and contents, by independent groups, through

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cross-examination (to mention a fundamental aspect of our democratic legal proceedings) (Predieri, 1964), and by adjustments required by public authorities (which to be effective must be provided with an "executive clause" by the public authority). This model is the one put into legal form by the sections of the Italian constitution governing the relations between the state and various religions; it is the law only if there has been a previous understanding. In point of fact, it is the one that has governed relations between the state and its social partners in overcoming financial and monetary crises and that corresponds to the tendency "to overwhelm opposition between pure self-regulation and regulation to get to the adoption of a mixed prescriptive technique that has the advantages of constitutional discipline. The constitution guarantees the main principles established by each domestic legal system, protects public interests, permits the advantages of self-regulation, and is able to quickly and effectively understand the market's innovative needs" (Regoli, 1993, p. 431).

17. Limiting the inflow and outflow of foreign capital and starting a heterocompensated policy for undeveloped countries

The request for control measures is continuous, but the IMF excludes controls at exit and favors controls at entry (where they can lead to the extension of debt expiration). The big banks' refusal to participate in the developing countries' recovery is continuous, and they "have foreseen a modest increase of capital flows to developing markets beginning next year" (Merli, 1999, p. 3).[23] In Washington, in an organized seminar, "Stanley Fischer, the second most important man of the IMF, reminded participants that 'There is no political determination from the G-7 or anyone else' to proceed to any bailout with public money to the advantage of private creditors" (Merli, 1999, p. 3).[24]

It has been said that "the only modification to the present international financial 'architecture' is due to the latest credit concession made by the IMF in response to an American request. Can we say that the system seems significantly strengthened by it? The Contingent Credit Line is granted to member countries that pursue strong economic policies as a precautionary line of defense against future balance-of-payments problems that might derive from international financial contagion. In Monetary Fund language, this means that at the time of approval of the CCL, past policies and future projects must be considered so that recourse to Monetary Fund resources is unlikely, economic results obtained by the nation must be evaluated positively, progress has been made in the assimilation of considerable interprivate standards, and the country has constructive relations with private creditors, has taken substantial steps in correcting its vulnerability from abroad, and finally submits a satisfactory economic and financial program to the Monetary Fund. It is more likely that under these conditions a camel will go through the eye of a needle" (Sarcinelli, 1999). What the Bank for International Settlements had stated is taken up again—that "it recognized that in 1997 to 1998 many of the countries seriously infected

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by the Southeast Asia crisis were already exercising budgetary policies that were considered internationally valid. The general manager of the IMF, Michel Camdessus, who certainly cannot be considered a supporter of active market intervention, has spoken of the 'chronic disease' of the financial system, predicting the institution of a special fund to aid member countries who apply healthy policies domestically 'not to endure the consequences of a temporary loss of confidence on the part of international investors'" (Pollio Salimbeni, 1999, p. 25).

The meeting of September 26, 1999, was important for the undertaking of the burdens of heterocompensation and for the provisions related to the reduction of the debt of poorer nations. It would not be far-fetched to think that after the two texts, heterocorrection and heterocompensation of the international monetary system has been attained and that two similar and balanced trends have been outlined. For the time being, trends at present are to avoid dramatic crises, avoid disasters, and restore efficiency. These goals are indicators of the legitimacy of the system.

Notes

1. On the distinction between the two types of services, see Hill (1997, p. 315), Daniels (1993), Marshall (1988), Kassab (1992), and Ochel and Wegner (1987).
2. Adam Smith emphasizes that for the farmer short-term contracts without guarantee of obtaining at least part of the fruits deriving from investments do not promote but rather restrain or even halt productive growth (see Sylos Labini, 1992, p. 395). Similarly, on the importance given by Adam Smith to "laws and institutions" in the economic order, see Brennan and Buchanan (1985), Brüggemeier (1977) ("the market economy and mixed economy tend to a decentralize many economic decisions, but without the support of the institutional legal apparatus the invisible hand holding such economies would be paralized"), and Friedman (1975). It is amply treated in the contemporary economic analysis by Dardi in Becattini (1990). No differently, continuing to talk about historiographic data, Cattaneo (1983, p. 298) wrote that the farming industry is part of the trading life of nations but does not derive from a bucolic bent. It is caused by the institutions and laws that give access to the land to capital and industry.
3. This in part regulates the agreements of December 1997, which have extended opportunities for financial services to increase their presence in trade with foreign operators and to widen the range of products that can be offered and financial activities that can be exercised. "The commitments of each country have been specifically undertaken and listed in schedules that are signed from time to time and that are subject to the general exception by which national governments maintain full right to limit access under prudential and surveillance regulations to guarantee stability and security of the financial system. Activities linked to the management of the monetary policy of each country are left out of the agreement, as are those of central banks (Article 1, GATS Annex on Financial Services). ... The principle governing a government's regulatory activity for prudential purposes in compliance with WTO agreements is as follows: regulations must be *functional* to reduce market risk and ensure stability, *necessary*, in the sense of being proportionate to its purpose, and *nondiscriminatory* and nonhindering (or not making market access to foreign dealers more difficult" (Malaguti, this volume).
4. Quotations are superfluous. The observation is frequently found in Anglo-Saxon literature. See, among others, Cawson, Morgan, Werber, Holmes, and Stevens (1990, p. 20); Kuttner (1997, p. 328); and Hodgson (1991, p. 251).
5. Az. 2 BvR 1877/99 e BvR 50/98.

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6. In Giurisprudenza constituzionale, 1994, II, 677 ss.
7. The first protection of stability dwells in the firm itself within the market, which "being a center for trade and the circulation of information where the choices and situations of the firm are divulged and judged by the public, represents the second protection. The necessary complement of inside controls and market discipline—the third protection of the stability of institutions—is represented by the regulating authorities themselves" (Padoa Schioppa, 1996, p. 62).
8. I could say that my research is more in the macroarea, while Carbone's and Malaguti's studies are related to the microarea. This means that they have a concrete impact, directly interfering with subjective rights. When I refer to the constitutional problems of a monetary or financial policy, I don't mention single aspects.
9. With "an extraordinary opportunity for progress and civilization," confidently says Zanfarino (1998, p. 21).
10. *Dar al-Islàm* is also *dar al-'adl* because justice and Islam are inseparable (Gardet, 1976, p. 26).
11. Defined as "the contract according to which the parties undertake to make mutual payments whose amount is determined on the basis of different reference parameters" (Caputo Nassetti, 1997).
12. Carbone (this issue, pp. 235–246) adds that such regulation has its primary source in rules of international trade, codified in the specific models I have just mentioned. I must add that I do not agree with the authoritative opinion of Sergio Carbone for the reasons already mentioned in Predieri (1999).
13. Hicks (1954) has already written on the subject of future contracts. He correctly understood that "future markets give an important contribution to the attainment of stability in time, imposing convergence between expected prices and real prices; especially sensitive to the determining factors of the prices, as regards brokers who only perform hedging operations and for this reason have have a limited viewpoint and left to themselves would cause structural unbalance between demand and supply."
14. Understood as "the combination of the Central Bank's liquid liabilities: legal tender ..., demand deposits with the Central Bank and the margin available in the advance accounts of the banks with the Central Bank" (Cassese, 1998, p. 157). The author mentions how "the amount of base money is modified by means of rediscount and advance to banks, the purchase and sale of currency and securities on the open market, variations in the account that the Treasury has with the Bank of Italy," so that "by buying or selling foreign currency" the Central Bank "expands or reduces the amount of base money."
15. Padoa Schioppa (1996, p. 65) remarks that in this regard it should be mentioned that the numerous empiric studies carried out to verify the grounds of these fears have not come to irrefutable conclusions.
16. A recommendation is "a statement that is not prescriptive so much as valuational: a statement that qualifies a type of conduct not as mandatory, but rather as good, fair, convenient, or appropriate" (Guastini, 1995, pp. 154) or an exhortative act. It contrasts with "a decision, a binding act by international organizations, even though, actually, a recommendation produces effects, even obligations, that are secondary or side effects" (Conforti, 1987, p. 188). Conforti goes on to say: "the thing that by definition it cannot produce, without becoming a decision, is the effect of binding to the recommeded behavior. In other words, in the presence of a recommendation, the nations or other subjects of international law (such as other international organizations) to which it is addressed remain at any time free to behave more or less as required" (Malintoppi, 1958, esp. ch. 3).
17. For the sake of completeness I am mentioning the theory in Italian law that makes informality of functions (in the event of informal agreements) not free by law from responsibility (expressed with regard to informal deeds of the president of the Republic), while customary procedures exclude responsibility, excepting in instances standardized by custom. In this regard, see Piergigli, (1987) and Rescigno (1980, p. 9).

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18. Similar conclusions are drawn by Watson (this volume), who says that the most frequent causes of financial crises are lack of control of deficit and regulation.
19. Pollio Salimbeni (1999) adds: "with the opening of the Japanese financial system in 1983–1984 enforced by the United States, and progressive dismantling of national controls on exchanges in Europe, the single capital market speeds up geographical mobility of money. Investment and disinvestment operations are carried out by brokers without any distinction as to nationality and the currency of their choice. Here is the time jump. ... The difference in the revolution of the eighties is that finance has definitely severed the links of time and space, becoming an 'independent sphere of action' of productive and trade activity to such a degree that the balance of payments, which gives account of all payments and all proceeds of a country with the rest of the world, has become more like the statement of capital movements than the statement of export and import of goods." "Since 1528 the Genovesi main opponent is the Spanish monarchy, with its strong need to find money. In Spain, Genovesi lenders replaced the Germans, in particular the Fugger; they were in big difficulties because of the first bankrupty of Philippe II" (Corradini, 1994, p. 7).
20. It is Blinder's opinion that, between them, there should be those that limit "currency exposure of domestic operators to developing countries" and "capital flows. There is no need to scare markets or bar free investment flows. I would just introduce duties on incoming short-term capitals to limit and not stop their arrival, as Chile did in the past. To these three priorities I would add a proposal: there's need of more transparency for financial systems in developing markets, better accounting standards, real development of financial supervision institutions, ability to follow investment methods, and evolution in the private sector. In many developing countries private finance liberalization grew up quicker than countries' supervision capacity (Padula, 1999, p. 20).

    Volatility is the product of a genie escaped from a bottle; those free capital flows are traveling around countries. We must learn to live with this genie, but we still have time to reduce the imbalances of the last years. How? Three measures can reduce volatility. First of all it is important to leave the fixed currency-rate system in those countries where currencies are linked to the dollar. Brazil has been the last victim of this illusion. All the crises observed in these last years (Asia and Russia included) would have been less destructive if floating exchange rates would have existed. There could have been a gradual exchange adjustment and strong depreciations could have been avoided" (Padula, 1999, p. 19). "Basil Borssos, with American origins, doesn't have any doubts: 'The South American crisis can be solved.' On the contrary, Alan Blinder, who is one of the economists close to Bill Clinton's Democratic administration and involved in a new global financial architecture project," supports stronger planning (p. 18). The Argentine Model is a obliged way to keep a link with the dollar (Borssos is theory). He managed the GM investment ($350 million) building up the most technological factory of the GM group ("*And we go to the Middle East*," 1999, p. 78).
21. See, on the contrary, Carbone (this volume).
22. Compare, in this sense, Cons. Stato, Sez. IV, April 9, 1999, n. 601, in Cons. Stato, 1999, n. 4, 584 ss.
23. Merli (1999, p. 3) continues: " 'Banks are worried,' said Sir John Bond (president of Hsbc and Iif), 'and the Monetary Fund and other authorities want the private sector to get involved. It is important that the privates get involved to solve crises,' Bond said, 'but we do reckon that a voluntary approach is necessary, as the Brazil and Korea successes have showed. The vice president of Citygroup, Bill Rhodes, said that assertions coming from the G-7 and the Monetary Found about a possible imposition of reconstruction to the private sector, create 'markets uncertainties' and instead, we should concentrate on preventing financial crises."
24. Merli (1999, p. 3) continues: "Fisher reminded the audience that voluntary reconstruction with Korea, Brazil, and others worked well because there were banks as opposition. Related to Ecuador, Romania, Pakistan, and Ukraine, bond holders are the opposition. The introduction of clauses allow them voting reconstruction, and Fisher said that this can increase the developing countries spread and wouldn't be bad if it would take them to more balanced levels than the

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1996 to 1997 ones. Dallara reminded the audience that emerging countries opposed to these clauses if developed countries don't introduce them as well."

References

Abi Saab, G. (1998) Preface. In C. Holmgren, *La renégociation multilatérale des dettes: le Club de Paris au regard du droit international.* Brussels: Bruylant.

Aliber, R.Z. (2000) "Capital Flows, Exchange Rates, and the New International Financial Architecture: Six Financial Crises in Search of a Generic Explanation." *Open Economies Review* 11 (Supplement).

Braudel, F. (1985) *La dynamique du capitalism*. Paris: Flammarion.

Brennan, G. and J.M. Buchanan (1985) *The Reason of Rules: Constitutional Political Economy.* Cambridge: Cambridge University Press. Italian translation: *La ragione delle regole. Economia politica costituzionale*, edited by A. Villani. Milan: Franco Angeli, 1991.

Brüggemeier, G. (1977) *Entwicklung des Rechts im organisierten Kâpitalismus* (vol. 1). Frankfurt am Main: Syndikat Autoren V. Verlag.

Brunel, L.S. and J.L. Bodin (1998) *Géopolitique de la faim. Quand la faim est une arme.* Paris: Presses Universitaires de France.

Calderoni, M. (1998) "Senza nuovi fondi l'Fmi non regge. Colloquio tra Camdessus e Fazio." *Il Sole 24 Ore,* 5 July, p. 3.

Caputo Nassetti, F. (1997): *Profili civilisti dei contratti 'derivati' finanziari*. Milano: Giuffrè.

Carbone, S.M. (1998) "The Enforcement of the European Regime for Investment Services in the Member States and Its Impact on National Conflict of Laws: A General Perspective." *Scritti in onore di Giuseppe Federico Mancini* (vol. 2). Milano: Giuffrè, 1998.

Carbone, S.M. (2000) "Financial Derivatives and Private International Law: Some Remarks." In *Open Economies Review* 11 (Supplement).

Cassese, S. (1998) *La nuova costituzione economica*. Rome: Laterza.

Cattaneo, C. (1983/1860) *Memorie di economia pubblica dal 1833 al 1860.* Milan. Reprinted by Banca del Monte di Milano.

Cawson, A., K. Morgan, D. Werber, P. Holmes, and A. Stevens (1990) *Hostile Brothers: Competition and Closure in the European Electronics Industry*. Oxford: Oxford University Press.

Colcker, R. (1998) *American Law in the Age of Hypercapitalism: The Worker, the Family, and the State.* New York: New York University Press.

Conforti, B. (1987) *Raccomandazioni internazionali*. In *Enciclopedia del diritto*, vol. XXXVIII, Milano: Guiffrè, pp. 187–191.

Corradini, M. (1994) *Genova e il Barocco. Studi su Angelo Grillo, Ansaldo Cebù, Anton Giulio Brignole Sale.* Milan: Vita e Pensiero.

Daniels, P.W. (1993) *Service Industries in the World Economy.* Oxford: Oxford University Press.

Dardi, M. (1990) "Il mercato nell'analisi economica contemporanea." In G. Becattini (ed.), *Il Pensiero economico.* Torino: Utet.

Eschilo. *Le Supplici* verse 604.

Fazio, A. (1998) "Il sistema monetario internazionale." In *Conference Proceedings on Idee per il futuro del sistema monetario internazionale, Florence, 19 giugno 1998.*

Fratianni, M. (2000) "Comment on Aliber's 'Capital Flows, Exchange Rates, and the New International Financial Architecture: Six Financial Crises in Search of a Generic Explanation." In Savona (ed.) *Open Economies Review* 11 (supplement):63–67. Kluwer Academic Publishers.

Friedman, L.M. (1975) *The Legal System: A Social Science Perspective.* New York: Russell Sage Foundation. Italian translation: *Il sistema giuridico nella prospettiva delle scienze sociali.* Bologna, 1978.

Gardet, L. (1976) *La Cité Musulmane, vie sociale et politique.* Paris: Vrin.

Gilpin, R. (1987) *The Political Economy of International Relations.* Princeton: Princeton University Press. Italian translation: *Politica ed economia delle relazioni internazionali.* Bologna, 1990.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission. www.manaraa.com

Guastini, R. (1995) “Norma giuridica (tipi e classificazioni).” *Digesto discipline privatistiche sezione civile* 12. Turin: Utet.
Hamada, K. (1999) “The Choice of International Monetary Regimes in a Context of Repeated Games.” *Open Economics Review* 9(supplement 1):417–445.
Henin, P. (1986) *Macrodynamics: Fluctuations and Growth.* London: Routledge. Quoted from A. Heertje, Introduction. In J.E. Stiglitz, *Il ruolo economico dello stato.* Bologna, 1992.
Hicks, J.R. (1954) *Valore e capitale*. Turino: Utet.
Hill, T.P. (1997) “On Goods and Services.” *Review of Income and Wealth* 23(3):315.
Hodgson, G. (1991) *Economia e istituzioni.* Ancona: Otium.
Holmgren, C. (1998) *La renégociation multilaterale des dettes: le Club de Paris au regard du droit international.* Brussels: Bruylant.
Hume, D. (1995) *Writings on Economics.* Madison: University of Wisconsin Press.
Institute for International Economics (1999) *Safeguarding Prosperity in a Global Financial System: The Future International Architecture.* Washington, DC: Institute for International Economics.
Kant, I. (1798) *Der Streit der Fakultäten in drei Abschnitten.* Konigsberg: Nicolovius. Italian translation: *Il conflitto delle facoltà in tre sezioni*, in N. Merker (ed.), *Stato di diritto e società civile*. Rome: Êditori Riuniti, 1995.
Kassab, D. (1992) *Income and Equality.* New York.
Keynes, J.M. (1923) *A Tract on Monetary Reform.* London: McMillan. Italian translation: *La riforma monetaria.* Milan: Feltrinelli, 1975.
Kuttner, R. (1997) *Everything for Sale: The Virtues and Limits of Markets.* New York.
Llewellyn, D.T. (2000) “Some Lessons for Regulation from Recent Bank Crises.” *Open Economies Review* 11 (Supplement).
Luttwak, E.N. (1998) *Turbo-Capitalism.* Italian translation: *La dittatura del capitalismo. Dove ci porteranno il liberalismo selvaggio e gli eccessi della globalizzazione.* Milan: Mondadori.
Malaguti, M.C. (2000) “Private Law Instruments for Reduction of Risks on International Financial Markets: Results and Limits of Self-Regulation.” *Open Economies* 11 (Supplement).
Malintoppi, A. (1958) *Le raccomandazioni internazionali.* Milan: Giuffrè.
Marshall, J.N. (1988) *Services and Uneven Development.* Oxford: Oxford University Press.
Mengozzi, P. (1999). “The World Trade Organization Law: An Analysis of Its First Practice.” In P. Mengozzi (ed.), *International Trade Law on the Fiftieth Anniversary of the Multilateral Trade System.* Milan: Giuffrè.
Merli, A. (1999) *Respinta ogni ipotesi di ristruturazione forzata.* Nel 2000 modesto aumento degli investimenti. Pvs, le banche sempre rigide sui debiti, in Il Sole 24 Ore, 26 Settembre 1999, 3.
Ochel, W. and M. Wegner (1987) *Service Economies in Europe*. London.
Padoa Schioppa, T. (1996) “I prodotti derivati: proili di pubblico interesse. Lezione tenuta all’Università Cattolica del Sacro Cuore—Centro studi finanziari, 3° ciclo di Lezioñi Emilio Moar.” In *Bollettino economico della Banca d’Italia* 26:59–63.
Padula, G. (1999) “Stop the the Fixed Rates: Interview with Alan Blinder.” *Il Mondo* 12:19–20.
Pagels, H. R. (1989) *The Dreams of Reason: The Computer and the Rise of the Sciences of Complexity.* New York: Bantham.
Piergigli, V. (1987) “La prassi degli interventi e del potere di esternazione del Capo dello Stato nei primi due anni della Presidenza Cossiga.” In *Diritto delle societa* 493.
Pollio Salimbeni (1999) *Il grande mercato. Realta e miti della globalizzazione.* Milan: Mondaro.
Predieri, A. (1964) *Contraddittorio e testimonianza del cittadino nei procedimenti legislativi.* Milan: Giuffrè.
Predieri, A. (1992) *Il nuovo assetto dei mercati finanziari e creditizi nel quadro della concorrenza comunitaria.* Milan: Giuffrè.
Predieri, A. (1996a) “Erosione e trasferimento di sovranita con norme tecniche.” In *Studi in onore di Feliciano Benvenuti.* Modena: Mucchi.
Predieri, A. (1996b) “Le norme tecniche nello stato pluralista e prefederativo.” *Il Diritto dell’economia* 2:251.
Predieri, A. (1999) “Schedule 36, La Lex Mercatoria come diritto attuale e il diritto transnazionale.”

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In A. Predieri, *Carl Schmitt, un nazista senza coraggio* (2 vols.). Florence: La Nuova Italia.

Ramonet, I. (1998a) *Géopolitique de chaos.* Paris: Galilée.

Ramonet, I. (1998b) "Strategies de la faim." *Le monde diplomatique* 536:1.

Regoli, D. (1993) "Mercati finanziari in diritto comparato." *Digesto discipline privatistiche sezione commerciale* 9:407–431. Turin: Utet.

Rescigno, G.U. (1980) "La responsabilita politica del Presidente della Repubblica. La prassi recente." In *Studi parlamentari e di politca costituzionale* 9.

Saccomanni, F. (2000). "Introduction: A New Architecture or New System? A Survey of International Monetary Reform in the 1990s." *Open Economies* 11 (Supplement).

Salvatore, D. (1992) *Economia internazionale.* Rome: La Nuova Italia Scientifica.

Sarcinelli, M. (1999) "Cinque sfide per l'Fmi." *Il Sole 24 Ore,* September 30, p. .

Savona, P. and A. Maccario (1998) "On the Relation Between Money and Derivatives and Its Application to the International Monetary Market: Acts of the Conference on Ideas for the Future of the International Monetary System, Florence, 19 June 1998." *Open Economies Review* 9 (Special Issue):637.

Savona, P., A. Maccario, and C. Oldani (2000) "On Monetary Analysis of Derivatives." *Open Economies Review* 11 (Supplement).

Smith, A. (1776) *An Inquiry into the Nature and Causes of the Wealth of Nations.* Italian translation: A. Smith, *La ricchezza delle nazioni*, edited by Anna and Tullio Bagiotti. Turin: Utet, 1987, book 5, ch. 1.

Sylos Labini, P. (1992) *Elementi di dinamica economica.* Rome: Laterza.

Tizzano, A. (1997) "Qualche considerazione sull'Unione economica e monetaria." *Il Diritto dell' Unione Europea* 3:455–459.

Triffin, R. (1997/1986) "Correcting the World Monetary Scandal: Acts of the Bradley-Kemp Congressional Summit on Exchange Rates and the Dollar, Washington, 11–13 November." *Challenge* 28(6) (1986): 4. Italian translation: "Lo scandalo monetario mondiale: Origini ... e soluzioni?," in R. Triffin, *Dollaro, euro e moneta mondiale.* Bologna, 1997.

Von Hagen, J. and I. Fender (1998) "Central Bank Policy in More Perfect Financial System: Acts of the Conference on Ideas for the Future of the International Monetary System, Florence, 19 June 1998." *Open Economies Review* 9 (Special Issue):493.

Watson, M. (2000) "International Financial Architecture and the Economic Renaissance in Europe." *Open Economies Review* 11 (Supplement).

"And We Go to the Middle East." (1999) *Il Mondo,* February 12, p. 78.

Wittfogel, K.A. (1957) *Oriental Despotism.* New York: Yale University Press. Italian translation: *Il dispotismo orientale* (2 vols.). Florence: Vallecchi, 1968.

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