REVIEW

Is There Law After Bretton Woods?

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I wondered when I picked up this book what Professor Dam¹ would come up with as rules of the international monetary game. Especially since I drew the assignment of drafting the sections on monetary law for the current revision of the Restatement of the Foreign Relations Law of the United States,² I have been anxiously looking around for sources of black-letter law—for rules, in other words, as contrasted with factors, considerations, or illustrations. In one way, I am encouraged by reading Dam’s book, since for all his intelligence and scholarship he hasn’t found the “rules” either, at least for the period after the collapse of the Bretton Woods par-value system in 1971. Indeed, the title of the book is taken from a description of the world’s monetary system before 1914, ascribed (like so much else in this field) to Lord Keynes.³ The game is still there, but the rules are more elusive than ever.

Even if all the principal players viewed objective facts from the same vantage point and had a common set of priorities, it would be enormously difficult to devise an effective body of rules

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¹ This past summer Dam became Deputy Secretary of State. He is Harold J. and Marion F. Green Professor of International Legal Studies (on leave of absence) at the University of Chicago Law School and at the time of his appointment was Provost of the University.
to govern international macroeconomic behavior. Given the diversity of perceptions, goals, and points of departure—and indeed no clear agreement even about who the players are—the effort to fashion rules has much of the quality of Sisyphus's efforts to roll the rock up the hill in Hades. Dam realizes this, and he makes sure in his preface to warn off those who would look to him either for the decoding of the rules of some eternal, unfathomable game or for guidance on how to achieve particular goals. "Practical experience in the U.S. decision-making process," he writes, "has convinced me that scholarship has little to offer by way of direct advice to those who would restructure the international economic system." What he does undertake to offer is perspective—both a longer historical view than most of the other recent writings on the international monetary system, and a more detached view than those who couple writing about the system with a plea for a particular solution, be it a return to gold, concentration on growth or on the fight against inflation, resource transfers to developing countries, more authority for the International Monetary Fund ("IMF"), more regulation of the private banking system, or whatever. Dam makes no special plea, except perhaps the inferential hope that those who count in this game—technicians and politicians—come to share the information and insight that he brings to his subject.

I

If the book, then, is not about prescriptive rules, is it about

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4. By this term I mean management of interest rates and of growth and employment policies, as well as exchange-rate management, as contrasted with tariffs, export subsidies, and similar devices concerning international trade, about which rules are possible to design and (within generous tolerances) to enforce.

5. Sisyphus was doomed to failure for having betrayed a secret of Zeus. The secret was Sisyphus's suspicion that a giant eagle bearing a maiden to a nearby island was none other than Zeus himself, and Sisyphus made the mistake of passing his suspicion on to the maiden's distraught father Aesopus. Sisyphus got his punishment, Aesopus did not get his daughter back, the island was named Aegina after the maiden, and the maiden's son by Zeus became the grandfather of the great Achilles.

6. K. Dam, supra note 3, at xiii. One wonders whether Professor Dam would have put the point just that way had he known, when he wrote the passage quoted, that he would be selected for the number two position in the U.S. State Department in the summer of 1982, when George Shultz succeeded Alexander Haig as Secretary of State. But perhaps such skepticism, from a lawyer, is a healthy alternative to the self-confidence of the political scientists turned statesmen in the Bundy/Kissinger/Brzezinski tradition.

law in a wider sense? Are there laws of nature, like those of Boyle and Newton and Kepler, that govern the international economic system? Are there laws that can be discovered and formulated, but not amended or repealed? The suggestion is an attractive one, related, I think, to the nostalgia for the "good old" gold standard, by which the market, untouched by human hands, reflected national achievement or indolence. But the reference is not one that Dam—or anyone who reads his chapter on the nineteenth century—would accept. There may have been elegance to the model developed by David Hume: as exports from Patria and imports to Xandia rise, gold will flow to Patria and out of Xandia; prices and wages will rise in Patria and fall in Xandia, until eventually Xandia will import less and export more, Patria will export less and import more, and the scales will once again be balanced. The gold standard before World War I created some of the conditions for this model, at least for those countries that were prepared to issue only money backed by gold or in the form of gold coins of an agreed and permanent weight. But as Dam neatly demonstrates, the "Golden Age" (roughly 1850-1914) was not really an age of gold but, the veil of myth removed, a period which knew floating exchange rates, governmental intervention in the exchange market, loans between central banks—in short, many of the devices that today seem manipulative and inelegant, not to say inept.

The Golden Age looked good in part because it was a period without war for the major powers and in part because Great Britain acted as the world's de facto central banker, creating liquidity by loans and foreign investment. The "rules" of the game turn out not to have been, for example, like Kepler's laws of motion: they did not describe the inevitable nature of the international economy, but rather prescribed actions to be taken by the central banks of Patria and Xandia to make sure that the model worked

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9 K. DAM, supra note 3, at 14-40.
10 To give the benefit of the doubt to the myth makers, Dam is prepared to put the beginning of the Golden Age at 1879, id. at 19, when the United States resumed convertibility of the dollar for gold after an interruption of almost 20 years during and after the Civil War. On this view, as he points out, the Golden Age did not last much longer than the man-made Age of Bretton Woods. Id.
11 Id. at 29-30. Dam notes several factors that permitted Britain to perform this role, including the fact that London was the center for most of the world's commodities markets, including the gold market, with most of the world's new gold arriving from South Africa every Monday. Id.
the way it was supposed to work. According to the rules, for example, if gold were flowing out of Xandia, its central bank was supposed to raise the discount rate to tighten the money supply and induce a fall in prices. In fact central banks often did the opposite, easing the money supply to offset the effects of a system over which they had no control.\textsuperscript{12}

II

Then came the Great War and the bad interwar years. Again looking closely, as Dam does, one can see that there were really several periods following the end of the War, punctuated, in Dam's version, in 1925, when Great Britain returned to gold; 1931, when Britain suspended payments of gold against currency; 1936, when the French-led gold bloc collapsed; and 1939, when the Second World War broke out.\textsuperscript{13} Of course one could subdivide this period quite differently, regarding, say, 1929 and 1933 as the critical turning points. In the minds of the men who planned for a better world after World War II, what was remembered was that the interval between wars lasted barely two decades, that there had been virtually no postwar financial planning during World War I, that monetary chaos in the 1920's, especially in Germany, had contributed to the rise of Hitler, and that when the Nazis came to power they perfected a variety of bilateral payments schemes that not only misallocated resources but had the effect of squeezing the smaller countries of Europe and drawing them into the German orbit. "Never again," said the men who began as early as 1942 to work toward a wholly different international monetary system.\textsuperscript{14}

The story of the negotiation of what became the Articles of Agreement of the International Monetary Fund, and particularly

\textsuperscript{12} Id. at 18.

\textsuperscript{13} Id. at 42-50.

\textsuperscript{14} See, for example, the statement of the U.S. Secretary of the Treasury, Henry A. Morgenthau, at the closing session of the Bretton Woods Monetary Conference in July 1944:

[What we have achieved] is the alternative to the desperate tactics of the past—competitive currency depreciation, excessive tariff barriers, uneconomic barter deals, multiple currency practices and unnecessary exchange restrictions—by which governments vainly sought to maintain employment and uphold living standards. In the final analysis, these tactics only succeeded in contributing to world-wide depression and even war.

of the roles of Lord Keynes for the British and Harry Dexter White for the Americans, has often been told. Though White represented a country that was likely to be the world's creditor and Keynes a country expecting to be a debtor concerned primarily about maintaining full employment, their proposals were in many ways similar. Both accepted the need for a new international monetary institution, to be run as far as possible by professional managers, and both started from the premise that exchange rates are a matter of international concern and should be relatively stable. Further, both White and Keynes looked to the new institution to oversee a code of monetary conduct, essentially to prohibit the interwar practices that now stood condemned, and both looked to the organization to provide resources (though in very different amounts) to countries in balance-of-payments difficulties.

Initially White and Keynes differed on the question of member countries' rights to change the par value of their currencies, with White for international control and Keynes for freedom, and Dam says that the outcome was a series of "artful concessions" to the British that maintained only the "illusion of Fund preeminence and of an international legal rule." I think that this is an overstatement, inconsistent with Dam's general view of the role and character of law. It is true that the original Articles of Agreement of the International Monetary Fund did not expressly prohibit a change in par value without the Fund's concurrence, but article IV, section 5(b), did say that a change in the par value of a member's currency "may be made ... only after consultation with the Fund," and article IV, section 6, said that if a member acts despite the objection of the Fund, the member would be ineligible to use the resources of the Fund, unless the Fund should determine otherwise. To me that is a fairly powerful sanction, and the fact that it rarely has been exercised does not "vitiate[] the princi-

16 K. Dam, supra note 3, at 91.
17 See infra note 24 and accompanying text.
19 Id. art. IV, § 5(b), 60 Stat. at 1404, 2 U.N.T.S. at 48.
20 Id. art. IV, § 6, 60 Stat. at 1405, 2 U.N.T.S. at 50.
ple of central Fund control." Dam is right in pointing out that the requirement in article IV, section 5(a), that a change in par value not be made "except to correct a fundamental disequilibrium," suffered from the failure to define that term. I am not sure that this constituted a failure of law, any more than did the failure to define "due process" or "unreasonable searches" in the American Constitution. Both at Philadelphia and at Bretton Woods, the Founding Fathers shifted some crucial decisions from their own shoulders to those of their successors. If, as a result, the rule of law is not as tight as some might have liked, I do not think this imports any loss of legitimacy for the process or for the role of law overall. It seems to me that the remedies for member countries in balance-of-payments difficulties—either provision of resources by the Fund or devaluation—were fairly explicit, especially when coupled with the decision that the initiative for either step must come from the member but be approved by the Fund. I was surprised by Dam's description of these provisions as relegating the central legal question to a "shadow existence, playing a role perhaps in debate or negotiation, but ultimately no central role." It seems to me that the Bretton Woods compromise is not a departure from but an illustration of Dam's basic definition of the role of law (with which I agree) "not as a sovereign statement of the legal and the illegal but rather as a set of substantive and procedural rules influencing behavior and embodying understandings of the moment." It seems to me that the famous question left open at Bretton Woods was whether the resources over which the organization would preside would be made available to countries as of right or under conditions to be set by the Fund. Both interpretations could be derived from the Articles of Agreement, though neither wholly convincingly, especially since both Keynes, who favored unconditional drawing rights, and White, who favored conditionality, claimed victory at Bretton Woods. The resolution of the question, essentially in favor of the American view, gave rise to much of the law—evolution, in

31 K. DAM, supra note 3, at 91.
32 Articles of Agreement, supra note 18, art. IV, § 5(a), 60 Stat. at 1404, 2 U.N.T.S. at 48.
33 K. DAM, supra note 3, at 91.
34 Id. at xiii; see also id. at 3-6 (discussing nature of rules and law and their interrelation).
35 Compare Articles of Agreement, supra note 18, art. V, § 3(a) ("A member shall be entitled to buy the currency of another member . . .") (emphasis added) with subparagraph (i) of the same subsection ("The member . . . represents that [the currency] is presently needed for making . . . payments which are consistent with the provisions of this Agreement.").
Dam's metaphor—of the quarter-century life of the Bretton Woods regime. Yes (1946), members were "entitled to buy the currency of another member," but "authority to use the resources of the Fund is limited to use in accordance with its purposes to give temporary assistance." Yes (1948), the Fund would ordinarily accept the representation of a member state that the currency it wished to draw was "presently needed for making . . . payments . . . consistent with the . . . Agreement," but "the Fund may, for good reasons, challenge the correctness of this declaration." Of course (1952) access to the Fund "should not be denied because a member is in difficulty," but "[t]he Fund's attitude toward the position of each member should turn on whether the problem to be met is of a temporary nature and whether the policies the member will pursue will be adequate to overcome the problem within such a period." Gradually these decisions led to negotiations of the member states' policies to support a drawing: the more the member was going into debt to the Fund, the stricter the conditions. For the first so-called tranche, equivalent in most cases to gold contributed by the member, there would be no real conditions: "Each member can count on receiving the overwhelming benefit of any doubt." If the member's debt to the Fund should grow, so would the scrutiny (and the required undertakings) before the Fund's resources would be made available.

Once drawing rights were made conditional, creditors of countries in potential difficulty could no longer count on those countries' access to the Fund's resources when the need became acute, and so the reassuring aspect of the members' rights in the Fund was weakened. The answer was to develop standby facilities, i.e.,

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26 Id. art. V, § 3(a), 60 Stat. at 1406, 2 U.N.T.S. at 54.
27 IMF Executive Directors Interpretation Pursuant to Decision No. 71-2 (Sept. 26, 1946), SELECTED DECISIONS OF THE INTERNATIONAL MONETARY FUND 17, 17 (9th ed. 1981) [hereinafter cited as SELECTED DECISIONS].
29 Id.
30 IMF Executive Directors Decision No. 102-(52/11) (Feb. 13, 1952), SELECTED DECISIONS, supra note 27, at 18.
31 Id.
32 Id. at 18, para. 3.
33 For reasons that have always baffled me, members do not borrow resources from the Fund, but purchase them, using their own (presumably costless) currencies, subject to an obligation to redeem their currency with convertible currency or other reserve assets within the period stated. Dam writes that perhaps the most important consequence of this terminology is that the text of the Articles of Agreement is not easily understood, even by financial experts or lawyers. K. DAM, supra note 3, at 107.
arrangements whereby the conditions and the corresponding undertakings for Patria's drawings would be worked out in advance of actual need.\textsuperscript{34} Subsequently, as it appeared that not only Patria and Xandia, but Great Britain and the United States, possibly even at the same time, might want to draw on the resources of the Fund, the Fund itself in effect took out a standby credit, through the General Arrangements to Borrow, first established in 1962 and kept going ever since.\textsuperscript{35}

The historical treatment of these developments in *The Rules of the Game* is nicely done, though I have to say that for me it broke no new ground. Given his strong background in economics and the analytical probing on the operative rules of the General Agreement on Tariffs and Trade ("GATT") in his earlier book,\textsuperscript{36} I had hoped Dam might question the standard prescription that the IMF nearly always handed out to countries applying to the Fund for use of its resources. Are balanced budgets, reduced credit, tight money, limited wage increases and the like really the "rules of the game," the Newtonian laws that would exist whether the Fund were in the picture or not? If the answer is yes, then much of the criticism of the Fund as unduly intervening in the setting of domestic priorities could be rejected: one would not, after all, criticize a weather forecaster for prescribing boots and umbrellas when his instruments showed the approach of snow or rain. But weather forecasters these days nearly always agree. With as much discord as there is among economists in and out of government in virtually every nation where discord is permitted at all, I have always been mildly skeptical of the homeopathic cure prescribed by the Fund. On the basis of Dam's prior writings, I rather expected Professor Dam to share my skepticism; reading this book I don't know whether he does or not.

\textsuperscript{34} For a detailed and still essentially operative account, see generally J. Gold, *Stand-by Arrangements of the International Monetary Fund* (1970).

\textsuperscript{35} The General Arrangements to Borrow ("GAB") created a special Fund facility available to the so-called "Group of Ten" Fund members and controlled by them. It was designed to avert Fund liquidity problems should one or more of the major states have to draw on the Fund. See K. Dam, *supra* note 3, at 147-50. At their January 1983 ministerial meeting, the Group of Ten decided to expand the GAB to permit its use for other states' financing as well, if the Fund's resources otherwise might not be adequate. See *Text of Communiqué Issued by Group of 10, 12 IMF Surv. 18, 20* (1983).

III

Dam sketches in only a few pages the final days of the Bretton Woods system. He is less fascinated than others have been with the shock of the United States announcing one Sunday night in August 1971 that it was revoking its promise to redeem officially-held dollars for gold, refusing (at least for the time being) to fix any par value for its currency, and imposing a tariff surcharge on nearly all imported goods.37 Nor does he talk much about the extraordinary autumn of 1971, when a shaken IMF staff, a swaggering U.S. Secretary of the Treasury, and the nervous leaders of Western Europe tried to pick up the pieces and repair the system, each looking to the others to take the painful decisions of currency devaluation or revaluation. Whereas in his earlier book with George Shultz, Dam had spoken of Secretary Connally as "flash[ing] the signal in true Texas style, with both guns blazing in the corridors of international finance,"38 here Connally is not even mentioned, and the Smithsonian Agreement of December 1971,39 which rearranged currencies and preserved at least the façade of a regime of legal rules, is treated rather lightly and, indeed, somewhat legalistically.40

Since it is no doubt true that the future determines the past, Dam is probably right in devoting less attention to the period from Camp David to Smithsonian than others have done.41 A decade

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37 For President Nixon's speech announcing these actions, see President's Radio and Television Address to the Nation Outlining a New Economic Policy for the United States, 7 WEEKLY COMP. PRES. DOC. 1168 (Aug. 15, 1971); for the implementation of the import surcharge, see Proclamation No. 4074, 3 C.F.R. 80 (1971), reprinted in 19 U.S.C. § 1202 (1976). Four years after the event, the import surcharge was sustained by the Court of Customs and Patent Appeals (reversing the Customs Court) on the ground that it was authorized under the Trading with the Enemy Act of 1917, 50 U.S.C. app. §§ 1-44 (1976). United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975), rev'g 378 F. Supp. 1155 (Cust. Ct. 1974).
39 For the text of the agreement, see 23 INT'L FIN. NEWS SURV. 417, 421 (1971). The Smithsonian Agreement as well as the relevant documents embodying the U.S. decision of August 15, 1971, are reproduced in A. LOWENFELD, supra note 15, at 488-91, 621-34.
40 K. DAM, supra note 3, at 189-92.
41 In the monetary world (as contrasted to the saga of the Middle East) Camp David is the name given to the measures announced by President Nixon on August 15, 1971, after a weekend of decision making August 13-15 at the presidential retreat in Maryland. The agreement of December 18-19, 1971, was not an accord of the IMF but rather of the Group of Ten, and therefore the thinking was that the conference to record it should not take place at the IMF headquarters but should be held close-by so that the executive directors could quickly vote to approve the agreement. The Treasury Department did not have a room large enough to accommodate all the participants plus translators, but Secretary Connally apparently did not want to hold the meeting at the State Department, which has conference
later, what seemed to be high drama at the time does seem to be just one phase in a process that was always inevitable. Still, I was intrigued by the statement in Shultz and Dam that when Secretary Connally's hard-headed policy ("The dollar is our currency but their problem") began to create political fallout, Dr. Kissinger began to take an interest and that "without the intervention of Kissinger the devaluation of the dollar [in December 1971] would almost surely have been greater, thereby obviating any need for a further devaluation in February 1973." There is no hint of that in this book, and at least the second half of the quoted passage, one might have thought, would call for some support in this longer and more specialized treatment of the subject. Dam is too tactful to quote President Nixon's statement at the close of the Smithsonian conference announcing "the conclusion of the most significant monetary agreement in the history of the world.

Dam is more interested in the years that followed the Smithsonian Agreement (1972-74), when on the one hand a new group of founding fathers tried to write new rules of the game, and on the other hand entrenched habits, sovereign jealousies, and unforeseen circumstances (notably the OPEC coup) combined to frustrate the process of creation. Notwithstanding the basic failure of the Committee on Reform of the International Monetary System and

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rooms of all sizes and shapes. Accordingly, the meeting was held at the Smithsonian Institution, a museum of science and natural history, and the agreement became known as the Smithsonian Agreement.

42 C. COOMBS, supra note 7, at 219. Since Coombs quotes Connally without citation, I cannot vouch for the accuracy of the quotation. See Lowenfeld, supra note 7, at 1563 n.18.

43 G. SHULTZ & K. DAM, supra note 38, at 12.

44 Id. at 116.

45 Supporting the Shultz/Dam view, Kissinger characterizes Connally as "sufficiently Texan to relish a good scrap for its own sake," and describes his own role as urging agreement on a realignment of exchange rates "short of an all-out confrontation that would threaten our Alliance relationships." H. KISSINGER, WHITE HOUSE YEARS 957 (1979).

46 President's Remarks Announcing a Monetary Agreement Following the Meeting at the Smithsonian Institution, 7 WEEKLY COMP. PRES. DOC. 1670 (Dec. 18, 1971). The President continued:

I know that may seem to be an overstatement, but when we compare this agreement with Bretton Woods, which, of course, was the last very significant agreement of this kind, we can see how enormous this achievement has been.

...[I]ndeed, [it is] the most significant event that has occurred in world financial history.

Id.

47 Compare Keynes's remark in 1942 that only "'a single act of creation, made possible by the unity of purpose and the energy of hope'" that the War engendered, could bring about an international monetary institution. R. HARROD, supra note 15, at 551 (quoting Keynes).
Related Issues (the "Committee of Twenty"), I think Dam is right to discuss the Committee's efforts in detail because of what they reveal both about the evolution of the international monetary system in the preceding thirty years and about the possible direction of its further development, whether by evolution or by reform.48

The reformers, spurred on by the collapse of Bretton Woods—though not of the world economy—decided to go beyond exchange rates and temporary aid by the IMF and to look at the international economic system as a whole.49 The crucial element, introduced by the United States in 1972 under its new Secretary of the Treasury, George Shultz, was that the balance of payments was a zero-sum game, that one country's deficit was another country's surplus, and that not only the deficit countries but the surplus countries as well might be deviating from an appropriate norm.50 Stated in this shorthand way, the perception seems far from startling. But what first Shultz and eventually the Committee pointed out was that the previous system, designed by Keynes and White and elaborated in the 1950's and 1960's, put pressures to adjust only on countries in deficit, with at least the inference (certainly drawn by the press) that they were doing something wrong. It was countries in deficit that had to devalue or to modify their policies as a condition for drawings from the IMF or (if they were reserve-currency countries such as the United Kingdom and the United States) to incur obligations of indeterminate maturity to the rest of the world. The countries in surplus, in contrast, had no need to go to the IMF for a drawing or standby, and the accumulation of

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48 K. DAM, supra note 3, at 213. The whole treatment of the work of the Committee of Twenty runs from page 211 to page 252. For a discussion of roughly the same subject by one of the members of the "Bureau" of the Committee of Twenty, see R. SOLOMON, supra note 7, at 235-66. See also G. SHULTZ & K. DAM, supra note 38, at 122-31.

49 For examples of the range of the Committee of Twenty's discussions, see COMMITTEE ON REFORM OF THE INT'L MONETARY SYS. & RELATED ISSUES (COMM. OF TWENTY), REPORT TO BOARD OF GOVERNORS, IMF, INTERNATIONAL MONETARY REFORM: DOCUMENTS OF THE COMMITTEE OF TWENTY (1974) [hereinafter cited as C-20 DOCUMENTS]. Professor Dam writes that this brochure, which with annexes and Reports of Technical Groups runs to about 250 pages, represents a comparatively minor portion of the Committee of Twenty's documents. K. DAM, supra note 3, at 213.

50 See IMF, SUMMARY PROCEEDINGS OF THE TWENTY-SEVENTH ANNUAL MEETING OF THE BOARD OF GOVERNORS 34, 36 (1972); Statement by Secretary Shultz to the Annual Meeting of the International Monetary Fund, 67 DEP'T St. BULL. 460, 462 (1972); see also ... and Secretary Shultz's Reform Proposals, 1 IMF SURV. 70 (1972) (remarks of Secretary Schultz) ("Surplus countries ... have ... been under much less pressure to revalue their currencies upward or to take other policy actions with a similar balance of payments effect. ... [T]his asymmetry will need to be corrected.").
reserves was not in any way made painful for them.\textsuperscript{51} Indeed in some cases the international monetary rules had enabled countries to maintain undervalued currencies, giving them both trade advantages (seen from a mercantilist point of view) and the ability to insulate their own economies from inflation in the rest of the world. In the popular image these countries—notably West Germany and Japan—were the good guys, the efficient, hard-working producers, as contrasted with other countries living beyond their means. The new perception said that was wrong: whatever the optimal slope of the curve of inflation, real growth, employment, consumption, and welfare might be, the countries to one side of it were as much deviant as the countries on the other side.

Various task forces were commissioned to put these generalities in precise terms. One suggestion was to measure each country's gain or loss in reserves over a given time period, or perhaps to measure the relation of reserve changes to GNP. When a country's reserves reached an "indicator point" (above or below the base), one version would require the country to adjust; in another version, a meeting would be convened by the international community to determine whether the country should adjust and to what extent.\textsuperscript{52} Adjustment might mean a new exchange rate (if stable exchange rates were being maintained); it could also mean other changes in economic policy, including measures concerning interest and credit, employment and social benefits, or imports and exports.

What if a state—in particular a state that was accumulating reserves in greater amount than the norm and had no need of international assistance—declined to adjust? At the start of the reform movement, that question appeared to be the major obstacle. In the course of the work of the Committee of Twenty, however, the problem was solved, but only at the technical level. A system of increasingly painful sanctions (or "pressures" in the more diplomatic language of the Committee of Twenty) was developed, in-

\textsuperscript{51} The German view would regard the last statement as an overstatement, because under Bretton Woods if a country in surplus was not prepared to raise the value of its currency, it would have to purchase dollars with its currency, which might one day come back to feed domestic inflation. If it did revalue, its export industries might be adversely affected. Still, these choices did not involve the painful medicines administered to countries in deficit. See, e.g., OECD, \textit{Towards Full Employment and Price Stability} 247-49 (1977) (the McCracken Report) (reporting German and Japanese criticism of the American position).

cluding (in ascending order): (i) a tax on excess reserves; (ii) a requirement that excess reserves be deposited with the IMF without interest; (iii) withholding of future allocations of Special Drawing Rights, the “paper gold” that the IMF issues from time to time and hoped to make the world’s principal reserve asset; (iv) publication of a report on an errant country’s external position and policies; and (v) (in extreme cases) authorization for other countries to apply discriminatory restrictions on trade or other current transactions with the country in question.\(^{53}\)

So much for the technical problems.\(^{54}\) Were countries really ready to accept the implications of these suggestions put forward by the technicians? Not only for the countries in surplus, but for the United States and for the many countries in deficit (even before the oil crisis of 1973-74), the reform initiatives contemplated an expansion of the international community’s jurisdiction over internal affairs—a scope of jurisdiction well in excess of anything heretofore known. Whereas previously a country could avoid international jurisdiction (to use the lawyers’ term) simply by not invoking it, now objective measurements—changes in the flow or stock of reserves—would set international scrutiny and “pressures” in motion. One might talk about reserve indicators and asset settlement, words understood only by the technocrats and a few academics, but if deviations from a norm were required to be kept within a stated range or else, there would really be Rules of the Game. And the game would involve quite directly the major issues about which elections are fought in democratic states—target rates of growth and inflation, budgetary deficits, interest rates, perhaps the ratio of exports to domestic consumption, and so on.

There could, of course, be some variation. Xandia, a deficit country, might be told to reduce government expenditures, for instance, but not whether the reduction should be in veterans’ benefits, medical care, or higher education. Patria, a surplus country,\

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\(^{53}\) These “pressures” were set out in the Committee of Twenty’s Outline of Reform, in C-20 DOCUMENTS, supra note 49, at 7, 28-30. They are spelled out somewhat further in Report of Technical Group on Adjustment, in C-20 DOCUMENTS, supra note 49, at 141, 153-56. The effect of publication in this form was to “record the state of the discussion,” Outline of Reform, in C-20 DOCUMENTS, supra note 49, at 7, 23, without committing the members of the Committee of Twenty (let alone the members’ governments) to the propositions stated.

\(^{54}\) The technical questions of definition, measurement, and application are necessarily compressed in this brief review. Dam explains them in a plausible and comprehensible way, the conclusion being that although the details are by no means trivial, they are not so difficult as to defy solution. See K. DAM, supra note 3, at 221-35. For the principal report and annexes, but not the reports of the technical groups, see A. LOWENFELD, supra note 15, at 527-82.
might be told to increase its overseas expenditures, but not whether these increases should be in foreign aid, increased imports, or more direct foreign investment. Still, carried by the wave of understanding that (whether exchange rates were fixed, adjustable, or floating) there is no wall of separation between domestic and international economic phenomena, what started out as a clearly correct criticism of the asymmetry of the prior system grew, in the technical discussions, into an expansion of international jurisdiction beyond the capacity of the world to accept—at least up to now.

I think Dam would agree with the preceding discussion, though he does not present it quite that way. He does discuss in some detail the issue of sanctions and pressures, and in particular whether they should be applied automatically on the happening of a stated event, or by affirmative political decision, or semiautomatically (i.e., on the happening of a stated event unless the competent body voted otherwise within x days). The technical debates on that subject—as on others—were to some extent a smoke screen for the fundamental issue of how much states were prepared to submit their internal economic policies to man-made international controls. When early in 1974 the Committee of Twenty in effect gave up its efforts to achieve comprehensive reform, "in the light of the recent developments in the world economy [read the OPEC coup]," and began to shift to priorities for an interim regime, the prospects of change in the international monetary system by an act of creation disappeared. The vision of a reform system—i.e., a system that owed its structure to a conscious legislative act—was transformed into an indication of the "general direction in which the Committee believes that the system could evolve in the future."

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55 I say the criticism is clearly correct, as far as it went; others have pointed out that there were really two asymmetries, and that the American proposals did not address the second one—the asymmetry between reserve centers (e.g., the United States) and other countries. See, e.g., Williamson, The Failure of World Monetary Reform: A Reassessment, in The International Monetary System Under Flexible Exchange Rates 297, 304 (R. Cooper, P. Kenen, J. Braga de Macedo & J. van Ypersele eds. 1982).

56 K. DAM, supra note 3, at 231-35.


58 See the remark of Keynes quoted supra note 47.

59 Outline of Reform, in C-20 DOCUMENTS, supra note 49, at 7, 7; see also id. at 18-19. Professor Dam quotes R. SOLOMON, supra note 7, at 262, in attributing the changed formulation to Paul Volcker, at the time Undersecretary of the Treasury for Monetary Affairs and one of the U.S. representatives on the Committee of Twenty's Committee of Deputies. K. DAM, supra note 3, at 221.
The monetary system did of course evolve and continue to do so. The direction of that evolution, from the mid-1970's to the date of the manuscript (early 1981), and a look ahead form the last two chapters of Dam's volume.

First came the Second Amendment to the Articles of Agreement of the IMF, negotiated in outline by the major powers in 1975 and in detail at a meeting of the so-called Interim Committee in Jamaica in January 1976. The economists who had hoped that their ideas might finally be translated into law treated the Second Amendment as a failure—simply an adaptation of the legal regime to the actual state of affairs (particularly with regard to floating exchange rates) and not in any real sense a cure or even a prescription for a cure of the system's ills. Dam is kinder. For one thing, he regards as more significant than do the economists the delegation of various authorities to the Fund itself, so that if further agreements are reached—for instance on a return to fixed exchange rates or on changing the characteristics of Special Drawing Rights—they can be implemented without need to resort once more to the ponderous process of treaty amendment. For an-
other, he treats with a good deal of care the provisions of new article IV of the IMF Agreement, which replaced the commitment to par values in the original Articles of Agreement.66

Article IV, section 1, provides that

each member shall

(i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;

(ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;

(iii) avoid manipulating exchange rates of the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and

(iv) follow exchange policies compatible with undertakings under this Section.67

Further, article IV, section 3, provides that “[t]he Fund shall oversee the international monetary system,” including “the compliance of each member with its obligations under Section 1 of this Article.”68 Does this constitute recognition of the international jurisdiction talked about in the Committee of Twenty, minus the “pressures”?69 The first decision of the Executive Directors of the Fund in implementation of article IV, the Decision on Surveillance over Exchange Rate Policies,70 would lead one to think not, for it is addressed almost entirely to exchange-rate policies. Yet it does men-

by an eighty-five percent majority of the total voting power, that international economic conditions permit the introduction of . . . exchange arrangements based on stable but adjustable par values”), art. XIX, § 2(c), 29 U.S.T. at 2243 (“Fund, by a seventy percent majority of the total voting power, may prescribe [SDR-based] operations in which a participant is authorized to engage in agreement with another participant”), art. XIX, § 6(b), 29 U.S.T. at 2245 (“A seventy percent majority of the total voting power shall be required for decisions to adopt, modify, or abrogate the rules for reconstitution [of SDR holdings].”).

66 K. Dam, supra note 3, at 256-67.
67 Amended Articles of Agreement, supra note 60, art. IV, § 1, 29 U.S.T. at 2208.
68 Id. art. IV, § 3, 29 U.S.T. at 2209.
69 Professor Triffin, perhaps the world’s leading international monetary economist, wrote, “[t]he only obligations I can find . . . are so general and obvious as to appear largely superfluous.” Triffin, supra note 63, at 47.
tion domestic policies of member states, and one could build on that if the collective will were there.

Having last looked into this question myself in 1977, just after the Decision on Surveillance was issued, I had hoped to learn from Professor Dam what the experience had been in the first four years of the Jamaica regime. Dam notes (as I did in 1977) the American preference for common law, as expressed in various statements by William Simon, who had succeeded Shultz as U.S. Secretary of the Treasury, and the European preference for a code of conduct, as expressed by the Managing Director of the Fund, Johannes Witteveen. The trouble with a common-law approach, however, is that so long as the Fund keeps its practice secret, as most governments desire, it will be very hard for a body of precedents to be built up, except perhaps in the minds of a few permanent members of the IMF staff. Professor Dam, out of government for the relevant period, has the same thirst for knowledge that I do, but it remains unsatisfied:

[I]t is difficult in retrospect to determine which side [common law or code] won. The specific principles in the surveillance decision were not much more specific than those in the Articles of Agreement themselves, and yet, since the results of consultations are not made public, it is impossible to know whether those principles have been given any more definite content. Certainly unless consultations have produced new principles that then bind members in later consultations, nothing that a lawyer would recognize as a "common law" approach can be identified.

I suppose that with Dam's support and the IMF Decision as authority, some kind of "law" may be stated—even "restated." Carrying on the Restatement's role as a kind of bridge between a

71 Id. at 11 ("it is recognized that there is a close relationship between domestic and international economic policies"). See also infra note 77 and accompanying text.


74 K. DAM, supra note 3, at 260. Recent annual reports of the Fund have contained reviews of the experience with surveillance, see, e.g., IMF, Annual Report 1980, at 52-58 (1980); IMF, Annual Report 1981, at 61-62 (1981); IMF, Annual Report 1982, at 56-58 (1982), but unless one knows how to read between the lines much better than either Professor Dam or this reviewer, they shed very little light on the questions raised.
Is There Law After Bretton Woods?

case system and a code system, I may be able to come up with a "black-letter" rule something like the following:

Member states of the International Monetary Fund
(1) may not manipulate exchange rates in order to prevent effective balance of payment adjustment or to gain unfair advantage over other members;
(2) should intervene in the exchange market if necessary to counter disorderly conditions in the exchange value of its currency; and
(3) should take into account in their intervention policies the interests of other member states. But could one do more than that? For example, could one state in black-letter law (or even in a normative comment) that member states are obligated to take into account in their overall macroeconomic policies the interests of other member states? This is a good deal more problematical. For instance, could a rule of international law obligate the United States, in determining its own central bank discount rate, to take into account the interests of Canada? Indeed, does the United States, because of its size and the role of the dollar as the major reserve and transaction currency, have an obligation to consider the interests of, and consult with, virtually all member states, whereas, say, Ecuador has a duty to consider at most the interests of Bolivia and Peru? And if there is no obligation to prepare the monetary version of an environmental impact statement, is it at least open (a) to Canada or France, or (b) to the Managing Director of the IMF to initiate a "consultation" with the United States about its policies concerning interest rates or fiscal policy or inflation?

The Decision on Surveillance says that once a consultation is initiated, the Fund's appraisal of a member's exchange rate poli-

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76 I hasten to state that the above is a condensed paraphrase of operative paragraphs A, B, and C of the Decision on Surveillance, see supra note 70 and accompanying text, and only a first draft of what might go into the Restatement of Foreign Relations Law (Revised), to be published in Tentative Draft No. 5 in the spring of 1984.

78 It is interesting that after relatively limited exchange market activity in the last years of the Ford administration and the first year and a half of the Carter administration, the United States in November 1978 initiated a policy of high-volume, day-to-day intervention in exchange markets, including the acquisition of substantial foreign currency reserves. When the Reagan administration entered office, the United States changed its policy again, intervening only to counter conditions of severe disorder in the market, see ECONOMIC REPORT OF THE PRESIDENT 172-73, 189-91 (1982), such as that which existed after the attempt on President Reagan's life in March 1981. Whether these changes reflected any constraint or "consultation" on the part of the IMF or only different political/economic outlooks of several administrations within the wide band of internationally acceptable conduct is not clear.
cies "shall be made within the framework of a comprehensive analysis of the . . . economic policy strategy of the member, and shall recognize that domestic as well as external policies can contribute to timely adjustment of the balance of payments."77

It seems that initiating a consultation on a basis other than the member’s activity concerning exchange rates is not permitted, though if that jurisdictional prerequisite is present, the scrutiny of effects on other members may go beyond exchange rates.78 But assuming the jurisdictional prerequisite has been met and a consultation has been properly initiated, may that consultation go beyond exchange-rate practices and include the economic policies of the member state that is the subject of the consultations? Dam urges an affirmative answer to that question, "for if surveillance is to be effective, it must be concerned with domestic policies that generate inflation and thereby domestic instability."79 "Indeed," he argues, "it would be a denial of the fundamental shift in priorities between Bretton Woods and Jamaica, from exchange rate stability to domestic stability, to foreclose inquiry into domestic policies in the surveillance process."80 But he has no precedents and he is not optimistic. "The carrot of Fund financial assistance," he concludes, "is likely to be more influential than the stick of Fund surveillance."81

77 IMF Executive Directors Decision No. 5392-(77/63) (April 29, 1977), SELECTED DECISIONS, supra note 27, at 10, 13, quoted in K. DAM, supra note 3, at 266.

78 This seems confirmed by a supplemental decision that provides that “[w]henever the Managing Director considers that a modification in a member’s exchange arrangements or exchange rate policies or the behavior of the exchange rate of its currency may be important or may have important effects on other members . . . he shall initiate informally and confidentially a discussion with the member.” IMF Executive Directors Decision No. 6026-(79/13) (January 22, 1979), SELECTED DECISIONS, supra note 27, at 15, 15. In other words, the latter decision permits a discussion to be initiated by the Managing Director without any finding of departure from the “black-letter” rules, but a change in the member’s exchange rate practice remains the trigger.

79 K. DAM, supra note 3, at 267.

80 Id. Anthony M. Solomon, Undersecretary of the Treasury during most of the Carter administration and currently President of the Federal Reserve Bank of New York, carried this approach forward in a recent speech. The carrot for participation in more meaningful surveillance by the Fund would be greater availability of funds for Patria in the first and second credit tranches for Fund drawings, i.e., more money with less stringent conditions. The stick would be the announcement, in some form, that if Xandia declines the Fund’s invitation to participate in consultations or to follow through on them, there will follow at least a yellow light for prospective lenders. See A. Solomon, Restoring Balance in an Interdependent World, Remarks before Bicentennial Financial Symposium, New York (Oct. 7, 1982).

81 K. DAM, supra note 3, at 267. Note (as Dam does, id. at 266-67) that the amended articles state that “[t]hese principles [of surveillance] shall respect the domestic social and political policies of members.” Amended Articles of Agreement, supra note 60, art. IV, §
Even the carrot, however, may not be particularly effective. As Dam observes in his final chapter, the conditions for conditionality continue to be loosened by availability of alternative resources, particularly to developing countries. As an observation, that is certainly correct; as a prediction of a continuing trend, it is hard to tell. It was hard to predict, even as late as the Jamaica Agreement of 1976, how great would be the availability of credit from nonofficial sources, as the private banking sector turned petrodollars into Eurodollars and re-lent them to governments on a massive scale, usually without conditions or performance criteria. As concern has mounted since 1981 over the creditworthiness of the sovereign borrowers—first Poland, then Mexico, tomorrow perhaps Argentina or Brazil—it may be that an IMF standby will become a requirement for private sector loans or rescheduling of existing debt. If that happens, the Rules of the Game—that is, the old

3(b), 29 U.S.T. at 2209. Dam would argue, I believe, that "respect" means that the Fund is not supposed to tell a socialist country to be capitalist, or vice-versa, not that the Fund must close its eyes to the country's particular economic measures.

K. DAM, supra note 3, at 296.

As of the close of 1980, the total outstanding, long-term debt of developing countries without significant oil reserves stood at $370.1 billion, compared with $97.3 billion in 1973. Of these amounts, official institutions accounted for $49.1 billion in 1973, or about 50%; by 1980, official institutions accounted for $155.8 billion, or 42%. See IMF, ANNUAL REPORT 1981, at 34 (1981) (Table 12). By 1982, the total debt stood at $505 billion, of which over 60% was held by U.S. and foreign private creditors. See IMF, WORLD ECONOMIC OUTLOOK 170 (1982) (Table 30).

The announcement on December 23, 1982, of the IMF credit of SDR 3.6 billion (equal to about U.S. $3.94 billion) to Mexico, see Mexico to Use Resources from Fund to Support Major Adjustment Effort, 12 IMF Surv. 1 (1983), discloses a new and apparently close working relationship between the Fund and private-sector banks. The announcement reflects detailed negotiations concerning Mexico's future economic policies, including major reductions in public sector deficits, tight monetary policies, flexible exchange rate policies, and stringent reductions in the rate of inflation, in line with past IMF prescriptions. Further, the announcement states:

The advisory group of [private] bankers has informed the Managing Director that the responses to date to the request concerning the needed financing from the international banking community have been highly positive and that these responses demonstrate the intention of the commercial banks to do their part. On the basis of this direct survey of commitments of the commercial banks made by the advisory group, the Managing Director concluded that there was sufficient assurance that the needed amounts were being made available to justify his recommendation to the Fund's Executive Board that it could approve the proposed arrangement with the expectations that it was being adequately financed to support the policies of the Mexican authorities.

Id. at 3.

The New York Times reported that Paul A. Volcker, Chairman of the Board of Governors of the Federal Reserve System, was supporting the IMF in initiatives such as the massive credit to Mexico by "brush[ing] aside" some regulatory obstacles that might have inhibited cooperation of the U.S. commercial banks in the Mexican rescue effort. Farwsworth, A Dramatic Change at the I.M.F., N.Y. Times, Jan. 9, 1983, at F1, col. 2, F10, cols. 2-3.
rules of conditionality—will regain some of their importance. Not Jamaica, reflecting the frustrated movement for reform, but Bretton Woods, having passed through several stages of evolution, will become relevant once again; the earlier question of conditional drawings versus drawings as of right will once more be critical.

What then is the law that informs the conditionality imposed by the Fund? Is it simply a kind of common law of tort: "do not hurt they neighbor"? Or is there a law of nature that gives content to the order, "do what is economically sound"? I think that question is implicit in the question with which Dam ends his book. "The question is thus not whether reform or evolution will be chosen but where the balance will be." His hunch is that reform will turn out to have less economic substance than will evolution, but that progress along either path is likely to involve new levels of complexity in legal rules. I am not sure whether to be encouraged or discouraged by that prediction.

V

There is much more to this rich and thoughtful book than the themes followed in this review. Dam omits some topics about which I would have liked to learn from him—for instance, the criteria of the Fund in approving (or at least declining to disapprove) the growing web of exchange controls, among developed as well as developing countries. But he does pay continuing attention to the role of gold—past, present, and future; to Special Drawing Rights from their birth in 1968 to their adolescence in the 1980's with some of the "barnacles" (in Dam's phrase) removed; and to prospects for the composition and use of reserves, whether by design or by the forces of nature. Also, Dam has a brief but illuminating discussion of the pros and cons of regulation by national authorities of off-shore banking, concluding that neither a territorial nor an extraterritorial (domiciliary) approach to regulation of branch banking would work unless everybody—notably including Great Britain and Switzerland—went along. He regards the prospects of agreement on that subject as dim, though (I think) in the long

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86 See supra notes 25-34 and accompanying text.
87 Id.
88 See, e.g., id. at 14-40, 54-60, 246-47, 269-75, 336-41.
89 Id. at 276; see also id. at 275-81.
90 See, e.g., id. at 314-20.
91 Id. at 320-28.
92 Id. at 324-26.
run desirable. Dam also gives a quite lucid account of the European Monetary System—a mini-Bretton Woods including some (though not all) of the members of the European Economic Community.\footnote{Id. at 328-36.} I refrain from summarizing this discussion here because I suspect that as these lines are written (Autumn 1982) the rules of that game are changing, if indeed the game continues past the date of publication.\footnote{See, e.g., Rattling Snake, ECONOMIST, Sept. 18-24 (1982), at 84.}

The big game, however, will clearly go on. As John Williamson, a leading scholar on international monetary matters and one of the IMF’s representatives at the Committee of Twenty, recently wrote, “an individual country may be able to decelerate inflation without much loss in real income by varying the fiscal-monetary mix so that its currency appreciates, [but] this is not an option for a closed system, such as the world.”\footnote{Williamson, supra note 55, at 298.