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INTRODUCTION

AFTER THE FALL: FINANCIAL CRISIS AND THE INTERNATIONAL ORDER

Robert B. Ahdieh[*]

Recent years have challenged the international order to a degree not seen since World War II—and perhaps the Great Depression. As the U.S. housing crisis metastasized into a financial and economic crisis of grave proportions, and spread to nearly every corner of the globe, the strength of our international institutions—the International Monetary Fund, the World Trade Organization, the Group of Twenty, the Basel Committee on Banking Supervision, and others—was tested as never before. Likewise tested, were the limits of our national commitment to those institutions, to our international obligations, and to global engagement more generally.

The Symposium published in this issue of the *Emory International Law Review* speaks to one critical dimension of these challenges. Even before the crisis, the commitment of the industrialized states of the global "North" to the developing and least developed economies of the global "South" might fairly have been questioned. The limited progress of the supposedly development-oriented Doha Round of multilateral trade negotiations might be cited to argue as much.[1] In the face of a broadly rising tide, however, all boats were rising—even if less consistently than an equitable distribution of wealth might have counseled.[2]

With the onset of the crisis, however, such gains could no longer be assured. Even more worrisome, if the crisis were to trigger a substantial contraction in foreign aid or increased trade barriers, significant backsliding might be expected to occur. But in the midst of great crisis—as counseled by the theme of this Symposium—one may sometimes find great opportunity. In the face of the reassessments prompted—even demanded—by the crisis, there emerges the possibility of a more foundational change in approach, by which

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1 *See generally* Raj Bhala, *Doha Round Betrayals*, 24 EMORY INT'L L. REV. 147 (2010).

2 *See* Rik Kirkland, *The Greatest Ecomonic Boom Ever*, FORTUNE, July 23, 2007, at 120–28.

the strength and vitality of the international order might not merely be preserved, but actually enhanced.

The challenge of allocating the benefits and burdens of social and economic development both equitably and efficiently was not, of course, created by the financial crisis. Considering only the most immediate agenda items facing the international community—issues of climate change, public health, and international terrorism have all contributed as well. With the crisis, however, questions of development, distribution, and equity have come to a head.

The *Emory International Law Review* has secured a fascinating set of contributions directed to these questions, addressing a broad array of issues and offering distinct new perspectives on them. The articles most directly concerned with the financial crisis, to begin, offer institutional analyses—and concrete proposals—that will add greatly to debates over the crisis and its implications. Duncan Alford, for example, outlines the increasingly important role of supervisory colleges, even as he highlights the continuing need for an institutional framework to wind down insolvent banks.[3] To similar effect is Raj Bhala's critique of the international trade regime's shift from its Doha Round focus on poverty reduction and the discouragement of Islamic extremism to more mundane aspirations,[4] and Ross Buckley's critique of the International Monetary Fund's capacity to play a meaningful role in international finance.[5]

More broadly, Yesha Yadav's account of the complexity of international financial regulation and proposed framing of relevant regulation around systemic risk oversight, standard-setting, and the articulation of relevant principles for international finance also adds greatly to the debate.[6] Scott Harshbarger and Goutam Jois likewise speak to the institutions of financial regulation, proposing the creation of a systemic risk regulator, but one framed within a new analytical framework for the reconciliation of market and regulatory power, built on a regime of accountability and citizen

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[3] *See generally* Duncan Alford, *Supervisory Colleges: The Global Financial Crisis and Improving International Supervisory Coordination*, 24 EMORY INT'L L. REV. 57 (2010).

[4] *See* Bhala, *supra* note 1.

[5] *See generally* Ross P. Buckley, *Improve Living Standards in Poor Countries: Reform the International Monetary Fund*, 24 EMORY INT'L L. REV. 119 (2010).

[6] *See generally* Yesha Yadav, *The Specter of Sisyphus: Re-making International Financial Regulation After the Global Financial Crisis*, 24 EMORY INT'L L. REV. 83 (2010).

empowerment.[7] Together, these contributions—along with fascinating papers by Peter Crofton and Joanna Stettner, speaking respectively to critical questions of transnational environmental regulation and public health[8]—offer a rich trove of material for better understanding the financial crisis, the distribution of global wealth and responsibility, and the future of the international economic, political, and legal order.

By way of introduction, I offer another take on the theme of the Symposium, drawing on both strands of the Symposium articles and broader evidence as well. I highlight, in particular, the striking fact that the financial crisis has not proven nearly as damaging to the vibrancy and vitality of the international economic, political, and legal order as might have been predicted—and even expected, given the logical precedent of the Great Depression. Minimally, the international order has held up well in the face of the crisis; arguably, it has thrived.

I. PAST AS PROLOGUE?

In the face of grave crises, some instinct of self-preservation might be expected to encourage heightened insularity, and even isolationism, among relevant states. Some of this tendency might be explained by a desire to exercise heightened control in circumstances of heightened uncertainty. A more acute sense of self-interest—given increased scarcity and seemingly greater costs of failure—might be expected to contribute to this pattern.

As states respond to these individual pressures toward insularity, however, there emerges a vicious cycle. Whatever the initial trigger, increased isolation by any given nation prompts a reciprocal response by others. These responses, in turn, drive the initial movers to isolate themselves further, initiating the cycle anew.

The United States's response to crises over the last century—both financial and otherwise—largely confirms these expectations. In the case of each world war, the United States long resisted engagement.[9] In the aftermath of World

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[7] *See generally* Scott Harshbarger & Goutam U. Jois, *Turning the Page on the Global Financial Crisis: Civic Capitalism and a Blueprint for the Future*, 24 EMORY INT'L L. REV. 15 (2010).

[8] *See generally* Peter M. Crofton, *Alternative Fuels and Developing Nations: Who Will Pay the Piper?*, 24 EMORY INT'L L. REV. 185 (2010); Joanna Stettner, *International Obesity: Legal Issues*, 24 EMORY INT'L L. REV. 209 (2010).

[9] *See* Arthur Schlesinger, Jr., *Back to the Womb? Isolationism's Renewed Threat*, FOREIGN AFF., July–Aug. 1995, at 2–3.

War I, in turn, the United States drew back into its shell—refusing to join the League of Nations, adopting the Neutrality Acts of 1935 through 1937, and refusing membership in the Permanent Court of International Justice.[10] Even after World War II, selected strands of isolationism again took hold in the U.S. psyche, and even government policy.[11]

Most instructive as to the "Great Recession" we have endured of late, however, is the cautionary tale of the Great Depression. Famously, the United States responded to the stock market crash of 1929 with the Smoot-Hawley Tariff Act of 1930 ("Tariff Act of 1930").[12] Motivated by a desire to protect American workers and farmers from foreign competition, the Tariff Act of 1930 was emblematic of the pattern suggested above.[13] At base, it sought to insulate the U.S. economy from the rest of the world. Its result, however, was a vicious cycle of tariff rate increases (and currency devaluations) that ultimately drove the global economy into the Great Depression.[14]

II. THE GREAT RECESSION AND THE INTERNATIONAL ORDER

Comparing events of the last several years to the account described above, however, a story of insulation and isolation proves difficult to tell. In fact, just the opposite might be suggested. Arguably, the international economic, political, and legal order has not merely survived the financial crisis—it has *thrived* amidst it. One might variously identify *fiscal*, *institutional*, and *aspirational* indicia of this anomalous observation.

A. Fiscal Indicia of Internationalism Amidst the Crisis

To begin, a story of insulation and isolation is difficult to reconcile with three aspects of the fiscal, economic, and trade policies of the United States

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[10] *See* David J. Bederman, *Appraising a Century of Scholarship in the* American Journal of International Law, 100 AM. J. INT'L L. 20, 29, 49 (2006); Elizabeth Borgwardt, *"When You State a Moral Principle, You Are Stuck With It": The 1941 Atlantic Charter as Human Rights Instrument*, 46 VA. J. INT'L L. 501, 530 n.83 (2006).

[11] Consider, for example, the anti-interventionism that emerged in the post-war years. *See* Schlesinger, *supra* note 9, at 4–5.

[12] *See* Oona A. Hathaway, *Presidential Power over International Law: Restoring the Balance*, 119 YALE L.J. 140, 175–76 (2009). One might also note the succession of competitive devaluations that occurred at the time. *See* Bhala, *supra* note 1, at 158–59.

[13] *See* Barry Eichengreen, *The Political Economy of the Smoot-Hawley Tariff*, *in* 12 RESEARCH IN ECONOMIC HISTORY 3–9 (Roger L. Ransom, Peter H. Lindert & Richard Sutch eds., 1989).

[14] *See id.* at 31–35 (noting a cycle of tariff rate increases following the Tariff Act of 1930, among other contributing factors to the Great Depression).

and other developed countries amidst the crisis. The first is the case of the International Monetary Fund ("IMF"). Just a few short years ago, many were drafting the epitaph of the IMF.[15] As recently as December 2007, the IMF undertook budget cuts in the hundreds of millions of dollars and initiated plans to eliminate almost 15% of its workforce.[16] Minimally, the IMF was an institution in decline; to many, it was living on borrowed time.

At the height of the financial crisis, however, the Group of 20 ("G-20") undertook to provide a massive infusion of new capital into the IMF, increasing its lending assets by roughly $1 trillion.[17] This included funds not only for new credit lines, but also for a dramatic increase in the IMF's special drawing rights—funds seen by some as a potential alternative to the U.S. dollar as a global reserve currency.[18]

Besides the resurgence of the IMF, our successful avoidance of potential isolation and insulation might also be seen in aspects of the U.S. government's bailout of distressed corporations—and particularly of the American Insurance Group, Inc. ("AIG"). At the time of the AIG bailout, as many readers will recall, there was much talk of the need to disclose the counterparties to AIG's credit default swap contracts—the ultimate beneficiaries of any bailout of the firm.[19] The concern, it became clear, was that a significant number of those counterparties were foreign banks and other overseas entities.[20] With the provision of bailout funds to AIG, thus, significant U.S. tax dollars would end up overseas. Amidst all the talk, however, there was little suggestion that the bailout might be limited to domestic counterparties.[21] Nor was any provision made for such a limitation.

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15 *See* Buckley, *supra* note 5, at 131–32, 135.

16 *See* Bob Davis, *IMF Plans to Cut Jobs, Lift Income*, WALL ST. J., Dec. 7, 2007, at A3.

17 *See* Henry Chu, Jim Puzzanghera & Paul Richter, *G-20 Summit Surprises with Show of Unity*, L.A. TIMES, Apr. 3, 2009, at A1; *see also* Buckley, *supra* note 5, at 141–42.

18 *See* Andrew E. Kramer, *Russia Says Dollar Makes Poor Reserve Currency*, N.Y. TIMES, June 6, 2009, at B3; *see also* Buckley, *supra* note 5, at 142. The shift to a reduced degree of conditionality in the IMF's assistance programs likewise deserves note. *See IMF to Ease Lending Practices to Aid Distressed Countries*, L.A. TIMES, Mar. 25, 2009, at B7.

19 *See* Sue Kirchhoff, *Lawmakers Press Fed for AIG Answers*, USA TODAY, Mar. 6, 2009, at 6B.

20 *See* Detlev F. Vagts, *The Financial Meltdown and Its International Implications*, 103 AM. J. INT'L L. 684, 684 (2009); Yadav, *supra* note 6, at 101–02.

21 *See, e.g.*, Mary Williams Walsh, *A.I.G. Lists Firms to Which It Paid Taxpayer Money*, N.Y. TIMES, Mar. 15, 2009, at A1.

Especially given the "brooding omnipresence"[22] of the Great Depression as operative precedent for our own Great Recession, a final fiscal and economic indicator of the international order's successful resistance to insulation and isolation is the lack of any significant protectionist response to the financial crisis. As Raj Bhala documents in his contribution to the Symposium, there has clearly been some increase in protectionism during the crisis.[23] The relative scope of it has been limited, however, especially by comparison with the far-reaching scope of the crisis itself.[24] It has also occurred largely at the margins, in terms of its areas of substantive application.[25] It is quite telling, thus, that even as the United States undertook massive liabilities to bail out the U.S. automobile industry,[26] there was little talk of the invocation of potential safeguard relief or other extraordinary trade measures.

B. Institutional Indicia of Internationalism Amidst the Crisis

Alongside continued U.S. investment in the international economic and political order, one might point to a number of institutional commitments to the latter that emerged during the crisis—and are difficult to reconcile with a story of insulation and isolation. We might begin, once again, with the IMF. Beyond its lack of resources, the sense of the IMF's decline in the years preceding the financial crisis was grounded in its lack of any coherent mandate. With the shift to floating exchange rates in the 1970s, the original charge of the IMF was rendered irrelevant.[27] Its mixed success—at best—in its subsequent efforts to alleviate currency and debt crises in developing countries, meanwhile, had diminished support for a mission directed to those functions.[28]

Alongside the G-20's influx of new resources, however, came an expanded—and emboldened—mandate. The IMF was charged to play a more active role as policy advisor during financial crises, to beef up its early warning systems (and thereby prevent future crises), to ensure global liquidity, and to expand and regularize its economic forecasting activities, including by

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22 S. Pac. Co. v. Jensen, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting).

23 *See* Bhala, *supra* note 1, at 159–60.

24 *See id.* at 160 ("[A]ll of the trade-restricting or trade-distorting measures that members implemented since October 2008 collectively affected a maximum of 1% of world trade and were concentrated in a few sectors . . . .").

25 *Id.*

26 *See* Matthew Dolan, *Ford Benefits as GM, Chrysler Stumble*, WALL ST. J., Feb. 20, 2009, at B1.

27 Buckley, *supra* note 5, at 121–22.

28 *Id.* at 122–35.

extending them to developed economies.[29] At least as to the IMF, thus, the international order emerged from the crisis stronger and more influential than at the outset.

The etiology of the IMF's resurgence, in turn, suggests a further indication of the advance of international institutions, notwithstanding—and perhaps even *on account of*—the crisis. With the financial crisis, the G-20 emerged as the leading mechanism of international economic coordination, displacing the Group of 7/Group of 8 ("G-7"), which had occupied that role for decades.[30] Like the empowerment of the IMF, this might be seen as some indication of a strengthened international order, given the more inclusive membership of the G-20.[31] More to the point, it too seems inconsistent with a story of isolation, given the resulting shift from engagement with a smaller circle of counterparties to a dramatically larger (and more diverse) group.

A final example in the realm of institutional reform might also be cited. Among the additional undertakings of the G-20 amidst the financial crisis was the strengthening of the Financial Stability Forum ("FSF")—originally established by the G-7 in 1999.[32] Over the course of its November 2008 and April 2009 summits in Washington and London, the G-20 expanded the membership of the FSF to include the entirety of the G-20, as well as a handful of other national and international representatives.[33] This alone, of course, might be seen to simply echo the shift from the G-7 to the G-20 as the locus of international economic policymaking. Additionally, however, the G-20 placed the FSF on significantly strengthened institutional foundations—variously renaming it the Financial Stability *Board*, appointing a Secretary-General and steering committee to lead it, expanding the size of its permanent secretariat, and expanding its mandate in a number of important respects.[34] The strengthening of the IMF, thus, turns out not to have been an isolated event amidst the crisis. Contrary to expectations, rather, the financial crisis saw

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[29] *See* Bob Davis, *IMF Gains New Influence from Summit*, WALL. ST. J., Apr. 3, 2009, at A7.

[30] *See* David J. Lynch, *Leaders Vow to Do Whatever It Takes*, USA TODAY, Nov. 17, 2008, at 1B; *cf.* Barack Obama, Op-Ed, *A Time for Global Action*, CHI. TRIB., Mar. 24, 2009, § 1, at 25.

[31] Duncan Alford highlights an analogous example: the IMF's call for supervisory colleges for internationally active banks to become "more inclusive," so as "to avoid protectionist tendencies." *See* Alford, *supra* note 3, at 57 n.5.

[32] Enrique R. Carrasco, *The Global Financial Crisis and the Financial Stability Forum: The Awakening and Transformation of an International Body*, 19 TRANSNAT'L L. & CONTEMP. PROBS. 203, 205–06 (2010).

[33] *See id.* at 214–19.

[34] *Id.*; *see also* Yadav, *supra* note 6, at 98–99, 109–14.

numerous examples of the increased institutionalization of—and hence increased engagement with—the international order.

C. Aspirational Indicia of Internationalism Amidst the Crisis

Beyond the fiscal and institutional indicators of a stable—and even strengthened—international order amidst the financial crisis, certain aspirational indicia of the latter might also be identified. In these cases, the vitality of the international order was not manifested (at least to date) by the investment of dollars or the strengthening of particular institutions. Rather, it is suggested by our ambitions to, and an attendant rhetoric of, internationalism.

I have already noted the resistance to increased trade barriers in the face of the recent crisis.[35] For the most part, we have not succumbed to the temptations of protectionism. But the critical insight from trade policy may be even stronger. For the latter has shown some hints of moving in just the *opposite* direction over the last few years. The latter period has thus seen some reinvigoration of efforts to move the trade agenda forward—the precise converse of the U.S. response to the 1929 crash. This begins with the Doha Round, which has seen halting efforts at forward movement in the last few years.[36] It is most evident, however, in the Obama Administration's increased efforts to get pending free trade agreements—with Colombia, South Korea, and others—positioned for legislative approval.[37]

Two further developments, respectively in the financial and investment arenas, might also be cited in this vein. First, consider the decision of the U.S. Securities and Exchange Commission—even as the financial crisis was building steam in November 2008—to propose a dramatic effort to harmonize financial accounting standards. After years of effort to preserve the place of U.S. General Accepted Accounting Practices, a surprising release from the Commission in November 2008 outlined a proposed roadmap for the shift of U.S. issuers to International Financial Reporting Standards by 2014.[38] Again,

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[35] *See supra* notes 24–26 and accompanying text.

[36] *See* President Barack Obama, The State of the Union (Jan. 27, 2010) ("But realizing those benefits also means enforcing those agreements so our trading partners play by the rules. And that's why we'll continue to shape a Doha trade agreement that opens global markets, and why we will strengthen our trade relations in Asia and with key partners like South Korea and Panama and Colombia.").

[37] *See id.*

[38] Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers, Securities Act Release No. 8982, Exchange Act Release No. 58,960, 73 Fed. Reg. 70,816 (Nov. 21, 2008).

one might have expected a heightened orientation to domestic standards and heightened resistance to such international undertakings, given the forbidding crisis on the horizon. Here as well, however, events proved otherwise.[39]

Finally, in terms of aspirational indicia of the continued strength of the international order—even amidst the crisis—one might consider the essential disappearance from the public discourse of criticism directed to foreign investment in the United States by sovereign wealth funds. Before the crisis, seemingly disproportionate emphasis was placed on concerns about whether national security interests (broadly defined) might be compromised by significant ownership stakes in U.S. firms by the sovereign wealth funds of Abu Dhabi, China, Norway, Singapore, and others.[40] Since the onset of the crisis, however, such talk has largely disappeared. In part, this can be traced to the diminished level of such activity—and the U.S. government's own ownership of significant stakes in many U.S. corporations after the crisis. The level of such foreign investment remains substantial, however, and one might thus have expected the issue to remain salient—and perhaps even to become more so, as the crisis progressed and scapegoats were sought.[41] To the contrary, however, the issue has largely faded from the scene.

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I do not mean to suggest, to be clear, that we are in the best of all possible worlds for the international order. Surely there are limits to the pattern described above, and any number of counter-examples that might be offered.

As already noted, for example, Raj Bhala's contribution to the Symposium highlights *some* degree of increased protectionism amidst the crisis.[42] At a more fundamental level, however, we might see his critique of the direction that the Doha negotiations have gone to suggest deeper limits of the claim I suggest. Thus, even aside from selective increases in protectionism, the broader shift in the emphasis of the Doha Round—from its initial orientation towards poverty reduction and the diminishment of Islamic extremism to the

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39 Notably, in February 2010, the Commission reiterated its commitment to the convergence in accounting standards that it had proposed more than a year earlier on the front-end of the financial crisis. *See* Commission Statement in Support of Convergence and Global Accounting Standards, Securities Act Release No. 9109, Exchange Act Release No. 61,578, 75 Fed. Reg. 9494 (Mar. 2, 2010).

40 *See* Richard A. Epstein & Amanda M. Rose, *The Regulation of Sovereign Wealth Funds: The Virtues of Going Slow*, 76 U. CHI. L. REV. 111, 112–13 (2009).

41 *See* Patrick Jenkins, *Sovereign Funds Wooed by Central Banks*, FIN. TIMES (London), Mar. 23, 2010, at 4.

42 *See supra* note 23 and accompanying text.

more standard, technical, and self-interested goals of reciprocity and market access—might be seen as contrary to the pattern that I suggest.[43] Arguably, however, the shift that Bhala observes had already occurred, long before the crisis struck.[44] Further, one might plausibly see the shift as fully consistent with an account of continued commitment to the international order—even if of a less ambitious and ennobling nature.[45]

Beyond the latter, it also bears noting that not every advance of the international order is likely to be embraced, even amongst internationalists. Ross Buckley, for example, highlights the concerns of many about the IMF's capacity to be effective in the tasks already given to it—let alone as to a new set of responsibilities.[46] Conversely, meanwhile, many would critique the IMF's abandonment of conditionality in its recent provision of financial support to developing countries—given the importance of that tool in advancing critical reforms.[47]

Even with these caveats, however, it is clear that the international order has held up better amidst the financial crisis than might have been expected. With the Great Depression as the obvious analogy, meanwhile, it is equally clear that it has exceeded the historical record. Given the broad and painful scope of the recent crisis, it would have been well within the realm of the possible that we would be living today in "Fortress America."[48] That we are not—that we may even have moved in the opposite direction—thus deserves our attention.

III. A BRAVE NEW WORLD?

How might we explain the international order's striking stability—and even success—amidst the recent financial crisis? Reasonable expectations and relevant precedent alike might have predicted a contraction in U.S.

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43 *See* Bhala, *supra* note 1, at 152–53, 159–60.

44 *See, e.g.*, Eyal Benvenisti & George W. Downs, *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, 60 STAN. L. REV. 595, 625–31 (2007) (noting the failure of the Doha Round prior to the onset of the financial crisis). *But see* Bhala, *supra* note 1, at 153 (suggesting the shift occurred "amidst the 'Great Global Recession'"). Bhala's narrower critique of the WTO Secretariat (and its membership) for framing the Doha negotiations as a way to alleviate the crisis, by contrast, is all but impossible to dispute. *See* Bhala, *supra* note 1, at 150.

45 One might also question whether the ambitions of the Doha Round were ever quite as broad as Bhala suggests.

46 *See* Buckley, *supra* note 5, at 143–45.

47 *Cf.* Patrick J. Keenan & Christiana Ochoa, *The Human Rights Potential of Sovereign Wealth Funds*, 40 GEO. J. INT'L L. 1151, 1175–76 (2009).

48 *Cf.* WILLIAM GREIDER, FORTRESS AMERICA (1998).

engagement with the world. Minimally, they might have predicted a relatively heavier reliance on domestic—rather than international—policies and institutions amidst the crisis. Yet neither prediction has proven true. How might we explain as much?

Part of the explanation, to begin, may lie in the nature of the financial crisis. Elsewhere, I have described the operative dynamic in the recent crisis as one of *coordination*.[49] More precisely, the financial crisis arose out of the multiple equilibrium character of the financial markets—and resulting interdependence in the behavior of market participants.[50] Both the onset of the crisis and its resolution thus lay in an alignment of relevant expectations. On the front end, the crisis was defined by an alignment of expectations around the prospect of reduced investment, diminished lending, and resulting market contraction.[51] The fundamental task in responding to the crisis, in turn, was to shift expectations back to the preferred equilibrium of investment, lending, and the like.[52]

Given the foregoing, the prospects for insulation and isolation were necessarily diminished. Even if the United States could somehow have insulated its *markets* from outside influence, it could not insulate market participants' *expectations*. Any coherent response to the crisis thus had to recognize—and attend to—markets generally and not domestic markets alone.[53] For that reason, the expected—and conventional—response of insulation and isolation may simply have been inapposite in the recent crisis.

Further explanation might take us beyond the nature of the crisis itself, to the international political economy within which it took place. Over the last thirty years, a dramatic transformation has occurred in the creditor-debtor relationship of the United States (among other industrialized nations) and the rest of the world. When Ronald Reagan came into office, the United States was

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49 *See, e.g.*, Robert B. Ahdieh, *The Visible Hand: Coordination Functions of the Regulatory State*, 95 MINN. L. REV. (forthcoming 2010).

50 *See* Russell Cooper & Andrew John, *Coordinating Coordination Failures in Keynesian Models*, 103 Q.J. ECON. 441, 447 (1988); Douglas W. Diamond & Phillip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON. 401 (1983).

51 Hence, the familiar rhetoric of "systemic risk," "contagion," and "herd behavior" with reference to financial, banking, and currency crises.

52 As to this task, Yesha Yadav highlights the important point that effective crisis response may require not only assistance to relatively smaller banks and other *private* institutions—but also to the relatively weak regulators with primary responsibility to oversee the latter. *See* Yadav, *supra* note 6, at 103–06.

53 Yadav notes, in this regard, the systemic risks attendant to the collapse of even relatively small banking institutions. *See* Yadav, *supra* note 6, at 106, 112.

the world's largest creditor.[54] Today, however, it is the world's largest debtor, with debts in excess of $12 trillion.[55] Even more striking is the holding of that debt—in substantial part—by countries including Brazil, China, Russia, and Taiwan.[56] Over the last several decades, the international flow of capital has, in a sense, reversed itself.

Given as much, the stability of the U.S. economy is now dependent on open markets, both for capital and for goods, in ways it has not previously been. Much of the persistent, and even heightened, engagement of the United States with the international order, even amidst the financial crisis, might be understood through this prism. Because of the importance of continued trade and investment flows to the United States, it becomes essential for us to ensure them—by resisting protectionism, sustaining both U.S. and global financial markets, and encouraging the stability of foreign governments.

Finally, at the intersection of the foregoing explanations, we may simply stand at a very different place than twenty years ago, let alone the 1930s. For all the talk of "globalization" over the last few decades, for much of that time, it was just that: talk. In fact, that may have been its primary purpose—as a mechanism to evangelize and to promote, as much as to describe.

In recent years, by contrast, there has been far less talk of globalization. In one view, this might be seen to suggest some reduction in globalization's scope or power. It might suggest some abandonment of the project. It might, on the other hand, signal just the opposite. If the talk of globalization was primarily about its promotion and advancement, the latter may simply have ceased to be a relevant project. We may be talking less about globalization, in this view, because it's now a reality. It's the "new normal."[57]

If so, our expectations as to how states are likely to respond to crises may require reassessment. Likewise, the policy prescriptions we choose to emphasize in the face of potential (and ongoing) international crises also require reassessment. Even our institutional frameworks for grappling with

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[54] *See* Robert Z. Aliber, *The Global Savings Tsunamis*, WILSON Q., Summer 2009, at 56.

[55] *See* Elizabeth Becker & Edmund L. Andrews, *I.M.F. Warns That U.S. Debt Is Threatening Global Stability*, N.Y. TIMES, Jan. 8, 2004, at C1; Edmund L. Andrews, *Federal Government Faces Balloon in Debt Payments*, N.Y. TIMES, Nov. 23, 2009, at A1.

[56] U.S. Dep't of the Treasury, Major Foreign Holders of Treasury Securities, http://www.treas.gov/tic/mfh.txt (last visited Apr. 28, 2010).

[57] *Cf.* Bhala, *supra* note 1, at 163–64 n.63 (noting "inter-dependent [] global supply chains and manufacturing processes").

financial crises may warrant reassessment, if such crises turn out to have potential to drive us closer together, rather than further apart. Borrowing from an entirely different kind of crisis, we may have unwittingly crossed our own Rubicon, arriving at a new international order, with little possibility of turning back.