

FINANCIAL STATECRAFT

GRAHAM S. STEELE*

ABSTRACT

The purse is mightier than the sword. In recent decades—from the Cold War to the War on Drugs to the War on Terror to Russia’s invasion of Ukraine—financial institutions have increasingly become the conduits for the United States government’s foreign policy. This Article argues there are deep and under-appreciated connections between the use of money and credit to influence geopolitics, which this Article terms “financial statecraft,” and the goals of financial regulation.

This Article begins by establishing a framework for understanding the partnership between banks and the government in service of financial statecraft. Next, this Article engages in a critical examination of financial statecraft using the examples of global banks, sovereign debt and U.S. dollar markets, and cryptocurrencies. These cases help to clarify the complex relationships between the geopolitical objectives of financial statecraft and the domestic, stability-focused goals of financial regulation. They illustrate the tradeoffs between financial statecraft’s competing aims of promoting access to U.S.-supplied money and credit while ensuring compliance with legal restrictions against money laundering and economic sanctions. They also demonstrate the tensions between the U.S. government’s desire to leverage the competitive advantages of U.S. financial institutions to further its foreign policy and regulatory agencies’ mandates to preserve the safety and stability of the U.S. financial system. This Article concludes by proposing regulatory and statutory reforms to integrate financial statecraft and financial regulation into a single, coherent regime.

Conducting internationally focused statecraft without proper regard for domestic financial regulatory considerations can undermine financial stability. Conversely, successful domestic financial regulation requires consideration of the impact of geopolitics on financial markets and institutions. Ultimately, financial statecraft and financial regulation mutually benefit from financial market integrity and financial stability.

* The author is an academic fellow at the Rock Center for Corporate Governance at Stanford Law School and a senior fellow at the Roosevelt Institute. The author served as the Assistant Secretary for Financial Institutions at the U.S. Department of the Treasury from 2021 to 2024 and the Chief Counsel for the minority staff of the U.S. Senate Committee on Banking, Housing, and Urban Affairs from 2015 to 2017. For their thoughtful comments and feedback, the author would like to thank Hilary Allen, Dan Awrey, Robert Bartlett, John Crawford, Jeremy Kress, Michael Klausner, Sandy Mayson, Patricia McCoy, Saule Omarova, Frank Partnoy, Sarah Bloom Raskin, Ganesh Sitaraman, Mark Van Der Weide, Pierre-Hugues Verdier, William Weightman, Arthur E. Wilmarth, Jr., and Jeffrey Zhang and the participants in the Law and Macroeconomics Conference at the University of Michigan and the Wharton Financial Regulation Conference at the Wharton School of the University of Pennsylvania. Finally, the author would like to thank the editors of the *Stanford Journal of Law, Economics & Business* for their thorough review, excellent feedback, and patience throughout the editorial process.

TABLE OF CONTENTS

INTRODUCTION.....	3
I. THE TRADITIONAL FINANCIAL PARTNERSHIP.....	13
A. <i>Bank Chartering, Regulation, and Support</i>	14
1. Sovereign Control.....	14
2. Stability Regulation.....	15
3. Sovereign Support.....	16
B. <i>The Financial Crisis and the Failure of the Deregulatory Model</i>	17
II. THE FINANCIAL STATECRAFT PARTNERSHIP.....	18
A. <i>The Financial Statecraft Framework</i>	18
1. Deposit Accounts.....	19
2. Payments.....	21
3. Credit and Capital	24
B. <i>Financial Statecraft as a Partnership Regime</i>	27
1. Sovereign Control.....	28
2. Stability Regulation.....	29
3. Sovereign Support.....	31
III. THE DOUBLE-EDGED SWORD OF FINANCIAL STATECRAFT.....	32
A. <i>Where the Statecraft Partnership Goes Wrong: Three Cases</i>	33
1. National Banks.....	33
2. Sovereign Debt and Offshore Dollars.....	39
3. Cryptocurrencies	43
B. <i>From Targeted Financial Weapons to Financial Weapons of Mass Destruction</i>	48
1. Financial and Political Instability	49
2. Political Economy Problems	50
IV. INTEGRATING FINANCIAL STATECRAFT AND FINANCIAL REGULATION.....	52
A. <i>Financial Regulatory Reforms</i>	53
1. Prudential Tools.....	54
2. Structural Remedies	56
3. Lending Authorities	57
B. <i>Statecraft Reforms</i>	58
1. Consultative and Substantive Factors	59
2. Agency Deference and Oversight	60
CONCLUSION	62
APPENDIX	64

31 STAN. J.L. ECON. & BUS. 1

INTRODUCTION

President Donald Trump's so-called "Liberation Day" tariffs provided a vivid illustration of the critical, but underappreciated, role financial capital plays in modern geopolitics. On April 2, 2025, President Trump invoked the International Emergency Economic Powers Act of 1977 (IEEPA) to impose sweeping trade tariffs. These trade-related measures triggered ripple effects that spilled over into the U.S. financial sector.¹ The European Union responded with retaliatory proposals to tax U.S. banks or invoke anti-coercion rules to exclude U.S. banks from government procurement contracts with E.U. member states.² These protectionist policies have caused observers to question the United States' longstanding commitment to its role serving as global provider of safe financial assets, creating volatility in U.S. Treasury markets.³ U.S. Treasury Secretary Scott Bessent responded to this financial instability not by recommitting to multilateral financial coordination, but instead by proposing a package of financial deregulation.⁴ Less than a year later, the value of the U.S. dollar slid against other currencies after the President threatened tariffs on European countries for defending Greenland's sovereignty against threats of U.S. annexation.⁵ European officials revived their talk of using the anti-coercion instrument against strategically important U.S. industries.⁶ Financial market observers began to speculate that Europeans could take retaliatory actions, including dumping their holdings of U.S. Treasury securities.⁷

These episodes were just the latest examples of financial statecraft, meaning the role that dollar-denominated asset and capital flows play in influencing geopolitics.⁸

-
1. See Gerrit De Vynck, Maegan Vazquez, María Luisa Paúl & Caroline O'Donovan, *Team Trump Defends Tariffs as Bipartisan Opposition Grows, Markets Slide*, WASH. POST (Apr. 6, 2025), <https://perma.cc/9XJB-39BT>.
 2. See Camille Gijs, *EU Readies Counterstrike on Big Tech and US Banks Over Trump's Mega Tariffs*, POLITICO (Mar. 31, 2025), <https://perma.cc/A9AK-HLBM>.
 3. See Kate Duguid, Harriet Clarfelt & Costas Mourselas, *Liquidity Worsens in \$29tn Treasury Market as Volatility Soars*, FIN. TIMES (Apr. 11, 2025), <https://perma.cc/X9W4-MGFZ>; see also Randy Thanthong-Knight, *Bank of Canada Says Trump Trade Policy May Hurt Greenback's Safe-Haven Status*, BLOOMBERG (Sept. 23, 2025), <https://perma.cc/J9DG-SFKF>.
 4. See Ebrima Santos Sanneh, *Bessent Defends Tariffs, Calls for Deregulation*, AM. BANKER (Apr. 9, 2025), <https://perma.cc/H7D5-VUHF>.
 5. See Ian Smith & Emily Herbert, *Dollar Slips as Donald Trump's Greenland Threats Reawaken 'Sell America' Fears*, FIN. TIMES (Jan. 19, 2026), <https://perma.cc/H9Y9-P5PG>.
 6. See Jennifer Rankin, *EU Considers Retaliatory Measures Over Trump Greenland Tariff 'Blackmail'*, THE GUARDIAN (Jan. 18, 2026), <https://perma.cc/9YPT-SZ59>.
 7. Ultimately, just one Danish pension fund announced it would sell \$100 million of its Treasuries holdings. See Alex Haring, *Danish Pension Fund to Sell \$100 million in Treasuries, Citing 'Poor' U.S. Government Finances*, CNBC (Jan. 20, 2026), <https://perma.cc/JP3W-4PDF>.
 8. See BENN STEIL & ROBERT E. LITAN, FINANCIAL STATECRAFT: THE ROLE OF FINANCIAL MARKETS IN AMERICAN FOREIGN POLICY 4 (9th ed. 2006). Financial statecraft is a subset of the broader category of economic statecraft, also referred to as "geoeconomics." See ROBERT D. BLACKWILL & JENNIFER M. HARRIS, WAR BY OTHER MEANS: GEOECONOMICS AND STATECRAFT 8 (Harv. U. Press 2016) (defining "geoeconomics" as the practice of "applying

FINANCIAL STATECRAFT

Today, the signs of financial statecraft are difficult to miss. The international response to Russia's invasion of Ukraine relied upon financial sanctions transmitted through U.S. banks with global footprints.⁹ During the Biden Administration, Executive Branch agencies sought to leverage the World Bank and G7 partners to "de-risk" private capital investments in infrastructure, critical minerals production and other strategic sectors,¹⁰ and use the banking system to root out environmentally damaging industries.¹¹ On the private sector side, JPMorgan Chase, the largest U.S.-based bank by assets, has launched a "Security and Resiliency Initiative" commitment to invest up to \$1.5 trillion over ten years in sectors of strategic importance to the United States.¹²

To be sure, the U.S. government's financial, military, and foreign policies have long influenced one another.¹³ Public and private finance have been used to fund war efforts and reconstruction following armed conflicts. The creation of the First Bank of the United States (First Bank), and the financing it provided, brought "order out of chaos" following the Revolutionary War.¹⁴ In upholding the creation of the Second Bank of the United States (Second Bank) after the War of 1812, the U.S. Supreme Court recognized that "money is the sinew of war."¹⁵ President Andrew Jackson subsequently vetoed the extension of the Second Bank's charter on the basis that foreign stockholders might assume control, giving "cause to tremble for the purity of

economic instruments to advance geopolitical ends").

9. See Stephen Morris & Owen Walker, *Banks and Russia: There is No Easy Way Out*, FIN. TIMES (Mar. 18, 2022), <https://perma.cc/464P-PC7V>.
10. See Advait Arun, *What Private Capital Cannot Do Alone: The Future of Global Infrastructure Development*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Dec. 20, 2024), <https://perma.cc/MA7S-KA49>.
11. See FIN. CRIMES ENFORCEMENT NETWORK, FINCEN NOTICE, FIN-2021-NTC4 (Nov. 18, 2021) (alerting financial institutions to the risks of "environmental crime," defined as "illegal activity that harm human health, and harm nature and natural resources by damaging environmental quality, including increasing carbon dioxide levels in the atmosphere, driving biodiversity loss, and causing the overexploitation of natural resources" including wildlife trafficking, illegal logging, illegal fishing, illegal mining, and waste and hazardous substance trafficking).
12. See Press Release, JPMorganChase Launches \$1.5 Trillion Security and Resiliency Initiative to Boost Critical Industries, JPMORGAN CHASE (Oct. 13, 2025), <https://perma.cc/9JPX-QDWN>.
13. See MAX M. EDLING, A HERCULES IN THE CRADLE: WAR, MONEY, AND THE AMERICAN STATE, 1783-1867 12 (2023) (observing the United States' global might "rested on the ability of the American government to pay for soldiers, warships, military equipment, and supplies.").
14. John Wilson Million, *The Debate on the National Bank Act of 1863*, 2 J. POL. ECON. 251, 262 (1894). The policy justifications for creating the First Bank included financing wars and the subsequent economic recoveries. See Charles J. Reid, *America's First Great Constitutional Controversy: Alexander Hamilton's Bank of the United States*, 14 U. ST. THOMAS L.J. 105, 120-24, 163-65 (2018). Hamilton was inspired by the Bank of England, which had "helped to finance the British war machine" by assuming the government's debts, providing payments to overseas military operations, and managing the domestic money supply. *Id.* at 118-19.
15. *McCulloch v. State of Maryland*, 17 U.S. (4 Wheat.) 316, 373 (1819).

31 STAN. J.L. ECON. & BUS. 1

our elections in peace and for the independence of our country in war[.]”¹⁶ Later, the national banking system was established to “meet the necessities of the Civil War,” including the creation of national banks to purchase government bonds to finance the Union’s war effort.¹⁷ During the Civil War, economic sanctions took the form of physical blockades of Confederate-controlled ports.¹⁸ The Supreme Court upheld the sanctions because “war suspends all commercial intercourse between the citizens of two belligerent countries or States, except so far as may be allowed by the sovereign authority[.]”¹⁹ In its decision, the Court reiterated that “[m]oney and wealth . . . are said to be the sinews of war,” and are therefore “as necessary in its conduct as numbers and physical force.”²⁰

As U.S. banks expanded overseas, Congress recognized the United States’ emerging status as the “purse of the world” and the fact that wars were increasingly determined “as much by dollars [as] by men and guns[.]”²¹ During World War I and World War II, the United States government again turned to U.S. banks to finance the war efforts and postwar European reconstruction.²² Following World War II, economic sanctions enabled the international community to influence countries’ internal governance, ostensibly with an aim towards “promot[ing] democracy and secur[ing] human rights.”²³ They were also used to help execute the Cold War against the “world conquest by communist imperialism.”²⁴

-
16. Andrew Jackson, *Veto Message Regarding the Bank of the US* (July 10, 1832) in JACKSON VERSUS BIDDLE: THE STRUGGLE OVER THE SECOND BANK OF THE UNITED STATES 11 (George Rogers Taylor ed. 1949). Jackson believed U.S. banks’ shareholders should be “purely American,” and therefore “friendly to our Government and willing to support it in times of difficulty and danger.” *Id.* at 12.
 17. *Raichle v. Fed. Rsrv. Bank of N.Y.*, 34 F.2d 910, 912 (1929); *see also* *Atherton v. Fed. Deposit Ins. Corp.*, 519 U.S. 213, 222 (1997) (“During and after the Civil War a federal banking system reemerged. Moved in part by war-related financing needs, Treasury Secretary (later Chief Justice) Salmon P. Chase proposed, and Congress enacted, laws providing for federally chartered banks and encouraging state banks to obtain federal charters.” (citation omitted)).
 18. *See* *The Prize Cases*, 67 U.S. 635, 665-66 (1862).
 19. *Ins. Co. v. Davis*, 95 U.S. 425, 429 (1877); *see also* *The Prize Cases*, *supra* note 18, at 672 (the “laws of war recognize the right of a belligerent to cut these sinews of the power of the enemy . . .”).
 20. *The Prize Cases*, *supra* note 18, at 671-72.
 21. SUBCOMM. ON INT’L TRADE & COMMERCE, COMM. ON INT’L RELS., U.S. HOUSE OF REPRESENTATIVES, *TRADING WITH THE ENEMY: LEGISLATIVE AND EXECUTIVE DOCUMENTS CONCERNING REGULATION OF INTERNATIONAL TRANSACTIONS IN TIME OF DECLARED NATIONAL EMERGENCY* 94 (1976) (statement of Senator Esch).
 22. *See infra* Part II.A.3.
 23. Jessica Whyte, *Economic Coercion and Financial War*, 90 J. AUSTL. POL. ECON. 5, 11 (2022). As part of a 1968 effort organized by the U.K. through the United Nations Security Council, the United States used sanctions to pressure the white-dominated government of Rhodesia to recognize the rights of the country’s native African population. *See* Donald L. Losman, *Rhodesia: A Decade Under Sanctions*, 43 IL POLITICO 321 (1978).
 24. Proclamation No. 2914 (Dec. 16, 1950). At various points from the 1950s to 1970s, the U.S. government prohibited trading with, or blocked assets of, Communist countries, including China, North Korea, Vietnam, Cambodia, Cuba, and East Germany. *See*

FINANCIAL STATECRAFT

If financial statecraft is not new, its evolution has tracked the changes in the global economy and the shifting nature of geopolitics. The economy has grown increasingly globalized and financialized.²⁵ The United States now enjoys the so-called “Exorbitant Privilege”—the idea that the U.S. dollar’s status as the world’s reserve currency has situated the U.S. financial system at the center of global economics and geopolitics.²⁶ This post-World War II economic integration under a global dollar system has shifted the emphasis of foreign policy away from armed conflicts between world powers toward diplomatic negotiations and legal tools like sanctions.²⁷ The attacks by the terrorist group al Qaeda on September 11, 2001 (9/11), and the ensuing War on Terror, were watershed moments after which financial sanctions increasingly became a “tool of first resort to address a range of threats to the national security, foreign policy, and economy of the United States.”²⁸

We are now in an age where, even during normal time, finance is actively being managed by the government consistent with its geopolitical goals.²⁹ This model of

SUBCOMM. ON INT’L TRADE & COMMERCE, *supra* note 21, at 226-28.

25. See Robin Greenwood & David Scharfstein, *The Growth of Finance*, 27 J. ECON. PERSP. 3 (2013); see also Gerald F. Davis & Suntae Kim, *Financialization of the Economy*, 41 ANN. REV. SOC. 203, 204 (2015) (defining “financialization” as the “increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of the domestic and international economies.” (quoting GERALD A. EPSTEIN, FINANCIALIZATION AND THE WORLD ECONOMY 3 (2005))).
26. See KENNETH ROGOFF, OUR DOLLAR, YOUR PROBLEM: AN INSIDER’S VIEW OF SEVEN TURBULENT DECADES OF GLOBAL FINANCE, AND THE ROAD AHEAD 219-28 (2025). The Bretton Woods agreement, reached in 1945 and implemented in 1958, instituted a system of currency convertibility among significant economies with the International Monetary Fund (IMF) as a central multilateral financial institution and the U.S. dollar as the reserve and trading currency.
27. See NICHOLAS MULDER, THE ECONOMIC WEAPON: THE RISE OF SANCTIONS AS A TOOL OF MODERN WAR 3 (2022) (describing how the “methods of economic warfare were thus repurposed and refined for sure outside a formally declared state of war” and the novelty of sanctions serving as “coercive exclusion [that] could take place *in peacetime*.” (emphasis in original)).
28. TREASURY SANCTIONS REVIEW, *infra* note 215, at 1; see also MOHSIN, *infra* note 27 at 172 (observing that the United States began “relying on economic sanctions to help solve more and more geopolitical scuffles.”). To illustrate this point, the number of financial sanctions designations grew by 933 percent over two decades—from 912 in 2001 to 9,421 in 2021. See TREASURY SANCTIONS REVIEW, *infra* note 215, at 2. This increase can in part be attributed, however, to two Russia-focused laws passed in the 2010s enhancing sanctions authorities against countries and individuals that engage in certain human rights violations. See Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, Title IV (2012); see also Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, Title XII, Subtitle F (2016). Up until 9/11, the Treasury Department had been “reticent to let the intelligence community near the financial system” to avoid “upset[ing] the balance of the international financial system.” ZARATE, *infra* note 27, at 60; see also FARRELL & NEWMAN, *infra* note 48, at 63 (stating, prior to 9/11, “Treasury saw the Department of State and the intelligence community as menaces to global markets and threats to its own autonomy.”).
29. See Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, 22 J. INT’L ECON. L. 655, 657-60 (2019) (describing the move from the “Neoliberal Order” to the “Geoeconomic Order”)

31 STAN. J.L. ECON. & BUS. 1

financial statecraft operates as a public-private partnership, shifting some of the obligations—and profits—of international development and sanctions off the sovereign and onto private banks.³⁰ This settlement has effectively turned private financial institutions and markets into geopolitical tools of first resort through which the United States Government projects its global power while avoiding armed conflict.³¹ Dollar-based assets and liabilities are to the global financial system what the Strait of Hormuz is to global energy markets: a critical commercial chokepoint without which much of global trade cannot function.

The Trump Administration's predilections for geopolitical conflict and financial deregulation have expanded and complicated the United States' use of financial statecraft. Before taking office, the Chairman of President Trump's Council of Economic Advisors proposed a new "Mar-a-Lago Accord" of monetary protectionism, suggesting the U.S. Treasury's Exchange Stabilization Fund (ESF) could be used to accumulate foreign currency reserves and IEEPA could be invoked to impose fees on foreign holders of U.S. Treasuries to discourage them from accumulating large foreign exchange reserves.³² But there is also a camp that wants to expand so-called "dollar diplomacy" and urge other nations to adopt the dollar as their official currency.³³ In late September, Secretary Bessent announced the United States government's intent to use the ESF and a consortium of private financial institutions to stabilize Argentina's sovereign debt and currency markets to aid that country's right-wing government in the lead-up to national elections.³⁴

As financial statecraft evolves, the Executive and Judicial branches are weakening

-
30. See *infra* Part II; see also Kathryn Judge, *Financial Regulation Beyond Stability*, 19 J. L., ECON. & POL'Y 194, 200 (2024) (describing the role of U.S. banks as the "eyes and ears of law enforcement and the enforcers of economic sanctions" as among the "most significant ways that banks are harnessed to serve governmental aims."); see also MULDER, *supra* note 23, at 295 (describing finance as a "particularly potent conduit for pressure" such that "global banks and corporate finance are the frontline of sanctions implementation and compliance.").
 31. See *infra* Part II; see also Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SECURITY 42, 44 (2019); MULDER, *supra* note 27, at 4 (explaining how economic sanctions replaced armies and armed conflicts with a "technical and administrative apparatus of lawyers, diplomats, military experts, and economists."); JUAN C. ZARATE, *TREASURY'S WAR 11* (PublicAffairs 2013); SALEHA MOHSIN, *PAPER SOLDIERS: HOW THE WEAPONIZATION OF THE DOLLAR CHANGED THE WORLD ORDER* 170, 177 (2024).
 32. See Stephen Miran, *A User's Guide to Restructuring the Global Trading System* 28-34, Hudson Bay Capital (Nov. 2024), <https://perma.cc/Y6BJ-Y4QD>.
 33. See Claire Jones, Amelia Pollard & Joseph Cotterill, *US Pushes for Wider Global Dollar Adoption*, FIN. TIMES (Nov. 1 2025), <https://perma.cc/J4NZ-QSVD>.
 34. See Ciara Nugent, James Politi & Joseph Cotterill, *US Offers Financial Lifeline to Argentina's Javier Milei*, FIN. TIMES (Sept. 22, 2025), <https://perma.cc/N3JR-ZVGC>; see also Ciara Nugent, Demetri Sevastopulo & Claire Jones, *US Treasury Arranging Fresh \$20bn in Debt Market Support for Argentina*, FIN. TIMES (Oct. 15, 2025), <https://perma.cc/876N-FF89>; Zolan Kanno-Youngs & Alan Rappeport, *Trump Dangles \$20 Billion Lifeline for Argentina, With Strings Attached*, N.Y. TIMES (Oct. 14, 2025), <https://perma.cc/4ZRW-NB32>. Secretary Bessent offered alternative justifications for this intervention, at times arguing it was necessary for financial stability and at other times on geopolitical terms.

FINANCIAL STATECRAFT

core regulatory authorities. The Supreme Court is in the process of reducing the political independence of financial regulatory agencies and cabining agencies' powers to regulate private industry.³⁵ President Trump is seeking to consolidate the previously independent central bank—the Fed—under his control.³⁶ The European Central Bank has clearly become concerned about European banks' reliance on dollar funding and potential funding vulnerabilities in case they should lose access to dollar liquidity as a result of protectionist measures and political influence over the Fed.³⁷ The increasingly expansive use of financial statecraft and protectionist tools coupled with the diminishment of financial regulation and agency independence have raised the stakes of this project and prompted questions about the future role of the U.S. dollar in the global economic system.³⁸

This Article's first contribution is descriptive. It expands and sharpens the meaning of financial statecraft by providing an account of how financial agencies and institutions have been enlisted in foreign policy.³⁹ There is a traditional, well-understood partnership between U.S. banks and the United States government administered through chartering, regulation, and sovereign support. Financial statecraft is another, less appreciated partnership. It is comprised of a mix of supportive tools that seek to promote and expand access to U.S. dollar-denominated

35. See *infra* Part IV.B.2.

36. See Colby Smith & Ben Casselman, *The Fed Tried to Avoid a Fight with Trump. It Got One Anyway.*, N.Y. TIMES (Sept. 15, 2025), <https://perma.cc/YVV9-JZ6Y>.

37. See Stefania Spezzati, Jesús Aguado, Lawrence White & Elisa Martinuzzi, *ECB Presses Banks on Dollar Funding Over Trump Concerns*, REUTERS (May 14, 2025), <https://perma.cc/D3K6-AB8C>; see also Francesco Canepa & Balazs Koranyi, *Euro Zone Banks Should Prepare for Risk of Dollar Squeeze, ECB Says*, REUTERS (Nov. 26, 2025), <https://perma.cc/5ABE-D8KG>.

38. See Scott Bessent, Secretary, U.S. Dep't of the Treasury, Remarks before the Economic Club of N.Y. (Mar. 6, 2025), <https://perma.cc/RRZ9-RTH5> (describing financial deregulation, tariffs, and dollar sanctions as the "three pillars" of "America First" economic agenda); see also Graham Steele, *What Tariffs and the Argentina Bailout Can Tell Us About the Perils of Financial Statecraft*, JUST SECURITY (Dec. 1, 2025), <https://perma.cc/CDW3-Y5MJ>.

39. See *infra* Part II. This is not a comprehensive account of the broader regime of economic sanctions; for example, travel-related sanctions like visa restrictions issued by the Department of State or general trade sanctions such as the export control regime administered by the Department of Commerce's Bureau of Industry and Security. See Kenneth W. Abbott, *Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970s and 1980s*, 65 MINN. L. REV. 739 (1981). Similarly, this account does not address the ways in which national security-based investment controls like the Committee on Foreign Investment in the United States (CFIUS) review process are being repurposed to further protectionist trade and industrial policies. E.g., Demetri Sevastopulo, *Foreign Investment Panel Split on Nippon's Bid for US Steel*, FIN. TIMES (Dec. 14, 2024), <https://perma.cc/HPG7-468F> (quoting an anonymous expert arguing the U.S. Trade Representative's opposition to Nippon Steel's acquisition of US Steel "exposes the Cfius process to becoming a permanent tool of politicians, [and] unreasonably expands the scope of what is considered national security."); see also Harry Dempsey and Amelia Pollard, *Dealmakers Fear US Steel 'Golden Share' Heralds New Normal Under Trump*, FIN. TIMES (June 17, 2025), <https://perma.cc/ZDW2-ZUAT> (quoting a former government official that the US decision to take a so-called "golden share" in the Nippon-US Steel acquisition was "not about economics, this is about control.").

31 STAN. J.L. ECON. & BUS. 1

money and credit and coercive measures that seek to deny access to this money and credit.⁴⁰ It is also largely driven by political agencies focused on foreign policy, with little involvement from financial regulators.⁴¹ It is therefore thought to be largely separate from, if not at times in conflict with, the goals of financial regulation.⁴²

This Article's second contribution is normative. It argues that, contrary to conventional accounts, internationally focused financial statecraft and domestically focused financial regulation are deeply connected. That is, there are geopolitical dimensions to financial regulation and regulatory dimensions when finance is used in service of geopolitics. There are inherent tensions between the U.S. government's dual desires of increasing financial influence by expanding access to dollar-denominated money and credit and the repercussions for financial stability and legal compliance when the government imposes coercive statecraft measures. The attributes that make finance an attractive tool of statecraft—including the intangibility, ubiquity, and velocity of money, financial instruments, and financial markets—make financial markets and institutions more fragile than other commercial businesses.⁴³ This fragility can lead to runs and panics and can metastasize into financial crises that, in turn, create negative externalities that harm the broader economy necessitating sovereign bailouts.⁴⁴ Financial statecraft therefore requires financial agencies to consider how geopolitics intersect with their statutory authorities and that they fail to exercise the full scope of their authorities by ignoring geopolitics.⁴⁵ Conversely, foreign policy makers must account for, *ex ante*, the stability and resilience of markets and institutions when planning and implementing statecraft measures. Failing to connect these two regimes risks transforming a geopolitical advantage into an economic vulnerability.

The Article proceeds in four parts. Part I describes the traditional public-private partnership between U.S. banks and the United States government to allocate money and credit in the *domestic* economy through the regulatory perimeter of chartering, regulation, and public support. Part II establishes the contours of financial statecraft as an analogous *international* partnership between banks and the government and a sector-specific form of geoeconomics. The framework established in Part II highlights several of financial statecraft's salient features, including its transmission through depository accounts, payment infrastructure, and credit and capital investment; its mix of supportive and coercive tools; and its legal fragmentation across disparate statutes and agencies. Part III then engages in a critical examination of the intersections

40. See *infra* Part II.A.

41. See *id.*

42. See, e.g., JPMorgan Chase, *supra* note 12 (quoting JPMorgan Chase CEO Jamie Dimon that "excessive regulations" are one of the "obstacles that stand in the way" of a strong, secure, and resilient American economy).

43. See *infra* Part II.B & III.A.

44. See *infra* Part III.B.

45. This Article does not argue financial agencies possess, or should possess, hidden statecraft *mandates* as such. These are first and foremost questions of scope and balance—of *when* and *how* regulators should be involved in formulating and responding to statecraft.

FINANCIAL STATECRAFT

of financial statecraft and regulation through the examples of global banks, dollar-denominated sovereign debt and currency markets, and cryptocurrencies. This Part illustrates financial statecraft's inherent complexities. Using finance to achieve the U.S. government's geopolitical objectives requires financial institutions with the capacity to manage geopolitical risks and withstand shocks caused by coercive statecraft measures. But, as this Part demonstrates, financial statecraft has not kept pace with the compliance and stability risks posed by the growth of Global Systemically Important Banks (GSIBs). Likewise, nonbank financial institutions that seek to operate outside the traditional regulatory perimeter—a phenomenon known as “shadow banking”—can undermine effective statecraft *and* regulation. Part IV proposes reforms to integrate statecraft and regulation into a new partnership in the form of a single comprehensive and mutually supportive regime for managing the operations and risks of financial statecraft. Specifically, banking agencies should incorporate statecraft considerations into financial stability-related regulatory policies, including prudential regulations,⁴⁶ structural remedies, and financial support programs.⁴⁷ To guide agencies' use of their delegated authorities, Congress should clarify the relevant statutory factors governing the exercise of statecraft powers to include regulatory considerations; codify the appropriate level of deference applicable to statecraft and regulatory policy decisions; and impose additional coordination and transparency requirements.⁴⁸ These targeted reforms are meant to respond to the undesirable and unintended financial and political consequences identified in previous Parts by ensuring statecraft is consistent with financial regulation and reflects democratic input.

This Article neither advocates that finance should play a more expansive role in statecraft nor that governments abandon financial statecraft. Instead, it seeks a more comprehensive understanding of what the U.S. government is doing when it engages in financial statecraft as it presently exists and offers a new perspective on the connections within this system and between the seemingly attenuated fields of financial statecraft and financial regulation. This Article complicates several strands of corporate law and financial regulation scholarship. It contradicts the notion that using finance as a tool of statecraft is novel or anathema to good financial governance.⁴⁹ It also challenges the idea that incorporating statecraft considerations into business law, thereby regulating the global flow of capital, imposes net costs on the financial system or society by inhibiting efficient capital formation.⁵⁰ As this Article shows, unregulated

46. “Prudential regulation” refers to the regulations that seek to preserve the safety and stability of financial institutions and the financial system. Rules targeted at the stability of individual institutions are referred to as “microprudential” and rules targeted at the system as a whole are known as “macroprudential.” See generally Daniel K. Tarullo, Member, Bd. of Governors of the Fed. Rsr. Sys., *Rethinking the Aims of Prudential Regulation* (May 8, 2014), <https://perma.cc/F3D4-RZQ7>.

47. See *infra* Part IV.A.

48. See *infra* Part IV.B.

49. See Pierre-Hugues Verdier, *International Finance and the Return of Geopolitics*, 119 AM. J. INT'L L. 229 (2025).

50. See Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549 (2023); Mariana Pargendler, *The Grip of Nationalism on Corporate Law*, 95 INDIANA L.J. 533 (2020).

31 STAN. J.L. ECON. & BUS. 1

capital is detrimental to both financial statecraft and financial stability. This Article explores the proper balance between public and private financial powers within financial statecraft's partnership model. It also rebuts recent criticisms that financial regulators—and the Fed in particular—are pursuing extralegal mandates outside of their core expertise or stretching legal authorities beyond their proper bounds.⁵¹ If anything, the experience of financial statecraft demonstrates they are failing to appreciate how other areas of economic and foreign policy bear on their core responsibilities.

This paper contributes to the line of scholarship on the growing role of geoeconomics⁵² and its relationship to corporate and financial institutions and transactions,⁵³ such as cross-border investments,⁵⁴ foreign ownership of economically significant platform businesses,⁵⁵ and corporate law in foreign policy and warfare.⁵⁶ Previous scholarship has examined specific geopolitical and international financial objectives into which banks have been enlisted, including detecting illicit financial enterprises⁵⁷ and combatting tax evasion through offshore banking.⁵⁸ Others have examined the financial system's role as a transmission mechanism and potential source of vulnerability in modern forms of warfare.⁵⁹ This Article offers new domestic

-
51. See Christina Parajon Skinner, *Central Bank Activism*, 71 DUKE L.J. 247 (2021); David T. Zaring & Jeffery Y. Zhang, *The Federal Reserve's Mandates*, 108 MINN. L. REV. 333 (2023); Christina Parajon Skinner, *Financial Stability and Bank Agency Discretion*, 92 U. CHI. L. REV. 503 (2025).
 52. See, e.g., ANTHEA ROBERTS & NICOLAS LAMP, SIX FACES OF GLOBALIZATION: WHO WINS, WHO LOSES, AND WHY IT MATTERS (2021); J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 YALE L.J. 1020 (2019); Kathleen Claussen, *Trade's Security Exceptionalism*, 72 STAN. L. REV. 1097 (2020); Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PA. L. REV. 1955 (2024); Harlan Grant Cohen, *Nations and Markets*, 23 J. INT'L ECON. L. 793 (2020).
 53. See HENRY FARRELL & ABRAHAM L. NEWMAN, UNDERGROUND EMPIRE: HOW AMERICA WEAPONIZED THE WORLD ECONOMY (Penguin 2024) (ebook); Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SECURITY 42 (2019); PIERRE-HUGUES VERDIER, GLOBAL BANKS ON TRIAL: U.S. PROSECUTIONS AND THE REMAKING OF INTERNATIONAL FINANCE (2020); Pierre-Hugues Verdier, *Transnational Enforcement Leadership and the World Police Paradox*, 64 VA. J. INT'L L. 239 (2024).
 54. See Eichensehr & Hwang, *supra* note 50.
 55. See Ganesh Sitaraman, *The Regulation of Foreign Platforms*, 74 STAN. L. REV. 1073 (2022).
 56. See Curtis J. Milhaupt, *Corporate Governance in an Era of Geoeconomics* (ECGI Working Paper No. 790/2024) (July 2025), available at: <https://perma.cc/SG4D-Z64Y>; Tom C. W. Lin, *Business Warfare*, 63 B.C. L. REV. 1 (2022); Kishanthi Parella, *Corporate Foreign Policy in War*, 64 B.C. L. REV. 1981 (2023).
 57. See Judge, *supra* note 30, at 200-05; Mariano-Florentino Cuéllar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. CRIM. L. & CRIMINOLOGY 311, 324 (2003); Stavros Gadinis & Colby Mangels, *Collaborative Gatekeepers*, 73 WASH. & LEE L. REV. 797 (2016).
 58. See Itai Grinberg, *The Battle of Taxing Offshore Accounts*, 60 UCLA L. REV. 304 (2012).
 59. See ZARATE, *supra* note 31; Tom C.W. Lin, *Financial Weapons of War*, 100 MINN. L. REV. 1377 (2016); David Zaring & Elena Baylis, *Sending the Bureaucracy to War*, 92 IOWA L. REV. 1359 (2007).

FINANCIAL STATECRAFT

dimensions to the view of the global dollar-based financial system as a political and legal phenomenon⁶⁰ and the political economy of the international financial system.⁶¹ It provides contributions that help address the challenges of preserving financial stability in the dollar-based global financial order.⁶² This analysis is also relevant to economic development scholarship examining issues of financial access and inclusion⁶³ and the roles of the so-called “developmental state”⁶⁴ and “derisking state”⁶⁵ in shaping national and international economies. Like these other contributions, this Article elucidates the under-appreciated ways that questions of financial governance and allocation are upstream from issues of governance across other strategically important economic sectors.

This Article connects the aforementioned lines of foreign policy and development scholarship to banking and financial regulation. This includes post-Global Financial Crisis scholarship focused on the Fed’s role in foreign policy,⁶⁶ U.S. banks’ international activities,⁶⁷ and the operations of foreign banks within the United States.⁶⁸ Despite its significance, the role of U.S. financial institutions and markets in statecraft is often underappreciated in financial regulatory scholarship.⁶⁹ When financial statecraft is scrutinized, critiques of tools like anti-money laundering requirements generally focus on their micro-transactional inefficiencies, to the exclusion of broader questions about the regime’s connections to broader statecraft goals. Ultimately, this Article broadens the scholarly understanding of banking and finance as a special form of “outsourcing regime” and the duties the government imposes on financial

-
60. Francisco J. Quintana, *Dollar Dominance, De-dollarization, and International Law*, 28 J. INT’L ECON. L. 1 (2025); Carla Norloff, *Dollar Hegemony: A Power Analysis*, 21 REV. OF INT’L POL. ECON. 1042, 1043 (2014).
61. E.g., MARY BRIDGES, *DOLLARS AND DOMINION: US BANKERS AND THE MAKING OF A SUPERPOWER 4* (2024) (describing the “interconnected structures of political economy” that led to the growth of U.S. bank branching abroad); Benjamin Braun, Arie Krampf & Steffen Murau, *Financial Globalization as Positive Integration: Monetary Technocrats and the Eurodollar Market in the 1970s*, 28 REV. OF INT’L POL. ECON. 794 (2021).
62. See John Crawford, *The Dollar Dilemma: Hegemony, Control, and the Dollar’s International Role*, 18 VA. L. & BUS. REV. 149 (2024).
63. See Demirguc-Künt, Klapper & Singer, *infra* note 243.
64. See THE DEVELOPMENTAL STATE 1 (Meredith Woo-Cummings ed., 1999) (describing the “developmental state” as “shorthand for the seamless web of political, bureaucratic, and moneyed influences that structures economic life in capitalist Northeast Asia.”); Robert H. Wade, *The Developmental State: Dead or Alive?*, 49 DEV. & CHANGE 257 (2018).
65. See Daniela Gabor, *Critical Macro-finance: A Theoretical Lens*, 6 FIN. & SOC’Y 45 (2020); Daniela Gabor, *The (European) Derisking State* (2023) (unpublished manuscript), <https://perma.cc/6XDU-2ZQY>; Stefan Eich, *Derisking As Worldmaking: Climate Finance and the Politics of Uncertainty*, 32 REV. OF INT’L POL. ECON. 668 (2025).
66. See Peter Conti-Brown & David Zaring, *The Foreign Affairs of the Federal Reserve*, 44 J. CORP. L. 665 (2019); Daniel D. Bradlow & Stephen Kim Park, *A Global Leviathan Emerges: The Federal Reserve, COVID-19, and International Law*, 114 AM. J. INT’L L. 657, 659-61 (2020).
67. See BRIDGES, *supra* note 61; Graham S. Steele, *Banking on the Edge*, 2 U. CHI. BUS. L. REV. 171 (2023).
68. See Jeremy C. Kress, *Domesticating Foreign Finance*, 73 FLA. L. REV. 951 (2021).
69. See Judge, *supra* note 30, at 195.

31 STAN. J.L. ECON. & BUS. 1

institutions.⁷⁰

I. THE TRADITIONAL FINANCIAL PARTNERSHIP

Many financial products, services, and markets have been used to further statecraft, including equity markets,⁷¹ commodities markets,⁷² and insurance.⁷³ This discussion focuses on the role of the banking system in statecraft because banks are special. They serve an essential financial intermediation function by creating and allocating money and credit⁷⁴ and serving as a the transmission belt for monetary policy and payments.⁷⁵ Banks use deposits, credit, payment services, and related functions to provide liquidity that ensures households and businesses are able to meet

70. See Robert C. Hockett & Saule T. Omarova, *The Finance Franchise*, 102 CORNELL L. REV. 1143, 1147 (2017) (arguing the “modern financial system is effectively a public-private partnership that is most accurately, if unavoidably metaphorically, interpreted as a franchise arrangement.”); Saule T. Omarova & Graham S. Steele, *Banking and Antitrust*, 133 YALE L.J. 1162, 1219 (2024) (describing banking as the “outsourcing of sovereign money-creation power to profit-seeking private firms”); Lev Menand & Morgan Ricks, *Federal Corporate Law and the Business of Banking*, 88 U. CHI. L. REV. 1361, 1389 (2021) (describing the system of chartering national banks as an “outsourcing scheme”); Morgan Ricks, *Money as Infrastructure*, 2018 COLUM. BUS. L. REV. 757, 801 (arguing “banks’ monetary function is . . . understood as an outsourcing or franchise arrangement.”).

71. Under Section 721 of the Defense Production Act of 1950 (DPA), the President reviews mergers, acquisitions, or other investments by foreign individuals and governments to determine the transactions’ national security implications. See 50 U.S.C. § 2170(a)-(b). Pursuant to such investigation, the President can take any action he or she “considers appropriate to suspend or prohibit” the transaction, including filing legal action, to ensure it will not “threaten to impair the national security.” 50 U.S.C. § 2170(d). While this process, administered by the interagency Committee on Foreign Investment in the United States (CFIUS) focuses on inbound investments, there has been increasing interest in restricting outbound investments, with particular focus on China. See Eichensehr & Hwang, *supra* note 50, at 578-82; see also U.S. DEP’T OF THE TREASURY, 89 FED. REG. 90398, PROVISIONS PERTAINING TO U.S. INVESTMENTS IN CERTAIN NATIONAL SECURITY TECHNOLOGIES AND PRODUCTS IN COUNTRIES OF CONCERN (Nov. 15, 2024).

The U.S. securities laws can also be used to restrict inbound investment. In the 1990s, Congress scrutinized the use of U.S. capital markets to facilitate investments in Chinese weapons development and proliferation. See STEIL & LITAN, *supra* note 8, at 49-51. Congress pushed the Securities and Exchange Commission (SEC) to impose sanctions on foreign securities issuers, under the rationale that certain types of foreign ownership and exposure to geopolitical tensions pose material investment risk. See *id.* at 51-53.

72. See *infra* notes 204-05 and accompanying text.

73. See SUBCOMM. ON INT’L TRADE & COMMERCE, *supra* note 21, at 97-98. For example, insurance and reinsurance were included among the list of “covered services” used to enforce the price cap applicable to Russian oil exports subject to sanctions following the invasion of Ukraine. See OFF. OF FOREIGN ASSET CONTROL, U.S. DEPT. OF THE TREASURY, OFAC GUIDANCE ON IMPLEMENTATION OF THE PRICE CAP POLICY FOR CRUDE OIL AND PETROLEUM PRODUCTS OF RUSSIAN FEDERATION ORIGIN 2 (2023), <https://perma.cc/B85C-PH79>.

74. See *U.S. v. Phila. Nat’l Bank*, 374 U.S. 321, 326-27 (1963) (describing how banks play a “key role in the national economy”).

75. See FED. RES. BANK MINNEAPOLIS, *Are Banks Special?*, in ANNUAL REPORT OF 1982 (1983).

FINANCIAL STATECRAFT

their financial obligations.⁷⁶ This Part establishes the structure of domestic banking law and regulation as a form of public-private partnership in service of domestic economic goals.

A. Bank Chartering, Regulation, and Support

The unique structure of bank *regulation* is based upon the special attributes of the banking *business*. The U.S. banking system is governed by a framework of federal licensure, regulation and supervision, and government guarantees and liquidity support. The government apportions access to bank charters, the power to create money in the form of deposits and loans, in addition to support through a public safety net. This framework reflects the longstanding desire that private banks be democratically accountable and concerns about the potential that, in the absence of robust public supervision, banks might use their political and economic power to set banking policy.⁷⁷ Under this partnership arrangement, U.S. banking law “vests substantive control over the allocation of risks and returns in financial markets in private actors operating on a micro-level and assigns the responsibility for ensuring financial stability to public actors operating on a macro-level.”⁷⁸

1. Sovereign Control

Questions about what financial institutions and products should have access to the privileges and restrictions of the banking franchise—what is commonly called the “regulatory perimeter”—have persisted since the nation’s early banking laws.⁷⁹ The National Bank Act of 1863 (NBA) established a uniform national currency that could only be issued by national banks chartered and supervised by the Office of the Comptroller of the Currency (OCC).⁸⁰ Salmon P. Chase, the Treasury Secretary who championed the NBA, described the national banking system as a “foundation of national credit combined with private capital.”⁸¹

In chartering national banks, Congress created “federal instrumentalities to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositaries.”⁸² National banks inherited from the First Bank and the Second Bank the role of fiscal agents

76. See Anil K. Kashyap, Raghuram Rajan & Jeremy C. Stein, *Banks as Liquidity Providers: An Explanation for the Coexistence of Lending and Deposit-Taking*, 57 J. FIN. 33, 34-35 (2002).

77. See Roderick M. Hills, Jr., *Exorcising McCulloch: The Conflict-Ridden History of American Banking Nationalism and Dodd-Frank Preemption*, 161 U. PA. L. REV. 1235, 1247-48 (2013).

78. Saule T. Omarova, *New Tech vs. New Deal: Fintech as a Systemic Phenomenon*, 36 YALE J. REGUL. 735, 749 (2019).

79. See Katherine E. Di Lucido, Nicholas K. Tabor & Jeffery Y. Zhang, *Fenceposts without a Fence*, 76 VAND. L. REV. 1215 (2023).

80. See *McCormick v. Market Nat’l Bank*, 165 U.S. 538, 551 (1897).

81. REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES 17 (1862).

82. *Franklin Nat’l Bank of Franklin Square v. N.Y.*, 347 U.S. 373, 375 (1954).

31 STAN. J.L. ECON. & BUS. 1

entrusted with safekeeping public deposits.⁸³ National banks were historically understood as “quasi-public institutions,”⁸⁴ or “instrumentalities of the federal government, created for a public purpose.”⁸⁵ As such, banks’ public benefits are accompanied by obligations, including ensuring the products and services they provide meet the needs of the communities they serve.⁸⁶

2. Stability Regulation

The structure of bank regulation balances the national banking system’s competing priorities of local accountability, national and global scale, and financial stability. The debates over the First and Second Banks were infused with a wariness of the government’s role in banking and the belief that government tends to favor those with financial privilege and infringe upon individual liberties.⁸⁷ Upon assuming the presidency, Thomas Jefferson worried that, during wartime, the First Bank could channel its financial support to influence outcomes or dictate the terms of peace.⁸⁸ After the First Bank’s charter expired, the U.S. government relied on state banks to help finance the War of 1812.⁸⁹ Following the War, proponents argued that chartering the Second Bank would help finance government activities and restore the stability of state banks.⁹⁰ The NBA’s sponsor, Senator John Sherman, similarly argued that a stable financial system, built on a uniform national currency, was essential to the Union’s cause.⁹¹

83. See *McCulloch*, 17 U.S. at 396-97; see also *First Nat’l Bank v. Anderson*, 269 U.S. 341, 347 (1926) (“National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies . . .”).

84. *Van Reed v. People’s Nat’l Bank*, 198 U.S. 554, 557 (1905).

85. *Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (1896); see also *Farmers’ and Mechanics’ Nat’l Bank v. Dearing*, 91 U.S. 29, 34 (1875) (describing national banks as “instruments designed to be used to aid the government in the administration of an important branch of the public service.”).

86. E.g., 12 U.S.C. § 1816(6) (the factors to be considered as part of a bank’s application for deposit insurance include the “convenience and needs of the community to be served . . .”); see also 12 U.S.C. § 2901 (requiring banks to “serve the convenience and needs of the communities in which they are chartered to do business . . .”).

87. See Bray Hammond, *Free Banks and Corporations: The New York Free Banking Act of 1838*, 44 J. POL. ECON. 184, 188 (1936).

88. See NATIONAL MONETARY COMMISSION, *THE FIRST AND SECOND BANKS OF THE UNITED STATES* 71, 61st Cong., 2d Sess. (1910). Jefferson once described banks as “more dangerous than standing armies.” Letter from Thomas Jefferson to John Taylor, May 28, 1816, *Founders Online*, NAT’L ARCHIVES, <https://perma.cc/EZM9-XS4N>.

89. See NATIONAL MONETARY COMMISSION, *supra* note 88, at 110.

90. See *id.* at 155.

91. See Million, *supra* note 14, at 258; *id.* at 269-70 (Some NBA supporters saw the delegation of currency creation to the states as a strategic error that allowed Rebel states to finance their operations.). Secretary Chase argued the existence of a national banking system would have “so strengthened the motives for adhesion derived from other sources that the wild treason of secession would have been impossible[.]” See also REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES, *supra* note 81, at 20.

FINANCIAL STATECRAFT

The national bank chartering and regulation regime serves the dual purposes of ensuring public control over the monetary system and maintaining financial stability by preventing credit accumulation outside the perimeter of banking regulation.⁹² The NBA limits national banks to the “business of banking,” the list of permissible activities identified in the “bank powers clause.”⁹³ The Banking Act of 1933, or “Glass-Steagall” Act, separated commercial and investment banking and prohibited nonbank financial companies from issuing deposits.⁹⁴ The Bank Holding Company Act of 1956 (BHCA) requires any corporation that owns a bank to limit its activities and investments to banking, managing or owning banks, or activities determined to be closely related to banking.⁹⁵ Yet, important restrictions on banks’ activities, like Glass-Steagall, allowed U.S. banks to continue purchasing and underwriting Treasury securities and exempted their operations abroad.⁹⁶

Banking agencies have broad authorities to enforce the statutory limits on the banking franchise and constrain financial institutions’ behavior in order to preserve the solvency of individual institutions and safeguard the stability of the financial system.⁹⁷ When regulation fails, however, the government possesses special tools to prevent financial collapse.

3. Sovereign Support

Banking is an unstable business, subject to runs and panics that can metastasize into financial crises. As a result, banks have a “safety net” of support through public deposit insurance and central bank liquidity.⁹⁸ Responding to the banking panic in 1907, the Federal Reserve Act of 1913 (FRA) established the Federal Reserve System.⁹⁹ The FRA was intended to address the need for both an elastic currency and a “lender of last resort” supplying banks with liquidity.¹⁰⁰ The Fed implements the nation’s monetary policy, executes lender-of-last-resort functions, and administers clearing and payment systems accompanied by an implied purpose of preserving financial stability.¹⁰¹ Following another banking panic from 1929–1933, Congress created the Federal Deposit Insurance Corporation (FDIC) and the deposit insurance fund it administers. The 1929 panic, and resulting Great Depression, reinforced the view that

92. See Morgan Ricks, *Entry Restriction, Shadow Banking, and the Structure of Monetary Institutions*, 2 J. FIN. REGUL. 291, 292-3 (2016).

93. 12 U.S.C. § 24(Seventh).

94. See Banking Act of 1933, §§ 16, 21, 48 Stat. 162 (codified as 12 U.S.C. § 227).

95. See Bank Holding Company Act of 1956, Pub. L. No. 84-511, § 4, 70 Stat. 133, 135.

96. See Banking Act of 1933 § 13.

97. See *Noble State Bank v. Haskell*, 219 U.S. 104, 112 (1911).

98. See Thomas M. Hoenig, *Financial Modernization: Implications for the Safety Net*, 49 MERCER L. REV. 787, 788 (1998).

99. See MICHAEL S. BARR, HOWELL E. JACKSON & MARGARET E. TAHYAR, *FINANCIAL REGULATION: LAW AND POLICY* 42 (1st ed. 2016).

100. *Id.* at 41.

101. See Renee Haltom & John A. Weinberg, *Does the Fed Have a Financial Stability Mandate?*, FED. RSRV. BANK RICHMOND ECON. BRIEF NO. 17-06 (2017), <https://perma.cc/43KU-TFBE>.

31 STAN. J.L. ECON. & BUS. 1

banking was “no longer merely a private business proposition” as it “involves great social consequences.”¹⁰² The public safety net limits the negative externalities caused by financial instability but also gives rise to moral hazard.¹⁰³ Regulation is intended to mitigate these unintended consequences.

B. The Financial Crisis and the Failure of the Deregulatory Model

While regulation preserves financial stability, it is often accused of creating an “unprofitable straitjacket” that “discourage[s] competition and restrict[s] innovation.”¹⁰⁴ Beginning in the 1970s, Congress relaxed restrictions on banks’ ability to operate nationally and internationally.¹⁰⁵ In 1999, Congress passed the Gramm-Leach-Bliley Act (GLBA), authorizing banks to trade, invest in, and underwrite a variety of securities, commodities, and derivatives and insurance products.¹⁰⁶ Proponents argued this deregulation would make U.S. banks “more competitive both domestically and internationally”¹⁰⁷ and preserve the “global dominance of American finance.”¹⁰⁸ To further these goals, some banking law provisions contain explicit directives to promote the competitiveness of U.S. banks.¹⁰⁹

This deregulatory ethos culminated in the Global Financial Crisis of 2007–09.¹¹⁰ Following the crisis, financial regulation increasingly focused on a so-called “macroprudential” approach to regulation that seeks to preserve the stability of the financial *system*—not just the profitability and soundness of individual financial *institutions*.¹¹¹ This approach remains a work-in-progress, having been implemented in

-
102. *Banking Act of 1935: Hearings on H.R. 5357 Before the H.R. Comm. on Banking & Currency, 74th Cong. 10* (1935) (statement of Leo T. Crowley, Chairman, Fed. Deposit Insurance Corporation).
103. See Hoening, *supra* note 98, at 788. Moral hazard is “the expectation that, when faced with the prospect of either variant of a major blow to the financial system, government authorities will provide funds or guarantees to the firm to keep it functioning,” meaning creditors “may not price into their credit or investment decisions the full risk associated with those decisions.” Daniel K. Tarullo, Member, Bd. of Governors of the Fed. Rsrv. Sys., *Regulating Systemic Risk, Remarks at the 2011 Credit Markets Symposium 2* (Mar. 31, 2011).
104. FIN. CRISIS INQUIRY COMM’N, *THE FINANCIAL CRISIS INQUIRY REPORT* 33 (2011).
105. See Steele, *supra* note 62, at 209-13.
106. See Dafna Avraham, Patricia Selvaggi & James Vickery, *A Structural View of U.S. Bank Holding Companies*, 18 *ECON. POL’Y REV.* 65, 67-68 (2012).
107. H.R. REP. NO. 106-74, pt. 1, at 97 (1999).
108. S. REP. NO. 106-44, at 5 (1999) (quoting former Fed Chair Alan Greenspan).
109. See 12 U.S.C. § 1843(k)(3)(D); see also 12 U.S.C. § 611a (stating the purpose of the International Banking Act to “provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad”).
110. See FIN. CRISIS INQUIRY COMM’N, *supra* note 104, at 28 (before the financial crisis, “regulators looked to financial institutions to police themselves—‘deregulation’ was the label.”).
111. *E.g.*, Judge, *supra* note 30, at 198-200; see also Jeremy C. Kress & Jeffrey Y. Zhang, *The*

FINANCIAL STATECRAFT

fits and starts and subject to substantial revision across presidential administrations.¹¹² Meanwhile, claims that regulation inhibits “competitiveness” that undermines economic and foreign policy persist to this day.¹¹³

II. THE FINANCIAL STATECRAFT PARTNERSHIP

Financial statecraft is a public-private partnership, wherein the government outsources the execution of foreign policy through financial institutions.¹¹⁴ Again, banks are *special* institutions. They have the power to create and allocate money, credit, and payments via their privileged relationship to sovereign entities like the Fed and Treasury. Banks’ specialness makes financial statecraft a unique form of geoeconomics. Unlike other geo-strategically important industrial sectors, banks’ powers are unconstrained by limitations like resource availability or logistical operations.¹¹⁵ Financial transactions are facilitated by legal agreements and entries in financial institutions’ ledgers that can occur almost instantaneously. The accompanying risks can materialize suddenly. Because finance is the lifeblood of the economy, it sits upstream from other strategically important industries that play a role in geoeconomics.

A. *The Financial Statecraft Framework*

Financial statecraft channels banks’ essential functions—deposit accounts,

Macroprudential Myth, 112 GEO. L.J. 569, 578-82 (2024); Graham S. Steele, *Tailors of Wall Street*, 93 COLO. L. REV. 993, 999-1002 (2022).

112. See Daniel K. Tarullo, *Financial Regulation: Still Unsettled a Decade After the Crisis*, 33 J. ECON. PERSP. 61, 64 (2019) (observing it is “too soon to render a complete verdict on the post-crisis regulatory response”).
113. E.g., Exec. Order No. 13,772, 82 Fed. Reg. 9965 (Feb. 3, 2017) (establishing “core principles” for the first Trump administration’s approach to financial regulation, including “enabl[ing] American companies to be competitive with foreign firms in domestic and foreign markets.”); see also U.S. DEP’T OF THE TREASURY, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS 54-56 (2017) (arguing “U.S. regulatory requirements that exceed the applicable international standard can sometimes create an undue burden of higher costs to our economy, and risk making U.S. firms less competitive internationally.”).
114. See Wally Adeyemo, Deputy Secretary, U.S. Dep’t of the Treasury, Remarks at Press Conference at the Department of Justice (Oct. 10, 2024), <https://perma.cc/S3WJ-H9UL> (describing the anti-money laundering and sanctions regimes as a “public-private partnership . . . with the financial sector to protect our national security” in which “financial institutions work hand-in-hand with Treasury to keep our country safe.”); see also Judge, *supra* note 30, at 200 (describing the anti-money laundering regime as involving “public-private ecosystems—regimes that have gone far beyond partnerships in which the public and private components have co-evolved over time and remain mutually dependent on each other.”); Parella, *supra* note 56, at 2033-34 (discussing the trend of increasing privatization of foreign policy and sanctions implementation).
115. The exception is the rare case where the government transports physical currency, as it did when lifting some of its sanctions against Iran during the Obama administration. E.g., Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, WALL ST. J. (Aug. 3, 2016), <https://perma.cc/M44K-S5U6>.

31 STAN. J.L. ECON. & BUS. 1

payments, and credit¹¹⁶—in service of the nation’s foreign and economic policy objectives, through a mixture of supportive and coercive tools.¹¹⁷ In a supportive application, the U.S government provides access to investment capital; safe and liquid currency; and cheaper and timely payments to allies it wishes to bring into, or maintain within, its sphere of influence.¹¹⁸ Coercive applications, like blocking access to global payment networks or the U.S. banking system and freezing foreign reserves and assets held in the Federal Reserve System and U.S. banks, deny entities access to these financial resources. A description of this legal framework can be found at Table 1 at the [Appendix](#).

1. Deposit Accounts

Providing deposit accounts is the quintessential banking activity.¹¹⁹ The NBA authorizes the Secretary of the Treasury to designate national banks as “depositories of public money and financial agents of the Government,” including any “reasonable duties” that are required of them.¹²⁰ Until the Federal Reserve Act’s (FRA) passage in 1913, however, national banks could not establish overseas branches or accept drafts.¹²¹ Section 25 of the FRA allowed national banks to establish branches abroad for the “furtherance of the foreign commerce” and to “act if required to do so as fiscal agents of the United States.”¹²²

Statecraft considerations provide a variety of exceptions from the ordinary rules of deposit operations. The Edge Act of 1919 allowed national banks to create special subsidiaries abroad to “engag[e] in international or foreign banking or other international or foreign financial operations” without complying with state-by-state banking laws.¹²³ Under IEEPA, the President can prohibit sanctioned banks from serving as depositories and fiscal agents for U.S. government funds.¹²⁴ U.S. law exempts banks’ foreign branches from the ordinary requirement to repay all deposits if the bank’s inability to repay is due to an act of war, insurrection, civil strife, or an

116. These are the core national bank powers included in the “business of banking.” See 12 U.S.C. § 24(Seventh); see also 12 C.F.R. § 5.20(e)(i) (describing receiving deposits, paying checks, and lending money as the “three core banking functions”).

117. See Milhaupt, *supra* note 56, at 2 (observing that “[g]lueconomics requires leveraging, curtailing or blocking the actions of private corporations to increase state power vis-a-vis geopolitical rivals.”).

118. See MULDER, *supra* note 27, at 158-64, 261-76 (describing the roles of economic supports following World War I and the Lend-Lease program).

119. See 12 U.S.C. § 1813(a)(2) (defining state-chartered banks as institutions “engaged in the business of receiving deposits.”).

120. 12 U.S.C. § 90.

121. See Frederick R. Dahl, *International Operations of U.S. Banks: Growth and Public Policy Implications*, 32 L. & CONTEMP. PROBS. 100, 102 (1967).

122. See 12 U.S.C. § 601; see also BRIDGES, *supra* note 61, at 79.

123. Steele, *supra* note 67, at 183-84 (quoting 41 Stat. 378 (1919)).

124. See Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade, Exec. Order No. 14,059, § 2(b)(i)(B), 86 Fed. Reg. 71549 (Dec. 17, 2021).

FINANCIAL STATECRAFT

action taken by a foreign government.¹²⁵

The most prominent statecraft-related deposit authority is the Bank Secrecy Act of 1970 (BSA).¹²⁶ Congress enacted the BSA to address the “growth of financial institutions in the United States had been paralleled by an increase in criminal activity which made use of these institutions” and the “serious and widespread use of foreign financial institutions, located in jurisdictions with strict laws of secrecy as to bank activity, for the purpose of violating or evading” U.S. laws, including criminal, tax, and regulatory requirements.¹²⁷ The BSA requires financial institutions, pursuant to rules established by the Treasury Department, to: (1) file reports on large currency transactions;¹²⁸ (2) file reports on suspicious transactions;¹²⁹ (3) establish anti-money laundering and countering the financing of terrorism programs;¹³⁰ (4) establish due diligence policies that are reasonably designed to detect and report instances of money laundering related to the opening and administration of correspondent or private banking accounts;¹³¹ and (5) verify the identity of customers seeking to open accounts.¹³² As part of the so-called “War on Drugs” in the late 1980s, Congress expanded criminal offenses and penalties related to cash and currency transactions linked to narcotics production, trafficking, and associated businesses.¹³³

Following 9/11, Congress enacted Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT) extending the categories of money laundering offenses and associated penalties.¹³⁴ Section 311 of the USA PATRIOT Act authorizes the Treasury Secretary to institute special measures against jurisdictions, financial institutions, financial transaction classes, or types of accounts that present a “primary money laundering concern.”¹³⁵ Pursuant to such designation, the Treasury Department can require heightened transaction recordkeeping, beneficial ownership

125. See 12 U.S.C. § 633(a).

126. See Pub. L. No. 91-508, 84 Stat. 1118 (1970). The BSA, also known as the Currency and Financial Transactions Reporting Act, expanded existing reporting requirements that the Treasury Department had applied to some currency transactions under TWEA.

127. *Cal. Bankers Assn. v. Shultz*, 416 U.S. 21, 26-27 (1974).

128. See 31 U.S.C. § 5313.

129. See 31 U.S.C. § 5318(g).

130. See 31 U.S.C. § 5318(h).

131. See 31 U.S.C. § 5318(i).

132. See 31 U.S.C. § 5318(l).

133. See H.R. REP. NO. 101-446, at 22 (1990); see also S. REP. NO. 101-104, at 3 (1990); John K. Villa, *A Critical View of Bank and the Money Laundering Statutes*, 37 CATH. U. L. REV. 489, 489 (1988) (observing “public concern over this nation’s drug problem, heightened by the deaths of several prominent athletes, gave legislators greater license to take harsh action against anyone identified with money laundering—an activity that many associate with drug dealers.”).

134. Title III was based on Congress’s finding that the 9/11 plotters facilitated their scheme using payment instruments like cash, checks, and credit cards that should have been subject to financial reporting requirements. See H.R. REP. NO. 107-250, pt. 1, at 34 (2001).

135. 31 U.S.C. § 5318A(a).

31 STAN. J.L. ECON. & BUS. 1

and correspondent account information collection.¹³⁶ If necessary, the Secretary can prohibit, or impose conditions upon, the opening or maintaining of U.S. correspondent or payable-through accounts involving specific jurisdictions, financial institutions, transaction classes, or accounts that present primary money laundering concerns.¹³⁷

While largely understood as a transaction-focused statute, the BSA is part of a *structural* effort to deploy the financial system “not just to punish a few people who happen to get caught with money after committing a crime, but to punish instead the larger infrastructure that allows domestic and global criminal networks to profit from and finance crime.”¹³⁸ But supervision and enforcement of this structure is fragmented. Congress has delegated BSA authority to the Treasury Department, through the office of the Treasury Secretary. The Treasury Department’s Financial Crimes Enforcement Network (FinCEN), an office established by Executive Order in 1990 and codified in the USA PATRIOT Act, generally administers the BSA.¹³⁹ The Secretary has the authority to delegate supervision of the BSA’s provisions, which the Treasury Department has delegated to banks’ appropriate Federal regulatory agency.¹⁴⁰

2. Payments

The second channel of financial statecraft consists of banks’ payment functions.¹⁴¹ The U.S. government seeks to leverage private financial institutions and public agencies to control access to U.S. dollars and payment infrastructure. These tools have expanded in recent decades, reflecting the growth of international finance in facilitating trade.

In the global dollar system, the Fed has effectively become the central bank to the rest of the world, providing its international counterparts with the global reserve currency that facilitates international payments and trade.¹⁴² The Fed has established standing swap line agreements to provide certain central banks with dollars in exchange for their local currency, to be repaid at a later date.¹⁴³ Currency swaps are generally—although not exclusively—executed for the purpose of preventing economic instability in foreign countries and, by extension, the potential spillovers to the U.S. economy.¹⁴⁴ The Gold Reserve Act of 1934 created Treasury’s Exchange

136. See 31 U.S.C. § 5318A(b)(1)-(4).

137. See 31 U.S.C. § 5318A(b)(5).

138. Cuéllar, *supra* note 57, at 324.

139. See 31 U.S.C. § 310.

140. See 31 U.S.C. § 5318(a)(1); see also 12 C.F.R. §§ 1020.210, 1020.220.

141. Payment instruments generally consist of cash, checks, bank-to-bank transfers, remittances, and various types of payment cards. See BARR, JACKSON & TAHYAR, *supra* note 99, at 756-57.

142. See Bradlow & Park, *supra* note 66, at 659-61.

143. See Conti-Brown & Zaring, *supra* note 66, at 690-91.

144. Specifically, the Fed states the swap lines “support financial stability and serve as a prudent liquidity backstop” by “eas[ing] strains in financial markets and mitigate[ing] their effects on economic conditions” and ensuring the “provision of credit to households and businesses” through dollar-based bank funding markets. See Bd. of Governors of the

FINANCIAL STATECRAFT

Stabilization Fund (ESF) to help the U.S. government manage the exchange value of the U.S. dollar as it navigated the move off the gold standard.¹⁴⁵ Amendments to the law permitted the Treasury to “deal in gold, foreign exchange, and other instruments of credit and securities” consistent with its commitments to the IMF.¹⁴⁶

The private payments ecosystem includes correspondent bank accounts, messaging services, and clearing services.¹⁴⁷ Correspondent accounts allow foreign banks to access U.S. dollars and the U.S. financial system by maintaining accounts at U.S. banks.¹⁴⁸ U.S. banks remit payments using the Fed’s Fedwire system or the private Clearing House Interbank Payment System (CHIPS).¹⁴⁹ Financial institutions can apply for a “master account” with the Fed, providing access to the central bank’s payment and settlement services, as well as the ability to directly settle transactions with other banks.¹⁵⁰ For international payments, banks also use the Society for Worldwide Interbank Financial Telecommunication (SWIFT) messaging service to coordinate payments.¹⁵¹ These interbank payment systems evolved after World War II, as a “means of clearing dollars employed in commercial transactions throughout the world[.]”¹⁵²

Dollar and financial sanctions are an outgrowth of the wartime embargoes that sought to prevent U.S. persons, businesses, and allies from engaging in trade with the nation’s adversaries. This regime is overseen by the Treasury Department’s Office of

Fed. Rsrv. Sys., Central Bank Liquidity Swaps, <https://perma.cc/C7HV-LYWR>.

145. See Russell Munk, *Exchange Stabilization Fund Loans to Sovereign Borrowers: 1982–2010*, 73 L. & CONTEMP. PROBS. 215, 216 (2010).
146. *Id.* at 216 (quoting 31 U.S.C. § 5302(b)). Among other purposes, the ESF serves as the depository for the United States’ special drawing rights in the IMF. See OFF. OF INSPECTOR GENERAL, DEP’T OF THE TREASURY, AUDIT OF THE EXCHANGE STABILIZATION FUND’S FINANCIAL STATEMENTS FOR FISCAL YEARS 2023 AND 2022 4 (2023). The Federal Reserve Bank of New York manages the ESF’s assets as a fiscal agent of the Treasury. See also *id.* at 2.
147. See Ntina Tzouvala, *Sanctions, Dollar Hegemony, and the Unraveling of Third World Sovereignty*, YALE J. INT’L L. 1, 10 (2024).
148. See Jacquelyn B. Lewis, *Money Finds a Way: Increasing AML Regulation Garners Diminishing Returns and Increases Demand for Dark Financing*, 55 VAND. J. TRANSNAT’L L. 529, 547 (2022).
149. See Sarah Jane Hughes, *Policing Money Laundering through Funds Transfers: A Critique of Regulation under the Bank Secrecy Act*, 67 IND. L.J. 283, 288-89 (1992).
150. Julie Andersen Hill, *Opening a Federal Reserve Master Account*, 40 YALE J. REGUL. 453, 460-63 (2023). Private institutions eligible for master accounts include Edge Act corporations and uninsured branches and agencies of foreign banks. See Bd. of Governors of the Fed. Rsrv. Sys., 87 Fed. Reg. 51,099, 51,109-10 (Aug. 19, 2022). The criteria for master account consideration include an institution’s money laundering, terrorism financing, and sanctions evasion risks. See also Hill, *supra* note 150, at 507-08.
151. Hughes, *supra* note 149, at 288-89. SWIFT is a Belgian-based association of banks established in 1977. See *id.* at 288 n. 26. It is overseen by a network of central banks, including the Fed. See also ZARATE, *supra* note 31, at 49-50. International messaging systems like SWIFT “have become the key means through which domestic banks and financial institutions arrange transfers and communicate with each other.” FARRELL & NEWMAN, *supra* note 53, at 47.
152. S. REP. NO. 101-104, at 24.

31 STAN. J.L. ECON. & BUS. 1

Foreign Asset Control (OFAC).¹⁵³ During World War I, the United States Congress enacted the Trading with the Enemy Act of 1917 (TWEA) as the first statutory sanctions scheme,¹⁵⁴ inspired by earlier wartime blockades.¹⁵⁵ Section 5(b) of TWEA authorizes the President to, during wartime, “investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing [or] exporting . . . [of] currency or securities” and “investigate, regulate, direct and compel, nullify, void, prevent or prohibit” transactions involving property owned by foreign countries or nationals.¹⁵⁶

TWEA put “bankers, merchants, manufacturers, and all other citizens upon notice . . . that they can not deal with an alien enemy without risk or hazard.”¹⁵⁷ While some emergency war powers were terminated at the conclusion of World War I, TWEA was extended due to the large amount of foreign property still being held by the U.S. government.¹⁵⁸ President Roosevelt again invoked TWEA during World War II to freeze the U.S.-based assets of Axis Powers countries and countries occupied by the Axis Powers.¹⁵⁹ Over time, however, Presidents increasingly pushed the bounds by utilizing TWEA outside wartime conditions, causing Congress to pass IEEPA that narrowed the President’s broad, largely unchecked, powers.¹⁶⁰

IEEPA limited *some*, but not all, Presidential powers during declared emergencies and expanded authorities available during declared wars.¹⁶¹ Section 203(a) of IEEPA authorizes the President, upon declaring a “national emergency” that constitutes an “unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States,”¹⁶² to “investigate, regulate, or prohibit”: (1) transactions in foreign exchange; (2) transfers or credits involving foreign countries or nationals between, by or through banks; (3) the importing or exporting of currency or

153. OFAC was created in 1950 after President Truman declared a national emergency responding to the Korean War. U.S. Dept. of the Treasury, About OFAC, <https://perma.cc/C44F-9A63>. OFAC was the successor agency to the Office of Foreign Funds Control created in 1940 after Germany invaded Norway during World War II. *See id.* TWEA specifically authorizes the President to delegate authority under section 5(b), while there is general authority for the President to delegate other authorities. *See also* 50 U.S.C. § 4305(b)(1); 3 U.S.C. § 301.

154. *See* Pub. L. No. 65-91, 40 Stat. 411 (1917).

155. *See* MULDER, *supra* note 27, at 2.

156. 50 U.S.C. § 4305(b)(1).

157. SUBCOMM. ON INT’L TRADE & COMMERCE, *supra* note 21, at 97 (statement of Senator Esch). TWEA codified the conditions wherein sanctions could be imposed and what constitutes an “enemy” of the United States and provided a mechanism for issuing licenses to do business with enemy citizens and processes for returning frozen foreign assets upon cessation of hostilities, which had previously been resolved according common law. *See id.* at 158-60; *see also id.* at 167-78 (citing cases).

158. H.R. REP. NO. 95-459, at 231 (1977)

159. *See id.* at 233.

160. Limits included the timing of national emergencies, applicability only to international economic activity, and Congressional oversight. *See id.* at 10-11.

161. *See id.* at 10.

162. 50 U.S.C. § 1701(a).

FINANCIAL STATECRAFT

securities.¹⁶³ Such sanctions are generally applied to bank deposits as well as “[a]ll transfers of credit and all payments” by banks, regardless of location, “with respect to any property subject to the jurisdiction of the United States or by any person subject to the jurisdiction of the United States.”¹⁶⁴

Dollar sanctions and other payment restrictions have become a routine policy response to conflicts with hostile state and non-state actors.¹⁶⁵ After the 9/11 attacks, the George W. Bush administration froze the assets of, and prohibit transactions with, individuals affiliated with al Qaeda and blocked foreign banks that declined to freeze assets of the sanctioned individuals held abroad from the United States.¹⁶⁶ For the first time, the U.S. government also sought access to transaction data from SWIFT in order to trace the flow of funds behind al Qaeda’s operations.¹⁶⁷ Following Russia’s invasion of Ukraine, the United States and its allies froze about \$300 billion in Russian foreign central bank reserves held by other central banks.¹⁶⁸ Important Russian banks were restricted from SWIFT and the U.S. restricted, froze, or blocked Russian financial institutions’ access to the U.S. banking system, U.S. dollars, and sovereign debt markets.¹⁶⁹ Policymakers have thus increasingly employed U.S. dollar financing through the Fed and Treasury and sanctions denying access to U.S. dollar payments and freeze assets in U.S. banks as foreign policy tools.

3. Credit and Capital

The final statecraft channel consists of credit and credit-related assets.¹⁷⁰ National banks’ international credit provision began with the instrument known as the “bankers’ acceptance.”¹⁷¹ Today, statecraft-related credit transactions often involve guarantees or other subsidies provided by international financial institutions (IFIs)—like the World Bank and IMF—multilateral development banks (MDBs) and export credit and public financial agencies. The World Bank, in particular, has become the

163. 50 U.S.C. § 1702(a)(1)(A).

164. 31 C.F.R. § 500.201(a)(1).

165. See Marco Cipriani, Linda S. Goldberg & Gabriele La Spada, *Financial Sanctions, SWIFT, and the Architecture of the International Payments System* (Fed. Rsrv. Bank of N.Y. Staff Rep. No. 1047) (2023).

166. See ZARATE, *supra* note 31, at 57-58.

167. See *id.*

168. See REBECCA M. NELSON, CHRISTOPHER A. CASEY & ANDRES B. SCHWARZENBERG, *RUSSIA’S WAR ON UKRAINE: FINANCIAL AND TRADE SANCTIONS 1* (Cong. Research Svc. 2023), <https://perma.cc/RX8A-DM8P>.

169. Congress further restricted transactions involving Russian gold and the Russian central bank’s access to funding through the IMF. See *id.*

170. See *U.S. v. Phila. Nat’l Bank*, 374 U.S. 321, at 326 (observing banks “do not merely deal in, but are actually a source of, money and credit” through their relationship with the central bank).

171. See BRIDGES, *supra* note 61, at 79-101. A bankers’ acceptance is essentially a trade contract that a bank will accept as collateral for credit, and which banks can also trade on a secondary market. See *id.* at 81-85.

31 STAN. J.L. ECON. & BUS. 1

largest creditor to low-income countries.¹⁷² As the largest shareholder in the IFIs and most of the MDBs, the United States has special veto powers at the IMF, giving it outsized influence that allows it to secure financial and political support for its international development priorities.¹⁷³

The connections between statecraft and credit stretch back to the nation's founding. In upholding the Second Bank's constitutionality, Chief Justice John Marshall observed that the Second Bank's creation was an outgrowth of the fact that war making and credit creation—the “sword and the purse”—are vital government functions.¹⁷⁴ The “calamities” of the War of 1812 had been “greatly aggravated” by the absence of the First Bank as a “convenient instrument of finance.”¹⁷⁵

During the Civil War, the national banking system enabled the U.S. government to issue bonds or take out low-cost loans to finance the Union's war effort.¹⁷⁶ Similarly, during World War I, banks helped the Treasury raise debt by creating securities affiliates to facilitate the issuance of government bonds, including through the Liberty Loan and Victory Loan programs.¹⁷⁷ Banks “were ‘expected’ to aid the government in distributing war loans and were ‘encouraged’ to aid potential investors by lending them the purchase price of government bonds.”¹⁷⁸

By the end of World War I, Congress was concerned that the United States had “been loaning enormous sums” to European countries to pay for the war effort.¹⁷⁹ Both the FRA and the Edge Act were part of an effort to encourage the private financing of foreign trade.¹⁸⁰ The Edge Act allowed national banks to create special subsidiaries abroad to “engag[e] in international or foreign banking or other international or foreign financial operations” without complying with state-by-state banking laws.¹⁸¹ Because banks' Edge Act subsidiaries were “not to be banks of deposit,” Congress

172. See Paolo Subacchi, *De-Risking the Global Financial System: Forging a ‘New Consensus’* 13 (Friedrich Ebert Stiftung 2023), <https://perma.cc/P3F3-3TRS>.

173. See U.S. DEPT. OF THE TREASURY, REPORT TO CONGRESS FROM THE CHAIRMAN OF THE NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES 5, 14-15 (2024).

174. See *McCulloch*, 17 U.S. at 407 (The Court situated the government's chartering authority in Congress's Article I powers, including its ability to “lay and collect taxes; to borrow money; to regulate commerce; to *declare and conduct a war*; and to *raise and support armies and navies*.”) (emphasis added).

175. *Id.* at 354.

176. See Million, *supra* note 14, at 260, 269.

177. See *id.* at 49; see also ARTHUR E. WILMARTH, JR., TAMING THE MEGABANKS: WHY WE NEED A NEW GLASS-STEAGALL ACT 21-22 (2020).

178. *Securities Industry Ass'n v. Bd. of Governors of the Fed. Rsrv. Sys.*, 839 F.2d 47, 60 (2d Cir. 1988).

179. H.R. REP. NO. 66-408, at 1-2 (1919). Illustrating U.S. banks' stake in the outcome at Versailles, J.P. Morgan executive Thomas Lamont was a formal participant in the treaty negotiations. See RON CHERNOW, THE HOUSE OF MORGAN: AN AMERICAN BANKING DYNASTY AND THE RISE OF MODERN FINANCE 207-09 (paperback ed. 2010).

180. Bridges observes the FRA made banks “less dependent on government deposits and more reliant on a financial market enabled by the Federal Reserve System.” BRIDGES, *supra* note 61, at 79. See H. Rep. No. 63-69, at 30 (1913).

181. 41 Stat. 378 (1919).

FINANCIAL STATECRAFT

determined that they did not require traditional banking protections.¹⁸²

The 1923 Dawes Plan and 1930 Young Plan, concocted to help Germany repay its war debts, called upon U.S. banks to extend loans to Germany, financed by bonds issued to American investors.¹⁸³ The issuance of foreign bonds to U.S. investors continued throughout the 1920s, often with the explicit or implicit support of U.S. government officials who frequently subordinated the bonds' safety and soundness to the goals of foreign policy.¹⁸⁴ During this period, for example, the U.S. State Department was involved in structuring or review U.S. banks' foreign loans.¹⁸⁵ Once Adolf Hitler came to power, however, Germany ceased making payments on its Dawes and Young Plan loans and left the United States and other European countries in the position of having to make bondholders whole.¹⁸⁶

U.S. banks' role in World War II consisted largely of purchasing government debt to help finance the war effort.¹⁸⁷ The V-Loan program authorized regional Federal Reserve Banks, acting as fiscal agents of the government, to coordinate government-guaranteed loans by banks to businesses providing goods or services to the government's war effort.¹⁸⁸

Concerns arising from the close coordination between monetary and fiscal authorities necessitated by war financing led to the 1951 Treasury-Fed Accord. During World War I, the Fed had "recognized its duty to cooperate unreservedly with the Government to provide funds needed for the war" and "suspend[ed] the application of well-recognized principles of economics and finance which usually govern banking operations in times of peace" because "[w]ar is the most uneconomic of all processes."¹⁸⁹ The Treasury-Fed Accord sought to insulate the central bank's technocratic operations from the type of political influence that occurred during the wars by establishing how each agency would manage its responsibilities to finance government deficits and address postwar inflation.¹⁹⁰ The Fed has nonetheless

182. H. REP. No. 66-408, at 3.

183. See WILMARTH, *supra* note 177, at 52-53, 68-69.

184. See *id.* at 57-61.

185. See W. Mark. C. Weidemaier, *Sovereign Immunity and Sovereign Debt*, 2014 U. ILL. L. REV. 67, 83-85.

186. See Piet Clement, *'The Touchstone of German Credit': Nazi Germany and the Service of the Dawes and Young Loans*, 11(1) FIN. HIST. REV. 33, 37-38 (2004).

187. See Lev Menand & Josh Younger, *Money and the Public Debt: Treasury Market Liquidity as a Legal Phenomenon*, 2023 COLUM. BUS. L. REV. 224, 256.

188. See HOWARD A. HACKLEY, *LENDING FUNCTIONS OF THE FEDERAL RESERVE BANKS: A HISTORY* 147 (1973). The Treasury Secretary was authorized to designate Federal Reserve Bank as fiscal agents pursuant to section 15 of the FRA. *Id.* at 149. The V-loan program lasted beyond the war and was codified and extended by the DPA. See also 12 U.S.C. § 391; Defense Production Act of 1950, Pub. L. No. 81-774, § 301, 64 Stat. 798 (codified as 50 U.S.C. § 4531).

189. BD. OF GOVERNORS OF THE FED. RSRV. SYS., *SEVENTH ANNUAL REPORT* 11 (1921).

190. See Menand & Younger, *supra* note 187, at 257-61. By the end of World War II, the U.S. government and banks had expended vast sums of money to finance the war and rebuilding efforts. There were concerns that this era of so-called "fiscal dominance" would lead to rampant inflation and financial instability if political agencies sought to

31 STAN. J.L. ECON. & BUS. 1

continued utilizing its lender-of-last-resort and emergency lending authorities during times of national exigency.¹⁹¹

The Global Financial Crisis transformed Treasury’s Exchange Stabilization Fund (ESF) from an exchange rate-focused tool into a financial stability tool and an instrument of credit creation. ESF funds were used to support the money market mutual fund (MMF) industry,¹⁹² turning the ESF into the de facto “deposit insurer for the entire money market industry.”¹⁹³ In 2020, the ESF was used for similar purposes, to support the Fed’s emergency lending programs during the COVID-19 pandemic.¹⁹⁴

In addition to the traditional commercial banking function of making loans, statecraft extends to banks’ role serving as primary dealers and “market makers” in the financial markets, clearing the market by holding an inventory of securities and buying and selling inventory in response to market demand.¹⁹⁵ Under IEEPA, the President can prevent the Fed’s Board of Governors and Federal Reserve Bank of New York (FRBNY) from permitting sanctioned entities to register as primary dealers in U.S. Treasury securities.¹⁹⁶ In 2022, OFAC imposed sanctions on investing and trading in Russian sovereign debt in primary and secondary markets, including prohibiting U.S. financial institutions from processing payments from the Russian government to investors.¹⁹⁷

B. Financial Statecraft as a Partnership Regime

Having laid out the framework of financial statecraft, the remainder of this Part considers its parallels to the partnership structure of financial regulation. Financial statecraft requires a coordinated approach that incorporates a set of *international* dimensions into the *domestic* financial partnership between banks and the government. Like the traditional public obligations that flow from the stability and liquidity provided by chartering, regulation, and the federal safety net, banks’ participation in statecraft is an outgrowth of the special role they occupy in the economy—both domestic and global—the benefits they receive from the government, and obligations created by domestic law.¹⁹⁸ As with their traditional functions, their participation in

continue influencing the Fed’s independent conduct of monetary policy. *Id.*

191. See *infra* Part II.B.3.

192. See Graham S. Steele, *Banking as a Social Contract*, 22 U.C. DAVIS BUS. L.J. 65, 83-84 (2021); see also *id.* at 107.

193. David Zaring, *Administration by Treasury*, 95 MINN. L. REV. 187, 233 (2010).

194. See OFF. OF INSPECTOR GENERAL, *supra* note 146, at 5-6.

195. See JOINT ECON. COMM., A STUDY OF THE DEALER MARKET FOR FEDERAL GOVERNMENT SECURITIES 15 (1960).

196. *E.g.*, Exec. Order No. 14,059, at § 2(b)(i)(A) (Sept. 4, 2024).

197. See NELSON, CASEY & SCHWARZENBERG, *supra* note 168, at 1. Many of the frozen Russian Central Bank’s assets are held at the securities clearinghouse and depository EuroClear. See Monika Pronczuk & Eshe Nelson, *E.U. Moves to Tap Frozen Russian Assets to Help Ukraine*, N.Y. TIMES (Dec. 12, 2023), <https://perma.cc/6VT9-MPXB>.

198. See Calif. Bankers Ass’n. v. Schultz, 416 U.S. 25, 48-49 (1974) (banks’ participation in detecting illicit financial activity is compelled by their “substantial stake in [the] continued availability and acceptance” of banking products as payment instruments and

FINANCIAL STATECRAFT

statecraft does not make them official government actors.¹⁹⁹ Banks are private “gatekeepers” monitoring the integrity of financial markets under the threat of formal and informal sanction.²⁰⁰ The statecraft partnership simultaneously renders U.S.-chartered banks private entities to be constrained through government regulation *domestically* while serving as “national champions” whose operations are supported and promoted by the government *internationally*.²⁰¹

Using finance for geopolitics is a double-edged sword. To successfully execute statecraft, the government must maximize the costs it imposes on adversaries and benefits it provides to allies while also minimizing domestic financial disruptions. Finance is a useful tool because it is critical to the broader economy; at the same time, that importance is why finance is tightly regulated through chartering, substantive or prudential safeguards, and a public safety net. Managing the risks of financial *statecraft* therefore requires effective financial *regulation* across the traditional areas of chartering, regulation, and sovereign support.

1. Sovereign Control

Like the traditional regulatory perimeter and federal safety net, financial statecraft raises foundational questions about access and inclusion. In the international context, authorities must determine which financial activities and institutions are permitted access to the U.S. dollar and financial system.

The United States seeks to attract foreign sovereigns and private sector companies into its sphere of influence through financial institutions, markets, platforms, and other infrastructure.²⁰² This allows the government to track the flow of money into, or the proceeds derived from, illicit activities like drug trafficking, terrorism, sanctions evasion, and tax evasion.²⁰³ Controlling globally significant financial channels, like large payment networks, allows governments to influence statecraft by regulating access to those channels.²⁰⁴ In order to create sufficient costs from denying access to

their interest in the “wide acceptance and availability” of such instruments); *see also* BRIDGES, *supra* note 61, at 10 (banks have “unique public duties that have given them a central role in mediating the expansion of US financial power around the world.”).

199. *See Calif. Bankers Ass’n*, 416 U.S. at 52-53 (rejecting the argument that the BSA renders banks “agents of the Government” subject to the Fourth Amendment).

200. *See Gadinis & Mangels, supra* note 52, at 808-12 (describing the theory of financial sector gatekeeping).

201. *See Li-Wen Lin & Curtis Milhaupt, We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 704-706 (2013) (describing “business groups fostered by the political regime and deeply entwined with . . . leadership [that] may be central to the developmental success of the regime.”).

202. *See* Christopher Clayton, Matteo Maggiori & Jesse Schreger, *A Theory of Economic Coercion and Fragmentation* 3-4 (Sept. 2024), <https://perma.cc/6JE6-YQZ5>.

203. The payments system was utilized in this way when the U.S. government invoked IEEPA to access SWIFT information to track al Qaeda-affiliated financial data following 9/11. *See* JENNIFER K. ELSEA & M. MAUREEN MURPHY, CONG. RSCH. SERV., RS22469, TREASURY’S TERRORIST FINANCE PROGRAM’S ACCESS TO INFORMATION HELD BY THE SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATION (SWIFT) (2006).

204. *See* Cuéllar, *supra* note 57, at 383 (observing that, as “authorities develop a capacity to

31 STAN. J.L. ECON. & BUS. 1

the objects of statecraft, those objects need access to—or even dependence upon—U.S. finance.

But the need for access can conflict with the necessities of control. The debates over the First Bank and Second Bank illustrate long-held concerns about the potential influence of foreign capital investment and ownership over the U.S. financial sector. While foreign ownership restrictions on private U.S. banks were liberalized by banking deregulation,²⁰⁵ many restrictions remain, as well as restrictions on foreign banks' ability to operate in the United States.²⁰⁶ When Congress considered amending the BSA to require greater disclosure of financial investments, some argued this would drive foreign investment away from the United States. Congress rejected this argument, "seriously question[ing] the morality of sustaining our balance of payments by catering to white collar criminals."²⁰⁷

The policies that regulate access and control thus contain embedded preconceptions and value judgments about what countries, entities, and populations should be granted access to the global dollar system, and on what terms.²⁰⁸ The point here is that both financial statecraft raises complex considerations about public control over, and private access to, the financial system.

2. Stability Regulation.

The tradeoff between financial access and control can create financial instability. The United States sits at the apex of modern financial power as the home to the most identified GSIBs.²⁰⁹ The eight U.S. GSIBs had more than \$16 trillion in total financial exposures (a measure of on- and off-balance sheet assets) as of year-end 2020.²¹⁰ Measured on a standalone basis, this financing activity would be the third-largest

disrupt the least detectable kinds of criminal financial transactions . . . they might get criminals to shift to financial activity that is more costly, more detectable, or both.").

205. See Steele, *supra* note 67, at 195-96.

206. See Sitaraman, *supra* note 55, at 1108-13.

207. S. REP. NO. 91-1139, at 12.

208. This dynamic affects retail consumers and financial inclusion. For example, financial sanctions and BSA compliance can result in the exclusion of individuals, entities, and jurisdictions from the banking and payment systems, a process known as "de-risking." U.S. DEPT. OF THE TREASURY, AMLA: THE DEPARTMENT OF THE TREASURY'S DE-RISKING STRATEGY 3-5 (2023), <https://perma.cc/M7WD-D4AF>. There is a related economic statecraft conception of de-risking wherein nations seek to "reduc[e] interdependencies . . . with countries that pose economic and political risks." Subacchi, *supra* note 172, at 2.

209. See FIN. STABILITY BD., 2024 LIST OF GLOBAL SYSTEMICALLY IMPORTANT BANKS (G-SIBs) (Nov. 2024), <https://perma.cc/LS6U-FUBJ>; see also Bd. of Governors of the Fed. Rsrv. Sys., Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies, 79 Fed. Reg. 75,473, 75,475-77 (2014) (defining GSIBs as banking entities whose "failure . . . or . . . inability . . . to conduct regular course-of-business transactions, would likely impair financial intermediation or financial market functioning so as to inflict material damage on the broader economy" based upon a set of indicators established by an international body of financial regulators and implemented domestically).

210. For more detail on U.S. GSIBs' global financial footprints, see Table 2 app.

FINANCIAL STATECRAFT

economy in the world, behind only the United States and China.²¹¹ These banks have over \$4 trillion worth of cross-border claims, process more than \$1 quadrillion in global payments annually, are comprised of an average of 1,464 legal entities, and operate in an average of 52 different legal jurisdictions. U.S. GSIBs' dominant presence has extended the reach and capability of financial statecraft.²¹²

As with sovereign control, the growth of financial institutions' global operations is accompanied by risk and complexity. Imposing statecraft measures like financial sanctions can cause fragmentation that undermines the stability of financial markets and institutions. Financial deregulation has made many commodities markets highly financialized, with dealer banks playing an important intermediation role trading a variety of commodities and controlling commercial businesses, both which are vulnerable to geopolitical risk.²¹³ Sanctions-induced market fragmentation can lead to sudden revaluations of these assets, creating "fire sale" dynamics where market participants simultaneously seek to monetize devaluing assets, leading to further devaluation.²¹⁴ This stress can be transmitted to the broader financial system through direct financial exposures between institutions or indirect common exposures to particular asset classes.²¹⁵ Ultimately, it can result in capital markets *and* real assets being stranded—both in the sense of losing substantial financial value but also literally becoming trapped in jurisdictions subject to sanctions.²¹⁶

-
211. See WORLD BANK GROUP, GDP: ALL COUNTRIES AND ECONOMIES, <https://perma.cc/8QNT-4L6R>.
212. Financial institutions' ability to capture global market share is the result of a variety of factors, including being domiciled in the United States and economies of scale in businesses like payments, especially dollar-based payments. *E.g.*, Robert M. Hunt, *An Introduction to the Economics of Payment Card Networks*, 2 REV. OF ECON. NETWORKS 80 (2003); see Wilko Bolt & David Humphrey, *Payment Scale Economies from Individual Bank Data*, 105 ECON. LETTERS 293 (2009); see also Crawford, *supra* note 62, at 178-80. SWIFT likewise enjoys a "virtual monopoly as the switchboard of the international financial system[.]" ZARATE, *supra* note 31, at 11; FARRELL & NEWMAN, *supra* note 53, at 59-60.
213. See IMF, *Shockwaves from the War in Ukraine Test the Financial System's Resilience*, GLOBAL FINANCIAL STABILITY REPORT at 18-22 (Apr. 2022); Saule T. Omarova, *The Merchants of Wall Street: Banking, Commerce, and Commodities*, 98 MINN. L. REV. 265 (2013). The Russian sanctions package caused price volatility and declines in market liquidity in energy and commodities markets like wheat, nickel, and aluminum, exacerbating a post-pandemic period of already high inflation and financial fragility. See also IMF, *supra* note 213, at 23-24 (discussing the potential impacts on dealer banks from disruptions in commodities and short-term funding markets); see also Yi Fang & Zhiqian Shao, *The Russia-Ukraine Conflict and Volatility Risk of Commodity Markets*, 50 FIN. RSCH. LETTERS 1, 9 (2022).
214. See Jeremy Kress, Patricia McCoy & Daniel Schwarcz, *Regulating Entities and Activities: Complementary Approaches to Nonbank Systemic Risk*, 92 S. CAL. L. REV. 1455, 1469-72 (2019).
215. See *id.*
216. See Angelika von Dulong, Alexander Gard-Murray, Achim Hagen, Niko Jaakkola & Suphi Sen, *Stranded Assets: Research Gaps and Implications for Climate Policy*, 17 REV. ENV'TL ECON. & POL'Y 161, 161 (2023) (defining stranded assets as assets for which "risks materialize as unanticipated declines in value and capital is too costly to re-allocate"); see also IMF, *supra* note 213, at 13; Friederike Niepmann & Leslie Sheng Shen, *Geopolitical Risk and Global Banking* 27-28 (Bd. of Governors of the Fed. Rsv. Sys. Int'l Fin. Discussion Paper No. 1418) (July 2025) (discussing the range of geopolitical risks in global banking, including expropriation, capital controls, profit repatriation limits, asset freezes, and

31 STAN. J.L. ECON. & BUS. 1

Statecraft measures can affect the stock price of banks with geopolitical exposures or lower capital ratios.²¹⁷ Banks that are exposed to geopolitical risks may, in turn, reduce their domestic lending.²¹⁸ This financial stress can threaten financial stability if systemically important financial institutions suffer losses as a result. So, while the United States can use financial tools to respond to acts of military aggression, financial instability weakens their effectiveness.

3. Sovereign Support

American banks' competitive advantage is an outgrowth of the U.S. dollar's status as the world's reserve currency and the United States's central role in the economy and geopolitics.²¹⁹ The U.S. central bank maintains a monopoly on currency issuance, including the ability to allocate U.S. dollars through central bank swap lines and control access to public payments infrastructure, from the Fedwire payment system to eligibility for "master accounts" provided to financial institutions.²²⁰ The ability of the Fed, IMF, and other institutions to backstop banks' statecraft activities constitutes an international version of the domestic public financial safety net.²²¹

Historically, the federal safety net—namely, the lender-of-last-resort function—

windfall taxes targeting foreign institutions, all of which may "trap capital, reduce operational flexibility, and generate legal and compliance uncertainty . . ."). In 2014, for example, Morgan Stanley was prevented from selling its oil trading and storage business to a Russian state-owned oil company after the U.S. government sanctioned the prospective acquirer. Justin Baer & Alexander Kolyandr, *Rosneft's Planned Deal for Morgan Stanley Oil Business Collapses Companies Failed to Win Regulatory Approval*, WALL ST. J. (Dec. 22, 2014), <https://perma.cc/E7MX-7GLD>.

217. See IMF, *supra* note 213, at 13 (direct exposures to Russia caused US banks' market capitalization to decline by 8 percent on average, and limiting or exiting their Russian operations would reduce banks' equity capital ratios by an estimated 20 to 80 basis points); see also Pinar Uysal, Kellen Lynch & Ilknur Zer, *U.S. Reciprocal Tariff Announcement and European Bank Stock Performance*, FEDS Notes (Aug. 26, 2025), <https://perma.cc/9VX9-9WZY> (finding European banks with higher exposure to trade-sensitive sectors, weaker capitalization, or poorer asset quality experienced significantly larger declines in their stock prices following the Liberation Day tariff announcement).
218. See Niepmann & Shen, *supra* note 218, at 42.
219. See Jacob Lew, Secretary, U.S. Dep't of the Treasury, *The Evolution of Sanctions and Lessons for the Future*, Remarks at the Carnegie Endowment for Int'l Peace (2016), <https://perma.cc/XGW7-HHZD> (noting the system of economic sanctions was "forged in the context of our position as the world's largest economy and the predominant role that the U.S. financial system plays in global commerce."); see also U.S. DEPT. OF THE TREASURY, *THE TREASURY 2021 SANCTIONS REVIEW 1* (2021), <https://perma.cc/MW96-ES95> (hereinafter "TREASURY SANCTIONS REVIEW") (noting the effectiveness of sanctions "rests on the formidable strength of, and trust in, the U.S. financial system and currency.>").
220. See Penelope Hawkins, *Financial Access and Financial Stability*, in *CENTRAL BANKS AND THE CHALLENGE OF DEVELOPMENT*, at 73 (Bank for Int'l Settlements 2006), <https://perma.cc/4HRQ-HFMK>.
221. Indeed, both the Fed and IMF have been referred to as an *international* lender-of-last-resort. See Adam Lerrick & Allan H. Meltzer, *Blueprint for an International Lender of Last Resort*, 50 J. MONETARY ECON. 289 (2003) (discussing the role of the IMF); see also Colleen M. Baker, *The Federal Reserve's Use of International Swap Lines*, 55 ARIZ. L. REV. 603 (2013) (discussing the Fed's role as dollar lender-of-last-resort).

FINANCIAL STATECRAFT

was deployed strategically to support financial statecraft. To increase the issuance of Liberty Loans during World War I, Congress expanded the bills that could back Federal Reserve notes and loosened restrictions on advances by banks and the Fed.²²² In 1918, Congress created the War Financing Corporation (WFC), a public credit agency that could lend to financial institutions that, in turn, would make loans to industries considered essential to the war effort.²²³ Federal Reserve Banks could purchase WFC debt, and member banks could pledge WFC debt or loans secured by WFC debt in exchange for discounts or advances.²²⁴

After the Treasury-Fed accord, the Fed stepped back from directly facilitating war financing. Instead, the Fed has served as lender-of-last resort in response to geopolitical emergencies, including helping stabilize the U.S. banking system in the wake of the 9/11 attacks.²²⁵ The Fed also provides dollar liquidity that supports global money markets, not just the banking system.²²⁶

Like the domestic lender-of-last-resort function, sovereign financial support for banks' international activities creates moral hazard.²²⁷ Specifically, enlisting private banks to further financial statecraft increases their exposure to geopolitical risks and may create an implicit expectation that sovereign entities will come to their aid if these risks undermine financial stability. Also like its domestic corollary, this moral hazard can be mitigated by effective prudential regulation.²²⁸ The next Part explores three examples of the parallel and intersecting strands of statecraft and financial regulation.

III. THE DOUBLE-EDGED SWORD OF FINANCIAL STATECRAFT

Financial regulation and financial statecraft have largely been treated as separate enterprises with distinct goals. Statecraft tools like TWEA, IEEPA, and the BSA have become over-emphasized tools-of-first-resort. For policymakers, these coercive tools have intuitive appeal, allowing them to exert financial leverage over geopolitical allies and rivals while avoiding armed conflict. Yet, these tools are effective only when they impose maximal costs on targeted entities without inflicting pain on those implementing the sanctions. Their misuse or overuse risks imposing a variety of costs, including creating financial fragmentation that leads to financial instability or driving potential allies to alternative financial systems. At the same time, structural and

222. See Parinitha Sastry, *The Political Origins of Section 13(3) of the Federal Reserve Act*, 24 FRBNY ECON. POL'Y REV. 1, 8 (2018).

223. See *id.* at 10.

224. See *id.*

225. See WILMARTH, *supra* note 177, at 472 (noting that the Fed purchased \$150 billion in government bonds and extended \$45 billion in discount window loans following 9/11).

226. See Ron Alquist, R. Jay Kahn & Karlye Dilts Stedman, *Central Banker to the World: Foreign Reserve Management and U.S. Money Market Liquidity* (Fed. Rsrv. Bank of Kansas City Working Paper No. 22-08) (Aug. 29, 2025).

227. See Giancarlo Corsetti, Bernardo Guimarães, and Nouriel Roubini, *International Lending of Last Resort and Moral Hazard: A Model of IMF's Catalytic Finance*, 53 J. MONETARY ECON. 441 (2006).

228. See *infra* Part IV.A.

31 STAN. J.L. ECON. & BUS. 1

prudential tools—like the NBA’s charter revocation “death penalty” provision, section 311 of the USA PATRIOT Act, the Dodd-Frank Act, the International Lending Supervision Act (ILSA), and the Bank Holding Company Act (BHCA)—are underutilized. Some of these statutes were expressly enacted to address geopolitical risks, but statecraft considerations have not been fully incorporated into prudential regulations to ensure banks can withstand statecraft-related financial shocks. Agencies have been hesitant to invoke structural enforcement provisions when financial products, markets, and institutions violate statecraft rules for fear of undermining financial stability. Finally, other provisions, including the Fed’s emergency lending and swap lines and Treasury’s ESF, have been repurposed. That is, they have been stretched beyond their original legislative intent and deployed in ways that blur the legal distinctions between statecraft and stability. As this Part explores further, the imbalances and lacunae between and across these regimes diminish the efficacy of both financial statecraft and regulation. Importantly, these shortcomings have the potential to undermine financial and geopolitical stability.

A. Where the Statecraft Partnership Goes Wrong: Three Cases

The examples of banks, U.S. sovereign debt and offshore dollar markets, and cryptocurrencies demonstrate the geopolitical and cross-border risks of using finance as geopolitical instruments. In case of global banks, domestic banking laws, regulations, and enforcement have not kept pace with the existence of systematically important institutions that operate within the regulatory perimeter but on a scale that creates concerns about moral hazard and legal compliance. By contrast, offshore dollar and crypto markets do not sit comfortably within the regulatory perimeter. They involve financial instruments and institutions that are outgrowths of the dollar-based system but which attempt to replicate and arbitrage the traditional regulatory perimeter, undermining the effectiveness of statecraft and regulatory requirements. These case studies examine the shared aims of financial statecraft and regulation, the deep connections between these domains, and the consequences when these two regimes are not sufficiently integrated.

1. National Banks

Increasing U.S. banks’ global reach enhances the government’s ability to project financial statecraft, but it challenges management and supervisors’ ability to oversee their operations and address growing and emerging risks. Financial institutions’ growth also increases potential systemic financial risks and the risks of moral hazard. The financial fragility produced by inadequate compliance and systemic risk leads to regulatory forbearance. All of these factors undermine financial institutions’ effectiveness as conduits for statecraft and regulators’ ability to contain systemic risks.

Sovereign Control. Banks’ international expansion arguably makes them better conduits of financial statecraft, but it also increases their exposure to money laundering and other illicit finance schemes by making them increasingly attractive

FINANCIAL STATECRAFT

targets of illicit financing activity and hostile foreign state adversaries.²²⁹ This, in turn, challenges sovereign control over the national banking franchise. At some point, banks become “Too Big to Manage,” meaning their size and complexity “prevents executives, board members, and shareholders from effectively overseeing the firm, leading to excessive risk-taking and misconduct.”²³⁰ The compliance failures of “Too Big to Manage” banks undermine the efficacy of financial statecraft.

In 1987, U.S. regulators uncovered money laundering compliance failures in the U.S. operations of the Bank of Credit and Commerce International (BCCI), including extensive business relationships with the drug trafficking operations of Nicaragua’s military government led by General Manuel Noriega.²³¹ This resulted in criminal indictments of bank executives and a Fed-issued cease-and-desist order; BCCI ultimately liquidated its international holding company and one of its U.S. subsidiaries.²³²

In the 1990s and 2000s, Riggs Bank facilitated illicit banking services for Chilean dictator Augusto Pinochet and members of the regime in Equatorial Guinea.²³³ Riggs agreed to a consent order with the Fed to address deficient BSA/AML compliance and pleaded guilty to a felony count of failing to file SARs accompanied by a \$16 million penalty.²³⁴ Compliance issues across the broader Riggs enterprise reached such a level that Riggs eventually needed to be rescued by the bank PNC.²³⁵

Globally active banks have continued to mismanage their illicit financing risks, especially after the Global Financial Crisis.²³⁶ From 2009 to 2016, the U.S. government fined 19 U.S. and foreign GSIBs \$21.8 billion for tax evasion, money laundering, and sanctions violations.²³⁷

In 2024, the U.S. affiliate of the Canadian bank TD Bank was charged with a variety of money laundering violations and fined \$3 billion by the U.S. Department of Justice (DOJ), FinCEN, OCC, and Fed resulting from three different schemes involving approximately \$600 million in illicit transactions.²³⁸ At the time, TD Bank was the tenth largest bank operating in the United States, with approximately \$367 billion in

229. See H.R. REP. NO. 91-975, at 10 (1970).

230. See Jeremy C. Kress, *Solving Banking’s ‘Too Big to Manage’ Problem*, 104 MINN. L. REV. 171, 173 (2019).

231. See Steele, *supra* note 67, at 204-05; see also S. Rep. No. 101-104, at 19-20. BCCI was a Luxembourg-based holding company, with banks chartered in London and the Cayman Islands and head offices in Karachi and London, the largest shareholder of which was the sovereign wealth fund of Abu Dhabi.

232. See Steele, *supra* note 67, at 204-05. Congress also enacted the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), which augmented the Fed’s role in consolidated supervision of international banking conglomerates. See *id.* at 205.

233. See *id.*

234. See *id.* at 206.

235. See *id.*

236. See Verdier, *supra* note 49, at 5-9.

237. See *id.* at 8.

238. See Plea Agreement, *U.S. v. TD Bank, N.A.*, at 37 (Oct. 10, 2024).

31 STAN. J.L. ECON. & BUS. 1

assets.²³⁹ TD Bank's former CEO alluded to the "Too Big to Manage" dynamic as a cause of the bank's compliance failures, explaining it is "easy in a bank of our size to sometimes not look at accountabilities as clearly as we should."²⁴⁰

Despite some of the headline-grabbing fines resulting from these settlements, scholars have questioned whether monetary penalties are a meaningful deterrent or merely an additional cost of doing business.²⁴¹ These debates are not new. After a Senate subcommittee report criticized the leniency of the BCCI penalty for sending the "wrong message to corrupt bankers,"²⁴² Congress enacted provisions requiring the OCC to hold a charter revocation hearing for any national bank convicted of certain criminal money laundering felonies, subjecting any state-chartered bank to a deposit insurance revocation hearing.²⁴³

If Congress meant to send a forceful message to banks that violate statecraft laws, enforcing these provisions against the largest banks has proven challenging. No large national bank has been subjected to a charter revocation hearing in the provision's history—even where the money laundering violations have been high-profile, egregious, and flagrant.²⁴⁴ One proffered explanation for the government's aversion to considering the "death penalty" for large banks is concern that the mere prospect of revoking a global bank's charter could threaten financial stability.²⁴⁵ In other words, by virtue of banks' systemic importance, financial markets and government enforcers

239. See *In the Matter of TD Bank, N.A. and TD Bank USA, N.A.*, No. 2024-02 (Oct. 10, 2024), at 3.

240. Catherine Leffert, *TD CEO Says the Bank's Size Helps Explain Risk Management Failures*, AM. BANKER (Sept. 4, 2024), <https://perma.cc/8ZEE-2NQ8>.

241. See Brandon L. Garrett, *The Rise of Bank Prosecutions*, 126 YALE L.J. F. 33, 41-45 (2016).

242. S. REP. NO. 101-104, at 35; see also Housing and Community Development Act of 1992, Pub. L. No. 102-550, §§ 1502, 1503 (1992). This provision was known as the "death penalty" provision. Catherine Collins, *Senate Weighs 'Death Penalty' Legislation for Money-Laundering Banks*, L.A. TIMES (May 19, 1991), <https://perma.cc/5R5Q-AF8M>.

243. See 12 U.S.C. §§ 93(d), 1818(w). The FDIC can also be appointed receiver for any bank convicted of a money-laundering offense. See 12 U.S.C. § 1821(c)(5)(M).

244. Charter revocation hearings have often not been required in specific matters either because banks entered into plea agreements—and were therefore not convicted of criminal violations—or the legal entities charged with applicable criminal offenses were not national banks. See Catherine Leffert & Kevin Wack, *The Anti-money-laundering Lever That Regulators Have Never Used*, AM. BANKER (Oct. 4, 2024), <https://perma.cc/G7YV-YWAE>. In the TD Bank case, for example, the national bank was charged only with *conspiracy* to engage in money laundering, while the holding company—which is not subject to charter revocation—was charged with the *substantive* felony money laundering offense. *U.S. v. TD Bank, N.A.*, *supra* note 238, at 2.

245. The British bank HSBC offers the most infamous post-crisis example. Following several regulatory orders for BSA/AML compliance violations, in 2012, HSBC entered into a settlement with the DOJ, OCC, Fed, OFAC, and the New York County District Attorney's Office for BSA compliance deficiencies, including a \$1.9 billion fine. See *Written Agreement Between HSBC Holdings PLC and Federal Reserve Board of Governors*, Docket Nos. 12-062-CMP-FB, CMP-HC (Dec. 11, 2012). The DOJ waived potential felony charges related to noncompliance with TWEA and IEEPA, causing observers, and even then-Attorney General Eric Holder, to suggest the bank might be "too-big-to-prosecute." Lewis, *supra* note 148, at 543; see also Patrick Reis, *Warren: Bust Cash-Laundering Banks*, POLITICO (Mar. 7, 2013), <https://perma.cc/4C28-VJ35>.

FINANCIAL STATECRAFT

are unable to impose adequate discipline for compliance or risk management failures.²⁴⁶ This, in turn, has implications for financial stability, meaning their compliance and risk management failures ultimately become society's problem.

Financial Stability Regulation. Pushing banks to extend credit based on statecraft goals without properly accounting for credit risk can introduce safety and soundness and financial stability risks.²⁴⁷ From one perspective, financial access, as measured by "financial depth," can "contribute to shared economic growth and development."²⁴⁸ Some studies have found increased financial access could help banks diversify their assets, thereby reducing the overall riskiness of their asset portfolio, and increase their base of deposit funding, thereby reducing liquidity risks.²⁴⁹ Most of the literature finds a positive relationship when there is increased access to payments and deposit accounts.²⁵⁰ This is likely because an increase in a bank's deposit base theoretically

-
246. To be sure, some smaller banks have suffered meaningful consequences for mismanaging their BSA/AML exposures. The markets punished Riggs Bank, forcing it into the arms of an acquirer. Foreign banks have been forced to convert their New York branches into agency offices. See *In the Matter of The Federal Branch of Arab Bank PLC*, No. AA-EC-05-12 (Feb. 24, 2005). Small banks have had their state-issued charters revoked for BSA/AML violations. Ernest L. Simons IV, *Anti-Money Laundering Compliance: Only Mega Banks Need Apply*, 17 N.C. BANKING INST. 249, 258-60 (2013); see also Lewis, *supra* note 148, at 545-47. And the FRBNY has suspended its issuance of master accounts to certain Puerto Rican international banking entities over money laundering and sanctions risks. Hill, *supra* note 150, at 498-99; *Banco San Juan Internacional, Inc. v. Fed. Rsv. Bank of N.Y.*, No. 23-cv-6414 (S.D.N.Y., Oct. 27, 2023) (mem.). Ironically, as originally drafted, the "death penalty" provision required *mandatory charter revocation* for criminal money laundering convictions, but concerns were raised that such a punitive penalty might mean that "small institutions may be subject to vigorous enforcement while large institutions might be able to negotiate a plea bargain and avoid the effects of this bill." *Money Laundering Legislation, Hearing Before the Subcomm. on Fin. Institutions Supervision, Regulation and Insurance of the Comm. on Banking, Fin. and Urban Affs. U.S. House of Representatives*, at 29, 101st Cong., 2nd Sess. (1990) (statement of Thomas H. Oldfield, Vice Chairman of the Conference of State Bank Supervisors and Supervisor of Banking, State of Washington).
247. There is a limited, but growing, body of international development and finance literature examining the relationship between financial access and financial stability. See Hawkins, *supra* note 220; see also Ratna Sahay, Martin Čihák, Papa N'Diaye, Adolfo Barajas, Srobona Mitra, Annette Kyobe, Yen Nian Mooi & Seyed Reza Yousefi, *Financial Inclusion: Can It Meet Multiple Macroeconomic Goals?* 17, 19 (IMF Staff Discussion Note 15/17) (2015); Khalil Feghali, Nada Mora & Pamela Nassif, *Financial Inclusion, Bank Market Structure, and Financial Stability: International Evidence*, 80 QUARTERLY REV. OF ECON. & FIN. 236, 251 (2021); Martin Čihák, Davide S. Mare & Martin Melecký, *The Nexus of Financial Inclusion and Financial Stability: A Study of Trade-offs and Synergies* 15 (World Bank Pol'y Rsch. Working Paper, No. 7722) (2016); Mostak Ahamed & Sushanta K. Mallick, *Is Financial Inclusion Good for Bank Stability? International Evidence*, 157 J. ECON. BEHAVIOR & ORG. 403 (2019); Peter J. Morgan & Victor Pontines, *Financial Stability and Financial Inclusion* (ADBI Working Paper No. 488) (2014); Robert Cull, Asli Demirgüç-Kunt & Timothy Lyman, *Financial Inclusion and Stability: What Does Research Show?*, CGAP Brief (2012).
248. Asli Demirgüç-Kunt, Leora Klapper & Dorothe Singer, *Financial Inclusion and Inclusive Growth: A Review of Recent Empirical Evidence* 3 (World Bank Group Pol'y Rsch. Working Paper No. 8040, 2017).
249. See Morgan & Pontines, *supra* note 247, at 13.
250. See Ahamed & Mallick, *supra* note 247, at 423; see also Feghali, Mora & Nassif, *supra* note

31 STAN. J.L. ECON. & BUS. 1

provides more stable funding, as deposits are considered “stickier” than some other bank liabilities.²⁵¹ At the same time, however, deposits linked to illicit activities and vulnerable to blocking sanctions can be associated with liquidity, compliance, and reputational risks.

Other studies have found both complementarities *and* tradeoffs between financial access and stability.²⁵² In contrast to deposits, most, though not all, studies find increased access to credit can negatively affect financial stability.²⁵³ The potential risks from increased credit access include the erosion of credit underwriting standards and elevated credit risk associated with low-quality loans to foreign borrowers, increase in banks’ compliance and reputational risks, and generally lax regulation.²⁵⁴

These findings are consistent with the traditional understanding that banks’ specialization in credit underwriting benefits from relationship-based lending that increases access to customer information and the corresponding ability to evaluate prospective borrowers’ creditworthiness.²⁵⁵ As banks’ global footprints grow, however, there is more distance between banks’ operations and customer base.²⁵⁶ This could diminish the benefits of banks’ informational advantages and increases the difficulty of evaluating borrowers’ credit profiles.

In the 1970s, the U.S. government encouraged private banks to use the proceeds of capital coming from the oil boom into investments in low-income and developing countries, a practice known as “petrodollar recycling.”²⁵⁷ The resulting loans to foreign importers were supported in part through guarantees provided by U.S. export credit agencies.²⁵⁸ These arrangements illustrate how safety and soundness considerations can be subordinated to financial statecraft, as U.S. banks’ recycling of petrodollars into investments in low-income countries’ sovereign debt led to significant credit losses.²⁵⁹ In response, Congress enacted the ILSA, requiring banking agencies to tighten

247, at 251; Sahay *et al.*, *supra* note 247, at 18-19.

251. See Ahamed & Mallick, *supra* note 247, at 423.

252. See Čihák, Mare & Melecký, *supra* note 247, at 17.

253. See Feghali, Mora & Nassif, *supra* note 247, at 251; see also Sahay *et al.*, *supra* note 247, at 16-17; Čihák, Mare & Melecký, *supra* note 247, at 12-13. *But see* Morgan & Pontines, *supra* note 247, at 13 (finding increasing small businesses lending aids financial stability by reducing non-performing loans and lowering the financial institution’s probability of default).

254. See Morgan & Pontines, *supra* note 247, at 13.

255. See Kashyap, Rajan & Stein, *supra* note 76, at 33.

256. These risks could be mitigated to some extent if activities are conducted through foreign branches with deeper connections to the local communities they serve. Using foreign branches and subsidiaries can also reduce cross-border exposures and contagion. See Niepmann & Shen, *supra* note 216.

257. See STEIL & LITAN, *supra* note 8, at 12-13. The term “petrodollar” refers to the traditional role of U.S. dollars as the currency of choice for the global oil trade. See also Ingrid Walker, *What Is the Petrodollar and Why Is It Under Pressure?*, GREEN CENTRAL BANKING (Jan. 29, 2026), <https://perma.cc/AD5G-RCMB>.

258. See Braun, Krampf & Murau, *supra* note 61, at 809-10.

259. See Steele, *supra* note 67, at 202-04.

FINANCIAL STATECRAFT

supervision and regulation of banks' international lending activities.²⁶⁰

While diversification theoretically helps banks offset the risks of specific business lines, it also exposes them to a wider variety of potential risks.²⁶¹ For example, the Russian sanctions had ripple effects, causing financial market conditions to tighten,²⁶² widening credit spreads, causing assets on the balance sheets of banks with exposures to the Russian economy to decline in value, raising the cost of funds and increasing the potential that such banks could not roll over their debt.²⁶³ This, in turn, can cause losses on bank balance sheets, affecting banks' capital ratios and leading to broader financial contagion by causing banks to pull back from their role providing credit to the financial sector and the nonfinancial economy.²⁶⁴ The point here is that over-provision of statecraft-motivated credit can lead to credit and other financial bubbles that can cause macroeconomic instability that ultimately results either in economic crisis, bailouts, or some combination thereof.²⁶⁵

Sovereign Support. Global banks' cross-border exposures exacerbate the "Too Big to Fail" phenomenon in banking—the "recurrent pattern of government bailouts of large, systemically important financial institutions."²⁶⁶ As banks grow relative to their home country economies, the financial stability risks of their failure increases, as does the effect of such failure on the nation's fiscal capacity.²⁶⁷ Increasing banks' cross-border footprints increases their interconnectedness, and the likelihood of financial spillovers and contagion.²⁶⁸ GSIBs' organizational complexity makes them difficult for banking agencies to resolve using domestic bank resolution processes.²⁶⁹

Statecraft measures have at times been repurposed into financial stability tools during times of national exigency. In 1933, President Franklin D. Roosevelt used TWEA to declare a national bank holiday, notwithstanding the law's limited

260. *See id.* at 204.

261. *See* Kevin J. Stiroh & Adrienne Rumble, *The Dark Side of Diversification: The Case of US Financial Holding Companies*, 30 J. BANKING & FIN. 2131 (2006).

262. *See* Fang & Shao, *supra* note 213 at 10.

263. *See* IMF, *Safeguarding Financial Stability amid High Inflation and Geopolitical Risks*, GLOBAL FINANCIAL STABILITY REPORT, at 91 (Apr. 2023).

264. *See* Jaewoo Lee & Joshua Aizenman, *Financial Versus Monetary Mercantilism: Long-Run View of Large International Reserves Hoarding* 8 (IMF Working Paper No. 2006/280) (2006).

265. Lee & Aizenman, *supra* note 264, at 8; *see also* Čihák, Mare & Melecký, *supra* note 247, at 17 (noting "greater financial inclusion, particularly associated with extensive borrowing by individuals, may also increase the risk of extreme events, unexpected losses of the financial system, and ultimately more frequent banking crises.").

266. *See* Saule T. Omarova, *The "Too Big to Fail" Problem*, 103 MINN. L. REV. 2495, 2495 (2019).

267. *See* Asli Demirgüç-Kunt & Harry Huizinga, *Are Banks Too Big to Fail or Too Big to Save? International Evidence from Equity Prices and CDS Spreads*, 37 J. OF BANKING & FIN. 875 (2013); *see also* Amy G. Lorenc & Jeffrey Y. Zhang, *How Bank Size Relates to the Impact of Bank Stress on the Real Economy*, 61 J. OF CORP. FIN. 1 (2020).

268. *See* İnci Ötoker-Robe, Aditya Narain, Anna Ilyina & Jay Surti, *The Too-Important-to-Fail Conundrum: Impossible to Ignore and Difficult to Resolve* 3 (IMF Staff Discussion Note No. 11/12) (2011).

269. *See id.* at 4; *see also* Avraham, Selvaggi & Vickery, *supra* note 106, at 74.

31 STAN. J.L. ECON. & BUS. 1

applicability to wartime and its exclusion of domestic transactions.²⁷⁰ Roosevelt also used TWEA to move the United States off of the gold standard by prohibiting banks from paying out or exporting gold coin and bullion,²⁷¹ and later by ordering the Fed to impose price controls in an attempt to control domestic inflation as the United States entered World War II.²⁷² During the international balance of payments crisis in 1971, President Nixon used TWEA to institute a form of capital control, ordering a national emergency and imposing a duty on foreign imports.²⁷³

The confluence of financial statecraft and financial stability considerations creates pressure on the government, through central bank emergency lending authorities and swap lines, to mitigate financial instability brought on by financial statecraft measures. This is particularly true now that the Fed's deployment of dollar swap lines during Global Financial Crisis has expanded the global lender-of-last-resort role by offering dollar liquidity to offshore and foreign entities using other central bank as intermediaries.²⁷⁴ This gives rise to additional moral hazard concerns.²⁷⁵ The role of IFIs standing behind some statecraft-related credit arrangements introduces additional political and economic complexities when sovereign and private debt restructuring and forgiveness are involved.

2. Sovereign Debt and Offshore Dollars

To maximize financial statecraft's reach, the government wants to minimize the risk that coercive statecraft measures will create excessive fragmentation that hinders

-
270. See *Subcomm. on Int'l Trade & Commerce, Comm. on Int'l Rels., U.S. House of Representatives, Emergency Controls on International Economic Transactions* 231-32 (1976). The Emergency Banking Act of 1933 (EBA) amended TWEA to remove the exclusion for domestic transactions and allow the President to use its powers during declared national emergencies, which Congress ratified in the Gold Reserve Act. *Id.* Subsequent legal challenges to the bank holiday were upheld under the EBA authority without ruling on Roosevelt's invocation of TWEA. *Id.* at 232.
271. See Kenneth W. Dam, *From the Gold Clause Cases to the Gold Commission: A Half Century of American Monetary Law*, 50 U. CHI. L. REV. 504, 510 (1983).
272. See *Subcomm. on Int'l Trade & Commerce, Comm. on Int'l Rels., supra* note 270, at 234-35. Congress again retroactively approved Roosevelt's use of TWEA in the First War Powers Act of 1941. *Id.*
273. See H.R. REP. NO. 95-459, at 5 (1976). The Nixon Administration also contemplated extending a V-loan to Penn Central Railroad when it was on the brink of insolvency in 1970. See also HACKLEY, *supra* note 188, at 152. Instead, Congress amended the law to prohibit the use of V-loans to prevent the insolvency or bankruptcy of any company unless it would have an adverse effect on defense production.
274. See Conti-Brown & Zaring, *supra* note 66, at 690-92; see also Crawford, *supra* note 62, at 212-13.
275. During World War I, for example, some legislators were concerned that departing from the Fed's doctrine of only issuing notes against "real bills," though necessitated by the war, would lead to "utter wreck" for the central bank and commercial banking system. See Sastry, *supra* note 222, at 10-11 (quoting Rep. Carter Glass). Some argued the appropriate path was for private banks to finance the war with assistance from the Fed, while others felt the central bank "was not intended to meet war emergencies" and war financing was "unrelated to monetary policy." *Id.* at 12 (quoting Rep. Glass).

FINANCIAL STATECRAFT

the free flow of global capital.²⁷⁶ Such interference could push financial transactions outside the U.S., threatening the “central role of the U.S. financial system globally, not to mention the effectiveness of our sanctions in the future.”²⁷⁷ At times, the financial sector seeks to opportunistically leverage the prospect of an exodus from the dollar or U.S. financial markets to blunt aggressive regulation and enforcement.²⁷⁸

The ability to influence globally significant pools of dollar-denominated financial assets and payment services can extend the reach of financial statecraft. But sanctions and other measures imposed on systemically important financial markets and instruments, including U.S. dollar assets and U.S. Treasury markets, can cause price volatility, inflation, and financial stress that metastasizes into panic and instability.²⁷⁹ As the Global Financial Crisis and other recent episodes demonstrated, financial markets and instruments can achieve their own “Too Big to Fail” status, requiring financial support.²⁸⁰ The growth and systemic importance of financial markets can create financial stability concerns, rendering them “Too Big to Sanction” and limiting their utility for statecraft.²⁸¹ And yet, the perceived geopolitical significance of these channels can prevent regulators from taking necessary steps to mitigate their systemic importance.

Sovereign Control. Eurodollars, the market consisting of “dollar-denominated financial accounts and instruments situated outside of the United States”²⁸² provide an example of the financial industry’s efforts to access dollar-denominated financial assets without being subject to accompanying oversight. Offshore markets like Eurodollars extend the dollar’s global reach in some respects, but this enhanced reach is accompanied by risks that the U.S. government cannot fully control the proliferation of dollar-denominated assets and liabilities—particularly if they are issued by foreign financial institutions or held in other jurisdictions.²⁸³

Eurodollars emerged as a way for private U.S. and foreign banks to serve clients in foreign and offshore jurisdictions by providing access to dollars and dollar-denominated financial products without being subject to credit and capital controls,

276. See Clayton et al., *supra* note 202, at 1 (describing the “fragmentation doom loop”).

277. Lew, *supra* note 219.

278. E.g., Duncan Kerr, *Clearing: European Banks Weigh Up US Dollar Clearing Options*, EUROMONEY (Jan. 5, 2015), <https://perma.cc/8NSB-CHK9> (reporting on foreign banks reevaluating the profitability of their U.S. dollar clearing businesses in response to Fed regulations and OFAC enforcement actions).

279. See Steele, *supra* note 202, at 83-84, 103-05 (discussing disruptions in the Treasury and repo markets in 2013, 2014, and 2019).

280. See Robert C. Hockett & Saule T. Omarova, *Systemically Significant Prices*, 2 J. FIN. REG. 1, 6 (2016) (observing a particular financial asset’s “ubiquity as an investment vehicle is virtually by definition significant to the financial markets.”).

281. See Jean Whalen & John Hudson, *Too Big to Sanction? U.S. Struggles with Punishing Large Russian Businesses.*, WASH. POST (Aug. 26, 2018), <https://perma.cc/DX3L-DCMK>.

282. Thomas C. Baxter, Jr. & James H. Freis, Jr., *Fostering Competition in Financial Services: From Domestic Supervision to Global Standards*, 34 NEW ENGL. L. REV. 57, 71 (1999).

283. See John E. Hoffman Jr. & Ian H. Giddy, *Lessons from the Iranian Experience: National Currencies as International Money*, 3 U. PA. J. INT’L L. 271, 274-78 (1981).

31 STAN. J.L. ECON. & BUS. 1

tax reporting, and other requirements of U.S. law.²⁸⁴ U.S. overseas branches and Edge Act corporations and U.S. branches of foreign banks, in particular, engage in Eurodollar and dollar clearing tied to offshore banking jurisdictions.²⁸⁵ The Eurodollar markets were a primary channel through which banks recycled petrodollars.²⁸⁶ In an effort to respond to the growth of this offshore banking market, the Fed authorized the creation of special international banking facilities, legal entities established in the United States to accept deposits without being subject to the interest rate and reserve restrictions that Eurodollars were meant to circumvent.²⁸⁷

These dollar-denominated offshore markets thus combine legal entities that are subject to less stringent regulation than chartered U.S. banks²⁸⁸ with financial markets and assets established to arbitrage U.S. banking regulations. While the U.S. government has a legal hook to sanction transactions routed through the U.S. banking system, the law governing international payments can be ambiguous and monitoring events happening overseas and forcing foreign banks into compliance can be challenging in practice.²⁸⁹

The Eurodollar market illustrates how the desire to project geopolitical influence through global dollar provisioning can lead U.S. authorities to sacrifice full control over dollar-denominated financial instruments by allowing offshore financial markets to develop outside of their regulatory reach.²⁹⁰ This imperils statecraft's effectiveness, as other governments—particularly those that rely on income from offshore and secrecy jurisdictions—may not share the United States' geopolitical goals. Private financial institutions may likewise have interests and incentives that are at odds with U.S. foreign policy.

Financial Stability Regulation. Financial institutions transmit the financial capital that flows across borders and through offshore financial markets. These activities are accompanied by idiosyncratic risks. In 1974, for example, the German Bankhaus Herstatt failed due to its mismanagement of foreign exchange risk, briefly paralyzing cross-border interbank payments and creating concerns that contagion could spread across the global banking system.²⁹¹ Herstatt's failure was brought on by, among other things, being cut off from dollar clearing services.²⁹² In the 1990s, crises in the foreign exchange markets, driven by the volatility of the peso and ruble, caused the collapse

284. See Steele, *supra* note 67, at 189, 191-92. So-called "Eurodollar loans" and foreign bank accounts in secrecy jurisdictions were also used to circumvent U.S. securities market regulations like market manipulation, insider trading, and speculation in violation of margin trading restrictions. See also *id.*; S. REP. NO. 91-1139, at 3 (1970).

285. See Steele, *supra* note 67, at 196; see also Kress, *supra* note 68, at 963-65, 970-72.

286. See Braun, Krampf & Murau, *supra* note 61, at 802.

287. See David W. Wise, *International Banking Facilities and the Future of Offshore Banking*, 6 FLETCHER F. 299, 316-28 (1982).

288. See Steele, *supra* note 67, at 214-18; see also Kress, *supra* note 68, at 976-78.

289. See Peter S. Smedresman & Andreas F. Lowenfeld, *Eurodollars, Multinational Banks, and National Laws*, 64 N.Y.U. L. REV. 733, 746-86 (1989).

290. See Crawford, *supra* note 62, at 153.

291. See Joseph Sommer, *Where is a Bank Account?*, 57 MD. L. REV. 1, 29-31 (1998).

292. See FARRELL & NEWMAN, *supra* note 53, at 29.

FINANCIAL STATECRAFT

of the hedge fund Long Term Capital Management (LTCM).²⁹³ The LTCM episode reinforced the risks of international banking exposed during the Herstatt failure, compounded by the complexity of modern financial derivative instruments.

In 2023, Credit Suisse, a Swiss GSIB, failed as a result of persistent money laundering, risk management, and other compliance failures.²⁹⁴ Credit Suisse's New York branch provided customers and affiliates with access to dollar liquidity through short-term funding markets, as a primary dealer of U.S. Treasury securities, and through its access to the Fed's Discount Window lending.²⁹⁵ The exposures between Credit Suisse's London operations, the Caymans, and its New York branch created a layer of opacity for U.S. supervisors seeking to understand Credit Suisse's cross-border exposures. As Credit Suisse faced imminent failure, these opaque exposures created uncertainty regarding possibility of spillovers to the global financial system through offshore banking centers.

The role of U.S. sovereign debt as the global reserve asset and safe investment also creates exposures between governments. China's significant holdings of debt issued by the U.S. housing-focused government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, made them "gravely concerned" about the fate of the GSEs during the Global Financial Crisis and required U.S. officials to keep their Chinese counterparts apprised of GSE bailout and reform efforts.²⁹⁶ It later came to light that Russia sought to coordinate with China to begin selling GSE debt, thereby exacerbating the crisis and raising the costs of the U.S. fiscal response.²⁹⁷ As noted above, the prospect of other governments selling their U.S. sovereign debt holdings resurfaced following President Trump's threats against Greenland. Foreign investors' significant holdings of U.S. Treasuries and other government agency debt could raise financial stability concerns if foreign investors suddenly and substantially reduced these holdings,²⁹⁸ thereby increasing yields, reducing the value of Treasury securities, and disrupting the many financial transactions that rely on Treasuries as collateral.

Conversely, the risk of investors—including foreign investors—fleeing to the safety of U.S. Treasuries and away from other private financial asset markets in a "dash for cash" creates additional financial stability concerns. This dynamic puts pressure on privately issued financial asset prices and dealer banks that, in order to stabilize market prices, have to absorb the resulting inventory of assets.²⁹⁹ Indeed, the run on

293. See Arthur E. Wilmarth, Jr., *The Transformation of the U.S. Financial Services Industry 1975–2000: Competition, Consolidation, and Increased Risks*, 2002 U. ILL. L. REV. 215, 347-48.

294. See FIN. STABILITY BD., 2023 BANK FAILURES: PRELIMINARY LESSONS LEARNT FOR RESOLUTION 5-7 (2023), <https://perma.cc/VKC2-JT7Y>; see also Emily Glazer et al., *Inside Credit Suisse's \$5.5 Billion Breakdown*, WALL ST. J. (June 7, 2021), <https://perma.cc/69VE-AE84>.

295. See CREDIT SUISSE, U.S. RESOLUTION PLAN PUBLIC SECTION 18 (May 31, 2023), <https://perma.cc/9QJL-C9DY>.

296. MOHSIN, *supra* note 31, at 183 (noting Chinese entities held 30 percent of the \$5.4 trillion in securities connected to the GSEs).

297. See ZARATE, *supra* note 31, at 383.

298. See U.S. Dep't of the Treasury, *Major Foreign Holders of Treasury Securities* (Sept. 2024), <https://perma.cc/Q9VA-JHL6>; see also MARC LABONTE & BEN LEUBSDORF, FOREIGN HOLDINGS OF FEDERAL DEBT 7, CONG. RSCH. SERV. (2024), <https://perma.cc/6J2G-PU8E>.

299. See Nellie Liang, *Under Secretary for Domestic Finance*, U.S. Dep't of the Treasury, *Remarks at*

31 STAN. J.L. ECON. & BUS. 1

LTCM was started by investors piling into U.S. debt, devaluing the non-dollar-denominated assets on LTCM's balance sheet.³⁰⁰

Sovereign Support. Like other markets and institutions, U.S. currency and debt markets benefit from implicit and explicit government support. They are, by definition, supported by the full faith and credit of the U.S. government. Eurodollar transactions rely on dollar clearing, and, by extension, U.S. payments infrastructure—potentially including central bank credit—in order to settle.³⁰¹ In 1962, the Fed established its first currency swap lines to stabilize the Eurodollar markets and maintain the global dollar peg under the Bretton Woods system.³⁰² Later, during the petrodollar and sovereign debt crises of the 1970s, central banks again made commitments to preserve Eurodollar markets as a source of global access to dollar liquidity.³⁰³

The sovereign safety net, including central bank swap lines and other dollar facilities with foreign central banks, has expanded to cover a range of global dollar-denominated financial markets.³⁰⁴ For example, LTCM was saved by public-private rescues, necessitated by its interconnections with large U.S. banks,³⁰⁵ including use of the ESF to stabilize the broader peso crisis.³⁰⁶ Similarly, almost half of the \$182 billion liquidity provided to Credit Suisse from the Swiss National Bank came through dollars borrowed from one of the Fed's dollar liquidity facilities.³⁰⁷ Through their investor-debtor relationship, the Chinese government was one of the beneficiaries of the government's bailout of the GSEs and the Fed's decision to purchase GSE debt as part of its quantitative easing program.³⁰⁸ These experiences demonstrate that the U.S. government supports a range of dollar-denominated assets and foreign holders of dollar-denominated claims, even if they are issued or traded through markets that operate beyond the full control of U.S. authorities.

3. Cryptocurrencies

the Future of Financial Markets: Innovation and Uncertainty, GEORGETOWN PSAROS CTR. FOR FIN. MKTS. & POL'Y (Sept. 17, 2024), <https://perma.cc/H3VK-PLHE>.

300. See Wilmarth, *supra* note 293, at 347-48. While the flight to safety creates pressure on private market participants, the U.S. government often benefits from the simultaneous appreciation in the dollar. See also Rohan Kekre & Moritz Lenel, *The Flight to Safety and International Risk Sharing*, 114 AM. ECON. REV. 1650 (2024).
301. See Smedresman & Lowenfeld, *supra* note 289, at 745-46.
302. See Quintana, *supra* note 60, at 5.
303. See Braun, Krampf & Murau, *supra* note 61, at 811-12.
304. See Mark Choi et al., *The Fed's Central Bank Swap Lines and FIMA Repo Facility*, 28 ECON. POL'Y REV. 93 (2022).
305. See Wilmarth, *supra* note 293, at 348.
306. See Munk, *supra* note 145, at 231-33.
307. See Antoine Martin, Member, Governing Bd., Swiss Nat'l Bank, *The US Dollar in the International Financial System 6* (Presentation to Atlanta Fed Fin. Markets Conference, May 21, 2024), <https://perma.cc/QY7H-UJ8G>.
308. See Brad W. Setser, *China's Rising Holdings of U.S. Agency Bonds*, COUNCIL ON FOREIGN RELS. (Feb. 13, 2023), <https://perma.cc/V956-UR9L>.

FINANCIAL STATECRAFT

The growth of cryptocurrency challenges financial statecraft, control of the monetary and banking franchise, and the stability of the financial system. Crypto's development is motivated by a libertarian ethos that stands in philosophical opposition to the principle of sovereign control.³⁰⁹ The crypto ecosystem therefore seeks to circumvent both financial statecraft and regulatory requirements. This has the effect of undermining both regimes—while at the same time seeking access to public financial infrastructure and support.

Sovereign Control. Private, stateless digital currencies threaten the efficacy of financial statecraft's sanctions and AML regimes. Cryptocurrencies are a complex ecosystem of tokens, software applications, digital ledgers, platforms, and other technological infrastructure that facilitates ostensibly autonomous financial transactions. This purported lack of individual- or entity-based control is a design choice, aimed at evading government regulation.³¹⁰ This central feature conflicts with financial institutions' gatekeeper role and the government's monopoly on currency issuance.

In 2023, the U.S. government imposed a \$4.3 billion penalty on Binance, the world's largest crypto exchange, for a variety of willful violations of BSA/AML, IEEPA, and other compliance requirements.³¹¹ Binance held itself out as solely operating outside of the United States. In order to avoid the obligations of U.S. law, but it processed millions of transactions, valued in the billions of dollars, between U.S. persons and entities in sanctioned jurisdictions, including Iran, Russia, Cuba, and Syria.³¹² This example illustrates the risks when financial actors seek to replicate the channels of statecraft while evading their legal obligations. It also suggests, however, such entities can eventually be forced into compliance if they reach sufficient scale and therefore desire greater legitimacy in the eyes of the government.³¹³ Yet, this compliance would turn out to be short-lived. In January 2026, the DOJ reportedly began investigating Binance for facilitating more than \$1 billion in transactions in

309. See TREASURY SANCTIONS REVIEW, *supra* note 219, at 2 (crypto products and services offer “malign actors opportunities to hold and transfer funds outside the traditional dollar-based financial system” and “empower [U.S.] adversaries seeking to build new financial and payments systems intended to diminish the dollar’s global role.”); see also FARRELL & NEWMAN, *supra* note 58, at 170 (describing crypto’s central goal of “undercutting the government’s monopoly on issuing money and its power to keep track of it.”).

310. See FARRELL & NEWMAN, *supra* note 53, at 168-69 (describing the Ethereum blockchain’s creator, Vitalik Buterin, that crypto’s decentralization “make[s] it harder for the government to shut it down” and “[b]lockchain-based currencies and social systems might eliminate intermediaries and immunize the base layers of society against the temptations of government, stopping governments and businesses from controlling people’s lives.”).

311. See *U.S. v. Binance Holdings, Ltd.*, No. CA23-178RAJ (W.D. Wa. 2023).

312. See *id.* Over a four-year period, Binance facilitated at least 1.1 million transactions, valued at over \$898 million, between U.S. and Iranian entities. *Id.* ¶ 42. Over a similar period, it processed \$106 million in bitcoin transfers from the Russian darknet marketplace Hydra. *Id.* ¶ 52. In all, over a five-year period, Binance processed trillions of dollars in transactions involving U.S. entities, resulting in a profit of more than \$1.6 billion. *Id.* ¶ 50.

313. See Henry Farrell & Abraham Newman, *Binance and the End of Crypto’s Dream to Escape From Government*, WALL ST. J. (Nov. 24, 2023), <https://perma.cc/F6TL-ETFA>.

31 STAN. J.L. ECON. & BUS. 1

potential violation of Iran-related sanctions.³¹⁴

The genre of crypto-assets known as decentralized finance (DeFi) poses particular challenges to financial statecraft because it attempts to supplant platforms like Binance, which rely on software programs designed to operate beyond the responsibility of any individual or group.³¹⁵ In 2022, OFAC sanctioned the crypto mixing service Tornado Cash for violating IEEPA by facilitating the anonymization of \$7 billion in virtual currency transactions involving sanctioned entities, including a hacker group affiliated with the North Korean government.³¹⁶ Individuals affiliated with Tornado Cash challenged OFAC's determination, arguing Tornado Cash's decentralized structure means it cannot be designated under IEEPA.³¹⁷ While the U.S. District Court for the Western District of Texas rejected this argument,³¹⁸ the U.S. Court of Appeals for the Fifth Circuit reversed the district court, holding so-called "smart contracts" like the one that operates Tornado Cash do not constitute a sufficient interest in "property" such that IEEPA can be applied to individual token holders.³¹⁹ Rather than appealing the decision, the Treasury Department chose to remove the Tornado Cash sanctions.³²⁰

Tether, the world's most popular stablecoin with \$120 billion in assets and \$190 billion in daily transactions,³²¹ provides another example of the risks of DeFi. Stablecoins are a form of crypto-asset designed to maintain a one-to-one ratio with the U.S. dollar, serving as the "lifeblood of the global crypto economy."³²² Venezuela has reportedly demanded payments for oil in Tether in order to evade international

314. See Angus Berwick & Patricia Kowsmann, *Justice Department Probes Iran's Use of Binance to Evade Sanctions*, WALL ST. J. (Mar. 11, 2026), <https://perma.cc/JY59-6C45>.

315. See Hilary J. Allen, *DeFi: Shadow Banking 2.0?*, 64 WM. & MARY L. REV. 914, 934 (2023) (describing DeFi as a "software application . . . that serves as a simulacrum of traditional financial services provided using coins and tokens hosted on a permissionless distributed ledger" where "no central authority is in charge of determining who has the right to record transactions on the ledger"). It should be noted, however, that this decentralization can be illusory. For example, many DeFi protocol and platform governance tokens are concentrated among a small group of individuals and entities—in other words, centralized. U.S. DEP'T OF THE TREASURY, CRYPTO-ASSETS: IMPLICATIONS FOR CONSUMERS, INVESTORS, AND BUSINESSES 30, 36 (2022), <https://perma.cc/J9C4-GKTW>; see also PRESIDENT'S WORKING GRP. ON FIN. MKTS., FED. DEPOSIT INS. CORP., & OFF. OF THE COMPTROLLER OF THE CURRENCY, REPORT ON STABLECOINS 9 (Nov. 2021), <https://perma.cc/CBV9-JVEE>.

316. See Press Release, U.S. Treasury Sanctions Notorious Virtual Currency Mixer Tornado Cash, U.S. DEP'T OF THE TREASURY (Aug. 8, 2022), <https://perma.cc/6DBQ-DJAA>.

317. See *Van Loon v. Dep't of Treasury*, 688 F. Supp. 3d 454 (W.D. Tex., 2023).

318. See *id.* at 471.

319. See *Van Loon v. Dep't of Treasury*, No. 23-50669, slip op. (5th Cir. 2024).

320. See U.S. Dep't of the Treasury, *Tornado Cash Delisting*, U.S. DEP'T OF THE TREASURY (Mar. 21, 2025), <https://perma.cc/KB32-NU2W>.

321. See Angus Berwick & Ben Foldy, *The Shadow Dollar That's Fueling the Financial Underworld*, WALL ST. J. (Sept. 10, 2024), <https://perma.cc/PTH8-CDFE>.

322. Tory Newmyer & Jeremy B. Merrill, *Top Crypto Company Defies U.S. Sanctions on Service That Hid Stolen Assets*, WASH. POST (Aug. 24, 2022), <https://perma.cc/M3UJ-RDE5>.

FINANCIAL STATECRAFT

sanctions³²³ and Tether has been used to circumvent sanctions on Russia and finance Russia's military offensive against Ukraine.³²⁴ Tether has also become the cryptocurrency of choice for international money laundering and illicit banking networks.³²⁵ Illustrating the unique risks of DeFi, Tether, unlike Binance, has continued to evade the reach of U.S. authorities and failed to comply with U.S. sanctions imposed on other crypto entities,³²⁶ including continuing to process payments associated with Tornado Cash during the period OFAC's sanctions were in effect.³²⁷

Following a brief ceasefire in the U.S.-Iran conflict in April 2026, Iran reportedly demanded payment in cryptocurrency from any oil tanker passing through the Strait of Hormuz.³²⁸ This arrangement both renders these transactions more difficult for U.S. authorities to trace and block and signifies a narrow break from the petrodollar.³²⁹ Thus, the emergence of this new digital payment ecosystem as a medium for money laundering and sanctions evasion has the potential to undermine the central role of the dollar as a means of payment, and with it the effectiveness of statecraft.³³⁰

Financial Stability Regulation. In addition to circumventing financial statecraft channels, cryptocurrencies and DeFi engage in private money creation and regulatory arbitrage in a manner similar to so-called "shadow banks" prior to the Global Financial Crisis.³³¹ The outsized growth of unstable financial instruments outside of the regulatory perimeter creates financial stability risks.

The fragmented structure of the crypto markets is consistent with the "Too Many to Fail" dynamic, wherein financial stress causes smaller financial institutions to "fail en masse due to their highly correlated balance sheets and funding strategies."³³²

323. See Berwick & Foldy, *supra* note 321.

324. See *Countering Illicit Finance, Counter-Terrorism, and Sanctions Evasion, Comm. on Banking, Hsg. & Urban Affs., U.S. Senate 2* (Apr. 9, 2024), <https://perma.cc/W26H-4BYH> (statement of Adeyemo O. Adeyemo, Deputy Secretary, U.S. Dept. of the Treasury).

325. See UNITED NATIONS OFF. ON DRUGS AND CRIME, CASINOS, MONEY LAUNDERING, UNDERGROUND BANKING, AND TRANSNATIONAL ORGANIZED CRIME IN EAST AND SOUTHEAST ASIA: A HIDDEN AND ACCELERATING THREAT 51-54 (2024), <https://perma.cc/7FAW-APT4>.

326. See Berwick & Foldy, *supra* note 321 (describing Tether as "privately controlled in the British Virgin Islands by a secretive crew of owners, with its activities largely hidden from governments."); see also Newmyer & Merrill, *supra* note 322 (noting Tether has a "history of racking up penalties from regulators" and has "neglected to comply with U.S. sanctions[.]").

327. See Newmyer & Merrill, *supra* note 322.

328. See Najmeh Bozorgmehr, Alice Hancock, Verity Ratcliffe & Rachel Millard, *Iran Demands Crypto Fees for Ships Passing Hormuz During Ceasefire*, FIN. TIMES (Apr. 8, 2026), <https://perma.cc/L8R8-9HZV>.

329. See Emily Peck, *The Petrodollar Faces Its Biggest Test*, AXIOS (Apr. 10, 2026), <https://perma.cc/5Q6E-XATN>.

330. See Lin, *supra* note 60, at 1388.

331. See Omarova & Steele, *supra* note 70, at 1244-45; see also Allen, *supra* note 315; Omarova, *supra* note 78, at 753 (describing shadow banking as a system of "financial markets and activities that mimic the economic substance of bank-like credit-money creation without being subject to the same kind of regulatory oversight.").

332. See Jeremy C. Kress & Matthew C. Turk, *Too Many to Fail: Against Community Bank Deregulation*, 115 NW. U. L. REV. 647, 651 (2020).

31 STAN. J.L. ECON. & BUS. 1

During “crypto winter” in the spring through the winter of 2022, there were runs on at least seven different crypto assets causing at least five crypto platforms to declare bankruptcy, with more than four million customers filing claims to recover lost or frozen funds.³³³ Like they did during the Global Financial Crisis, shadow banking risks spilled over into the regulated banking system, this time driven by crypto firms. In March 2023, there were depositor runs on three banks that engaged in crypto activities—Silvergate Bank, Silicon Valley Bank (SVB), and Signature Bank—all of which had to be placed into voluntary liquidation or receivership.³³⁴

Decentralization is not the only risk presented by private digital currencies. In 2019, a corporate consortium led by technology giant Meta announced its plan to issue a global stablecoin, first called “Libra” and later renamed “Diem.”³³⁵ “The project drew backlash from policymakers alarmed by its potential to facilitate illegal transactions and threaten financial stability.”³³⁶ In addition to these very legitimate concerns, such projects raise issues of statecraft and political economy based on their potential to create a “globally dominant, private monetary system controlled by Meta and built on top of its social-media platform.”³³⁷

Sovereign Support. Crypto is a form of shadow banking. That is, crypto companies present themselves as an alternative to banks. Yet, they also seek access to the benefits of government-provided financial infrastructure without the *controls* and *obligations* associated with the regulatory perimeter. Far from being unique, cryptocurrencies are part of a long line of financial institutions seeking to engage in the “functional amplification and replication of the core banking franchise” but “without paying the ‘franchise fees’ imposed on banks,” through regulation and chartering.³³⁸

In truth, there are linkages between crypto, the banking system, and the public safety net. Money laundering schemes that utilize cryptocurrencies eventually connect back to regulated banks.³³⁹ When SVB and Signature failed, federal regulators had to invoke a “systemic risk exception” to guarantee all of the deposits at both banks, in excess of the normal limit of \$250,000.³⁴⁰ The stablecoin company Circle was SVB’s largest external depositor, with \$3.3 billion in deposits held in the bank, which was fully protected by deposit insurance pursuant to the systemic risk exception.³⁴¹

333. See Radhika Patel & Jonathan Rose, *A Retrospective on the Crypto Runs of 2022*, 479 CHICAGO FED LTR. (May 2023), <https://perma.cc/98QE-NSB7>.

334. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-23-106736, BANK REGULATION: PRELIMINARY REVIEW OF AGENCY ACTIONS RELATED TO MARCH 2023 BANK FAILURES (Apr. 28, 2023), <https://perma.cc/HL6Q-DB9X>.

335. See Omarova & Steele, *supra* note 70, at 1249.

336. See *id.*; see also FARRELL & NEWMAN, *supra* note 53, at 177.

337. See Omarova & Steele, *supra* note 70, at 1249.

338. See Hockett & Omarova, *supra* note 70, at 1164.

339. E.g., Cezary Podkul, *How Foreign Scammers Use U.S. Banks to Fleece Americans*, PROPUBLICA (June 25, 2025), <https://perma.cc/E7G3-U7AL>.

340. See Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC (Mar. 12, 2023), <https://perma.cc/KUR6-8ACJ>.

341. See Lizette Chapman & Jason Leopold, *The Big Names That Got Backstop for Billions in*

FINANCIAL STATECRAFT

During this period, Circle's stablecoin, USD Coin (USDC), lost its dollar peg, falling below 87 cents, but recovered following the systemic risk exception.³⁴² In the wake of SVB's failure, Treasury committed ESF funds to the Fed's Bank Term Funding Program, an emergency lending facility created to provide banks with term loans against the par value of their high-quality securities to meet depositor withdrawals.³⁴³

The Federal banking agencies took subsequent actions to limit banks' exposures to crypto, including the liquidity risks of holding deposits linked to stablecoins.³⁴⁴ But Trump Administration regulators have loosened restrictions on banks' crypto activities, including allowing banks to manage stablecoin reserves and accept stablecoins as a form of payment.³⁴⁵ At the same time, Congress has enacted legislation allowing stablecoin issuers to access federal charters without being subject to the full suite of banking requirements³⁴⁶ and some crypto companies are attempting to use state chartering authorities to engage in the business of banking and obtain access to master accounts and the Fed's payment systems.³⁴⁷ This means the banking system, and the taxpayer-provided safety net, are exposed to the financial stability risks of crypto assets. These interconnections will continue to deepen if stablecoins gain wider acceptance or stablecoin issuers become significant purchasers of Treasuries to serve as stablecoin reserves.³⁴⁸

B. From Targeted Financial Weapons to Financial Weapons of Mass Destruction

Uninsured SVB Deposits, BLOOMBERG (June 23, 2023), <https://perma.cc/2V7L-YP8D>.

342. See Vicky Ge Huang, Hannah Miao, & Caitlin Ostroff, *Circle's USDC Stablecoin Breaks Peg With \$3.3 Billion Stuck at Silicon Valley Bank*, WALL ST. J. (Mar. 11, 2023), <https://perma.cc/L4XA-5X3A>.
343. See Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Federal Reserve Board Announces it Will Make Available Additional Funding to Eligible Depository Institutions to Help Assure Banks Have the Ability to Meet the Needs of All Their Depositors (Mar. 12, 2023), <https://perma.cc/75T5-SAYK>.
344. See Off. of the Comptroller of Currency, Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank, Interpretive Letter No. 1179 (Nov. 18, 2021); see also Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Fed. Deposit Ins. Corp., and Off. of the Comptroller of the Currency, Agencies Issue Joint Statement on Liquidity Risks Resulting from Crypto-Asset Market Vulnerabilities (Feb. 23, 2023), <https://perma.cc/FB78-J783>.
345. See OCC Letter Addressing Certain Crypto-Asset Activities, Off. of the Comptroller of the Currency Interpretive Letter, No. 1183 (Mar. 7, 2025); see also Fed. Deposit Ins. Corp. and Bd. of Governors of the Fed. Rsrv. Sys., Agencies Withdraw Joint Statements on Crypto-Assets (Apr. 24, 2025), <https://perma.cc/8T2T-4DDB>.
346. See Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act of 2025, Pub. L. No. 119-27, 139 Stat. 419 (2025).
347. See *Custodia Bank v. Fed. Rsrv. Bd. of Governors*, Case No. 22-cv-125-SWS (D. Wyo. 2024).
348. See Rashad Ahmed & Iñaki Aldasoro, *Stablecoins and Safe Asset Prices* (BIS Working Paper No. 1270, May 2025), <https://perma.cc/94DD-JQF9>; see also U.S. Dep't of the Treasury, *Digital Money* (Presentation to the Treasury Borrowing Advisory Comm.) (Apr. 2025), <https://perma.cc/TY5L-7TBK>.

31 STAN. J.L. ECON. & BUS. 1

The foregoing examples illustrate the connections between financial statecraft and financial regulation through banks, Eurodollar and U.S. Treasury markets, and digital currencies. Financial statecraft is about the creation, modulation, and allocation of dollar-based financial resources. The U.S. government wants its financial institutions and markets to be open, competitive, and integrated, to be sure. But the efficacy of financial statecraft depends on its ability to serve as a “smart, powerful device that could be tailored”³⁴⁹ and thus not overly blunt or susceptible to unintended consequences. The enterprise is therefore contingent upon the financial stability provided by sound *regulation* that ensures the dollar based-financial system remains reliable and resilient. Decoupling financial regulation from statecraft can create two potent negative externalities, in the form of financial and political instability, that undermine the political aims of statecraft.³⁵⁰ To borrow a metaphor that bridges foreign policy and financial regulation, it can produce “financial weapons of mass destruction.”³⁵¹ Many of these concerns present classic tail risks: ostensibly low-probability events that nonetheless impose significant costs on the economy and society³⁵²—and thus are important to prevent from materializing.

1. Financial and Political Instability

Crises and bailouts undermine the preconditions for effective statecraft by exacerbating economic inequality, social unrest, and other economic, political, and social problems.³⁵³ The dynamics of the “Too Big to Fail” and “Too Many to Fail” problems and the financial exposures between banks and governments can create a “doom loop,” wherein the weakening of financial sector balance sheets weakens the sovereign balance sheet.³⁵⁴ The significant fiscal impacts of crises and bailouts bring the off-balance sheet operations of financial statecraft back on-balance sheet in sudden and costly ways.³⁵⁵ Inflation and volatility driven by credit bubbles, and inequitable

349. MOHSIN, *supra* note 31, at 177.

350. See Claire A. Hill, *The Rhetoric of Negative Externalities*, 39 SEATTLE U. L. REV. 517 (2016) (defining a negative externality as when “costs [are] imposed on third parties”).

351. See James B. Kelleher, *Buffett’s Time Bomb Goes Off on Wall Street*, REUTERS (Sept. 18 2008), <https://perma.cc/9FW3-LV6R> (quoting Warren Buffett referring to financial derivatives as “weapons of mass destruction”).

352. See Maik Dierkes, Fabian Hollstein, Marcel Prokopczuk & Christoph Matthias Würsig, *Measuring Tail Risk*, 241 J. ECONOMETRICS 105769 (2024).

353. See Atif Mian, Amir Sufi & Francesco Trebbi, *Resolving Debt Overhang: Political Constraints in the Aftermath of Financial Crises*, 6 AM. ECON. J.: MACROECONOMICS 1 (2014).

354. See Emmanuel Farhi & Jean Tirole, *Deadly Embrace: Sovereign and Financial Balance Sheets Doom Loops*, 85 REV. ECON. STUDIES 1781, 1783 (2018). The collective financial exposures between governments and their banking systems are often referred to as the “sovereign-bank nexus.” See also Giovanni Dell’Ariccia, Caio Ferreira, Nigel Jenkinson, Luc Laeven, Alberto Martin, Camelia Minoiu & Alexander Popov, *Managing the Sovereign-Bank Nexus* 5-8 (Eur. Central Bank Working Paper No. 2177, 2018).

355. See CONG. BUDGET OFF., FINANCIAL REGULATION AND THE FEDERAL BUDGET 35 (2019) (estimating that a hypothetical financial crisis reduces U.S. GDP by \$5.4 trillion over a ten-year period); see also Regis Barnichon, Christian Matthes & Alexander Ziegenbein, *The Financial Crisis at 10: Will We Ever Recover?*, FRBSF Econ. Letter (Aug. 13, 2018),

FINANCIAL STATECRAFT

government bailouts, can foment political polarization and dysfunction and increase the appeal of far-right politics.³⁵⁶ Indeed, cryptocurrency was conceived following the Global Financial Crisis as a means of exploiting the erosion of public trust in financial institutions and government.³⁵⁷ Bailouts of *international* financial institutions are particularly unpopular in areas with larger proportions of working-class voters.³⁵⁸

Financial instability and financial crises also challenge the hegemonic role of U.S. financial institutions and the perception of U.S. financial markets as global safe havens, undermining confidence in U.S. economic power.³⁵⁹ The turbulence in Treasury markets during recent events like the COVID-19 pandemic and the Liberation Day tariffs suggest traditional flight-to-safety dynamics may be changing.³⁶⁰ Such shifting norms and expectations among global financial market participants introduces additional volatility, uncertainty, and, ultimately, financial instability.³⁶¹ In these fundamental ways, failures of financial regulation can create another, mutually reinforcing, “doom loop” of financial and political instability.

2. Political Economy Problems

Short of a full-blown crisis, channeling important government policies through private financial institutions can erode democratic governance. GSIBs’ role in financial statecraft expands their political power by virtue of their systemic importance.³⁶² Private institutions motivated by profit or ideology may not share the same values as

<https://perma.cc/QU5Z-NWSW> (estimating that the Global Financial Crisis reduced economic output by seven percentage points, the equivalent of each American losing \$70,000).

356. See Manuel Funke, Moritz Schularick & Christoph Trebesch, *Going to Extremes: Politics After Financial Crises, 1870–2014*, 88 EUR. ECON. REV. 227 (2016); Győző Gyöngyös & Emil Verner, *Financial Crisis, Creditor-Debtor Conflict, and Populism*, 77 J. FIN. 2471 (2022); Sebastian Doerr, Stefan Gissler, José-Luis Peydró & Hans-Joachim Voth, *Financial Crises and Political Radicalization: How Failing Banks Paved Hitler’s Path to Power*, 77 J. FIN. 3339 (2022).
357. See Omarova & Steele, *supra* note 70, at 1245-46.
358. See J. Lawrence Broz, *Congressional Politics of International Financial Rescues*, 49 AM. J. POL. SCI. 479 (2005).
359. See ZARATE, *supra* note 31, at 384.
360. See Adriana Kugler, Member, Bd. of Governors of the Fed. Rsrv. Sys., Opening Remarks at the 2025 Federal Reserve Board Macro-Finance Workshop 2 (May 29, 2025), <https://perma.cc/S5QK-6GLS>; see also Steele, *supra* note 192, at 105-06.
361. See Kugler, *supra* note 360, at 2-3 (noting the potential “financial stability implications of the potential lower desirability of U.S. financial assets in flight-to-safety events.”).
362. See Adam William Chalmers, *When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying*, 19 BUS. & POL. 107 (2017) (finding banking organizations with greater financial resources and international banking activity are more likely to lobby at the international level); see also Elsa Clara Massoc, *Banks’ Structural Power and States’ Choices on What Structurally Matters: The Geo-Economic Foundations of State Priority toward Banking in France, Germany, and Spain*, 50 POL. & SOC’Y 599 (2022) (concluding the “fate of large domestic banks is linked to the future prospects of the state’s geo-economic position” and therefore large internationally active banks “still have structural power because they are understood as a crucial tool of statecraft.”).

31 STAN. J.L. ECON. & BUS. 1

their governments and can seek common cause with authoritarian governments that oppose the goals of U.S. statecraft.³⁶³ Yet, GSIBs' role in financial statecraft expands their political power by virtue of their systemic importance.³⁶⁴

Conversely, governments—even democratically elected ones—may abuse their powers to reward allies or punish foreign or domestic adversaries. The current administration has embraced so-called “state capitalism” where the government more directly controls or influences strategically important businesses.³⁶⁵ These and other statecraft tools can be used to surveil their populations and diminish the rights of individuals or entities with suspected ties to geopolitical rivals.³⁶⁶ The Trump Administration, for example, has threatened to impose trade remedies against Brazil's left-wing government—ostensibly because Brazil's public digital payment service is harming the competitiveness of U.S. banks and payment companies, but more likely because Brazil's former President, a Trump ally, has been barred from future office holding.³⁶⁷ Domestically, the U.S. government has used the financial system to

-
363. See KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* 134 (2019) (observing that “what is good for effective law and democratic self-governance is not necessarily good for capital.”). Prior to World War II, for example, J.P. Morgan willingly did business with Axis Power nations Italy and Japan. See also CHERNOW, *supra* note 179, at 279-86, 336-45, 430-68. Later, former Citigroup CEO Walter Wriston believed international banking exists in a “certain state of economic tension, with all governments, including the most democratic” and so sought to create a private global currency that could “replac[e] the whimsical tyranny of political rulers with the austere rigor of market discipline.” FARRELL & NEWMAN, *supra* note 53, at 25. Today, in addition to seeking to design stateless cryptocurrencies, crypto advocates and investors are seeking to create autonomous economic zones that are privately governed and attract investment through low taxes and light regulation. Rachel Corbett, *The For-Profit City That Might Come Crashing Down*, N.Y. TIMES (Aug. 28, 2024), <https://perma.cc/6T7Y-ZXDT> (discussing Prospera, a special economic zone created within the geographical borders of Honduras).
364. See Adam William Chalmers, *When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying*, 19 BUS. & POL. 107 (2017) (finding banking organizations with greater financial resources and international banking activity are more likely to lobby at the international level); see also Elsa Clara Massoc, *Banks' Structural Power and States' Choices on What Structurally Matters: The Geo-Economic Foundations of State Priority toward Banking in France, Germany, and Spain*, 50 POL. & SOC'Y 599 (2022) (concluding the “fate of large domestic banks is linked to the future prospects of the state's geo-economic position” and therefore large internationally active banks “still have structural power because they are understood as a crucial tool of statecraft.”).
365. See Joe Deaux, *Trump Targets Corporate America to Achieve Economic and Foreign Policy Goals*, BLOOMBERG (Aug. 19, 2025), <https://perma.cc/FZ2C-YVNK>; see also Greg Ip, *The U.S. Marches Toward State Capitalism With American Characteristics*, WALL ST. J. (Aug. 11, 2025), <https://perma.cc/X5JJ-96RR>.
366. See Mark Jia, *American Law in the New Global Conflict*, 99 N.Y.U. L. REV. 636 (2024) (discussing the implications of the emerging rivalry between the United States and China for legal rights within the United States); see also Jake Laband, *Existential Threat or Digital Yawn: Evaluating China's Central Bank Digital Currency*, 63 HARV. INT'L L.J. 515, 557 (2022) (discussing the Chinese government's development of a digital currency known as e-CNY).
367. See Ana Ionova, *Brazil Has a New Digital Spending Habit. Now It's a Trump Target.*, N.Y. TIMES (Sept. 29, 2025), <https://perma.cc/E387-2WFL>.

FINANCIAL STATECRAFT

marginalize politically disfavored groups like immigrant communities.³⁶⁸

The President's personal crypto businesses create new avenues for political corruption and enrichment.³⁶⁹ Following the Binance case, Binance's CEO, known as "CZ," stepped down from the company and pleaded guilty to criminal money laundering charges, serving a four-month prison sentence.³⁷⁰ But Binance subsequently went into business with the Trump family's crypto venture, and, in October 2025, the President wiped the slate clean by pardoning CZ.³⁷¹ The combination of broad authority, at times extralegal or implicit policy objectives, and judicial deference involving matters of foreign affairs render financial statecraft vulnerable to misuse or abuse by public authorities—particularly where the President directly controls economic regulation.³⁷²

IV. INTEGRATING FINANCIAL STATECRAFT AND FINANCIAL REGULATION

Financial statecraft presents new international dimensions to the traditional partnership between banks and the government. As the foregoing Part illustrates, although the missions of financial statecraft and regulation are connected, legal and policy ambiguity has led to under-enforcement and ineffective statecraft. The combined under-use of prudential tools and structural remedies and expansion of the

368. In the early months of the Second Trump Administration, for example, the Social Security Administration reportedly considered whether it could use its "Death Master File" to report groups of immigrants as deceased in an effort to deny them access to government benefits, bank accounts, and credit cards, before eventually shelving the idea. See Alexandra Berzon, Hamed Aleaziz, Nicholas Nehamas, Ryan Mac, & Tara Siegel Bernard, *Social Security Lists Thousands of Migrants as Dead to Prompt Them to 'Self-Deport'*, N.Y. TIMES (Apr. 10, 2025), <https://perma.cc/6EVJ-TZTB>; Alexandra Berzon, Tara Siegel Bernard, & Nicholas Nehamas, *Social Security Backs Off Listing Living Migrants as Dead*, N.Y. TIMES (July 1, 2025), <https://perma.cc/9XGH-HNUD>. The administration has reportedly explored other methods for using banks and credit card accounts to track immigrant populations. See also Paige Smith, Saleha Mohsin, Evan Weinberger & Daniel Flatley, *Banks, Treasury Staff Push Back on Citizen-Verification Proposal*, BLOOMBERG (Mar. 19, 2026), <https://perma.cc/69XC-ZMW2> (reporting on internal administration discussions relating to a potential Executive Order requiring banks to document their customers' immigration status); Zolan Kanno-Youngs, Hamed Aleaziz, Christopher Flavelle, Emily Cochrane & Glenn Thrush, *Stephen Miller Is Still Pursuing His Immigration Agenda, but More Quietly*, N.Y. TIMES (Apr. 5, 2026), <https://perma.cc/SF9K-7ECD> (reporting that, in calls with Federal immigration officials, White House Deputy Chief of Staff Stephen Miller has "asked for information on how immigrants use credit cards, potentially as part of an effort to crack down on their ability to open accounts and spend money . . .").

369. See W. Robert Thomas & Jeffrey Y. Zhang, *Crypto Kleptocracy*, 124 MICH. L. REV. ONLINE 84 (2026).

370. See Rebecca Ballhaus, Josh Dawsey, Patricia Kowsmann & Angus Berwick, *Trump Pardons Convicted Binance Founder*, WALL ST. J. (Oct. 23, 2025), <https://perma.cc/FP9N-ELZW>.

371. See *id.* The President also issued the first known pardon of a corporation to the crypto exchange BitMEX, which had been convicted of money laundering. See also Kimberly Wehle, *Trump Makes History by Pardoning a Corporation*, THE HILL (Apr. 1, 2025), <https://perma.cc/2ZQ8-8LQZ>.

372. See Ganesh Sitaraman & Timothy Meyer, *Presidential Regulation*, 42 YALE J. REGUL. 803 (2025).

31 STAN. J.L. ECON. & BUS. 1

safety net reduce market discipline, increase moral hazard, and abet the dynamics of “Too Big to Manage” and “Too Big to Fail” financial companies. Despite these implications, financial regulators mostly view statecraft considerations as falling outside their bailiwick, and have therefore failed to incorporate geopolitical considerations into their statutory responsibilities like preserving financial stability. Financial statecraft agencies like the Treasury Department do not appreciate how regulatory considerations can support or impede their desire to use dollar-based finance as a tool of geopolitical influence.

Because statecraft provides an important basis for regulating globally significant financial institutions, agencies can better integrate financial statecraft considerations into prudential regulations, enforcement provisions, and federal financial support programs. Financial agencies do not require *new* authorities or mandates to facilitate financial statecraft, as many relevant considerations already fit within their existing responsibilities to supervise the banking system and safeguard financial stability. Instead, they could benefit from additional direction to embrace their proper role in financial statecraft. At the same time, Congress can amend statecraft statutes to clarify their objectives and institute more meaningful coordination mechanisms to ensure that statecraft agencies are consulting their regulatory counterparts and properly accounting for regulatory considerations.

A. Financial Regulatory Reforms

Financial regulatory agencies possess broad authorities to address the risks posed by banks’ participation in statecraft. Financial agencies have traditionally taken a formalistic and conservative approach to their legal mandates and authorities,³⁷³ and have not viewed it as their place to preemptively intervene in the affairs of private markets or businesses.³⁷⁴ Using their existing authorities, however, agencies can incorporate geopolitical considerations through the lens of their statutory mandates to safeguard financial stability and regulate and supervise the banking system.³⁷⁵ The goal of these reforms is not to increase regulation across the board. These recommendations are focused on ensuring that financial institutions are capable of serving as *effective* and *resilient* transmitters of financial statecraft.

373. See Jerome H. Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys., *Central Bank Independence and the Mandate—Evolving Views 1*, Remarks at the Symposium on Central Bank Independence (Jan. 10, 2023) (stating the view the Fed “should ‘stick to our knitting’ and not wander off to pursue perceived social benefits that are not tightly linked to our statutory goals and authorities.”).

374. See Stephen Golub, Ayse Kaya, and Michael Reay, *What Were They Thinking? The Federal Reserve in the Run-up to the 2008 Financial Crisis*, 22 REV. INT’L POL. ECON. 657 (2015) (discussing the Fed’s approach of “post hoc interventionism”).

375. The Dodd-Frank Act gave the Fed authority that ties bank regulation to the goal of financial stability, see Steele, *supra* note 111, at 1001-02, however the Fed’s well-known “dual mandate” to pursue maximum employment and stable prices, see also 12 U.S.C. § 225a, may also be relevant to, for example, price spikes and market instability caused by statecraft tools like economic sanctions.

FINANCIAL STATECRAFT

1. Prudential Tools

The post-crisis regulatory framework enacted by Congress requires banking agencies to anticipate the possible sources of risk to financial stability and craft rules that mitigate the potential consequences of destabilizing events.³⁷⁶ Experience has shown that, in particular, well-capitalized banks are less affected by geopolitical shocks, while less well-capitalized banks tend to experience a larger increase in borrowing costs, decline in profits, and reduction in lending.³⁷⁷ This suggests bank capital regulations and other prudential measures are well-suited to help mitigate the financial stability risks of financial statecraft.³⁷⁸

The Fed can use its Dodd-Frank Act and ILSA authorities to adopt a statecraft-related scenario analysis exercise for global banks.³⁷⁹ For example, banks should be prepared to participate in economic sanctions regimes imposed under TWEA and IEEPA and withstand any financial shocks caused by market fragmentation or assets trapped or stranded by sanctions measures *without* seeking relief from the agency's capital rules or relying on emergency lending.³⁸⁰ Stress testing and scenario analysis can prepare banks for systemic events originating from all manner of endogenous and

376. See S. REP. NO. 111-176, at 2 (2010) (describing the “primary purpose” of the Dodd-Frank Act to “promote the financial stability of the United States” by “establishing an early warning system to detect and address emerging threats to financial stability and the economy” and “strengthening the supervision of large complex financial organizations . . .”).

377. See IMF, *supra* note 263, at 92; see also Niepmann & Shen, *supra* note 216, at 6.

378. See IMF, *supra* note 263, at 92.

379. See 12 U.S.C. § 5365(i)(1)(iii) (authorizing the Fed to “develop and apply such . . . analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States”). The purpose of ILSA is to “assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision . . . by strengthening the bank regulatory framework . . .” 12 U.S.C. § 3901(a). ILSA authorizes, and in some cases directs, supervisors to evaluate and mitigate the risks of banks’ international activities, including evaluation of banks’ foreign country exposures and transfer risk. Steele, *supra* note 67, at 204. The Fed’s Regulation K governs U.S. banks’ international activities. 12 C.F.R. § 211.1 *et seq.*

380. This stress test could be a stylized and more rigorous version of the “global market shock” scenarios that banks with large trading operations are already required to conduct as part of their annual stress tests, which include volatility in foreign exchange rates, government bond yields, and other “potential sources of distress such as geopolitical, economic, and financial market events.” BD. OF GOVERNORS OF THE FED. RSRV. SYS., 2025 STRESS TEST SCENARIOS 9 (2025), <https://perma.cc/S7WK-4BQA>; see also 12 C.F.R. § 252.54(b)(2). Scenarios worthy of further exploration include the secondary effects of sanctions on credit availability in countries not directly targeted by sanctions. Abraham L. Newman & Qi Zhang, *Secondary Effects of Financial Sanctions: Bank Compliance and Economic Isolation of Non-Target States*, 31 REV. OF INT’L POL. ECON. 995 (2024). Former Federal Reserve Governor Tarullo has noted, however, that the current design of the stress tests fails to “project second-order effects, such as the impact of fire sales or liquidity squeezes” that amplify financial shocks. Daniel K. Tarullo, *Taking the Stress Out of Stress Testing* 5, Remarks at the Ams. for Fin. Reform on Big Bank Regulation under the Trump Administration (May 21, 2019), <https://perma.cc/NF2B-YPYC>. He further described projecting second-order effects as a “a significant modeling challenge.” *Id.*

31 STAN. J.L. ECON. & BUS. 1

exogenous sources, including historical events like wars, volatile oil prices, foreign currency fluctuations, and the 9/11 terrorist attacks.³⁸¹ Nonbinding scenario analysis would provide significant informational value.³⁸² Over time, as these analyses are refined, they could eventually be incorporated into regulatory stress tests, which are used to set binding capital requirements.³⁸³

ILSA provides a foundation for banking agencies to incorporate financial statecraft-related considerations into prudential requirements for global banks, including capital, liquidity, and margin regulations.³⁸⁴ Such regulations could impose higher requirements for certain types of cross-border activities, exposures to regions with significant geopolitical risk, and activities conducted through offshore funding markets.³⁸⁵ Some aspects of statecraft are already embedded in the existing prudential framework.³⁸⁶ But this framework could better reflect the full range of statecraft-related

381. See Steele, *supra* note 111, at 1041; see also Jerome H. Powell, Chair, Bd. of Governors of the Fed. Rsr. Sys., Welcoming Remarks at the “Stress Testing: A Discussion and Review” Research Conference, Fed. Rsr. Bank of Boston 2 (July 9, 2019), <https://perma.cc/8ERX-DCEK> (noting “[w]hen the next episode of financial instability presents itself, it may do so in a messy and unexpected way. Banks will need to be ready not just for expected risks, but for unexpected ones. Thus, the tests will need to vary from year to year, and to explore even quite unlikely scenarios.”).

382. See Hilary J. Allen, *Reinventing Operational Risk Regulation for a World of Climate Change, Cyberattacks, and Tech Glitches*, 49 J. CORP. L. 727, 778-81 (2024).

383. See 12 U.S.C. § 5365(i); see also Steele, *supra* note 111, at 1007-09.

384. ILSA directs regulators to strengthen banks’ capital adequacy by increasing capital requirements, particularly for international lending, and requires regulators to establish reserve requirements for foreign country risk and set requirements for credit to highly indebted countries. See Steele, *supra* note 67, at 204. ILSA also provides banking agencies with discretion to issue capital directives to individual banks. See also 12 U.S.C. § 3907; *FDIC v. Bank of Coughatta*, 930 F.2d 1122 (5th Cir. 1991).

Capital ratios are “generally a measure of a bank’s loss-absorbing liabilities relative to the assets funded by those liabilities” adjusted for risk, while liquidity requirements “match banks’ asset portfolios against their volatile funding sources, requiring BHCs to maintain a pool of ‘safe’ and liquid assets that they can monetize in the event that they experience a sudden need for rapid deleveraging.” Steele, *supra* note 111, at 1002, 1009. Transactions that involve securities and derivatives require institutions to pledge cash or financial assets, known as “margin,” to their counterparties to cover their projected credit exposure, limiting the portion of such transactions that can be made using borrowed money or “leverage.” See Samuel G. Hanson, Anil K. Kashyap & Jeremy C. Stein, *A Macroprudential Approach to Financial Regulation*, 25 J. ECON. PERSP. 3, 15-16 (2011).

385. This could be incorporated into the Fed’s capital surcharge applicable to GSIBs calculated using factors including cross-jurisdictional activity. See *Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies*, 80 Fed. Reg. 49,082 (Aug. 14, 2015) (codified as 12 C.F.R. § 217.400 *et seq.*). Among other shortcomings, the GSIB surcharge does not accurately reflect banks’ cross-border exposures created by derivatives contracts. See also Bd. of Governors of the Fed. Rsr. Sys., *Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report* (FR Y-15), 88 Fed. Reg. 60,385, 60,394 (Sept. 1, 2023).

386. See *supra* notes 375-76, 380; see also 12 C.F.R. § 252.5(c) (establishing a threshold of \$75 billion in cross-jurisdictional activity for purposes of certain enhanced prudential standards).

FINANCIAL STATECRAFT

risks and the prominence of statecraft in the operations of global banks.

2. Structural Remedies

In addition to prudential measures, Treasury, the OCC, and the Fed should also invoke more structural remedies like high-risk money laundering designations, charter revocation, and structural separations. Citigroup, the most internationally active GSIB,³⁸⁷ highlights how banks' organizational structures affect their ability to serve as statecraft conduits. Citi's Mexican banking subsidiary, Banamex, had persistent shortcomings in money laundering compliance forcing Citi to eventually spin it off.³⁸⁸ Citi was the GSIB with the most financial exposure to the Russian economy and the Ukraine-related sanctions,³⁸⁹ causing it to wind down most of its Russian operations.³⁹⁰ When Citi then sought to expand its footprint in China by establishing a securities subsidiary, the Fed reportedly halted Citi's growth until it could resolve shortcomings in data management and risk controls that resulted in a \$136 million supervisory penalty.³⁹¹

Structural measures like supervisor-imposed divestitures and ringfencing, where banks create separate corporate entities in each country where they operate, could help to rationalize the international structures of banks like Citi, making them more manageable and resolvable and a more reliable conduits for financial statecraft. The Fed can also use the results of statecraft-related scenario analysis or stress tests to inform the resolution plans GSIBs are required to submit outlining how they be resolved in an orderly manner under the bankruptcy code.³⁹²

To implement structural measures, the Treasury and the OCC could establish

-
387. As of 2019, 48 percent of Citigroup's assets and more than half of Citigroup's revenue and income came from banking operations outside of North America. See CITIGROUP, 2019 RESOLUTION PLAN PUBLIC 101 (2019), <https://perma.cc/JWN5-QS5B>.
388. See Non-Prosecution Letter from Deborah Connor, Acting Chief, Money Laundering & Asset Recovery Section, U.S. Dep't of Just., to Brad S. Karp and Susanna Buerger, (May 18, 2017), <https://perma.cc/8FCQ-KXCP> (agreeing to a non-prosecution arrangement with DOJ for money laundering violations and payment of a \$97 million fine); see also Press Release, Citigroup, Citi Successfully Completes Separation of Consumer, Small and Middle Market Businesses from Institutional Business in Mexico (Dec. 2, 2024), <https://perma.cc/T3R8-ZVDV>.
389. See CITIGROUP INC., ANNUAL REPORT (FORM 10-K) 121 (Feb. 28, 2022) (reporting Citigroup had \$9.8 billion in exposures to the Russian economy at the time of Russia's invasion of Ukraine).
390. See Citigroup, Citi Continues to Reduce its Operations and Exposure to Russia, available at: <https://perma.cc/76CN-DCN2> (announcing Citi's intent to wind down its institutional banking services in Russia and transfer its consumer loan and credit card portfolios to Russian bank Uralsib). Goldman Sachs is likewise in the process of selling its Russian operations. See also Jennifer Surane & Selcuk Gokoluk, *Putin Allows Goldman Sachs to Sell Its Business in Russia*, BLOOMBERG (Jan. 31, 2025), <https://perma.cc/D7DB-Q4HE>.
391. See Cathy Chan, *Citigroup's China Expansion Plan Delayed by US Regulators*, BLOOMBERG (Sept. 22, 2024), <https://perma.cc/CY5G-8QNT>.
392. See 12 U.S.C. § 5365(d), (i)(2)(C)(iv) (stating the Fed "shall require [banks] . . . to update their resolution plans . . . based on the results of [stress tests]").

31 STAN. J.L. ECON. & BUS. 1

more transparent and credible policies for applying section 93(d) of the NBA, requiring charter revocation hearings for felony money laundering violations. They could also provide more guidance for using section 311 of the USA PATRIOT Act to designate jurisdictions or activities as high money laundering risks, including potential divestiture from high-risk jurisdictions. In 2023, FinCEN proposed identifying crypto mixers as entities that pose primary money laundering concern under section 311 of the USA PATRIOT Act, but it has yet to finalize this proposal.³⁹³

If the agencies believe such remedies would have adverse effects on financial stability, they have additional tools to address the risk that banks are “Too Big to Fail.” Section 4(m) of the BHCA allows the Fed to impose limitations on activities of BHCs that do not meet the standard of “well managed” and ultimately order divestiture after a period of noncompliance.³⁹⁴ Under section 5 of the BHCA, the Fed can also force any BHC to divest any subsidiary that “constitutes a serious risk to the financial safety, soundness, or stability” of an insured depository institution within such BHC’s structure.³⁹⁵ Finally, the Dodd-Frank authorizes the Fed and FDIC to impose heightened prudential standards, limits on growth or activities, or divestiture for any bank that fails to submit an adequate resolution plan.³⁹⁶

While the Fed has never used any of these authorities to order any banking institution’s restructuring,³⁹⁷ doing so in circumstances where banks have a demonstrated track record of noncompliance with statecraft requirements like AML regulations or exposures to geopolitically risky jurisdictions could increase the effectiveness of regulatory and statecraft measures. This approach is consistent with the OCC’s consent order capping TD Bank’s asset growth until it remedies its AML deficiencies.³⁹⁸

3. Lending Authorities

When prudential regulation fails, the Treasury and the Fed often deploy the financial safety net, including swap lines and the ESF, to preserve financial stability.³⁹⁹ This is due in part to the concurrent expansions of the prerequisite conditions of

393. See Fin. Crimes Enforcement Network, Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern, 88 Fed. Reg. 72,701 (Oct. 23, 2023). In January 2023, FinCEN designated Bitzlato, a Russian-affiliated decentralized crypto exchange, under section 311. See Fin. Crimes Enforcement Network, Imposition of Special Measure Prohibiting the Transmittal of Funds Involving Bitzlato, 88 Fed. Reg. 3,919 (Jan. 23, 2023).

394. See 12 U.S.C. § 1843(m); see also Kress, *supra* note 230, at 219-30.

395. See 12 U.S.C. § 1844(e).

396. See 12 U.S.C. § 5365(d)(5).

397. See Thomas M. Hoenig, Vice Chairman, Fed. Deposit Ins. Corp., *Can We End Financial Bailouts?*, Presentation to the Boston Economic Club 5 n.5 (May 2014); see also Kress, *supra* note 230, at 178.

398. See *In the Matter of TD Bank, N.A. and TD Bank USA, N.A.*, No. AA-ENF-2024-77 (Oct. 10, 2024), at 9-11.

399. See *supra* Part II.B.3.

FINANCIAL STATECRAFT

“unusual and extraordinary threat”⁴⁰⁰ or “unusual and exigent circumstances”⁴⁰¹ codified in statecraft and financial stability authorities, respectively. To mitigate the moral hazard created by these tools, agencies should establish *ex ante* policies for their use in the context of statecraft.

In the case of the Fed, this includes more explicit policies governing its administration of the payments system and the relationship to statecraft, including the criteria for providing master account and payment system access to foreign financial institutions, foreign government entities, and financial institutions that raise statecraft concerns like crypto firms. The lack of clarity leads to lobbying and legal challenges that could weaken the separations between banks, nonbanks, and public financial infrastructure.

The Fed is often hesitant to provide *ex ante* guidance on how it will deploy its emergency lending authorities, adhering to a policy of so-called “constructive ambiguity” to create uncertainty about the possibility of support in order to discourage moral hazard.⁴⁰² However, constructive ambiguity can exacerbate instability when there are mismatches between market expectations and actual support,⁴⁰³ or prove ineffective when institutions or markets are “Too Big to Fail.” The Fed can provide a more concrete vision for the use of its lender-of-last-resort function in statecraft-related scenarios, including when and how it will use emergency lending and swap lines.

The Treasury can also narrow its use of the ESF by limiting it solely to actions directly related to exchange rate policy management consistent with the ESF’s original intent. This would restrict the ESF’s availability as a source of loss-absorbing capital for Fed emergency lending programs.

B. Statecraft Reforms

Without robust coordination, the agencies that administer traditional statecraft laws may not appreciate the implications of their policy decisions for traditional regulatory goals like financial stability and how regulatory decision-making affects the financial sector’s capacity to serve as an effective conduit for foreign policy. Further, financial statecraft’s combination of broad authority and judicial deference presents risks of overuse, misuse, or abuse by government authorities—particularly where the President directly controls economic regulation.⁴⁰⁴ Congress can both provide for more reasoned decision-making and mitigate the risks of agencies exceeding, neglecting, or repurposing statecraft authorities by clarifying the basis and scope of relevant laws, aligning those provisions with other statutory mandates, and providing for greater oversight and transparency.

400. 50 U.S.C. § 1702(a).

401. 12 U.S.C. § 343(3)(A).

402. See Charles A.E. Goodhart & Hoizhou Huang, *The Lender of Last Resort*, 29 J. BANKING & FIN. 1059, 1067-68 (2005).

403. See Dmitri Vinogradov, *Destructive Effects of Constructive Ambiguity in Risky Times*, 31 J. INT’L MONEY & FIN. 1459 (2012).

404. See Ganesh Sitaraman & Timothy Meyer, *Presidential Regulation*, 42 YALE J. REGUL. 803 (2025).

31 STAN. J.L. ECON. & BUS. 1

1. Consultative and Substantive Factors

To address the escalating challenges to the government's chartering authority and circumvention of banks' gatekeeper function, Congress should clarify and expand financial agencies' authority to sanction crypto firms and other nonbank entities for non-compliance with chartering requirements and other legal obligations. For example, the Treasury Department sought clarification from Congress on the scope and application of its IEEPA authorities to DeFi entities.⁴⁰⁵ While the recent passage of stablecoin legislation has created a light-touch chartering regime that will likely exacerbate arbitrage opportunities, others have proposed legislative amendments to prohibit the functional equivalent of deposit-taking by nonbanks or address the risks presented by nonbank stablecoin issuers.⁴⁰⁶ As Congress deliberates, banking agencies can use their regulatory authorities to strengthen the regulatory perimeter and prevent shadow banking and illicit financing risks from entering the banking system.⁴⁰⁷

Congress can also provide more specific guidance for reconciling competing goals, including financial stability, economic growth, sanctions and AML compliance, competitiveness of U.S. financial institutions, and access to the banking system. Statecraft laws generally provide varying levels of specificity and wide discretion for agencies to choose between competing policy considerations. The OCC must consider five different factors, including the credit needs of communities, when considering whether or not a bank that has been convicted of money laundering crimes should have its charter revoked.⁴⁰⁸ Section 311 of the USA PATRIOT Act requires the Treasury Secretary to consult with the Fed Chair and consider whether designating an entity as a primary money laundering concern would "create a significant competitive disadvantage" for U.S. financial institutions or have a "significant adverse systemic impact on the international payment, clearance, and settlement system."⁴⁰⁹ Providing additional guidance through enumerated statutory criteria would help agencies reconcile competing goals within and across different statutory schemes.⁴¹⁰

405. See *Countering Illicit Finance, Counter-Terrorism, and Sanctions Evasion*, *supra* note 324, at 2 (requesting secondary sanctions authority over crypto exchanges that do not use correspondent accounts and clarification that crypto providers are subject to BSA and IEEPA).

406. E.g., Morgan Ricks, *A Regulatory Design for Monetary Stability*, 65 VAND. L. REV. 1289 (2012); John Crawford, *A Better Way to Revive Glass Steagall*, 70 STAN. L. REV. ONLINE 1 (2017); see also Gary B. Gorton & Jeffrey Y. Zhang, *Taming Wildcat Stablecoins*, 90 U. CHI. L. REV. 909 (2023).

407. See, U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 334. Under the Fed's Regulation H, banks are restricted from changing the "general character of [their] business or in the scope of the corporate powers [they] exercis[e]" without supervisory approval. 12 C.F.R. § 208.3(d)(2). Similarly, national banks must seek non-objection from the OCC to engage in certain activities. See also 12 CFR § 48.4 (governing retail foreign exchange transactions).

408. See 12 U.S.C. § 93(d)(2).

409. 31 U.S.C. § 5318A(a)(4).

410. Procedural reforms should be permissible even where statutes are directly administered by the President or apply to areas that have enjoyed substantial executive deference like foreign affairs, under the theory that the President is subject to a "duty to deliberate." See

FINANCIAL STATECRAFT

Statecraft authorities like TWEA, IEEPA, and the BSA should also include mandatory consultation or joint rulemaking requirements between Treasury and financial regulatory agencies to ensure regulatory considerations are incorporated into statecraft measures. Coordination is a longstanding challenge in financial regulation, which is subject to a balkanized regulatory structure that distributes responsibilities across multiple agencies with disparate and overlapping jurisdictions.⁴¹¹ Some financial authorities explicitly require joint rulemaking or approval processes between regulators and the Treasury Department.⁴¹² Administrations could also establish Treasury-led interagency processes or working groups to administer statecraft policies. For example, establishing a statecraft committee within the Financial Stability Oversight Council, the multi-member council chaired by the Treasury Secretary and created to coordinate financial stability-related efforts,⁴¹³ could be another logical venue for this function.⁴¹⁴

2. Agency Deference and Oversight

The unsettled state of administrative law has the potential to similarly unsettle financial statecraft. Many statecraft-related statutes provide agencies with broad delegations of authority.⁴¹⁵ Courts have traditionally deferred to many of the Treasury and Fed's statecraft-related policy judgments⁴¹⁶ and on foreign policy, economic

Shalev Gad Roisman, *Presidential Law*, 105 MINN. L. REV. 1269 (2021).

411. See BARR, JACKSON & TAHYAR, *supra* note 99, at 85-100 (discussing tradeoffs in the U.S. financial regulatory structure).
412. See, e.g., 12 U.S.C. §§ 1823(c)(4)(G), 1843(k), 1851, 5383.
413. See 12 U.S.C. § 5321 *et seq.*
414. While this paper focuses on the *domestic* law of financial statecraft, the global nature of statecraft and financial stability mean national governments cannot unilaterally resolve all issues. Hardening international rules, norms, and multilateral coordinating bodies would foster more consistent application and enforcement and prevent bad actors and jurisdictions from exploiting the fragmented nature of global financial governance while preserving the stability of the global financial system. See Michael S. Barr, *Who's in Charge of Global Finance?*, 45 GEO. J. INT'L L. 971, 995-1005 (2014); see also Daniel Schwarcz & David Zaring, *Regulation by Threat: Dodd-Frank and the Nonbank Problem*, 84 U. CHI. L. REV. 1813, 1875 (2017) (arguing multilateral international financial stability bodies provide a process for identifying global systemically important financial institutions, thereby pushing against nationalistic instincts and "limit[ing] the ability . . . to let 'national champions' become systemically risky in an effort to gain global market share or represent American interests.>").
415. E.g., Cuéllar, *supra* note 57, at 353 (noting the BSA provides the Treasury Department with a "substantial degree of discretion to define what counts as a 'financial institution'"); see also Curtis Bradley & Jack Goldsmith, *Foreign Affairs, Nondelegation, and the Major Questions Doctrine*, 172 U. PA. L. REV. 1743, 1783 (2024) (noting the "discretion conferred under IEEPA is quite broad").
416. See Zaring, *supra* note 193, at 191 (noting "Treasury's independence from judicial review . . . stretches back to the earliest days of the republic"); see also Conti-Brown & Zaring, *supra* note 66 at 675-76; see also Bradlow & Park, *supra* note 66, at 662 (arguing the Fed has "become a key global governance actor, [and] it operates in this sphere effectively without any accountability").

31 STAN. J.L. ECON. & BUS. 1

security, and national security issues.⁴¹⁷ The recent evolution in the courts' doctrines of statutory and constitutional interpretation have unsettled courts' traditional deference to agencies on matters of national security and foreign affairs.⁴¹⁸ In the Tornado Cash case, for example, the U.S. Court of Appeals for the Fifth Circuit declined to defer to Treasury's interpretation of IEEPA.⁴¹⁹ Courts have also invalidated the President's use of IEEPA to impose the sweeping Liberation Day tariffs.⁴²⁰ More broadly, a series of administrative law decisions is all but certain to diminish agencies' regulatory authorities, from reducing the independence of the leadership of financial regulatory agencies to empowering regulated industries to aggressively challenge agencies' actions.⁴²¹

The complexity of statecraft highlights the limitations of taking a formalist approach to Executive power.⁴²² The interconnected nature of financial statecraft complicates the traditional logic of agency deference by raising concerns of government overreach and involving subjects that seemingly lie outside of the wheelhouse of Treasury and financial regulatory agencies.⁴²³ Should courts view financial statecraft as foreign policy or financial policy? Is it possible to fully distinguish the two enterprises in a globalized and financialized economy? How will sweeping decisions limiting agencies' authorities interfere with core regulatory and foreign policy making?⁴²⁴ In many cases, the lines between statecraft, regulatory, and

-
417. See *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 314-22 (1936) (noting the broad authority enjoyed by the President in matters of foreign affairs); see also Claussen & Meyer, *supra* note 53, at 1974-78; Cuéllar, *supra* note 57, at 361 (noting "because IEEPA is framed as a statute involving foreign policy and national security concerns, the use of IEEPA is subject to little judicial review"); Eichensehr & Hwang, *supra* note 50, at 584-94.
418. See Bradley & Goldsmith, *supra* note 415; see also Timothy Meyer & Ganesh Sitaraman, *The National Security Consequences of the Major Questions Doctrine*, 122 MICH. L. REV. 55 (2023).
419. See *Van Loon v. Dep't of Treasury*, No. 23-50669 at 18-19 (articulating the proper standard of agency deference under IEEPA in light of *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024)).
420. See *Learning Resources, Inc. v. Trump*, 607 U.S. ___, slip op. (2026) (finding IEEPA does not authorize the president to impose tariffs).
421. See *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020); *Collins v. Yellen*, 141 S. Ct. 1761 (2020); *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024); *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 144 S. Ct. 2440 (2024); *Sec. & Exch. Comm'n v. Jarkesy*, 144 S. Ct. 2117 (2024); see also Graham S. Steele, *Major Questions' Quiet Crisis*, 31 GEO. MASON L. REV. 265 (2024) (discussing the implications of the major questions doctrine for financial regulation).
422. See Shalev Gad Roisman, *President Trump in the Era of Exclusive Powers*, HARV. L. REV. BLOG (Apr. 12, 2025), <https://perma.cc/YN6E-CNWM>.
423. See Zaring & Baylis, *supra* note 59, at 1362-66.
424. The Court's decision in the IEEPA tariffs case, for example, notably fails to provide clear guidance about the application of the major questions doctrine on matters of national security. Compare *Learning Resources, Inc.*, slip op. at 13 (applying the major questions doctrine to invalidate the IEEPA tariffs), with *id.* at 80 (Kagan, J., concurring) (arguing the major questions doctrine is "unnecessary because ordinary principles of statutory interpretation lead to the same result."). But see *id.* at 112 (Kavanaugh, J., dissenting) (observing the Court "has never before applied the major questions doctrine in the foreign affairs context, including foreign trade." (emphasis in original)); also Fed. Comm'ns

FINANCIAL STATECRAFT

financial stability authorities may be unclear, creating unintended consequences by hampering financial regulators' ability to support statecraft goals. Alternatively, allowing agencies to invoke statecraft as a blank check would impose more legal weight on financial statecraft's piecemeal framework than it can bear. As these moves play out, courts will have to make difficult choices.

Congress could get out ahead of these doctrinal shifts by establishing its views of the proper relationship between statecraft and regulation and codifying the level of deference applicable to financial statecraft-related authorities.⁴²⁵ Congress can subject statecraft to greater legislative scrutiny by requiring Treasury and the Fed to provide a joint annual report and testimony on goals and actions related to international finance and financial statecraft.⁴²⁶ Alternatively, statecraft considerations could be incorporated into existing reporting and testimony related to bank supervision and financial stability.⁴²⁷ The Fed is already subject to a variety of review, reporting, and testimony requirements, including the requirement to review and update its international banking regulations every five years—but these rules have “barely been amended” over the past two decades.⁴²⁸ Regardless of the specific form, Congress should generally subject financial statecraft to greater oversight to ensure it is conducted consistent with legislative purpose and intent.

CONCLUSION

This Article has mapped the expanding toolkit of financial statecraft—that is, the manipulation of money and credit as a lever in geopolitics—and argued that financial statecraft is deeply entangled with domestic financial regulation. Shortsighted

Comm'n v. Consumers' Rsch., 606 U.S. ___, slip op., at 52-53 (2025) (Kavanaugh, J., concurring) (arguing in dicta that the nondelegation and major questions doctrines are limited to domestic regulation and does not extend to the President's authorities over foreign affairs or national security).

425. It is worth acknowledging here the potential uncertainty regarding the role of Congress in dictating standards of agency deference. On one hand, the Supreme Court's decision in *Loper Bright Enters. v. Raimondo* overturning the prior practice of courts deferring to agencies' interpretations where a statute is ambiguous is rooted in the idea that, under Article III of the Constitution, “courts decide legal questions by applying their own judgment.” 144 S. Ct., at 2261. It is unclear how this holding affects Congress's ability to codify the applicable standard of deference for financial regulatory decisions. *See, e.g.*, 12 U.S.C. § 25b(b)(5)(A) (codified the level of deference for the OCC's NBA preemption determinations at the standard established in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)).
426. *See Conti-Brown & Zaring, supra* note 66, at 709 (proposing the Fed testify semiannually before Congress to “discuss specifically its vision of international affairs” and arguing such testimony “lets light into the informal collaboration which already exists between the Fed and the Treasury Department”).
427. *See* 12 U.S.C. § 5322(a)(2)(N), (c) (requiring the chairperson of the FSOC to submit an annual report and testify annually before the relevant congressional committees); *see also* 12 U.S.C. § 247b (requiring the Fed's vice chair for supervision to testify semiannually to the relevant congressional committees “regarding the efforts, activities, objectives, and plans” of the Fed's bank supervision and regulation functions).
428. Steele, *supra* note 67, at 253.

31 STAN. J.L. ECON. & BUS. 1

financial statecraft maneuvers can undermine financial stability, leading to bailouts and moral hazard. Conversely, inadequate financial regulation can undermine the nation's capacity to engage in financial statecraft. The lack of coordination between statecraft and regulatory agencies has the potential to undermine both regimes, and ultimately turn a competitive and strategic advantage into a potential source of vulnerability. Better aligning financial statecraft with the aims of financial regulation would help to ensure its effectiveness and preserve its legitimacy.

FINANCIAL STATECRAFT

APPENDIX

Table 1: The Financial Statecraft Framework

CHANNEL	LEGAL TOOLS	FINANCIAL INSTITUTIONS	SUPPORTIVE APPLICATIONS	COERCIVE APPLICATIONS
Accounts	Bank Secrecy Act Trading with the Enemy Act International Emergency Economic Powers Act USA PATRIOT Act Federal Reserve Act Edge Act National Bank Act	U.S. Banks Foreign Banking Organizations (FBOs)	Foreign branches and agencies of US banks US branches of foreign banks	Government reporting requirements Enforcement actions Money laundering risk designations
Payments	Trading with the Enemy Act International Emergency Economic Powers Act Federal Reserve Act Gold Reserve Act	U.S. Banks FBOs Payment networks Foreign central banks	Correspondent accounts Central bank master accounts Central bank swap lines Eurodollar market access	Blocking sanctions Divestiture
Credit	Federal Reserve Act Gold Reserve Act International Lending Supervision Act Dodd-Frank Act	U.S. Banks FBOs Securities Firms	Investments/ credit guarantees from international financial institutions, development banks, and export credit agencies Favorable treatment under capital regulations Central bank lender-of-last-resort liquidity	Blocking sanctions Punitive treatment under capital regulations Divestiture

31 STAN. J.L. ECON. & BUS. 1

Table 2: The Reach and Influence of U.S. GSIBs (Dollar figures in \$ billions)⁴²⁹

GSIB	TOTAL EXPOSURES	CROSS-BORDER CLAIMS	GLOBAL PAYMENTS	LEGAL ENTITIES	JURISDICTIONS
JPMorgan Chase	\$4,132	\$1,100	\$402,736	937	56
Bank of America	\$3,292	\$577	\$138,342	1,391	52
Citigroup	\$2,866	\$1,161	\$176,568	976	96
Wells Fargo	\$2,256	\$184	\$53,842	366	33
Goldman Sachs	\$1,541	\$644	\$13,066	3,617	51
Morgan Stanley	\$1,353	\$417	\$15,636	3,534	45
BNY Mellon	\$464	\$156	\$194,232	708	41
State Street	\$311	\$126	\$95,195	184	38
Total	\$16,215	\$4,365	\$1,089,617	1,464*	52*

* = average

Table 3: Balancing Financial Statecraft and Regulation

OVER-UTILIZED STATUTES	UNDER-UTILIZED STATUTES	RE-PURPOSED STATUTES
Trading with the Enemy Act (TWEA)	USA PATRIOT Act (§ 311)	Gold Reserve Act (§ 10)
International Emergency Economic Powers Act (IEEPA)	National Bank Act (NBA § 93(d))	Federal Reserve Act (FRA §§ 13(3) & 14)
Bank Secrecy Act (BSA)	Dodd-Frank Act (§ 165)	
	International Lending Supervision Act (ILSA)	
	Bank Holding Company Act (BHCA §§ 4 & 5)	

Core statecraft powers (gray)

Financial regulatory powers (blue)

429. See Steele, *supra* note 67, at 212, Table 6; see also Steele, *supra* note 192, at 79, Table 1.