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The Changing Politics Of Central Banking: A Legal Perspective

Part 4 of the Changing Politics of Central Banking Series

Marcelo M. Prates , Duke University

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www.einaudi.cornell.edu
170 Uris Hall, Cornell University, Ithaca NY 14853, t. 607-255-6370, f.607-254-5000

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Preface

The failure of many central banks to anticipate the 2008 global financial crisis has led to dramatic changes in both their policies and the tools they use, including new forms of lending, new regional collaborations, and experiments such as negative interest rates. It has raised a raft of questions about the independence of central banks and central bankers. It has also tested many theories previously taken for granted and requires a new multi-disciplinary approach. Cornell University's Meridian 180, the Global Finance Initiative, and the Mario Einaudi for Center International Studies have initiated a new project to develop an innovative field of interdisciplinary scholarship around the politics of central banking and to bring different forms of expertise to the discussion of complex technical issues.

With support from the Tobin Project (http://tobinproject.org/) and under the leadership of Professor Annelise Riles (Jack Clarke Professor of Far East Legal Studies, Cornell Law School; Professor, Department of Anthropology, Cornell University), the project includes a literature review of the state of knowledge on the politics of central banking in different social science disciplines. The resulting papers which focus on sociology, political science, economics, and law, are published as part of this International Studies Working Paper Series.

Based on a nation-wide call for applicants in multiple disciplines, four graduate students - Megan Doherty Bea (Cornell University), Adam Hayes (University of Wisconsin), Erin Lockwood (Northwestern University) and Marcelo Prates (Duke University) - received one-year fellowships to describe the achievements and methodological advantages of their disciplines related to the politics of central banking, as well as to identify blind spots and limitations. In addition to Professor Riles, the students were mentored during the year by the following faculty:

- Douglas Holmes, Professor of Anthropology, Binghamton University
- Ravi Kanbur, T.H Lee Professor of World Affairs, International Professor of Applied Economics and Management; Professor of Economics, Cornell University
- Peter Katzenstein, Walter S. Carpenter, Jr. Professor of International Studies, Department of Government, Cornell University
- Jonathan Kirshner, Stephen and Barbara Friedman Professor of International Political Economy, Department of Government, Cornell University
- Hirokazu Miyazaki, Director, Mario Einaudi Center for International Studies, John S. Knight Professor of International Studies; Professor, Department of Anthropology, Cornell University

The four graduate students' papers were presented and discussed during an international and interdisciplinary conference on *Changing Politics of Central Banking* (http://einaudi.cornell.edu). The conference, hosted at Cornell University on April 18 and 19, 2016, brought together current and former high-ranking central bank officials from Asia, Europe, the United States, and New Zealand as well as economists, political scientists, anthropologists, sociologists, and legal scholars It initiated a conversation between social scientists and policy-makers about the building blocks and parameters for a new intellectual architecture for understanding what central banks do as an empirical matter, and what they should do as a normative matter.

The Changing Politics of Central Banking: A Legal Perspective

Part 4 of the Changing Politics of Central Banking Series

Marcelo M. Prates, Duke University*

Abstract

Central banks around the world emerged from the financial crisis in a curious situation. On the one hand, central banks were criticized because they had not been able to anticipate or prevent the crisis. On the other hand, central banks were called on to lead the way to economic recovery, using unprecedented means if necessary. We can, thus, tell two different, even opposite tales of central banks after the financial crisis. One of losing prominence, and the other of becoming the most powerful institution of our times. And both accounts are very true. How is that possible? This white paper reviews the legal literature in search of answers to this question. It starts by revisiting the issue of central-bank independence and looking at how the different branches of government now interact with central banks. The paper also explores the legal questions associated with central banks making use of unconventional tools.

Keywords

Central bank, financial crisis, independence, lender of last resort, quantitative easing, international financial regulation

About the Author

Marcelo M. Prates has been a lawyer with the Central Bank of Brazil since 1998. He holds a Master's degree from the University of Coimbra School of Law (2004) and an LL.M. degree from Duke University School of Law (2015). He is an S.J.D. candidate (2018) at Duke University School of Law, with a particular interest in financial crises and bailouts.

Contact Information

Marcelo M. Prates, * LL.M. 2015 and S.J.D. candidate (2018), Duke University School of Law, 210 Science Drive, Box 90362, Durham, NC 277708 USA. Email: marcelo.prates@duke.edu.

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* This paper was presented and discussed during an international and interdisciplinary conference on the Changing Politics of Central Banking (http://einaudi.cornell.edu/news/cornell-conference-aims-bring-new-voices-central-banking-debate) at Cornell University on April 18 and 19, 2016. The author was mentored by Annelise Riles, Jack Clarke Professor of Far East Legal Studies, Cornell Law School; Professor, Department of Anthropology, Cornell University.

Introduction

Central banks tend to appreciate predictability. A "boring" life would be, in fact, the aspiration of any central banker.[1] And then a financial crisis hits, stability is lost, and panic spreads. Whenever central banks face a financial crisis, they reach a turning point. The fall from grace is inevitable; someone must be to blame. But redemption may come in unexpected ways.

Central banks emerged from the 2008 financial crisis in an ambiguous position. On the one hand, they were unable to realize that a crisis was building up (e.g., Gadinis, 2013a, pp. 344-345). Central banks attracted fierce criticism because they, along with other regulatory agencies (Gadinis, 2013a, pp. 344-346; Garicano & Lastra, 2010, pp. 598-599), failed to perform their tasks properly, letting all kinds of abuses and excesses happen without imposing any meaningful limitation (Levitin, 2014, pp. 1993-1994, 2041-2044). The proximity of central banks to the financial industry also brought into question the real effectiveness of their enforcement power, with claims of regulatory capture (Gadinis, 2013a, pp. 348-349; Levitin, 2014, pp. 2041-2049).

In response to these apparent failures, new models of central-bank governance began to be explored. Independence lost its prominence and, now, the emphasis is on the necessity of oversight and control of central banks' activities to improve transparency and accountability (Canova, 2015; Levitin, 2014, pp. 2049-2052).

On the other hand, central banks' subsequent efforts were crucial for stemming the adverse effects of the crisis and, later, for helping toward the economic recovery (e.g., Judge, 2015). Central banks have been increasingly active since the financial crisis. To rebuild stability, central banks started using unconventional and even unprecedented measures (e.g., Hayes, 2016).

Such non-traditional measures implemented by many central banks redefined the scope of central banking after the crisis, raising questions about the limits of their legal authority. Are central banks allowed to do "whatever it takes" to fulfill their mandates? The answer is as complex as the new tools adopted by central banks.

The political reality of central banking has been, therefore, mixed since the financial crisis. Central banks tend to be under greater political pressure when performing the tasks related to the stability of the financial system. They have, however, emerged as powerful public actors in the global economic arena when it comes to restoring liquidity and monetary stability. Either way, central banking is a matter of growing interest and concern.

Two representative issues of the changing political situation of central banking are examined here from a legal and comparative perspective. First, the paper looks at the interactions of the different branches of government and central banks. Not only have central banks lost part of their independence within the government, but their relations with legislators have also been reshaped. In the past few years, elected politicians have become much more interested in central banking.

[1] Haldane (2014) states that the "[f]ormer BoE governor Mervyn King aspired to make monetary policy 'boring'" (p. 4).

Second, the paper studies the legal issues arising out of central banks making use of unconventional tools. Because central banks have resorted to extreme measures in recent times, the definition and interpretation of their legal authority have become critical to the debate on the legitimacy of their acting. Finding the scope of their mandate is also relevant to understanding the limits of the power and influence central banks exert at the domestic and transnational levels. Finally, because the debate has spilled over to the courts, the paper analyzes how, after the crisis, even the judiciary is getting more involved with central banking.

This paper, thus, offers a starting point for exploring the legal literature that has touched on the politics of central banking after the 2008 financial crisis, without trying to be exhaustive. It is an attempt to put together different parts of related conversations that are spread across the legal field. Moreover, its focus is on the countries that were at the center of the financial crisis, like the United States, the United Kingdom, and, at a supranational level, the European Union (EU). Whenever valuable, the findings are contrasted with the reality of emerging markets, notably Brazil and China, to grasp the significance and peculiarities of the different approaches.

I. Politics of Central Banking: Financial Stability and Central-Bank Restraint

Central-Bank Independence Redux

After the 2008 financial crisis, the first trend that can be observed is the increasing participation of governmental authorities in central banking (Gadinis, 2013a). The trend appears even in countries that have well-established independent central banks,[2] such as the United States, the United Kingdom, Germany, and Japan.

Examining the law of fifteen jurisdictions,[3] Gadinis (2013a, pp. 356-364) observes that the final decision on critical issues related to the stability of the financial system is now in the hands of high-ranking government officials, like treasury secretaries and, particularly, finance ministers.[4] In fact, "there is a new player in global financial regulation, and it is the finance ministries" (Gadinis, 2013a, p. 358).[5]

Government officials are becoming more involved not only in urgent and sensitive issues but also in matters related to the regular operation of the financial system, like the supervision of financial institutions or the process of granting license (Gadinis, 2013a, pp. 359-364). Additionally, political involvement in banking and financial issues is now more active and direct, whereas politicians usually acted behind the scene before the crisis (Gadinis, 2013a, pp. 361-364).

[2] About the difficulties in defining and measuring the degree of central-bank independence, see, e.g., Crowe & Meade (2008); Cukierman, Webb, & Neyapti (1992); Duff (2014); Laurens, Arnone, & Segalotto (2009).
[3] Gadinis's analysis covered "fifteen key jurisdictions for international banking:" the United States, the United Kingdom, France, Germany, Japan, Spain, Switzerland, Belgium, Ireland, Italy, Denmark, Canada, Australia, Mexico, and South Korea.
[4] The notable exception here is Switzerland, which is the "only jurisdiction where reforms did not result in an increase of politicians' powers" (Gadinis, 2013a, p. 365).
[5] About the reality in the U.S., with the increasing participation of the Secretary of the Treasury in central banking matters, see also Bressman & Thompson (2010, pp. 628-630).

Post-crisis reforms have also built institutional arrangements that put government officials as the ultimate decision-makers in relevant regulatory matters. Many developed countries that were at the center of the financial crisis created regulatory councils encompassing central banks and other independent agencies (Bank for International Settlements [BIS], 2011, pp. 21-23; Gadinis, 2013a, pp. 364-369). As a result, financial regulators still are the leading experts and supervisors in the financial system, but final decisions are now reached with a significant participation of politicians (Gadinis, 2013a, p. 368).

The Financial Stability Oversight Council (FSOC) and the Orderly-Liquidation-Authority (OLA) mechanism, established by the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), provide a good example. The Fed still has a say in the designation, supervision, and liquidation of "systemically important" financial institutions. But the final decision on these matters is now reached with a significant participation of the Secretary of the Treasury, who is the dominant actor in the FSOC and the OLA (Duff, 2014, pp. 213-214, 217; Gadinis, 2013a, pp. 369-375).

The current pattern of an increased participation of government officials in central banking may come as a surprise to developed countries, mainly to those that have gotten used to independent central banks. This reality, however, will sound more familiar to some emerging economies that do not have formally independent central banks.

The Central Bank of Brazil (BCB) is not statutorily independent. It has, though, some degree of autonomy to determine the best way to achieve the policy goals, under Lei No. 4.595, de 31 de Dezembro de 1964, which is the primary law organizing and regulating the financial system in Brazil.[6] The BCB has the legal authority to perform the supervision of the nation's banking and financial systems, ensuring their safety and soundness and tackling systemic risk.[7] The BCB has, moreover, the sole authority to make decisions about the resolution of financial institutions.[8] Under the flexible exchange rate system in place since 1999, the BCB can also intervene in the foreign exchange market to manage the excessive volatility of the national currency.[9] Last, under the inflation-targeting regime,[10] the BCB is authorized to set a short-term interest-rate benchmark and to use monetary tools, especially open market operations, to pursue that benchmark.

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[6] A copy of Law No. 4.595, in English, can be found at Law 4.595, dated 12/31/1964 - National Financial System, Banco Central do Brasil, http://www.bcb.gov.br/?LAW4595 (last visited Feb. 20, 2015).

[7] In accordance with Article 10 of Lei No. 4.595. The BCB, however, is not the direct supervisor of insurance companies and pension funds. Securities regulation and the related supervision also fall outside the responsibilities of the BCB, although the BCB shares some regulatory functions with the primary agency that supervises the Brazilian securities market, with respect to the supervision of certain financial institutions that operate in that market.

[8] Under Lei No. 6.024, de 13 de março de 1974 (available, only in Portuguese, at http://www.planalto.gov.br/CCIVIL_03/leis/L6024.htm).

[9] According to Comunicado No. 6.565, announced by the BCB on January 18, 1999, and available, only in Portuguese, at https://www3.bcb.gov.br/normativo/detalharNormativo.do?method=detalharNormativo&N=99009328. See Tabak & Lima (2009) for a brief overview of the BCB intervention in the FX market.

[10] Under Decreto [Decree] No. 3.088, enacted on June 21, 1999, and available, only in Portuguese, at http://www.planalto.gov.br/ccivil_03/decreto/D3088.htm.

The inflation target, however, is set in advance not by the BCB itself, but by the National Monetary Council (CMN), which is presently composed of the Governor of the BCB, the Minister of Finance, and the Minister of Planning, Budget, and Management.[11] The CMN is responsible not only for policy-making and setting the BCB's organization and budget[12] but also for deciding the most critical matters related to the financial system, such as the bailout of financial institutions.[13] The CMN is a political council similar to the regulatory councils identified by Gadinis (2013a). In the CMN, the central bank has participation and can vote, although the final decision will result from a majority vote with the significant participation of two senior members of the President's cabinet.

The People's Bank of China (PBOC), in turn, uses a variety of instruments to achieve multiple goals, particularly price, credit, and exchange-rate stability (Geiger, 2008; Sun, 2013). Following its mandate, the PBOC gives particular importance to promoting economic growth as a result of its actions (Geiger, 2008, p. 3; Sun, 2013, p. 5). The PBOC is not, however, the authority responsible for regulating and supervising the financial system. These functions are, since 2003, in the hands of the China Banking Regulatory Commission (Borst & Lardy, 2015). The PBOC does act to adjust the money supply and influence interest rates, to affect the structure and scope of bank lending, and to keep the Renminbi exchange rate "within its targeted floating bands" (Sun, 2013, p. 3).

Despite performing several different activities, all the targets to be pursued and the instruments to be used by the PBOC are dictated by the Chinese central government, especially through the State Council (Borst & Lardy, 2015, p. 4; Geiger, 2008, pp. 1-4; Sun, 2013, pp. 5-10). It is also hard for the PBOC to implement a clearly independent monetary policy because of the limited exchange-rate flexibility (Geiger, 2008, p. 11; Sun, 2013, pp. 5, 12-14). Finally, the PBOC's monetary and credit policies are also impaired by the "high concentration of state-owned commercial banks (SOCBs) in the banking system," as the SOCBs tend to favor lending to state-owned enterprises (Sun, 2013, pp. 14-17).

Legislative Reactions to the Financial Crisis and Implications for Central Banking

Another trend that can be noticed following the 2008 financial crisis is the growing interest of the legislative branch in central banking, which is represented by two different movements.

First, legislators are back to financial regulation. Because deregulation has been seen as one of the causes of the crisis (e.g., Gadinis, 2013a, pp. 347-348; Levitin, 2014, pp. 2049-2050), post-crisis legislation related to the financial system tends to be extensive and detailed (Levitin, 2014, pp. 2040-2041), to the point of breeding overregulation (Prates, 2013, pp. 10-13). The Dodd-Frank Act is, again, a case in point. The Act has 848 pages, and the resulting or related regulation sprawl over more than eleven thousand pages (Levitin, 2016, p. 387; Romano, 2014, pp. 25-26).

[11] According to Article 8 of the Lei No. 9.069, de 29 de junho de 1995 (available, only in Portuguese, at http://www.planalto.gov.br/ccivil_03/LEIS/L9069.htm#art8).
[12] According to Article 4 of Lei No. 4.595.
[13] See, e.g., Medida Provisória [Provisional Measure] No. 1.179, enacted by the President of Brazil on November 3, 1995, and later on turned into Lei No. 9.710, de 19 de Novembro de 1998. A copy of the Law is available, only in Portuguese, at http://www.planalto.gov.br/ccivil_03/LEIS/L9710.htm.

Legislators are back also because financial regulation has become a matter of general concern. "Voters paid far greater attention to financial regulation as a result of the crisis," which made "impossible for politicians seeking reelection not to think about finance" (Gadinis, 2013a, p. 351). Whenever facing a crisis, especially a severe one like the 2008 financial crisis, legislators inevitably react to the media and popular clamor by "doing something" (Romano, 2014, p. 27). In the case, "doing something" meant passing copious legislation and demanding vast rulemakings in the shortest possible time (Romano, 2014, pp. 27-31). Legislators were, therefore, able to offer a quick response to constituents and to get some positive reports on the media; even if the rules created were not the best or the right answer to the crisis (Romano, 2014, pp. 28-30).

Regulatory delegation and deference could be a way of improving the quality of policy-making since the agencies tend to be the most technical and experienced public actors in the field (e.g., Romano, 2014). Regulatory delegation, however, can also be used by legislators to shift responsibility to the agencies for potential policy failures (Romano, 2014, pp. 31-32). The hefty amount of required rulemakings and the tight schedule for implementation transferred much of the pressure one level down. Central banks and the other regulatory agencies have been more exposed, thus, to direct lobbying, since the affected parties "have understandably sought to shape regulatory outcomes to their advantage" (Romano, 2014, p. 57). Financial regulation and its execution have, therefore, become much more political for central banks (Romano, 2014, pp. 67-69).

The second sign of change in the relation between central banks and legislators in recent years concerns the debate on the need for an external oversight to make central banks more transparent and accountable. The debate is particularly significant in presidential systems, in which the government is clearly separate from the legislative branch. As a consequence, any involvement of legislators with typical executive functions, like the functions performed by central banks, is controversial. In parliamentary systems, the fusion of executive and legislative powers in the government makes the debate less acute, yet still relevant.[14]

In the United States, the practice rather than explicit rules has led the Federal Reserve (Fed[15]), among all the governmental agencies, to be one of the most – if not the most – independent institutions (Rubin, 2012, pp. 665-672). The Fed is insulated not only from direct presidential control but also from congressional oversight, in a situation that Rubin (2012) calls "hyperdepoliticization." The increased degree of independence is particularly noticeable in the control of the money supply, which is executed through open market operations decided solely by the Federal Open Market Committee (FOMC) (Rubin, 2012, pp. 667-668). The freedom from congressional budget control that allows the Fed to fund itself also reinforces its "hyperdepoliticization" (Rubin, 2012, pp. 668-669).

[14] About the "different dynamics governing administrative operations in parliamentary and presidential regimes," especially regarding the competitive interactions between the executive and the legislative branches in exercising control over the bureaucracy, see Ackerman (2010, pp. 131-33).

[15] The term "Fed" can have different meanings. It can be used to refer to the Federal Reserve, as the central bank of the United States, specifically to its Board of Governors, which is technically the governmental agency, or even to the entire Federal Reserve System, including the twelve Federal Reserve Banks. Here, it will be used as a short reference to the central bank of the United States. For a brief overview of the different uses of "Fed," see Mehra (2010, p. 224 n. 7).

Although that unique form of independence is a long-standing tradition in the United States, it is not entirely safe from sustained legislative attacks aiming to reduce or eliminate the Fed's powers (Rubin, 2012, pp. 670-672). The most recent one appears in the preamble to the Dodd-Frank Act, which states that one of the primary purposes of the statute is "to protect the American taxpayer by ending bailouts." To accomplish that commitment, the Dodd-Frank Act greatly revised Section 13(3) of the Federal Reserve Act[16], aiming to limit the emergency powers that the Fed repeatedly invoked during the 2008 financial crisis (Baker, 2012, pp. 87-90; Mehra, 2010, pp. 234-260).

Under the Dodd-Frank Act, the Fed's Board of Governors needs prior approval of the Secretary of the Treasury to establish any program or facility related to emergency lending.[17] The Board also has to "provide Congress with immediate notice (within seven days of authorization) and periodic reports (every 30 days thereafter) regarding any Section 13(3) facility."[18] Moreover, the U.S. Government Accountability Office (GAO) is authorized "to conduct operational audits of all future credit facilities established under Section 13(3), and of discount window and open market transactions."[19]

Besides the monitoring of emergency-lending operations that are now in place, Congress is also pushing for a more comprehensive oversight of the Federal Reserve System. The goal is to bring about the possibility for the GAO to audit monetary-policy decisions and operations (e.g., Wessel, 2015). Legislative initiatives of this kind, such as the "Audit the Fed" bill,[20] has stirred controversy, mainly because they would create a direct threat to central-bank independence (Wessel, 2015).

On a somewhat contradictory note, Congress did not use the same rigor when authorizing and setting limits for the Fed to provide liquidity assistance to designated financial market utilities, like payment, clearing, and settlement systems (Baker, 2012, pp. 97-98, 105-108, 117-118). In fact, Title VIII of the Dodd-Frank Act opens the possibility for the Fed to act as a market-maker of last resort, especially when dealing with central clearing parties facing "unusual or exigent circumstances" (Baker, 2012, pp. 97-98, 103-105, 114-118).[21] In truth, Title VIII provisions can increase systemic risk and moral hazard instead of reducing them (Baker, 2012, pp. 114, 118-119). The rules create a significant expansion of the federal safety net without demanding any significant contribution from the institutions likely to benefit from the government intervention (Baker, 2012, pp. 114, 118-119, 120-126). As a consequence, Title VIII could contribute to lessening market discipline and also to furthering the mispricing of financial risk in the sector

[16] 12 U.S.C. § 343 (2012).
[17] 12 U.S.C. § 343(3)(B)(iv) (2012).
[18] BIS, 2011, p. 26, citing to 12 U.S.C. § 343(3)(C) (2012). See also Baker (2012, pp. 88-89).
[19] BIS, 2011, p. 26, citing to 31 U.S.C. § 714(e)&(f) (2012). See also Baker (2012, pp. 88-89).
[20] See Audit the Fed: Dodd–Frank, QE3, and Federal Reserve Transparency: Hearing Before the Subcommittee on Domestic Monetary Policy and Technology of the House of Commons on Financial Services, 112th Cong. 14 (2011).
[21] To emphasize the greater flexibility with which Congress treated the last resort role created in Title VIII of the Dodd-Frank Act, Baker (2012, pp. 109-112) notes that "when the words 'unusual' and 'exigent' are used together elsewhere in banking regulation, such as in the Federal Reserve's 13(3) emergency statutory authority discussed above, they are instead generally joined by the conjunctive 'and'," not by the disjunctive "or," as in Title VIII.

(Baker, 2012, pp. 93-94, 118-119). On a more surprising note, the Dodd-Frank Act did not require the degree of disclosure and accountability for Title VIII's last-resort lending authority as it did for the traditional Section 13(3) liquidity assistance (Baker, 2012, pp. 126-129).

In the United Kingdom, a broad external oversight of the central bank is already in place, at least when it comes to financial-stability actions. The Prudential Regulation Authority (PRA), an operationally-independent subsidiary of the Bank of England created after the 2008 financial crisis to perform the microprudential supervision of banks and insurers, is under a strict accountability regime (BIS, 2011, p. 14). The PRA is fully audited by the National Audit Office, with accountability to the Public Accounts Committee (BIS, 2011, p. 18). The PRA is also subject to independent inquiries ordered by the Treasury regarding its efficiency and effectiveness, and also potential regulatory failures, which, in the latter case, can lead to a report to the Treasury to be presented before Parliament (BIS, 2011, p. 18).

This reality can be observed also in the EU. The creation of a "banking union" in the Eurozone pushed much of the competence to perform microprudential supervision to the European Central Bank (ECB) (Smits, 2015, pp. 1172-1173).[22] "Acknowledging that central-bank independence for its monetary tasks differs from the independence and accountability befitting a prudential supervisor" (Smits, 2015, p. 1178), the ECB celebrated institutional agreements with the European Parliament and the Ecofin Council. The agreements "give both branches of the legislative branch wide powers of oversight" over the ECB activities related to banking supervision (Smits, 2015, p. 1178).

The idea of an external oversight of the central bank is not unusual in Brazil either. The Tribunal de Contas da União (TCU) [Federal Court of Accounts], which is the Brazilian equivalent to the American GAO, helps the Congress to execute its constitutional mission of ensuring the accountability of the federal government.[23] The TCU has the authority to perform investigations, audit operations, and assess the effectiveness of government policies and programs, including the ones executed by the BCB when supervising financial institutions or implementing monetary policy.[24] As a consequence of its authority, the TCU can issue decisions similar to injunctions, compelling the BCB's officers to do or to refrain from doing specific activities.[25] The TCU can even impose financial penalties on the officers of the BCB in case of wrongdoing.[26]

[22] Smits (2015, p. 1175) reports that "[a]s of end-2014, the ECB directly supervises 123 significant banks in the euro area, and is directly responsible for licensing all banks in the euro area and for the authorisation of shareholders in banks. The non-significant banks are primarily supervised by their national authorities. The ECB may decide to directly supervise NCA-supervised banks."

[23] Under Article 71 of the Constituição Federal [C.F.]. A copy of the 1988 Federal Constitution, in English, can be found at The Brazilian Constitution, Banco Central do Brasil, http://www.bcb.gov.br/?NORMS (last visited Jan. 4, 2016).

[24] Under Article 71 of the C.F. and Lei No. 8.443, de 16 de Julho de 1992, Diário Oficial da União [D.O.U.] de 17.7.1992 (Braz.).

[25] Under Lei No. 8.443, de 1992.

[26] Under Lei No. 8.443, de 1992.

Again the Tension between Independence and Accountability

Old problems… The overall impression is that the lines of central-bank independence are more blurred since the 2008 financial crisis. Central-bank independence has never been an absolute; not even in theory (Lastra & Miller, 2001, pp. 33-36). The protection of central banks against political pressure cannot and should not be complete, because of "concerns of social policy as well as the influence of politics or practicality" (Lastra & Miller, 2001, p. 35). But senior government officials and legislators have become much more involved in central banking after the crisis, particularly in issues related to the stability of the financial system. What are the implications of this "global paradigm shift" (Gadinis, 2013a, p. 332)?

On the one hand, a greater involvement of government officials and the extension of congressional control can increase the legitimacy and accountability of central banks' decisions (Gadinis, 2013a, pp. 380-382). More than that, the direct participation of government officials and legislators in financial regulation is a blunt response to the view that central banks and the other regulators failed in their mission of assuring the stability of the financial system (Gadinis, 2013a, pp. 343-349).

On the other hand, the interference of elected authorities in central banks' affairs can result in the (over) politicization of central banking. Because of the harmful effect that the 2008 financial crisis had had in the life of ordinary persons, financial regulation became a topic of increasing interest to voters, which prompted politicians to get involved (Gadinis, 2013a, pp. 350-351). Reelection pressures, nonetheless, can affect politicians' decisions, making their judgments prone to short-term interests and considerations not directly related to financial stability (Duff, 2014, pp. 204-205; Gadinis, 2013a, pp. 383-388; Bressman & Thompson, 2010, pp. 635-637).

As a side effect, the fading of central-bank independence can represent a setback for the pervasiveness of independent agencies. It can even be taken as a step in returning to the more traditional tripartite formula of separation of powers. Independent central banks have been seen as a landmark in the process of insulating complex and technical matters from the political branches of government (e.g., Ackerman, 2010; Bressman & Thompson, 2010, pp. 607-608, 654).

Ackerman (2010), for instance, has used the example of independent central banks to substantiate his claim that the tripartite model of separation of powers was flawed. The traditional three boxes of government functions were inadequate to accommodate the independent institutions (Ackerman, 2010, p. 131). A new conceptual framework would, thus, be required to encompass functionally independent units that were part of the modern government, but could not be categorized in one of its typical branches (Ackerman, 2010, pp. 128-130). Central banks, however, emerged from the 2008 financial crisis less shielded from direct political control and, as a consequence, they might not be the quintessential independent institution anymore. Instead of waving goodbye to Montesquieu (Ackerman, 2010), this might be the right time to welcome him back.

The legal literature sees the shift in central-bank independence also as a rearrangement of the all too often tortuous relation between administrative law and financial regulation (Barr, 2015; Metzger, 2015). The tension between accountability, "administrative law's central obsession" (Metzger, 2015, p. 130), and independence, "the defining structural precept" of financial regulation (Metzger, 2015, p. 130), is abating after the financial crisis.

Compared to the Environmental Protection Agency (EPA), for instance, the Fed was seen as less subject to presidential and congressional control and to judicial review, and more integrated with international peers than with national state regulators (Metzger, 2015, pp. 134-139). Financial regulatory agencies in the United States, moreover, could often exercise a broader discretion in rulemaking and enforcement. Financial regulation used to be conducted with a kind of "administrative soft law" approach (Levitin, 2014, pp. 2047). A closer relation with the regulated institutions allowed the regulators to use informal ways to create the related regulation, to assess compliance with the applicable rules, and even to take enforcement actions (Levitin, 2014, pp. 2044, 2047; Metzger, 2015, pp. 130-131, 140-142).

Many of these differences have waned since the 2008 financial crisis.[27] Massive rulemaking responsibilities related to politically charged issues, requiring closer interagency coordination, and the increased participation of government authorities and legislators in matters relevant to the financial system make central banks ever more similar to other regulatory agencies (Metzger, 2015, pp. 144-150, 152-154).

In the end, "the most important lesson administrative law holds for financial regulation is the inevitability of politics" (Metzger, 2015, p. 155). The main challenge that arises from the current debate on the politics of central banking is, in fact, an old one in administrative law: how to find a better way to reconcile democratic accountability with independence from political influence when it comes to technocratic bureaucracies (Barr, 2015, pp. 119-123; Metzger, 2015, pp. 155-156).[28]

This challenge, however, gets more complicated because of all the different activities that central banks can perform.[29] Many central banks have a narrow mandate focused on monetary stability, the pervasive activity of central banking (Arner, Panton & Lejot, 2010, p. 13; Garicano & Lastra, 2010, p. 609). Some will be committed to promoting maximum employment. Others act also to guarantee financial stability. Even if a central bank does not have any direct involvement with regulatory or supervisory responsibilities, it would still perform at least one task related to financial stability, which is the lender-of-last-resort role (Arner et al., 2010, pp. 14-15; Garicano & Lastra, 2010, p. 609). [30]

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[27] As Metzger (2015) notes, although "the two fields are drawing closer together, their traditional features have not entirely dissipated" (p. 146). There are even cases of inversion. In rulemaking, e.g., "as financial regulation has moved more towards a heavy rulemaking focus, administrative law has headed in the opposite direction, towards more informal and contingent forms of regulation." (Metzger, 2015, p. 154).

[28] The debate on the political legitimacy of central banks in the legal literature is not a new one either. About it, see, e.g., Lastra & Miller (2001, pp. 38-42).

[29] About the variety of tasks that can be performed by central banks, see, e.g., Arner et al. (2010).

[30] Moreover, as Daniel Tarullo (2014) emphasizes, "[n]ot all central banks have microprudential regulatory authority, (…), [b]ut the shortcomings of pre-crisis regulatory regimes have been of concern to all central banks" (p. 3).

The type of activity performed has a direct influence on the degree of accountability and transparency of central banks' actions (Garicano & Lastra, 2010). Regarding accountability, it is much harder to assess compliance and performance of central banks' actions related to financial stability than to those related to monetary stability (BIS, 2011, pp. 50-53; Garicano & Lastra, 2010, pp. 616-617). Monetary stability has one clear goal – price stability – and one basic set of instruments – monetary policy tools. Financial stability, in turn, moves around multiple goals and requires the use of a broad range of instruments to be effective (BIS, 2011, p. 50; Garicano & Lastra, 2010, pp. 610-611). This sharp distinction, however, may seem artificial, since even the concept of "price stability" is subject to controversy (Goldmann, 2014, pp. 269-272).

Concerning transparency, all the relevant information related to monetary policy is usually public or readily available (Garicano & Lastra, 2010, pp. 616-617). More than that, central banks have lately adopted the practice of "forward guidance". They disclose to the market how monetary policy will be conducted in the future depending on the evolution of some indicators, such as the inflation and the unemployment rates (Smits, 2015, p. 1170). The same degree of transparency cannot be granted in financial stability activities. Revealing too much information related to the stability of an institution or a sector can be counterproductive, "since the belief in a panic is self-fulfilling" (Garicano & Lastra, 2010, p. 617).

Despite all of these complexities, one thing is certain: the involvement of central banks with financial stability is positively correlated with political interest and control (Bressman & Thompson, 2010, pp. 648-650, 654-656; Garicano & Lastra, 2010, p. 611). Since the most recent trend is for central banks to become responsible at least for macroprudential regulation[31] besides monetary policy, it seems inevitable to have more political attention over central banking for the time being (Garicano & Lastra, 2010, pp. 612-613). And the trend is only reinforced by the growing dissipation of the limits between monetary-policy and financial-stability actions (Goldmann, 2014, pp. 269-272, 276-279; Tarullo, 2014, pp. 7-8).

… **with some new solutions**. The recent legal literature has offered some proposals to deal with the problems associated with central-bank independence. One possible solution would be trying to neutralize political influence altogether, especially at the legislative level, by promoting rent-seeking behavior from competing interest groups (Levitin, 2014, pp. 2058-2067). The idea would be to create industry divisions following the example of the Glass-Steagall Act, under which commercial banks, investment banks, and insurance companies were submitted to different regulatory regimes and had conflicting interests that helped to offset lobbying influences (Levitin, 2014, pp. 2060-2063). One way, therefore, to make both legislators and central banks less subject to unbalanced political pressure would be to foster "symmetrical policy contestations" (Levitin, 2014, p. 2058) – by, e.g., establishing different regulations and even regulators for megabanks and small banks. As a consequence, legislators and central banks could be more technocratic in their policy-making and could "advance more neutral regulatory agendas" (Levitin, 2014, p. 2067).

[31] For a definition of macroprudential regulation and an overview of the related instruments and tools, see, e.g., Duff (2014, pp. 189-199).

Canova (2015) goes one step further by arguing that more important than independence from politicians would be for central banks to be independent of private financial interests. The key issue to be discussed and solved in central-bank governance would be, therefore, capture (Canova, 2015, pp. 675-677). Conti-Brown (2015), looking at the governance of the twelve Federal Reserve Banks, also believes that capture is a crucial issue (pp. 16-17). The "tension between their public functions and their private governance […] presents problems for both constitutional law and public policy" (Conti-Brown, 2015, p. 13). The exclusively private nature of the appointment of the leaders of the Reserve Banks and the restrictions on their removal lead to the conclusion that "the Federal Reserve System as currently organized is unconstitutional under a straightforward application of the recent U.S. Supreme Court precedent" (Conti-Brown, 2015, p. 13). And Zaring (2015a, pp. 181-185) agrees that some constitutional challenges could be brought against the Federal Reserve System. Despite some arguments against their ambiguous public-private existence, the Reserve Banks might not be abolished anytime soon. And this is a consequence not of their functional utility, but of their political connections (Conti-Brown, 2015, pp. 23-24).

On a different note, Judge (2015, pp. 65-66) claims that there are forces that do not involve the traditional mechanisms of political control (congressional oversight, presidential control, and judicial review), but, even so, can impose meaningful limitation on central bank's actions. These forces are named "soft constraints" – like principled norms and the Fed Chair's concern with her reputation –, especially because they are not legally binding, and their application might not always be clear (Judge, 2015, pp. 66, 68-69). Soft constraints can, nonetheless, contribute to increasing the central bank accountability while preserving its independence. As a consequence, soft constraints help to enhance the democratic legitimacy of an institution that is seen as holding too much power without being politically accountable (Judge, 2015, pp. 65-66, 95). All in all, soft constraints can be an important yet imperfect resource for legitimizing not only the actions taken by the Fed but also the Chair's authority (Judge, 2015, pp. 74-75, 81-82, 87-90).

II. Realpolitik of Central Banking: Unconventional Measures and Central-Bank Dominance

Since the 2008 financial crisis, many central banks in developed countries may be less independent. But that does not mean that they are less powerful. On the contrary, central banks have been deeply involved in the most pressing issues that followed the crisis: from leading the efforts towards the recovery of many economies to contributing to the stability and cohesion of the EU.[32]

Central banks, facing the most fundamental challenges in a generation – if not longer –, have resorted to extraordinary measures (e.g., Haldane, 2015; Hayes, 2016). First, last-resort lending was taken to a new level (Haldane, 2014). To provide liquidity, especially right after the crisis, central banks around the world started lending also to non-banks and accepting a wider range of collaterals in these operations. In some cases, they went further to act as market-makers of last resort (Haldane, 2014). Second, to tackle a persistent low level of inflation and ultimately avoid deflation, central banks in developed countries lowered key interest rates to previously unseen –

[32] About the importance of the ECB's actions for the survival of the Eurozone and even for the future of European integration, see, e.g., Wilkinson (2014).

and sometimes negative – levels (Haldane, 2014). They also implemented quantitative and credit easing programs, purchasing large amounts of government securities and private-sector assets (Haldane, 2014; Pacces & Repasi, 2015).

Central banking has changed a lot and at a fast pace. "[C]entral banks are essentially unrecognisable from a quarter of a century ago" (Haldane, 2014, p. 3). What are the legal implications of that transformation? How has the legal literature reacted to those new operational and political aspects of central banking?

The main reaction of legal scholars has been to discuss the legal authority of central banks to perform such unusual activities. A slow but steady literature has analyzed the legal framework associated with the new tools used by central banks. The literature is trying to determine whether the recent actions taken by central banks are in accord with the existing rules or whether these actions are shaping reality even before the corresponding legal framework can be adjusted.

The legal literature is also looking at the increasing "judicialization" of central banking, represented by the judicial involvement in reviewing the measures related to the crisis response (e.g., Smits, 2015, pp. 1181-1190). The judicial review has been happening not only because of complaints filed directly against central banks and their decisions but also because of actions brought against the government by shareholders of bailed-out institutions on grounds of inadequate compensation.[33]

Liquidity Provision and Monetary Policy at a New Level

Regarding the limits of the legal mandate of central banks, Wilkinson (2014) raises the question that reverberated around Europe: "Does the European Central Bank have a mandate to do 'whatever it takes' to save the Euro" (p. 2)?

The question is related to the implications of the decision issued by the German Federal Constitutional Court in February 2014 casting doubt on the legality of the ECB's bond-buying initiative known as the Outright Monetary Transactions program (OMT) (Wilkinson, 2014). The OMT had been announced by the ECB in September 2012 and had had the purpose of allowing the ECB to act as the Eurozone's lender of last resort.[34] The ECB would make unlimited purchases of bonds, on the secondary markets, from selected Member States facing fiscal

[33] About the action brought by former shareholders of Northern Rock, an English bank that was nationalized in February 2008, see Walker (2010, pp. 753-754) and Singh (2011, pp. 898-900). As Singh (2011) emphasizes, the Northern Rock case "provides, for the first time, a judicial assessment of the Bank [of England]'s role within [Lender of Last Resort]" (p. 898). On the lawsuits filed by AIG shareholders against the nationalization of the American insurance company, see, e.g., Casey & Posner (2015, pp. 6, 50-53).

[34] Two years before announcing the OMT, the ECB had introduced a Securities Market Program (SMP). "Under the SMP, the ECB bought both sovereign bonds of Member States whose interest rates had become markedly out-of-line with the euro area average, and debt instruments issued by private entities" (Smits, 2015, p. 1167). Besides the SMP, the ECB also introduced the Covered Bonds Purchasing Program (CBPP), which was a predecessor of the Quantitative Easing (QE) program launched in early 2015. Although the SMP has ended with the announcement of the OMT, the CBPP and other subsequent programs with similar characteristics were included in the QE (Smits, 2015, pp. 1167-1171). Moreover, the ECB and the 19 national central banks that are part of the Eurosystem also provide liquidity to troubled financial institutions through the Emergency Liquidity Assistance (ELA), which has been used to avoid the collapse of several Eurozone banks, particularly in Greece (Hofmann, 2013, pp. 538-539).

problems and financing hurdles, if those States committed to the stringent conditions of a European Financial Stability Facility/European Stability Mechanism (Dahan, Fuchs, & Layus, 2015, pp. 149-151; Mayer, 2014, pp. 112-114).

The German Court based its decision on two grounds related to the European legal order, although the Court also included in its reasoning an issue related to the German constitutional law (Wilkinson, 2014, p. 9).

First, the ECB's program, as an act of economic rather than monetary policy[35] because of its redistributive implications,[36] would have violated the distribution of power between the EU and its Member States (Dahan et al., 2015, pp. 138, 145-147; Wilkinson, 2014, p. 5). Second, since the OMT program would be used to provide financial assistance to the Member States, it would have violated the prohibition against the central-bank financing of Member States (Dahan et al., 2015, pp. 147-148; Goldmann, 2014, pp. 276-279; Wilkinson, 2014, pp. 5-6).[37] Finally, the ECB action would have also conflicted with the German constitutional principle that secures Germany's democratic sovereignty in fiscal matters (Wilkinson, 2014, pp. 9-10). Here, the German Constitutional Court resorted to its "ultra vires doctrine." Under this doctrine, any act at the European level – as the ECB's OMT – that goes beyond the public powers transferred to the EU, modifying the plan of integration set by the Member States, would violate not only the EU law but also the German Constitution (Mayer, 2014, pp. 115-117, 124-128).[38]

Technically, the German Court did not declare the illegality of the ECB's program, as national courts can raise questions about the interpretation of EU laws but cannot directly invalidate acts based on these laws (Mayer, 2014, pp. 115-117). The Constitutional Court in Karlsruhe made a reference to the Court of Justice of the European Union (CJEU) so that the CJEU could analyze the issue before the German Court proceeded to its final decision (Wilkinson, 2014, pp. 3-4, 9-10).

Although the German Court's ruling could express deference to the CJEU, it, in fact, left the CJEU in a challenging position (Mayer, 2014, pp. 118-120). Since the German Court mixed national and European constitutional questions in its decision, any ruling of the CJEU based only on EU law, which is the scope of its competence, would fall short of effectively deciding the controversy (Wilkinson, 2014, pp. 3-4, 9-10). The German Court would still have room to make a different decision based on the national constitutional framework (Dahan et al., 2015, pp. 139, 143-144; Mayer, 2014, pp. 122-124).

Goldmann (2014) believes that the German Court, when analyzing the OMT program, applied an inappropriate standard of judicial review. Instead of following its tradition and reviewing only the rationality of the ECB's policy measures, which would suffice to go beyond mere procedural

[35] The ECB monetary policy mandate is found in Article 127(1) of the Treaty of the Functioning of the European Union (TFEU).
[36] On the problems of the distinction adopted by the German Court between "direct" and "indirect" monetary policy goals, see Goldmann (2014, pp. 274-276).
[37] The prohibition appears in Article 123(1) TFEU.
[38] For a detailed critique of the "legal context of the Constitutional Court's first-ever reference to the CJEU" and its use of the "ultra vires doctrine" in the case, see Bast (2014). Highlighting some weaknesses of the "ultra vires doctrine," see Dahan et al. (2015, pp. 142-144).

control, the Court moved toward a non-deferential full review (Goldmann, 2014, pp. 266-274). In doing so, the Court got entangled in highly controversial economic debates, like the definition of "price stability" and the differences and relations among monetary policy, financial stability, and fiscal policy (Goldmann, 2014, pp. 269-272, 276-279). The German Court, therefore, had to second-guess technical decisions that involved forward-looking estimates about economic factors and risks, threatening not only its legitimacy and reputation but also the ECB's independence (Goldmann, 2014, pp. 266-268).

The whatever-it-takes debate in Europe illustrates how the extraordinary measures adopted by central banks can raise more than just concerns regarding their legal authority. These measures can also raise questions that are deeply political: from circumventing democratic authority to affecting the complex dynamic between power and authority (Mayer, 2014, pp. 134-136; Wilkinson, 2014, pp. 12-14, 20-26, 30-31).

The "argument that resonated with the German Court is clear: 'the ECB does not have a mandate to defend the Euro by any means'" (Wilkinson, 2014, p. 24). The German Court dismissed any implicit claim of sovereignty by the ECB through the use of its whatever-it-takes doctrine to protect the stability of the Eurozone and of the European integration (Goldmann, 2014, p. 277; Wilkinson, 2014, pp. 21-24). The issue is particularly interesting in the EU because the Euro is a "currency without a state," and the ECB does not serve a single jurisdiction (Wilkinson, 2014, pp. 21-26). Bringing the issue under national scrutiny, the Court reasoned that the ECB initiative to act like an absent European sovereign was not compatible with German's "constitutional identity," mainly with its "principle of democracy" (Wilkinson, 2014, p. 24).[39] In the end, the debate on the viability of the Euro and of the European project turned into a clash between counter-majoritarian institutions: the ECB and the German Constitutional Court – with the anticipated involvement of the CJEU (Mayer, 2014, pp. 139-142; Wilkinson, 2014, pp. 25-26).

In fact, the CJEU, on 16 June 2015, ruled that the OMT program "does not exceed the powers of the ECB in relation to monetary policy and does not contravene the prohibition of monetary financing of Member States" (CJEU, 2015). The German Constitutional Court can still have a final word on the OMT matter, because of the national constitutional issues also at stake in that case. The ECB, nonetheless, has gained so far strong judicial support in favor of its legal authority to exercise broad discretion in implementing monetary policy.[40] If a connection with "price stability" can be demonstrated, the ECB is allowed to use a wide range of tools, conventional or not (CJEU, 2015).

Quantitative easing (QE) is another unconventional tool used by central banks that has sparked legal controversy. Pacces and Repasi (2015) start by explaining how, in the European context, QE is different from OMT. Although the OMT program is also executed through bond buying, it does not aim to increase the quantity of money, as QE does. "OMT only aim to secure the transmission of ECB policy rates throughout the Eurozone countries by ruling out speculations that one of them will exit the Euro to restructure its debt" (Pacces & Repasi, 2015, p. 1). So

[39]For a discussion about the definition of "constitutional identity" and of the democratic principle by the German Constitutional Court and its implications, see Dahan et al. (2015, pp. 140-141) and Mayer (2014, pp. 128-133).
[40]For a recollection of other cases against the ECB brought before the CJEU, all of them unsuccessful thus far, see Pacces & Repasi (2015, p. 3) and Smits (2015, pp. 1183-1188).

OMT can be effective without ever being implemented – as it is the case – because its most important effect is to affect expectations based on its credibility. On the other hand, for QE to be credible and, as a consequence, effective, it has to be implemented and to create an increase in the quantity of money (Pacces & Repasi, 2015, p. 1).

Despite these differences, QE[41] raises all but the same set of legal questions associated with OMT (Pacces & Repasi, 2015).[42] First, Pacces and Repasi advocate that QE lies within the ECB's monetary policy mandate[43] since QE is an open market operation; and open market operations are typical monetary-policy instruments (Pacces & Repasi, 2015, p. 3). Moreover, as the QE primary goal is to attain price stability (modifying inflation expectations), the ECB does not exceed its monetary-policy mandate because QE can also include economic-policy aspects (stimulating the economy). That line of reasoning appeared also in the Opinion of the Advocate General at the CJEU, Pedro Cruz Villalón, in the OMT case (Pacces & Repasi, 2015, p. 3).

Second, Pacces and Repasi (2015) argue that QE does not violate the prohibition of monetary financing of Member States[44] either. QE involves the purchase of government bonds and private assets alike, providing they are rated "investment grade". That limitation would exclude bonds of the most troubled countries (like, e.g., Greece) unless they committed to certain fiscal and economic conditions (Pacces & Repasi, 2015, p. 3). The ECB, moreover, makes the purchases only on the secondary market, not directly from the issuers on the primary market. There are also explicit limits on the total amount of purchases and on the relative amount of purchases from the same issuer or a single issue. These safeguards are considered sufficient to avoid even an indirect financing of a Member State, thus allowing "an unbiased formation of prices for government bonds on the primary market" (Pacces & Repasi, 2015, p. 4).

Finally, Pacces and Repasi (2015, p. 4) rebut another argument related to the supposed illegal monetary financing of a Member State – or to the violation of the "no bail-out" clause[45] for that matter. There is no illegal financing because only government bonds rated "investment grade" are eligible, and they are bought "in proportion to the share of national central banks in the ECB's capital" (Pacces & Repasi, 2015, p. 3). Government bonds are purchased and held directly by national central banks, and risk – and loss – sharing across the Eurozone is limited to 20% of the total asset purchases (Pacces & Repasi, 2015, p. 5).

Furthermore, the potential losses on the government bonds held by the ECB, because of a waiver of rights ("haircuts") or the default of a sovereign, would not lead to an automatic recapitalization of the ECB. As Pacces and Repasi (2015, p. 4) explain, reaching out again to the Opinion of the Advocate General Cruz Villalón in the OMT case, taxpayers' money would be at risk only if the ECB faced insolvency and were liquidated. But that situation would not occur unless the Eurozone and the Euro were to be broken up. As long as the ECB can operate with a

[41] The QE program was launched by the ECB on 22 January 2015, and the purchases started on 9 March 2015. For a detailed and useful overview of the ECB's QE, see Claeys, Leandro, & Mandra (2015).
[42] For another summary of the arguments and counterarguments regarding the legality of OMT, see Hofmann (2013, pp. 542-546).
[43] Article 127(1) TFEU.
[44] Article 123 TFEU.
[45] Article 125(1) TFEU.

negative equity and gradually eliminate that imbalance by reducing the distribution of profits (from, e.g., seigniorage) to the Member States, the illegal financing or a bail-out would be nothing but a remote possibility (Pacces & Repasi, 2015, p. 4).

In the United Kingdom, the crisis response was more collaborative and, perhaps because of that, less controversial. The legal framework related to management and resolution of failing banking institutions was modified and adjusted at the same time that the authorities were taking the measures needed to control the crisis (Walker, 2010, pp. 767-771). The nationalization of the Northern Rock Bank on February 17, 2008, for instance, was facilitated by the transitional provisions introduced four days later, on February 21, under the Banking (Special Provisions) Act. The provisions allowed the Treasury to transfer the assets and liabilities of a bank, and even to make retroactive legal amendments, if these actions were necessary "to maintain financial stability or protect the public interest" (Walker, 2010, p. 767).[46] A year later, a more comprehensive and permanent Special Resolution Regime for failing banks was created under the Banking Act of 2009 (Walker, 2010, pp. 753-754, 767, 780).

The British parliamentary system helped to bring legislators, government authorities, and government agencies together to solve the problems of the financial system on a rolling basis. The coordinated move created some points of doubt and contributed to slowing reactions at first, especially when it was not possible to reach cross-party consensus (Singh, 2011, p. 919), but it ultimately provided the authorities with legal powers to act with confidence and determination (Walker, 2010, pp. 778-780). The coordination also helped to reduce claims based on the lack of legal authority against the actions taken by the Treasury, the Bank of England, and the then operating Financial Services Authority (the FSA) in response to the crisis. Even so, former shareholders of the nationalized Northern Rock Bank brought action against the government for inadequate compensation. In the end, the courts dismissed the lawsuit (Walker, 2010, pp. 753-754; Singh, 2011, pp. 898-900).

In the United States, by contrast, the legitimacy of the lending and QE programs adopted by the Fed in the aftermath of the financial crisis have drawn much more criticism. The concerns are similar to those that appeared in the European debate, although American legal scholars are more inclined to argue that the Fed exceeded its authority in its response to the financial crisis (Canova, 2015, pp. 667, 687-693; Emerson, 2010, pp. 125-129; Mehra, 2010, pp. 222-223).

The measures adopted by the Fed to deal with the investment bank Bear Stearns and the insurance corporation American International Group (AIG) were particularly contested. The claim is that, instead of providing liquidity to the troubled financial institutions through loans backed by collateral, the Fed made outright yet indirect purchases of private assets held by the institutions in need (Emerson, 2010, pp. 125-129; Mehra, 2010, pp. 235-238, 242).[47]

The operations had to be structured as loan transactions to observe the legal requirements that appeared in Section 13(3) of the Federal Reserve Act. But, in reality, the operations were asset purchases, allowing the Fed "to move assets off the balance sheets of these institutions and onto

[46] About the "UK casualties," see also Singh (2011, pp. 876-879).
[47] The private assets were essentially asset-backed securities (ABS) – particularly mortgage-backed securities (MBS) –, unsecured commercial papers, and money-market instruments.

its own" (Mehra, 2010, p. 235). To that end, the Fed created special purpose vehicles (SPVs), wholly-controlled limited liability companies named Maiden Lane LLC (Emerson, 2010, pp. 128-129). The SPVs were responsible for purchasing the assets from the troubled institutions, and the Fed, for making the loans to the SPVs. The SPVs, in turn, used the purchased assets as collateral for the loans (Mehra, 2010, pp. 235-249). The SPVs, therefore, served as intermediaries in the liquidity injections (Emerson, 2010, pp. 128-129). The relation between the Fed and the SPVs was so intertwined that the balance sheets of the SPVs were reflected on the Fed's balance sheet (Baxter, 2009). As a result, "[t]he composition of the Fed's balance sheet has been altered significantly by the actions that the Fed took during the crisis" (Mehra, 2010, p. 235, n. 62).

Mehra (2010, pp. 236, 239-40) identifies an additional problem with those transactions: the Fed was providing liquidity through loans to a party – the SPVs – other than the one who needed assistance – the troubled financial institutions. The ultimate beneficiary of the transaction was not the immediate borrower, which seemed to go against the language of the statutory requirements for the operation (Section 13(3) of the Federal Reserve Act). Furthermore, the operations implemented through the SPVs involved not a discount, as required by law, but an advance instead (Mehra, 2010, pp. 236, 241). It was, in fact, a backward operation. First, the Federal Reserve Board authorized one of the Federal Reserve Banks to lend a certain amount to an SPV; only then the SPV purchased the assets that would be used as collateral to the already formalized loan (Mehra, 2010, pp. 237-238, 241). In the end, it was not even possible to determine "whether the loans were in fact secured to the satisfaction of the Fed at the time it made them" (Mehra, 2010, p. 236). Because adequately valuing the assets offered as collateral was extremely tough during the crisis.

Regarding the QE programs in the United States, Canova (2015, pp. 691-693) argues that the Fed has stretched its statutory authority in the asset-purchase operations. By making allocation decisions and focusing on particular sections of the market, the Fed picked winners and losers and ultimately engaged in fiscal policy (Canova, 2015, pp. 667, 689-690, 693-695). The expansive actions that were taken throughout the QE programs "raised questions about the Fed's purported social neutrality and the justifications for its political independence from the representative branches of government" (Canova, 2015, p. 667).

The "Central Banking Network"

At the international level, the first central-bank action to arouse interest was a tool that had been reactivated during the 2008 financial crisis: the central-bank liquidity swaps, also termed the "swap lines" (Baker, 2013). The swap lines are contracts setting a bilateral currency agreement between the Fed and certain foreign central banks to exchange U.S. dollars for the foreign central bank's national currency. With the swap lines, the Fed – through the Federal Reserve Bank of New York "acting at the direction of the Federal Open Market Committee"[48] – provides foreign central banks with liquidity of U.S. dollars so that they can meet, especially in times of crisis, the

[48] The documentation used to implement the Central Bank Liquidity Swaps can be retrieved from https://www.newyorkfed.org/markets/liquidity_swap.html.

internal demand for the American currency (Baker, 2013, pp. 622-624, 626). The swap lines, thus, aim to "relieve global shortages in short-term funding markets for U.S. dollars" and "to promote international financial market stability" (Baker, 2013, p. 622).

The swap lines have put the Fed as the "de facto international lender of last resort" (Baker, 2013, p. 619). After all, the Fed is offering liquidity to foreign financial institutions, although indirectly and without knowing the identity of the ultimate beneficiaries (Baker, 2013, p. 623). On the one hand, the swap lines can be seen as a necessary tool to tackle instabilities in the global financial markets, particularly because the U.S. dollar is "the international currency and the main international reserve currency" (Baker, 2013, p. 612). The Fed, therefore, plays a preeminent role in the international monetary system and in the increasingly cooperative world of central banking – even more so after domestic-oriented responses to the crisis alone proved ineffective (Arner et al., 2010, pp. 9-10, 28). On the other hand, the swap lines can also be viewed as a controversial measure aimed to bail out foreign financial systems with U.S. taxpayers' money (Baker, 2013, pp. 606-608, 612-618).

In any case, Baker (2013, pp. 636-653) contends that the legal framework related to the swap lines should be improved. During the 2008 financial crisis, the Fed entered into swap-line arrangements with 14 foreign central banks for a total amount of $583 billion, or about one-fourth of the Fed's assets at the time (Baker, 2013, pp. 607-608, 626). Despite the significant amount at stake and the risks involved in the operation,[49] the Fed neither relied on a solid legal authority nor sought congressional approval to engage in the swap lines (Baker, 2013, pp. 608-609, 626-628). The swap lines illustrate how the power of central banks and their international aspirations influenced even the design of the agreements used to enhance liquidity at the global level: from bilateral loans between governments and treasuries, which were common during the 1990's crises, to bilateral currency swaps between monetary authorities, after the 2008 crisis (Duran, 2015a, pp. 11-13).

Baker (2013), however, identifies "several potential public policy problems" associated with the swap lines as they stood (p. 629). The assurance of U.S. dollar liquidity can not only increase moral hazard at the international level, leading to excessive risk-taking and instability; it can also influence the price of exchange rates and, as a consequence, distort pricing mechanisms on a global scale (Baker, 2013, pp. 629-632). By engaging so actively in the international financial arena to perform such an unconventional role, the Fed might face reputational damages that can threaten its independence. The international presence of the Fed might also make it subject to additional interest-group pressures and to an increased risk of capture (Baker, 2013, pp. 632-633). Finally, by acting internationally as a liquidity provider without having the corresponding regulatory and supervisory tools, the Fed cannot exert any control over the institutions that ultimately benefit from its actions, leaving even more room to misaligned incentives and moral hazard (Baker, 2013, pp. 633-635).

Duran (2015a) joins Baker (2013) in criticizing the currency swaps between central banks. Unlike Baker (2013), Duran (2015a) does not focus her analysis on the American perspective or on the problems that the Fed may face because of the swap lines. Duran (2015a, pp. 4-6) is more

[49] As Baker (2013) contends, "[a]lthough the default risk of a major central bank is generally viewed as minimal," the exposure to counterparty credit risk still exists (p. 624).

concerned about the international repercussions that the bilateral swap lines may generate, especially for emerging markets. She highlights three main negative consequences of the currency swaps.

First, currency swaps promote the fragmentation of the international monetary system. As many countries in Latin America, Europe, and Asia have tried to solve liquidity problems by letting their central banks sign bilateral agreements with the Fed, multilateral institutions like the International Monetary Fund (IMF) have been sidelined on the matter (Duran, 2015a, pp. 6-7, 12-13, 15-16). One of the possible causes for bypassing the IMF is political stigma (Duran, 2015a, pp. 11-13, 16). Since some countries, particularly emerging economies, had bad experiences with IMF programs during the 1990's and early 2000's crises, they now express a preference for bilateral arrangements. The increasing importance and autonomy of central banks may have also contributed to the spread of bilateral arrangements (Duran, 2015a, pp. 13-14, 16). The presence of an international organization, though, would be useful to better coordinate the efforts and allocate the resources based on the economic and financial situation of each country (Duran, 2015b, p. 2).

Second, currency swaps can raise concerns about reliability and stability. Since no resources are exchanged until the swap is activated, the counterparties face some "uncertainty about the access to international money in times of crisis" (Duran, 2015b, p. 2). That uncertainty could be avoided if the funds were transferred to an international organization that would collect them and, later on, allocate them as needed (Duran, 2015b, pp. 2-4).

Finally, currency swaps are "hierarchical not horizontal" (Duran, 2015b, p. 2), allowing room for central banks to unilaterally decide to whom they will extend their swap lines (Duran, 2015a, pp. 7, 15). The Fed, for instance, ultimately decided to have standing swap lines only with "the elite of the central banks in the developed world" (Duran, 2015a, p. 15). The PBOC, in contrast, "has almost 30 swaps in Renminbi with different central banks" (Duran, 2015a, p. 16). Again, the intermediation of an international organization would help to make the currency swaps less capricious and more accessible to a broader range of countries (Duran, 2015b, pp. 2-4).

Despite some frictions, the widespread use of currency swaps comes as a consequence of the increasing political and economic power of central banks around the world and of the higher degree of cooperation among central banks (Duran, 2015a). The coordination developed by central banks during the 2008 financial crisis was indeed remarkable (Arner et al., 2010). Although cooperation among central banks had hardly been a novelty, central banks were able to act fast and in an organized way to solve complex issues that went beyond national boundaries (Arner et al., 2010, pp. 30-34, 36-38). Through international meetings, formal and informal agreements, joint announcements, and collaborative efforts, central banks shared experiences, practices, and tools to deal with cross-border institutions and transnational problems (Arner et al., 2010, pp. 34-38; Lockwood, 2016). The swiftly coordinated response was facilitated by the high degree of independence – de jure and de facto – that many central banks held at the time (Arner et al., 2010, pp. 28-31).
As a result, the coordination helped to avoid the political hurdles that would have been encountered by governments acting in a similar situation (Arner et al., 2010, pp. 28-31). And the response was relevant not only because of the concrete measures jointly adopted by central banks

but also because it delivered a message of cohesion. The international coordination was also important to set a transnational regulatory agenda aimed at preventing or, at least, at better managing future crises (Arner et al., 2010, pp. 37-40).

Before the financial crisis, central-bank coordination would be found primarily in regulatory initiatives designed to deal with financial-stability matters. For the past 40 years, in fact, the "soft law" approach used in international financial regulation (IFR) has been testing the limits of public international law (e.g., Zaring, 2015b). The prevailing view is that a system organized by informal networks and based on flexibility, agility and expertise is more effective for IFR than one structured around formal international organizations and based on treaties (e.g., Brummer, 2011).

Pierre-Hugues Verdier (2013) offers a different perspective, claiming that the conventional accounts neglect IFR historical and political dimensions. For Verdier (2013, pp. 1424-1436), the success of "soft law" in IFR results from a combination of historical path dependence with the dynamic political interaction among three crucial actors: national regulators, the financial industry, and the government of influential countries. Each of these actors tends to be reluctant to fully submit to international standards and oversight, and, as a result, to lose a significant part of their power and influence. They, therefore, favor fragmented and informal international arrangements that can be more easily adjusted, diluted, or even tailored to their views and needs (Verdier, 2013, pp. 1428-1436, 1439-1456). So for IFR proposals to succeed they "must have strong support from one or more of the three major actors, and at least passive acquiescence from the others" (Verdier, 2013, p. 1436). Otherwise, the most common outcome in IFR tends to be inertia and purposely incremental development of goals and standards, leading to slow progress (Verdier, 2013, pp. 1436-1437).

In a similar manner, Annelise Riles (2013) notes that IFR might show positive signs in theory, but it can lead to uneven results in practice. First, because national actors tend to engage in IFR "with quite a nationalist view" (Riles, 2013, p. 73): they favor international harmonization as long as it helps to avoid that countries with less stringent regulation gain unfair advantage due to regulatory arbitrage (Posner & Sykes, 2013, pp. 1037-1039).

Second, because the development of standards and rules at the international arena means little without adequate supervision and enforcement at the national level (Riles, 2013, pp. 74-75). Without a strong "domestic support for implementation" (Riles, 2013, p. 74), IFR is nothing but good intentions. But the complex interaction of IFR and national powers can also degenerate into "Balkanization," an increased fragmentation of financial regulation that appears because actions taken toward global harmonization are offset by reactions at the national level (Baxter, 2016).

The third reason why IFR might be more appealing in theory than in practice is the difficulty in creating simple and precise rules at the international level that can be used and applied straightforwardly by different countries. The vaguer and more complex the rules created at the international level are, the harder it is to assess compliance and to control deceitful behavior at the national level (Posner & Sykes, 2013, pp. 1029, 1074-1077). Even the Basel accords, which have been mostly based on rules that could be considered precise and clear at first glance, have

failed to meet their goals largely because of the swiftness and complexity of financial systems. Some degree of regulatory capture and national politics, promoting narrow interests, might also have contributed to the failure (Posner & Sykes, 2013, pp. 1039-1042, 1074-1075).

Politics, after all, might have been more important to the formation and longevity of IFR than "rational calculations of cost and benefits by states" about international cooperation (Verdier, 2013, p. 1439).[50] Politics also brought the most fundamental change in the architecture of IFR after the financial crisis (Gadinis, 2013b). The G20 is now the "principal forum for international economic cooperation" (Verdier, 2013, p. 1461), since the Financial Stability Board (FSB), established by the G20 in April 2009, has been playing a leading role in IFR (Riles, 2013, p. 67).

The G20, however, is neither a "transnational regulatory network" (TRN) nor a formal international organization. The G20 is a political body in which countries that account for about 85% of the world's GDP get together, represented either by their national leaders or by their finance ministers and central bank governors (Verdier, 2013, p. 1462). Since the relationship between the G20 and the FSB is strong, political leaders – finance ministers in particular – now have a direct participation in IFR, mirroring what happened at the national level (Gadinis, 2013b, pp. 159-161, 163-170). Through the FSB, elected politicians can now shape global financial regulation "in ways not available to them in the past" (Gadinis, 2013b, p. 159).

The more political structure of the FSB does not necessarily contribute to enhancing its democratic legitimacy. The most important economies still hold the greater power to influence the outcome of FSB initiatives (Riles, 2013, pp. 91-93, 98-100). Furthermore, private actors and national legislators do not have significant direct participation in the FSB debates and decisions.

The "central banking network" (Baker, 2013, p. 637) that has emerged after the financial crisis is, though, somewhat different from previous and even recent experiences in IFR.[51] The network has operated internationally in unusual ways (Baker, 2013, pp. 608-609, 626-628, 637-638). The chief distinction here is that central banks have, in many cases, acted directly among themselves (Duran, 2015a, pp. 6-7, 11-16). They completely sidelined not only national authorities but also international organizations and forums. Central banks have operated together without an overarching legal framework and outside of a formal institutional setting (Baker, 2013, pp. 632-35; Duran, 2015a, pp. 7, 15). Moreover, their primary goal has not been to create or organize standards and rules to be used in the future, but to directly solve problems and share practices in real time (Arner et al., 2010, pp. 34-38; Duran, 2015a, pp. 7, 9, 13-16).

Posner and Sykes (2013) share a similar view, although they express it in a more negative fashion: "about the most one can expect is occasional ad hoc cooperation among a subset of central banks confronting an immediate short-term problem" (p. 1071). Posner and Sykes (2013) look at the episodes of central-bank cooperation as exceptions proving the rule that central banks usually fail "to coordinate efforts to stimulate economies during downturns" (p. 1073).

[50] For a different view, emphasizing the economic reasons that lead to international legal cooperation, see Posner & Sykes (2013, pp. 1027-1030).
[51] For a summary of past and recent central-bank cooperation and its limitations, see Posner & Sykes (2013, pp. 1071-1073).

Even when an effort to attain international coordination does exist, some disagreements may appear. Xin Chen (2014) claims that the radical QE policy adopted by the Bank of Japan (BoJ) since January 2013 has increased trade imbalances between Japan and its Asian counterparties. Under the ambitious economic program launched by Prime Minister Shinzo Abe ("Abenomics"), the BoJ has committed itself to engaging in an open-ended asset buying program and to raising its inflation target.

These actions resulted in the depreciation of the yen, helping Japanese exports "at the expense of Japan's trading partners" (Chen, 2014, p. 162).[52] As a consequence, Japan's measures could be viewed as violating not only exchange-rate policies designed to promote currency stability among countries but also international-trade rules (Chen, 2014). The violations would allow challenges of the Japanese strategies under the IMF Articles of Agreement and also under rules of the World Trade Organization (WTO) and of the General Agreement on Tariffs and Trade (GATT) (Chen, 2014, pp. 168-178). The line between economic stimulation at the domestic level and competitive depreciation at the international level is not always clear when it comes to the effects of monetary easing, particularly in long-lasting programs (Chen, 2014, pp. 165-168).

John Riley (2014) dissents with Chen on the subject, arguing that Japan's monetary-easing policy complies with international law. Riley (2014) concedes that the dramatic depreciation of the yen has been a side effect of the monetary easing implemented by the BoJ. But Japan's expansive monetary policy should be taken, in the first place, as a much-needed action to fight a persistent deflationary cycle and a stagnant economy; an action that would eventually come as a benefit for the region (Riley, 2014, pp. 185-188). It would be, then, difficult to prove that the ultimate intent of Japan was to manipulate its currency. Claiming violations of international rules against Japan "would be tantamount to accusing the US, EU, England, as well as others, of similar violations" (Riley, 2014, p. 191), since all these countries have resorted to unconventional measures to squash the adverse effects of the crisis (Posner and Sykes, 2013, pp. 1065-1068).[53]

All in all, the results of the coordinated actions taken by central banks during and after the crisis can be seen as fundamentally positive. Some questions, though, remain open: is extremely loose monetary policy coming to an end, either because of strategy or because of exhaustion? What and how effective will be central banks' exit strategies from unconventional liquidity and monetary-policy actions? Will central banks be able to consistently reduce their balance sheets and bring them back to "normal" levels (e.g., Arner et al., 2010, pp. 39-40)? Or, more broadly, how to create and explore synergies between monetary and financial stability policies at the national and international levels (BIS, 2011, pp. 43-45, 55-67; Heath, 2014)? The troubles the Fed had when trying to raise the benchmark interest rate at the end of 2015, because of domestic and even foreign factors (e.g., Forsyth, 2015), illustrates why the challenging life of central banks may not change anytime soon.

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[52] The evidence about the correlation between devaluation of the currency and boost in exports is not clear anymore. As "Big Mac Index" (2016) shows, Japanese export volume remained all but stable since January 2012, although the yen devaluated more than 35% in the same period.

[53] Nevertheless, as Posner and Sykes (2013) underline, because of the "long-run neutrality of money," in the long term "exchange rate devaluations will have no 'real' effect on economic activity because other prices will adjust to offset" (p. 1065).

Conclusion

What is in a mandate? From a legal perspective, this is the question that summarizes the current state of affairs of central banking. Since the 2008 financial crisis, central banking has changed a lot and at a fast pace. Many central banks have been exploring uncharted territory. The core of their legal mandate, however, remains the same: to maintain monetary and, in many cases, financial stability.[54] The tools central banks have been using, though, to implement their mandate are completely different, some of them unprecedented. Do central banks have the legal authority to use these tools?

Each branch of government has different answers to that question. At first, the executive branch will answer, "maybe." Governments have not removed central banks from financial-stability matters, but they have adopted measures to mitigate central-bank independence on that front. The fear of financial failures and bailouts have prompted governments to get more directly involved with financial stability. Central banks are still in the field, but they are not fighting alone anymore.

When it comes to price stability and economic growth, though, the answer offered by governments may turn into a more assertive "yes." The limitations, even political,[55] of fiscal policy have given governments good reasons to let central banks take the lead in reorganizing and stimulating the economy. From balance-sheet boosting to interest-rate tuning – below zero, if need be –, central banks have gone unconventional. The expansion of central banking can, however, push central banking further towards a more political space, complicating the practice of central-bank independence.

The Judiciary will timidly agree with the Executive and say, "yes," central banks can use any means to save the financial system and the economy – perhaps also the European Union. Faced with issues that are not typically brought to courts, judges seem to be wary of digging deeper into the work of central bankers (e.g., Zaring, 2015a, pp. 175-76). Judges may be concerned about becoming trapped in complicated economic debates or striking down critical central-bank decisions. A contested court ruling could lead to greater instability in the real economy. Reputational and legitimacy concerns can, thus, pose a serious challenge to judicial review of central banking.

Legislators, in turn, will tend to say, "no." For many of them, independent central banks went too far during the crisis, by unilaterally picking winners and losers among troubled financial institutions. And, for legislators, the extensive asset purchases are another sign that central banks are going beyond their mandate. Lawmakers, therefore, want not only to create more statutory constraints on central-bank actions but also to make central banks more transparent and accountable.

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[54] Although not all central banks will have a specific mandate on financial stability, most of them will act at least as lenders of last resort and, more recently, as macroprudential regulators. See supra note 30.

[55] Think, e.g., about the unpopular process of raising taxes to increase revenue and boost public spending and investments.

Legislators, however, have realized that building a legal framework to curb central-bank discretionary powers is easier said than done (e.g., Ip, 2015). A strict rules-based approach may not work well across all the tasks a central bank can perform. Some degree of flexibility, particularly in monetary policy and extreme stability measures, may be crucial for central banks to act promptly when faced with hard choices. Legislators may also have difficulties in targeting specific central-bank actions, like liquidity assistance or bailouts. The unconventional measures being used by central banks can hardly be classified – QE is a case in point. It is not easy to control an institution that deals with so many sensitive, complex and controversial issues. But it is certainly not desirable to allow such a powerful institution to go unchecked. Striking a balance is the enduring challenge.

One movement is, therefore, clear since the 2008 financial crisis: all the three branches of government have become much more involved with central banking, creating a complex interaction of powers. And the interest in central banks goes well beyond the public sphere. Central banks are now at the center of the economic and political arenas. They had to abandon their boring "good life" (Haldane, 2014, p. 4) to lead the efforts to tackle the economic downturn. Central banks have been acting on more fronts, facing more risks, and, as a consequence, attracting more attention. Every central-bank move and word are now scrutinized on a daily basis not only by government officials and legislators, but also by market actors, the media, and ordinary citizens (e.g., Doherty Bea, 2016). This reality gives a different dimension to the debate over central-bank independence and governance, making it harder to determine from whom and to what extent central banks are, or should be, independent.

At the international level as well, central banks are protagonists. Central banks around the world have been working in coordination, based mostly on informal agreements, on setting and emulating examples, and even on financial instruments. National governments and international bodies were sidelined in many situations, as central banks have been making full use of their autonomy to move fast and freely together. The "central banking network" is, in fact, helping to reshape international financial and monetary law, as central banks often appear as quasi-sovereign international legal actors. In the "central banking network," the urge to act seems to eclipse the need to craft a framework for acting. The network is, therefore, a dynamic yet fleeting process, since ad hoc arrangements can be easily set but can also be quickly abandoned (Posner & Sykes, 2013, pp. 1026, 1062, 1071-1073).

Regarding monetary policy, in particular, it may be too early to declare the victory of cooperation and harmony. Divergence among central banks is looming, as the United States, the United Kingdom, the European Union, and emerging economies are entering different phases in their responses to the lingering crisis (e.g., Wolf, 2015). Parting ways might reinvigorate expressions of regionalism and nationalism, especially on exchange-rate policies.

In the end, all these issues culminate in the debate over the real scope of the central-bank legal mandate. So, again, what is in the legal mandate of central banks? "Whatever it takes" may well be the best answer.

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