Dinner Parties During "Lost Decades": On the Difficulties of Rethinking Financial Markets, Fostering Elite Consensus, and Renewing Political Economy

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I. INTRODUCTION

This Article addresses two groups of problems that ought to be understood in relation to one another. On the one hand, there is ample reason to be concerned about the economy in the North Atlantic countries. On the other hand, and keeping in mind that history is a slaughter bench and economics is dismal, one might reasonably worry about how we, in societies with "modern" economic and political structures, may go about collectively thinking, discussing, and even deciding on what to do about our economy.[1]

This Article has three movements. In Part II, I discuss conceptual obstacles to forming the new elite consensus that rethinking the role of financial markets requires.[2] To produce policy reform, it is not enough to have new ideas; the ideas must be understood, adopted, and acted upon by people. Policy reform is thus always a function of conversations.

In Part III, I discuss some possible ways the elite consensus might be formed. I have tried to put these thoughts into practice: The World Economic Association (WEA)[3] held a global, virtual "conference" on financial market reform and asked me to design and host the forthcoming "Rethinking Financial Markets: Social Capitalism, Economies of Money,

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1. *See* G.W.F. HEGEL, LECTURES ON THE PHILOSOPHY OF HISTORY, at XX (J. Sibree trans., George Bell & Sons 1902) (1837); *see also* Thomas Carlyle, *Occasional Discourse on the Negro Question*, FRASER'S MAG. FOR TOWN & COUNTRY 531 (1849).

2. *See* SAMUEL J. ELDERSVELD, POLITICAL ELITES IN MODERN SOCIETIES: EMPIRICAL RESEARCH AND DEMOCRATIC THEORY (1989).

3. *See* WORLD ECON. ASS'N, http://www.worldeconomicsassociation.org (last visited Oct. 20, 2012).

and Custodial Regulation."[4] Central to the design of the conference is an intentionally provocative frame, a "Problematique," which is intended both to elicit responses and give those responses a common point of reference, thereby lending coherence to the enterprise. Incidentally, I hope that the political economy suggested by the Problematique is interesting, but the thrust is social, not substantive.[5]

The reader should ask whether any of this works—is the design any good? Can such conferences help to foster intellectually creative consensus? In order to help the reader answer that question, Part IV reproduces the Problematique so the reader may judge for herself how she might have responded and whether the aggregate of such responses might be understood to contribute to a politically operative consensus.

In Part V, the conclusion, I offer a preliminary assessment of the strengths and weaknesses of the approach taken by "Rethinking Financial Markets," which goes "live" as this journal goes to press.

II. REFLEXIVE POLITICAL ECONOMY AND THE PARALYSIS OF ELITES

My central notion is quite modest with regard to the relations between the abstracted discourse of political economy and actual economic life (and so social and political life), if perhaps problematic for economists and other policy professionals: the difficulties we confront in thinking or talking seriously *about* political economy are deeply entwined, even intrinsic, to the problems *within* our political economy. To put the matter in highfalutin terms: our meta-discourse (the various disciplines comprised by "political economy" as an enterprise) and our practice (the web of institutions, laws, economic interests, technologies, social understandings, and the like comprised by our business, in the broad sense of the work of society) entail one another.

Thus, when we find ourselves in financial crisis, as we have since 2008, we see, in tandem, difficulties within policy communities. The discourses that might be used to address the crisis have themselves been embarrassed, and so impaired, by the same crisis. Responses have been rather feeble.[6] To put matters simply: confronted with a serious crisis,

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4. *See Rethinking Financial Markets: Social Capitalism, Economies of Money, and Custodial Regulation*, WORLD ECON. ASS'N, http://rfconference2012.worldeconomicsassociation.org (last visited Oct. 20, 2012).

5. The question of how to instigate meaningful encounters among elites is a preoccupation of contemporary anthropology. *See, e.g.*, PAUL RABINOW ET AL., DESIGNS FOR AN ANTHROPOLOGY OF THE CONTEMPORARY (2008).

6. For example, many of the provisions embodied in regulatory efforts after the financial crisis have been surrounded by uncertainty and second-guessing. *Compare* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010) (provisions for

policy elites may become unsure of themselves and have difficulty making up their minds.

Of course, uncertainty is not confined to policy discourse about the economy, but instead pervades economic activity: there appears far more uncertainty in the realms of employment, investment, and business life generally. Even though the government has been deadlocked for years,[7] conservatives in the United States like to decry "regulatory uncertainty," as if the only impediment to decisive action by economic actors were rumors of a tsunami of unpredictable legislation. But the problem of uncertainty is simpler and more pervasive: it makes it difficult to invest, to hire, to spend, and to grow. Consider Japan since the late 1980s, the United States today, and the Eurozone debacle. In September 2012, the chairman of the Federal Reserve, Ben Bernanke, announced that the state of the U.S. economy was not entirely satisfactory, and he hinted that further reduction in the cost of capital might be necessary.[8] Indeed, a short trip to any big box retailer or auto dealership, where Bernanke presumably would have been offered 0% financing for years,[9] namely, at a negative real interest rate, suggests that the cost of capital is not impeding borrowing.[10] Worse, the need to offer financing at such low rates suggests that consumers, even those with money or at least high credit ratings, are so uncertain that they cannot relax with their purchasing power.

This interplay between thought and action—more precisely, between awareness of confusion and unwillingness to act—creates serious problems for political economy. Economists in particular are fond of asserting that "we know what should be done, but the problems are political." This is a convenient lie, recalling the old joke about the ruler who asked several economists a question and got more answers than there were respondents. But let us forgive professional posturing—there is a real problem here. To say, in effect, that "we know but are not responsible" is simplistic. There is no political economy without politics—there is no market that is not situated within a society, with institutions, created

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swaps and internal business are still yet to be fully articulated*)*, *with* DAVID A. WESTBROOK, OUT OF CRISIS: RETHINKING OUR FINANCIAL MARKETS (2009).

7. Although examples of political deadlock are legion, the inability to pass a federal budget in 2011 serves as a recent example. *See* Robert Pear, *Budget Stalemate Leaves Chaos at Many Agencies*, N.Y. TIMES (Mar. 14, 2011), http://www.nytimes.com/2011/03/15/us/15spend.html.

8. Ben S. Bernanke, Chairman, Fed. Reserve Sys., Address at the Federal Reserve Bank of Kansas City Economic Symposium (Aug. 31, 2012) (transcript available at http://www.businessweek.com/news/2012-08-31/bernanke-remarks-at-jackson-hole-economic-symposium-text).

9. *See, e.g.*, *Current Ads*, NEBRASKA FURNITURE MART, http://www.nfm.com/flipbk.aspx (last visited Oct. 20, 2012) (offering thirty-six months interest-free financing).

10. With interest rates so low, investors may be unwilling to lock up money, and it can be difficult to close deals.

and operated through social processes commonly called "political."[11] Thus, any answer to even a seemingly objective question—for example, should interest rates be raised, lowered, or held steady—entails a set of assumptions about the operation of the central bank, the health of financial industries, the capacities of regulators, the mechanics of the creation of credit, and so forth, as well as the usual concerns about the state of play.

To put matters differently, economic policy questions (always some version of "what is to be done?") do not arise in the abstract. Such questions are, as suggested above, inescapably situated within a context already defined by the political and economic life of the day. Moreover, economic policy questions are inescapably subjective in the very literal sense of pertaining to subjects and actors, that is, those who constitute politics. How to spend money available at an X rate of interest is a question that arises among subjects and is addressed by subjects. Any policy solution, whatever it is that we in the policy intellectual community claim to know, thus inescapably presumes the participation, and even belief, of those actual individuals, who must decide whether to buy, sell, hire, hoard, or invest, that we collectivize and address as "the economy." Therefore, in questions of political economy, to divide knowledge (what we know) from politics (what we can convince other people to do) is highly disingenuous. There is no knowledge without politics. Specifically, there can be no discussion of monetary policy without implicating the creation and operation of money, and various forms of credit, within a society.[12] This is how such things are imagined by those making policy matters for the conduct of policy.

Conversely, the fact that politics is broken—as it is widely believed to be in Washington and Europe—raises serious theoretical issues for those of us who do more thinking than acting, precisely because our theorizing (of whatever stripe) entails politics, an institutional setting, and so forth. But if we are uncertain about the institutional and social terrain on which our ideas operate, then our ability to think in the abstract (to use theory) to suggest ways forward is compromised. Conversations about the Eurozone, for example, often presume treaty changes that will bring forth a continental nation with vast and wise administrative capaci-

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11. *See generally* DAVID A. WESTBROOK, CITY OF GOLD: AN APOLOGY FOR GLOBAL CAPITALISM IN A TIME OF DISCONTENT (2003).

12. No reference to the French philosopher Michel Foucault is intended.

ty.[13] So can openers, in this case the peaceful realization of the Napoleonic dream, will be presumed.[14]

It thus seems that serious and pragmatic thinking about political economy should also attend to when and where the situation of policy thought is in the present practice. For example, as discussed further below, the present election of a President is dominated by talk of jobs, for understandable reasons. However, less than half of the people in the United States work.[15] The polity is larger than the labor market, and historical trends indicate this is likely to increase. This demographic reality—that the majority of people will not get jobs—is obvious, but almost completely undigested.

Campaigning for the Presidency, like operating monetary policy without visiting a big box store, proceeds with only a hazy impression of the world that ideas, glibly expressed, are said to represent and sometimes even affect. This is worrisome. Although elite language has often been disconnected from the world it governs (let them eat cake), it would be odd if governance did not suffer accordingly. Thus, in attending to the situation that our policy discourse addresses, we ought to connect our words to our worlds, lest economics become a peculiar sort of music.

Even if we know what we are talking about, do we know how to talk about it with anybody else? The question for political economy is not just how intellectuals, as individuals, describe and understand the world conceived as an object of inquiry; rather, the question is how do people with the collective capacity to act on and within an economy (elites) make up their minds, thereby constituting the economy itself? That is, political economy is what the anthropologists call a profoundly reflexive enterprise—meaning that it cannot be, at bottom, a scientific enterprise. This reflexive or self-constituting idea of political economy is entailed in the relatively recent practice of inflation targeting, in which communications from central banks form the expectations that central banks seek to influence. The downside, however, seems more relevant: if, as suggested above, elite uncertainty is itself socially harmful, then how are elites to be encouraged to make up their minds—to cut entitlements, increase the money supply, or do anything at all?

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13. *See, e.g.*, Stephen Castle, *Foreign Ministers Call for Stronger Ties Within Europe*, N.Y. TIMES (Sept. 18, 2012), http://www.nytimes.com/2012/09/19/world/europe/11-foreign-ministers-call-for-greater-european-union-integration.html.

14. *See* Mike Moffatt, *Definition of Assume a Can Opener*, ABOUT.COM, http://economics.about.com/od/termsbeginningwith1/g/assume_a_can_opener.htm (last visited Oct. 20, 2012).

15. *U.S. & World Population Clocks*, UNITED STATES CENSUS BUREAU, http://www.census.gov/main/www/popclock.html (last visited Oct. 20, 2012); *Databases, Tables & Calculators by Subject*, BUREAU OF LABOR STATISTICS, http://data.bls.gov/timeseries/LNS12000000 (last visited on Oct. 30, 2012).

Viewed in another way, it seems incredible that the world has changed so much and elite thinking has changed so little. In the years since the Great Recession began, why have we not seen seismic shifts in the structure of thought?

One answer is time and how societies cope with historical change. In the fall of 2008, it became clear that a housing bubble had implications not only for the financial system, but for how we thought about finance as a whole, and this was only four years ago. Generations later, it can be difficult to remember that the New Deal did not begin to take legal shape until four years after the Stock Market Crash of 1929, and the managerial-corporatist-statist capitalist order that was born in the New Deal was not fully mature until the Great Depression, World War II, and the postwar construction of the contemporary legal and institutional order had run their course.[16] So my question—why have we not rethought finance (along lines I have been working on, naturally)—bespeaks impatience on my part.

There are other reasons that political economy, despite its widely acknowledged shortcomings in practice, seems intellectually paralyzed. In the United States, the presidential term encourages a relatively short-term understanding of political economy, a view of recent events as a "crisis" from which there is a "recovery," a return to the status quo ante, rather than a departure and the emergence of a new set of economic circumstances, and perhaps a new understanding of what may be hoped from political economy. The Republican challenger asks, "Are you better off than you were four years ago?" implying that the current President has neither "fixed" the problem nor put mechanisms in place to fix the problem.[17] Conversely, the President is forced to defend his record by saying that we are on the right path to getting "back."[18] But back to where? None of this implies a new understanding of what the nation should expect from political economy.

Similar things might be said about the media, which tends to report new events, the scandal du jour, in terms of well-received understandings. Facts change, but publicly acceptable narratives change far less often, which is why journalism is easy to understand even if the world is not. So the financial crisis, in both its United States and European chapters, calls into question matters like the nature of federalism, central

16. Consider the fact that the Securities Exchange Act of 1933, the first of the New Deal securities laws, was not passed until almost four years after the crash. The Investment Advisers Act of 1940 and the Investment Company Act of 1940 were obviously passed much later.

17. *See* Jim Rutenberg, *Democrats Say U.S. Is Better off than Four Years Ago*, N.Y. TIMES (Sept. 3, 2012), http://www.nytimes.com/2012/09/04/us/politics/democrats-say-us-is-better-off-than-4-years-ago.html?pagewanted=all.

18. *See id.*

banking, money, and the possibility of generalizing a middle class (or the justification of poverty), all of which is reported on as if questions primarily for technocrats.

Still, these explanations for why we have not seen more fundamental shifts in thinking seem unsatisfying. It may be that, as John Kenneth Galbraith wrote over fifty years ago: "Ideas are inherently conservative . . . . They yield not to the attack of other ideas but . . . to the massive onslaught of circumstances with which they cannot contend."[19] But isn't the Great Recession the sort of "massive onslaught of circumstances"[20] that should foster rethinking?

Similarly, it could easily be argued that policy actions, especially in 2008–2009, meant that the relevant policy elites didn't believe much that they had spent years saying (and we in the academy had been teaching) about markets. In 2008, an ideologically laissez faire U. S. administration made profound interventions into the economy, implying that the government did not really believe a host of propositions about market efficiency, the ability to self-regulate, and the like.[21] Immediate responses to the crisis logically entailed a different view of what we meant by market regulation and, by extension, political economy. This was not completely acknowledged by either the Bush or Obama Administrations, and certainly not digested by policy elites, not even in the academy. We simply updated our textbooks and soldiered on into what is looking like a lost decade, at least to our students.

When the "crisis" passed—drama is not sustainable, even if economic unhappiness is—policy discourse blithely carried on in roughly the same fashion, albeit with fewer references to efficiency. Looking back on the last four years, less was learned than one might have hoped.[22] It remains to be seen whether the European debt crisis, and persistently high unemployment in the United States, will be more significant as a matter of intellectual history, but early signs are not good. Surely monetary policy, the only form of government intervention that seems to enjoy widespread support, will continue to be used to support economically marginal enterprises—meaning great swathes of society on both sides of the pond—without raising taxes too much. One will continue to hear nostrums about education, competitiveness, and growth, even if there is no evidence that these things are well understood, or can be made

19. JOHN KENNETH GALBRAITH, THE AFFLUENT SOCIETY 17 (4th ed., Penguin Books 1984) (1958).

20. *Id.*

21. *See* WESTBROOK, *supra* note 6, at ch.1.

22. *Compare* WESTBROOK, *supra* note 6, *with* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-115, 123 Stat. 115 (2009); *see also* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

to work for most people or even most countries. In short, intellectual consensus may not be revised, even in the face of dramatic circumstances.

We seem to be in a period of widespread elite malaise; the *Zeitgeist* is ill. As a matter of academic policy discourse, we observe a stubborn inability to substantively revise patterns of thought. The old dogs are not learning new tricks; the paradigm will not shift. Politically, we see an inability to reach agreement, marked by hollow ideological posturing, symbolized by Standard and Poor's downgrade of U.S. debt, and of course the farcical quality of Eurozone politics, so aptly skewered by Wolfgang Munchau in the *Financial Times* and especially his blog *Eurointelligence*.[23] Economically, we observe a shaky collective confidence, the flight to safe havens, scant hiring, and little will to reform anything, from healthcare to banking, even if nothing is working and few people are happy with the status quo. Academically, because the entire edifice has collapsed[24] and not been replaced, we are politically ineffectual, passive or ideologically shrill ("[t]he best lack all conviction, while the worst, [a]re full of passionate intensity"[25]), and so economically moribund, unwilling to invest, to hire, to venture.

Let us leave for future historians the question of why this is so, of why our elites have done what certainly appears to be an unimpressive job of confronting the challenges of our era. Perhaps it was ever thus. Maybe we simply do not enjoy enough distance to veil the ugly particulars of recent events. Be that as it may, how are we, who after all must live now, to respond?

III. VIRTUAL CONFERENCES AND REAL CONSENSUS?

A. An Opportunity to Respond

While I was struggling with such gloomy thoughts, an opportunity to respond arose. The WEA asked me to host a virtual conference on "Rethinking Financial Markets." I recently published a book, *Out of Crisis: Rethinking Our Financial Markets*, which had some merits as a text and which had led to some interesting travel. Nonetheless, I considered it a practical failure, at least insofar as the book was prescriptive. It is odd-

23. *See generally* EUROINTELLIGENCE: INFORMS, DEBATES, AND EDUCATES ABOUT THE EUROZONE, http://www.eurointelligence.com/eurointelligence-news/home.html (last visited Nov. 5, 2012).

24. *See The Financial Crisis and the Role of Federal Reglators: Hearing Before the H. Comm. on Gov't Oversight and Reform*, 110th Cong. 17 (2008) (testimony of Alan Greenspan, Former Chairman of the Federal Reserve).

25. William Butler Yeats, *The Second Coming*, *in* MICHAEL ROBARTES AND THE DANCER (1921).

ly difficult to avoid being prescriptive. Publishers, editors, reviewers ask—What is your argument? What should we do? One must answer as convincingly as possible as a condition of expression. But any answer is bound to fail to convince, and so to fail as politics. Moreover, having failed, it seems hubristic to have thought that success was possible. I'm not the king.[26] Those things said, the economy and the nation have been harmed. After the Great Recession, and after furious work on the part of many, so little rethinking had occurred. So this seemed like a chance to try, once again, to remake political economy after my own heart. Less bitterly, I was honored to be asked, even if I was disgusted with political economy, suspicious that middle-age anxieties were skewing my judgment, and looking forward to my sabbatical. I accepted the invitation.

The WEA is a global institution organized online (most of the principals are in the United Kingdom). The organization is devoted to the renewal of economics as a discipline and, it is widely hoped, the betterment of actual economies.[27] In the year of its founding, the WEA had become the second largest economic institution in the world with over 10,000 members. Its largest journal has over 20,000 subscribers.[28]

There is intellectual politics in the WEA: it has a "manifesto" and aspires to create a "pluralist" context for economic discourse.[29] The WEA is founded on the proposition that the discipline of economics is too narrow methodologically, ideologically, and geographically. The publishers of the *Real World Economics Review*, originally published as the *Post-Autistic Economics Review*, founded the WEA.[30] They argued that an unrealistic understanding of economic life dominated the economics discipline, where scholars were more committed to models than to understanding the world. Unsurprisingly, discourse in the WEA tends to lean leftward.

The WEA claims that its meteoric success reflects a widespread discontent with orthodox academic economics.[31] Discontent with economics is not merely intellectual: mainstream economics provides policy arguments that are used to make real decisions, especially in the deregulation of financial markets, and thus mainstream economics may be

26. I am not even Keynes.

27. "The World Economics Association (WEA) seeks to increase the relevance, breadth and depth of economic thought. Its key qualities are worldwide membership and governance, and inclusiveness with respect to: (a) the variety of theoretical perspectives; (b) the range of human activities and issues which fall within the broad domain of economics; and (c) the study of the world's diverse economies." *Manifesto*, WORLD ECON. ASS'N, http://www.worldeconomicsassociation.org/wea/manifesto (last visited Oct. 23, 2012).

28. *See* WORLD ECON. ASS'N, *supra* note 3.

29. *Id.*

30. *Id.*

31. *Id.*

blamed for much of the recent financial crisis.[32] In short, many people are worried that economics has not only gone astray, but also it is leading our leaders astray, and the WEA seems to be a place where such bad ideas are contested. And it costs nothing to join the WEA, so many people do.

As should be clear, my motives to accept the invitation were not entirely pure. The WEA is enormous, and this invitation presented an opportunity to get a large audience for my thinking. I did not have clear expectations, but I was disappointed that *Out of Crisis* had not made a larger impact.

It should be clear, however, I was and am supportive of the WEA, and I am broadly in agreement with its critique of the conduct of modern political economy. The invitation to host "Rethinking Financial Markets" offered an opportunity to reason how elites could communicate in a grounded fashion. Maybe "Rethinking" could provide literally that, a chance to start anew, to reconceive what was meant by the conduct of political economy in a world that was now, after the financial crisis, understood differently. Moreover, a digital conference offered a chance to encourage others and spur new conversations. "Rethinking Financial Markets" seemed, in short, to be a long shot at a fresh start. This is too dramatic, but the point is that recent economic events warrant real intellectual, policy, and perhaps political renewal, and even the hope for social betterment.

It still is not obvious how these aspirations were to be realized, even modestly.

B. Forms of Response

Policy academics, including law professors, primarily respond to social problems through their scholarship, which is much of what academics do. "Research" is expressed primarily as articles, which can be shortened for some contexts (blogs, op-eds) and occasionally expanded (books). Publication, it is presumed, helps to inform policy discourse, thereby improving society.

If only it were so easy. The academic article is, on its very best day, an awkward form for policy discourse. With studied naiveté, the text paints an ostensibly objective picture of the world, from which the author is effaced. Yet somehow the author's normative conclusions inexorably follow from this objective depiction. Implicitly, the text maintains, the relevant elites will recognize the rightness of the argument and govern themselves accordingly.

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32. *See generally* WESTBROOK, *supra* note 6.

Many objections to legal scholarship are familiar and do not require rehearsal here. Practitioners and judges have often complained that the mass of legal scholarship is irrelevant, utopian, and useless for what they do.[33] Even the *Harvard Law Review* says articles are often too long.[34] Academics in other disciplines note that legal scholarship is reviewed, and published, by students who do not know anything else. And over the years, even many within the legal academy have argued that legal scholarship is in bad faith, disingenuous arguments to foregone conclusions made for reasons of professional advancement, institutional maintenance, political oppression, moral hygiene, or simply to have something to do.

These criticisms of legal scholarship—and with minor modifications, policy scholarship in other disciplines—may all be valid. For purposes of fostering a new consensus, however, the problem that seems salient to me is that didactic scholarship, by its very structure, places the *reader* in a passive position. The article says: the following research was done, the following truths emerged, and the following steps (perhaps just further research) should be undertaken. So it is.

Confronted with such text, an academic reader may remember to cite the text if he agrees or wants to please the author and if he has a vaguely relevant text "in the pipeline" (far more likely in the case of a junior reader). Or the reader may, in rare circumstances, argue with the text (also likely in the case of a junior reader). But most of the time, as a practical matter, there is nothing for the reader to do but express approval or disapproval to nobody in particular. As Pierre Schlag explains, you get to the end of a successful policy piece (and therefore, the rule should be X) and say to yourself, in Bertie Woosterish fashion, "Right Ho! Where do I sign?"[35] But the vast majority of articles give no thought to how the argument, even if convincing, is to be realized. Presumably, legislators somewhere will pass a law to make it so, in recognition of the rightness of the argument and fulfillment of their duty as legislators.

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33. In an interview with C-Span, Chief Justice Roberts stated, "Pick up a copy of any law review that you see, and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th century Bulgaria or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much use to the bar." Chief Justice John Roberts, Discussion at the Annual 4th Cir. Conf. (June 25, 2011); *see also* Richard Posner, *Against the Law Reviews*, LEGAL AFFAIRS, Nov.–Dec. 2004, at 57 ("The result of the system of scholarly publication in law is that too many articles are too long, too dull, and too heavily annotated, and that many interdisciplinary articles are published that have no merit at all."). Why professors should be writing for judges is less clear.

34. A *Harvard Law Review* study of over 800 law professors found 90% of respondents found law review articles to be too long. *Law Review Usage Survey Results*, HARV. L. REV. (July 2005), http://www.harvardlawreview.org/law_review_usage_survey_results.pdf.

35. "Where do I sign" is from personal conversation with the scholar and critic of U.S. legal scholarship Pierre Shlag. For more on Bertie Woolster, see the works of P.G. Wodehouse.

This is not always the case. Sometimes a reader holds some form of relevant power; perhaps she is a judge or a legislator. Or, more likely, her staffer, or a political activist, reads something that seems relevant to an issue of importance, perhaps the antagonism with Iran. An idea, for example, that a corporation doing business with a regime designated by the U.S. government as a state sponsor of terrorism is something U.S. investors would want to know and should be disclosed as a matter of securities law, may be brought to the attention of the powers that be, and may even be made law. This can happen—my wife, Amy, wrote two such articles[36]—but does not happen often.

It is important to note that the conflict with Iran predated the scholarly idea. Using securities disclosure as a soft sanction provided a clever way to use existing legal mechanisms (mandatory disclosure under the securities laws) to put some pressure on Iran. Here, scholarship served existing political interests and used existing legal and institutional mechanisms. All of this may be a good thing, and certainly preferable to war with Iran, but it does not amount to renewal.

Of course it is a bit foolish to think about legal scholarship in terms of the reader. Scholarship is almost entirely about writing, not reading. Quite apart from substance, articles are a coin of the scholarly realm, used to get teaching jobs, tenure, maintain institutional standing, and the like. It is a lovely thing to have readers, but actual readers (people) are not necessary. An imagined "reader" is sufficient to organize the text.

In contrast to scholarly production, however, politics does not exist without the participation of the people in that polity. Thus, the didactic character of the scholarly article, as a form, is politically problematic. The reader, even the reader who is powerful outside the text, is asked to submit to the authority, the logical validity, of the argument. Under such circumstances, even a sympathetic reader may be somewhat noncommittal, and most readers will find some reason to demur—or not to read at all.[37] In short, legal scholarship is an awkward vehicle for building or especially revising elite consensus.

If didactic scholarship—including my own—is unlikely to build new consensus with which to confront extraordinary times, perhaps the conference is more promising. Like the dinner parties of the title, confer-

36. *See* Amy Deen Westbrook, *Sunlight on Iran: How Reductive Standards of Materiality Excuse Incomplete Disclosure Under the Securities Laws*, 7 HASTINGS BUS. L.J. 13 (2011); *see also* Amy Deen Westbrook, *What's In Your Portfolio: U.S. Investors Are Unknowingly Financing State Sponsors of Terrorism*, 59 DEPAUL L. REV. 1151 (2010); *cf.* Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. (2012). The Act, along with Obama's October 9, 2012 Executive Order, prohibits subsidiaries from doing what their parents cannot do in Iran and implements enhanced disclosure rules for public companies relating to Iran (in 10Ks and 10Qs).

37. *See* Roberts, *supra* note 33 (discussing discontent with law review articles).

ences can provide an occasion for people to talk to one another. Regardless of what they say, the salient point is that this is already a more social, and hence incipiently political, activity. At a conference, people have to participate with one another.

The WEA's invitation was fortuitous in another way, which in hindsight is quite profound for me. I have spent years talking with cultural anthropologists, George Marcus and Doug Holmes, and people I met through them, about ways of approaching present situations; those conversations were ultimately issued in a book, *Navigators of the Contemporary*.[38] Today, my friends in anthropology spend much of their effort designing various sorts of engagements, events, to which people bring various knowledge gained from their own practices in, for example, central banking. At least on good days, new truths emerge out of such engagements.

So the invitation to host the WEA's conference on "Rethinking Financial Markets" posed an interesting question—Could a virtual conference be used to further, or embody, consensus making among elites? Could a conference format be used to foster new thinking? Could such new thinking take on social and collective form, that is, become a political position as opposed to an individual's view? Ambitions must of course be kept in check. These things happen slowly, if at all. But hope springs.

C. A Design for a Digital Conference

1. Managing the Virtual

The WEA and its conferences "take place" on the web. What does the digital character of "Rethinking Financial Markets" mean for actually building consensus? As is often the case, figuring out the substantive significance of digital interaction has not been obvious. Superficially, however, the conference's digital character meant that "Rethinking Financial Markets" could be global. Many people could get involved, without an unlimited travel budget, and without undue time or travel pressure. Flying from the United States to Australia, for instance, is no small undertaking. So perhaps the low cost of individual involvement is the most obvious consequence of the digital character of the conference, at least in comparison to presenting a paper at a traditional "live" conference.

38. *See* DAVID A. WESTBROOK, NAVIGATORS OF THE CONTEMPORARY: WHY ETHNOGRAPHY MATTERS (2008).

A disadvantage of web-based conferences is almost as obvious. The web fragments as well as connects. How could the conference be organized to keep people from simply expressing their well-established personal views, rather than engaging in conversation and perhaps fresh thought? If it is easy to get involvement via the web, real *engagement*, and by extension, conversation or consensus, seems much harder to come by. The web is a big place, there is much to do, and everyone is busy, or at the very least distracted. Why would people participate? And if they do participate, would they do so with each other—or would we simply succeed in providing another venue for people to express themselves, as they do for online shopping and what used to be print journalism? To return to the metaphor of the dinner party, the timing and substance of "Rethinking Financial Markets" were quite intentionally designed to address these concerns.

2. Scheduling

Roughly speaking, the conference unfolded as follows: the WEA made its decision to give this conference, and in 2011 I accepted responsibility for hosting it. After some discussion, it was decided that "Rethinking Financial Markets" would be the third WEA conference, and the "live" portion would take place in the fall of 2012. This meant that preparation for the conference would take place in the late winter, spring, and summer of 2012.

During winter into spring, I spent time thinking about what the WEA might hope to accomplish and, more simply, what the specific themes and topics of the conference should be. I wrote a "Problematique" to frame the event in what I hoped were useful ways, just different enough to be provocative and general enough to encourage broad participation. The Problematique included specific topics that participants were encouraged to address, and it forms Part IV of this Article.[39]

The WEA established a webpage dedicated to the conference. The WEA used the webpage to communicate to the world, and to facilitate e-mails with actual and prospective conference participants in particular, under the motto "further information is available on the webpage." Conversely, participants used the webpage to register for the conference, submit papers, and, in due course, post comments. Thus, the webpage gave the conference a virtual "place."

Next, the WEA made a general call for papers through the newsletter of the WEA and through various mailing lists. I also made personal

39. *See infra* Part IV.

invitations to dozens of people, mostly via lengthy emails, explaining what the WEA was, what we were hoping to accomplish, and how easy and useful it would be to participate. Most of these people I knew beforehand, and I had an indirect connection to the others. Many invitees were friends. Numerous invitees said they would try to deliver a paper, and many of them have. Nonetheless, it is worth noting that much of this conference's content—as with "live" academic conferences—depends on individuals with personal or professional relationships for whom the conference is incidental, an opportunity to do or return a favor.

I recruited a few people I respected to vet papers, mostly to make sure nothing libelous was in the texts. On November 1, 2012, the webmaster will post the papers and will email links to conference participants. Papers will be organized under a broad topic area, and will be searchable by topic and keyword. The papers will be posted for a month, and the authors are expected to reply to comments. At the end of the month, the materials will be archived.

3. Inviting

Despite the fact that this is an "open" conference, we have given considerable thought to the "invitation," both in the sense of who to invite (who would contribute something worthwhile) and, conversely, how to make the conference itself inviting and appealing to those invited.

It is important to make the conference as inviting as possible because people have plenty of other things to do. Nonetheless, many invitees have said they are too busy. Where possible, I have emphasized the importance of the conference, as well as the importance of the other attendees. Here, as elsewhere, the Internet has changed less than might be expected. More specifically, where possible I have suggested that participation in this conference would enhance one's professional reputation, though this claim is not too strong in light of the open call for papers. Again, many people I am engaged with are already well established, and participating in this conference, or not, will not change their standing one iota. What is more plausible, for some, is that a larger global audience might see these proceedings and they might find new readers. At the end of the day, however, a fair number of people have written more or less because I asked them to, and it didn't interfere with their lives too much.

Under contemporary conditions, and in light of the fact that few participants have much to gain from contributing, I thought the conference needed to be as accessible as possible, especially for people that were invited directly. I emphasized that contributions could be short and did not need to have academic apparatus. The idea has been to encourage a range of experts to build upon what they knew already.

Making the conference too easy carries the risk that no work will be done, that the contributions will be too lightweight, mere opinions, and that the conference will therefore add no value. This risk is probably not as great as it initially appears. Here again, the social and professional context of the participants is probably more significant than the design of the conference: people say intelligent things—or not so intelligent things—because that is what they do and a large part of who they are.

D. Fostering Conversation

The foregoing ideas do little to address a fundamental difficulty—If people do not meet, in the same place and at the same time, will they confer? Are people simply likely to publish their own thinking, without undue attention to others (as is often the case on the Internet)? More generally, why—or how—can a virtual conference attain at least some of the conversational (collegial, dialogic, collective) character of an actual conference? And if the reason to give a virtual conference is to encourage a politics, the formation of elite consensus on financial markets (at least for me if not necessarily the WEA), then is not the failure to produce such context fatal to the success of the undertaking?

Two mechanisms seek to address this difficulty. First, participants can comment on papers, regardless of whether they submit a paper themselves. The authors are expected to respond to comments. The desire to judge things ranging from books to refrigerators to editorials seems to be very strong among denizens of the Internet. This is an advantage of virtual conferences. Commenting at an actual conference, which amounts to public speaking, is daunting for many people. Also, one person may comment at an actual conference at a time, and yet this single speaker demands the attention of the entire audience. Thus many people cannot, or will not, express their opinions. In a digital environment, lots of people can express lots of opinions. In short, the urge to comment should, in and of itself, encourage a "conversational" style of participation in a virtual conference.

"Rethinking Financial Markets" has a second, more substantive mechanism to encourage conversation in spite of the digital nature of the event. "Rethinking Financial Markets" is not a completely open invitation to present one's own ideas on the topic. Instead, it is an invitation to rethink finance as that problem is put forth by the conference itself. A lengthy Problematique sets forth the topics of the conference. This is a conference on an intentionally provocative vision of the tasks confronting political economy now. Participants are thus placed in a responsive position, asked to relate their knowledge to the conference's questions. Contributors each bring their own knowledge and perspectives, their private intellectual capital, to the table, but because the Problematique is shared, it serves as a point of commonality for the enterprise. The Problematique, as occasion for the papers, thus (in theory) creates a hub and spoke structure for the conference—which ideally allows for the widest possible range of responses, from participants all over the planet, yet also encourages the emergence of themes and connections.

Provocation is its own reward, but for this conference, provocation also has a dialogic purpose. The Problematique is intended to sufficiently unsettle the presumptions of the contributors to make them respond. In responding, contributors are responding to the same thing, and therefore the contributions relate to one another, even in the absence of actual, direct conversation.

So the idea is that new thinking, indeed provocation, would engender responses from various positions creating a hub and spoke structure that would form a digital analogue to live conversation, and (perhaps) would foster the emergence of consensus.

In general, the Problematique highlights tension between what is broadly understood to be social reality—the way we live now and the imaginary that informs much education and policy—what we might without rancor call mythos or ideology. We know *this* (about economic and social life at the present time) but we keep saying *that* (orthodox political economy). The Problematique thus begs the question: If we took better account of our world, how would we go about thinking about the financial markets that might be available to us?

IV. PROBLEMATIQUE: SOCIAL CAPITALISM, ECONOMIES OF MONEY, AND CUSTODIAL REGULATION

A. Introduction

It is not wrong to believe that recent financial crises and general discontent with the economy demand not just regulatory reform, but also more fundamental reconsideration of the purposes, contexts, and methods of financial regulation. However, as contemporary policy discourse conclusively demonstrates, the emergence of fresh thinking tends to be hampered by more or less subtle anachronisms, patterns of thought that hardly describe the world and so obstruct the achievement of collective intentions. If we were to redescribe the world, we could reconsider the politics of finance writ large.

This WEA conference aims to foster just such a collective reconsideration of the social role of finance and, consequently, the regulation of financial markets. As for any collective consideration of such a vast topic, a key difficulty is coherence—how to make something cogent out of a call to rethink financial markets, which raises myriad concrete and specific issues.

In an effort to provide a shared reference point for discussion, a hub for many spokes, this Problematique sets forth three general and contestable suppositions for contemporary thought about the sensible construction of financial markets going forward. This Problematique then asks more specific questions in a number of contexts, which numerous talented scholars have been invited to address. Of course, the participants may also expand upon or take issue with the general suppositions. And all of the proceedings will be available for public comment—the hope is that the set of contributions will coalesce into a broad yet trenchant consideration of the issues raised by contemporary financial markets and, by extension, political economy writ large.

The first supposition on which this conference proceeds (discussed in more detail below) is the idea that a great deal of social life has been capitalized, so that individuals and institutions in all reaches of society are directly dependent on the functioning of capital markets. Consequently, much of politics (including legal regulation and humane sentiment) should be understood to operate *through* financial markets, rather than in opposition to markets—hence, "social capitalism." As a corollary, financial market regulation should be understood as constitutive of core social processes, rather than the correction of the "failure" of some natural market. Markets are a form of politics and should be evaluated accordingly.

Second, the traditional imagination of finance, founded on conceptions like the scarcity of capital and intermediation, and legitimated by promises of innovation and growth, has become outdated due to this same capitalization of social life (that is, by the success of finance itself). Wall Street has colonized Main Street: financial markets, often even banked assets, are larger than the "real" economies they were meant to serve. The discipline of finance should be reinvented to account for the mercurial sea of liquidity that characterizes "economies of money."

Third, and in consequence of the first two suppositions, the practice of financial regulation should shift focus from fostering the formation and allocation of capital, to maintaining the stability of the institutions—now all perforce monetary institutions—on which contemporary social life depends—hence, "custodial regulation."

As noted, these suppositions are all contestable. As a matter of intellectual history, few ideas are logically necessary. It is quite possible that financial markets shall not be reconsidered along the lines suggested here. Were the suppositions mentioned above and clarified below to be taken seriously however, the practice of financial regulation would change in concrete ways. Our institutions, and hence economy, would evolve differently.

After discussion of these general suppositions in more detail below, this Problematique will list a series of propositions, designed to stimulate and focus discussion, and to explore possible directions and concrete proposals for matters ranging from sovereign debt to exchange regulation to labor markets.

B. General Suppositions

1. Social Capitalism

Much of a contemporary society's work depends on capital markets. Nowhere is this more obvious than in the United States, where healthcare, education, artistic and spiritual life, and retirement are largely provided through endowed institutions. Even in societies in which the state takes more direct responsibility for social needs, access to credit markets remains critical, as painfully illustrated by the sovereign debt aspects of the crisis in Europe.

Moreover, ordinary economic operations at the individual, business, and governmental levels rely on well-functioning credit markets. The "real economy" runs more on credit than on cash. Consider, in this regard, household credit cards, commercial paper markets, and credit facilities offered by banks to firms. Indeed, even cash, the payment system, and ultimately the institution of money itself require the health of leveraged financial institutions, as again illustrated by the European crisis. Once the functioning of the "ordinary" economy is understood to require smoothly operating capital markets, then the venerable tendency to understand finance as extraordinary (used to achieve something that the borrower cannot or will not pay for out of retained earnings, at least not immediately, such as the purchase of a house or a company) becomes less significant. Simply put, daily business in the real economy requires the financial economy to be functioning reasonably well.

Understanding the extent to which capital suffuses contemporary societies has profound consequences for political economy. The traditional distinction between Main Street and Wall Street, and the related distinction between labor and capital, lose much of their normative force. Those who work and those who own are both dependent on capital markets. By extension, "the social" (once thought to be workers and their dependents) cannot be understood in simple opposition to capital, despite drastic increases in inequality, notably in the United States. Most obviously, workers are dependent on capital markets to secure their retirements. But more deeply, and as already suggested, nearly fifty percent of the U.S. population does not hold a job. Consider the old, children, students young and not so young, the sick, caregivers, and so forth—all of whom are directly dependent on capital markets, or dependent on institutions that are directly dependent on such markets. Political economy must see to these people, too.

This capitalization of social life should mark a fundamental shift in social policy, even for those who think of themselves as progressive or on the left. In the present context, the task is not to oppose capital in the name of labor, conflated with humane sentiment; the task is to *construct* capital markets, indeed markets more generally, that serve people—hence "social capitalism." The object of regulation is not to correct for the failure of some market, but to design contexts in which relatively autonomous actors competitively and cooperatively pursue social goods.

2. Economies of Money

The capitalization of social life has monetized contemporary economies. In recent decades, many markets in specific assets and obligations, ranging from houses to much compensation to pensions, have been replaced by markets in more liquid legal instruments. Such instruments tend to be abstractions from, and more or less faithful representations of, the economic relations in question. For example, traditionally closely held entities, notably investment banks, have been converted into corporations and their equity traded. The assets and liabilities of firms are managed through the free creation of legal entities, with consequences for both accounting and capital formation—and for the network of indebtedness, exposure, and systemic risk—as illustrated by the constellation of structured finance, credit default swaps, and banks in 2008–2009. More generally, long- and short-term debt markets abound, and they are used by public and private institutions as well as households. The resulting debt streams, ranging from commercial rents to auto payments to home loans, are securitized as a matter of course.

To put matters more generally, recall Marx's observation that as a society becomes more commercial, social relations are replaced by perhaps more productive, but less personal, economic relations—"all that is solid melts into air." In recent years, we have witnessed a second wave of abstraction, as specific economic relations have been replaced by more formal and ephemeral claims, which are also more liquid. Insofar as contracts have been replaced by securities, namely, as (real) marketplace relations have been replaced by (financial) market relations, then political economy should be thought of in terms of finance, which is hardly the same as thinking in terms of tangible goods and services—hence, "economies of money."

The monetization or liquefaction of what is still often called the real economy has created a sea of liquidity. This liquidity needs to be managed; the financial industry has grown apace. One may of course view causation, and even blame, the other way around: the financial industry had incentives to create and sell services and products that ultimately resulted in capitalizing a great deal of economic life. At any rate, the monetization of the real economy has required a lot of work. The discipline of finance colonized management, providing conceptual tools for understanding business as if it were investment. Finance made the assumption of risk—especially the extension of credit—seem more manageable, and credit arrangements have proliferated. As already suggested, an essential objective of financial engineering has been to make illiquid forms of property more liquid, and thus more easily managed. This makes it easier to reinvest assets in pursuit of higher returns, to smooth cash flows, and, perhaps most importantly, to diversify the risk commonly associated with large illiquid assets.

But financial engineering need not confine itself to property, however ephemeral. Traditional banks, which now seek operating capital through commercial paper markets, or latterly, central banks (depositors and equity being hardly sufficient) regularly have assets in excess of their home country's GDP. The development of derivative markets has meant that risks, always also understood to be opportunities, could be priced directly, without the need to own anything. Freed from the shackles of the material world, the supply of derivatives is limited only by the willingness of counterparties. Derivative markets are many times larger than the total value of the assets they were once thought to insure. To generalize, because the supply of bets and promises (legally binding instruments) is limited only by hope, financial markets—the sum of monetary promises—have become much larger than the "real" economies of goods and services they supposedly finance. Thus, whether we begin with the abstraction of assets and obligations, or with the proliferation of finance, we find ourselves speaking of a global economy of money.

While the development of fundamentally more liquid economies, and perhaps even economies of money, appear to be historical changes of the *longue durée*, much contemporary liquidity stems directly from politics in the ordinary sense. That is, although the development of an economy of money may be structural—a characteristic of global society founded on incessant representation and electronically mediated—much contemporary liquidity is occasional. The United States has cut taxes and borrowed money while fighting wars and funding rising entitlement costs, especially in healthcare. Imprudent choices were made. In Europe, nations provided their people with ever more commodious European standards, equalized trade imbalances, and enjoyed more than a few bubbles, often despite lackluster growth and discouraging demographics, through massive private and public borrowing, and conversely, imprudent investing. The ability to repay—and hence the credit worthiness of borrowers and the soundness of lenders—is now in question. Surely more prudent policies were imaginable. The Chinese have pursued *Ordnung* and global market share through currency management, effectively subsidizing the cost of capital worldwide, albeit at both systemic risk and substantial domestic human cost.

Finance, in a fully monetized economy (to say nothing of an economy of money), cannot be understood in the traditional fashion. Traditionally, finance understands itself in terms of the allocation of scarce capital. The idea is that financial markets intermediate between savers, who have surplus social capital, and entrepreneurs, who have good ideas but cannot realize such ideas with their own assets. If capital markets are functioning well, good ideas will be realized; there will be innovation and thus growth. We may call this the Silicon Valley story.

In a monetized economy, however, capital is in principle abundant, not scarce. Due to the relative scarcity of investment opportunities (and conversely, the surplus of available liquidity), lenders are impelled to use enormous amounts of leverage in an effort to profit from narrow spreads, thereby increasing systemic risk. To quip, in contemporary financial markets, during ordinary times, drowning appears to be a greater danger than dehydration. However in times of crisis, confidence—and hence liquidity—can evaporate, or at least flow away from specific contexts. Consider, in this regard, the market for auction-rate securities, interbank loans, or even the sovereign debt of some advanced countries. In each of these markets in recent years, liquidity was plentiful and cheap, until suddenly, it was expensive or even unavailable. Water is difficult to manage.

The problem of growth is even more difficult for contemporary political economy than the challenges of rethinking finance in terms of the abundance rather than the scarcity of liquidity. Innovation, growth, and by extension job creation appear to be ephemeral and unpredictable. While ideas may require capital for their realization (the Silicon Valley story is not impossible, just very unlikely), the provision of capital is hardly tantamount to innovation. History gives us no reason to believe that everyplace will become a center of innovation. Most of the countries now at risk in Europe were not growing prior to the present crisis; economic growth in the United States has been regionally concentrated even during boom times. In short, it cannot be assumed that the structural reforms being undertaken worldwide, however sensible, will lead to innovation—much less substantial growth—much less employment—in any direct or automatic fashion.

Even good economic news may not be particularly good social news. Banks may raise capital without extending credit. Companies may improve their balance sheets, their production processes, and even grow without hiring more people. A fundamental difficulty for political economy is that the polity and the economy need not have the same demographic scope. The economy is likely to need less than all the people. People who cannot be expected to contribute to growth (the old, the sick, and most of the poor), people who simply will not contribute much to growth (most workers, most of the time), and most institutions and countries are nonetheless proper subjects of political economy, and they are also deeply invested in financial markets. In short, financial policy that depends on political justification for the uncertain hope of localized innovation and growth is hardly adequate for a social understanding of capitalism.

3. Custodial Regulation

In a global society in which social commitments have been capitalized and are held on a portfolio basis by highly leveraged and interdependent institutions, the traditional imagination of finance—how to intermediate scarce capital between savers and worthy entrepreneurs while preventing fraud—should lose its dominance and be replaced by a more custodial understanding of the vitality of stable capital to social order and humane understandings of institutions. The managers of a pension fund, a university endowment, or even a bank's sovereign debt portfolio—rather than the venture capitalist and the entrepreneur—should become the paradigmatic figures for contemporary thinking about capitalism and its regulation. For such managers, the issue is fulfillment of fiduciary obligation, which requires the ability to deliver what and when promised. The paradigmatic fiduciary, the trustee, is the custodian of the beneficiary's interests; from a custodial perspective, finance is the mediation of existing social obligations among parties and across time. Growth is desired but hardly essential: the fiduciary obligation exists nonetheless.

The custodial perspective is thus quite different from the perspective traditionally taken by finance and epitomized by the rationally self-interested venture capitalist, who seeks innovation and is willing to tolerate a substantial number of failures. Should the relevant elites take this conceptual turn to social capitalism operating on an economy of money, the aesthetics and practices of financial market regulation will be different from those that have characterized the last several decades. Rather than an emphasis on risk-taking in the hope for creative destruction that, on balance, may be said to serve society's best interests, financial regulation could become more explicitly concerned with the reliable flow of social capital.

C. Policy Contexts

What would financial policy and regulation look like if financial regulation were understood to be the construction of markets on which society could rely?

1. Recent History and the Art of the Possible

The financial crises from 2008 to the present have made apparent structural deficiencies in our financial markets and have impelled reform efforts. Although this entire Problematique might be understood to ask "what have we learned and what may be done," the following general questions may be fruitful, especially in considering the more specific questions that follow.

First, although the recent crises exhibited great greed and substantial fraud, such human failings are by no means new. Moreover, in the right measure, things like self-interest, optimism, and trust are virtues, even if their exaggeration can lead to disaster. On the basis of recent experience, what might be said about the relations between human frailty and institutional structure that might guide the design of regulatory regimes, the provision of incentives, and the establishment of sanctions?

Second, crises often provide an opportunity for reform. At the same time, regulated actors often have interests opposed to reform and are politically powerful in their own right. As one considers ideas for better financial markets, the question of political possibility looms large—Can we get there from here? For example, it might be argued that too many banks in European countries are overexposed to the sovereign debt of their own governments, meaning that fiscal crises can trigger financial crises and, in turn, further worsen conditions in the real economy. Better integration of European banking (weakening the links among a country's government, banks, and local economy) might serve to ameliorate the effects of fiscal crisis on local financial institutions, businesses and households, and hence people. But is such denationalization and, inevitably, consolidation of European banking politically imaginable?

Third, consider the interaction of short-term and long-term measures. Oftentimes, a crisis requires immediate action in order to avert disaster. The intervention may nonetheless have long-term consequences. For example, in 2008 and into 2009, the United States financed the "private" acquisition of several institutions deemed too big to fail, resulting in the creation of even larger, and presumably systemically more important, institutions. Similar, the ECB's injection of liquidity into financial institutions in late 2010 may have been necessary, but its medium-term effects are being questioned.

Fourth, interactions among institutions (markets, flows) of international and national scope may be difficult to sort out precisely because of incongruities of scale, differences between what is "national" and what is "international" or even "global." The obvious example is the now-famous observation that financial institutions live and work internationally, but they die nationally. In response, it is not too difficult to call for an international bankruptcy code or, in a similar vein, international accounting standards, or even cross-border banking resolution. But how are such things to be achieved? To make matters more difficult, it is not clear when "the international" is superior to the national. Some things—perhaps the establishment of a fiat currency is one of them—seem to function better if backed by a truly sovereign authority (for an American, it is not entirely clear when the federal is superior to the state.). Thus, in thinking about financial regulation—and hence constructing markets—one must consider the political context in which such regulation takes place.

2. Fiscal and Monetary Policy

The governments of many advanced economies are in periods of substantial retrenchment or, at the very least, are arguing that such retrenchment is necessary in order to gain competitiveness and economic health. A few nations—China and Germany spring to mind—are running substantial surpluses (implying deficits elsewhere). Finally, in cases of highly indebted governments and recessionary economies, it has become commonplace to note that austerity measures may be procyclical. In all of these situations, it is argued that "progrowth" policies are necessary in order to work down current debts and for long-term welfare.

From the perspective sketched above, at least three related problems suggest themselves. First, growth may not eventuate despite the establishment of virtuous policies. Second, and relatedly, surpluses imply deficits. If the issue is global (or even European) economic peace, then the answer mathematically cannot be universal trade surpluses and, practically speaking, will not be competitive equilibrium at some sort of median welfare. Finally, even if it occurs, growth may do little to address the social problems for which government is responsible, including, not incidentally, environmental concerns. But if "growth" is no North Star, then what guides fiscal and monetary policy?

3. Tax, Capital Formation, and Inequality

Tax policy discourse, particularly in the United States, is characterized by several often conflicting values. First, it is argued that taxes on individuals and firms should be low so that capital may be concentrated and invested, leading to economic growth, employment, and ultimately higher tax revenues. Second, there is considerable anxiety that tax burdens are falling unfairly on the broad middle class, who are also understood to be the "backbone" of the nation. Inequality and therefore populism are rising. Populism is often understood to exert inflationary pressure on policy making and otherwise to conflict with long-term interests of the polity—unless such arguments are merely camouflage for creditors. Third, there is some sentiment to use tax as an incentive for good behavior (for example, saving for retirement) and a disincentive for less desirable but often necessary behavior (for example, driving a car or perhaps, in Europe, trading securities). Fourth, taxes themselves may come at great political cost. Unwillingness to impose taxes, or inability to collect taxes, may have encouraged governments to issue too much debt. How would adopting a self-consciously custodial capitalism affect the priorities of tax policy?

4. Financial Instruments

In response to the substantial human and institutional costs of recent economic crises, and the anemic economies established in their wake, might we see a shift from an emphasis on disclosure-based regulation of financial markets to a greater emphasis on substantive approaches to regulation? Recall that financial regulation, especially of securities markets but also of other markets, has been based on mandatory disclosure and, more generally, the management of information. Since the 1930s, across a range of markets, the law has tended to regulate information about risk, rather than risk itself. Parties that are presumed to have both incentive and capacity to assess risk (for example, private equity investors, or hedge fund managers) have been allowed to operate with minimal regulation. To a lesser extent, other markets of significance to consumers (for example, real estate and health insurance) have also been regulated through the mandated provision of information designed to facilitate sound investment choices.

At least three interrelated developments have put this approach to regulation under considerable strain: the degree of capitalization of socially important institutions, and even households; the degree of leverage and interconnection found among institutions and households; and the prevalence of volatility and systemic risk. If financial regulation is understood in custodial—as opposed to entrepreneurial—terms, then it may not be prudent to rely on the provision of sound information to guide consumer choices in relatively rational markets.

A number of specific questions spring to mind. Is more substantive regulation of finance required? If so, in light of the difficulties inherent in risk assessment, perhaps most conspicuously demonstrated by rating agencies, how should such substantive regulation be designed? Should certain instruments or derivatives, such as over the counter derivatives, be banned outright? Or do efforts to move OTC trading onto exchanges suffice?

5. Financial Markets (Exchanges)

If the purpose of financial regulation is the ability to deliver social capital, then volatility is a real problem for the simple reason that human needs may occur during downturns. In light of recent losses in equity markets and perhaps interrupted employment, many people on defined contribution plans may have to postpone retirement indefinitely. The problem that volatility poses for social capitalism is exacerbated by the prevalence of systemic risk (by definition, risks that cannot be diversified away because asset prices move in the same direction).

The desire to suppress unreasonable volatility (namely, the desire for relatively stable markets) may be seen to be in tension with widely held belief that the quantity of trading is positively correlated with informational efficiency. Trading practices, notably including short selling, high-frequency trading, and even certain forms of insider trading, invariably have been justified in the name of price discovery. Presumably, a shift toward more custodial notions of financial regulation would also shift the balance toward efforts at dampening volatility at the expense of at least some practices legitimated in terms of price discovery. Is this conflict with stability, and is it real? If so, is it avoidable? If it is not avoidable, how might one think about striking a balance?

6. Financial Institutions

Since at least early 2008, it has become clear that large, or merely highly connected, financial institutions may serve as vectors for systemic risk. It has also become clear that numerous financial institutions, while not legally defined as banks, exhibit the structural weaknesses of banks; the mismatch between the terms of assets and liabilities make such institutions vulnerable to "runs" and sudden collapse with potentially calamitous ramifications. Thus, the classic rationales for emergency intervention into banks, and by extension bank regulation, apply to numerous institutions. Finally, events of recent years have demonstrated that many such institutions were—and in many cases still may be—too leveraged and too integrated to be operated safely.

In response, it has been broadly suggested (1) that such institutions should operate with more capital and less leverage, and (2) that financial institutions be disaggregated. At the same time, actual developments, notably consolidation in the banking industry in the United States and the liquidity policies of the European Central Bank, have tended to tighten, rather than loosen, the integration of the financial system. Moreover, the suggested reforms tend to lower the profit margin on permissible trades (because less leverage is used) and to prohibit presumptively profitable trades.

Understandably, such reforms have been resisted by financial industry participants (the Volcker Rule is a pale shadow of Glass-Steagall). But while these new approaches to regulation are unlikely to be politically palatable or practically easy, reforms nonetheless may be advisable. Thus, the question of how systemic risk within financial institutions may be reduced is conjoined with a narrow political question, namely, the extent to which a custodial understanding of financial regulation can overcome the class interests of financial industry insiders.

7. Custodial Relations

Entailed in the idea of social capitalism is the idea that financial markets themselves fairly directly serve human and institutional needs. The purpose of a mutual fund used for retirement purposes, or a line of credit, is to provide money when and where it is needed. Liquidity is just as necessary for modern life as is access to electricity or communication networks. The market's institutions, in this view, are much like utilities, expected to run smoothly and consistently, to be reliable, and even to be boring. Profit margins ought to be concomitantly low, at least in contrast to expectations among contemporary market participants.

Also entailed in the idea of social capitalism is that much capitalism takes place in and among not-for-profit institutions, including governments. That is, the distinction between public and private is far less clear in this context than it was once believed to be. What has become clear is that various institutions serve various missions that benefit different sets of people in different ways. By extension, we should expect to see far more articulated ideas of fiduciary relations—that is, the obligations owed by those in power over socially significant institutions, including for-profit corporations.

This is in some contrast to traditional conceptions of finance, in which violent market interactions, the often destructive clash of the rational self-interests of market actors, were celebrated because these conflicts supported growth, innovation, and hence new jobs. It has been said that financial volatility, creative destruction, and so forth are the hallmarks of a dynamic, creative capitalism—a capitalism that is highly localized at the best of times. So the question arises—Will broader needs for a more stable, boring capitalism bring about Schumpeter's prophecy of the bureaucratic end of entrepreneurial capitalism?

8. Labor Markets and Social Capitalism

As suggested above, a great deal of political economy rests upon the belief that capital formation leads to growth and that growth will require labor, leading to high rates of employment, and hence human well-being. As also suggested, however, capital may not lead to growth, and even if it occurs, growth may employ relatively few people, to which it is often said that (still more) education is thus necessary. It is not at all clear that technological markets tend to employ many (code is infinitely replicable), and, as noted, surpluses imply deficits. Even if all workers could somehow be made competitive in technological economies, however, the fact remains that a humane political economy must account for many people who are not economically productive. In short, social capitalism appears not only to have transformed the opposition between labor and capital that was long an article of faith on the left, but it has also almost severed the relationship between labor and capital that has long served, for those on the right, as justification for capital's antics and inequality generally. What does this state of affairs mean for labor policy? What are the consequences for education policy?

There is much more to say, but the foregoing ought to provide this conference with a few points of reference if not a tight focus and, at any rate, ought to be enough provocation for a Problematique. I trust that conference participants will not feel overly constrained by my effort to articulate these problems and will say what they wish.

V. CONCLUSION: A VERY PRELIMINARY ASSESSMENT

So, does it work? Can a virtual "conference" be used to foster the emergence of new thinking about public policy and help elites to rethink their positions?

"Rethinking Financial Markets" takes place after this writing. The work that has been done so far has been in preparation. Moreover, this conference serves as a sample. No doubt virtual conferences could be better designed. In short, it is far too soon to draw firm conclusions.

It is not too soon, however, to make some preliminary assessments. As this journal goes to press, some two dozen papers have been submitted. The WEA has done a great deal of work planning and marketing this conference, and I think we have learned some things.

Perhaps the most exciting aspect of the conference has been the sheer range of participants: scholars from not only Europe and North America, but also from South America, across Asia, and Australia, have submitted papers.

In light of the fact that this is an open conference, accessible to anyone with Internet access, I have been pleasantly surprised by the quality of the papers. It may be that the Problematique discouraged frivolous responses.

The electronic format has also encouraged, or at least allowed, a degree of experimentation. One contributor even wrote a (quite erudite) poem about the nature of political economy as it is seen at different times. This formal playfulness, again, may reflect the rather unconventional framing of the Problematique—at least one contributor said so.

As mentioned, in setting up this conference, the WEA both published calls for papers and invited people directly. About half of the people who have submitted papers are friends of mine, or at least friendly professional acquaintances. And many, many people who were invited have not had time, or have not made time, to write.

A number of contributors were concerned that if they submitted a paper to the WEA, they would be foreclosed from publication elsewhere, which they wanted or perhaps even thought they needed for professional purposes.

Drawing these impressions together, I am skeptical that such conferences represent the sort of breakthrough that I perhaps naively hoped. I suspect that the motivations for elite conversations over the Internet are much the same as they ever were—chiefly, advancement and sociability. If that is the case, then conferences like "Rethinking Financial Markets" may do as much to reinforce the commitments of elite groupings as they do to foster new combinations and renewal.

To close, for now, at the very least, "Rethinking Financial Markets" provides a large forum for interesting new work across vast distances. And the conference has not properly begun. It is much easier to comment on papers, and to comment on the comments, than it is to write. So we may yet hope for a sparkling dinner party.