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Kenneth W. Dam

THE  
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OF THE  
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Reform and  
Evolution in the  
International  
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## PREFACE

Although this book addresses the lively and urgent issue of the proper design of the international monetary system, it reflects a long-standing interest in the intersection of two academic disciplines, law and economics, and in the accommodation of two fields of practical endeavor, law and diplomacy. In neither economic affairs nor diplomacy would law seem a priori to have much of a role to play. When they are combined, the role for law becomes even smaller. Yet if understood 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, law turns out to be of central importance. The subject is, then, the role of these rules in international monetary affairs.

In this book I have continued an inquiry that I commenced in the allied field of international trade in a book that appeared just over a decade ago, *The GATT: Law and International Economic Organization*. A decade is a long time, and in that period my perspective has changed radically. In *The GATT* the perspective was prescriptive. I sought there a set of international rules that would lead naturally, if not ineluctably, toward a goal of freer trade.

Since *The GATT* was written, I have changed and so has the trend of events. Practical experience in the U.S. decision-making process, especially in the arena of international affairs, has convinced me that scholarship has little to offer by way of direct advice to those who would restructure the international economic system. The value of scholarly research to the policy-

maker lies rather in providing a perspective against which contemporary events can be understood and the likely consequences of particular policy initiatives assessed. In any case, the 1970s has been a time of lowered horizons in international economic affairs as much as in U.S. domestic affairs. In trade, it is a close question whether liberal or protectionist influences had the edge in the 1970s. And in money, the only assessment that gains widespread acceptance is that the current international monetary system is the worst conceivable with the possible exception of the one that preceded it.

The perspective that I have adopted in this book is therefore historical and detached. It is historical because the most interesting and perhaps even the most important question is how the international monetary system changes and adapts to underlying conditions. Change has been the order of the day. Even the international gold standard, as a universal institution, lasted only a few decades. And the 1970s was a period of constant, sometimes headlong, change.

The contrast between evolution, in the sense of unplanned change, and reform, in the sense of consciously planned change, provides a useful theme for much of the discussion. The well-informed reader will note that I use the term "evolution" somewhat differently from the way in which it is used in current International Monetary Fund discussions. Today all officials are evolutionists and readily declare their opposition to reform. But by reform they mean comprehensive reform of the entire monetary system. Hence, in the Fund's corridors it is common to describe, for example, plans for adopting new international rules changing the attributes of the Special Drawing Rights as a step in the evolution of the system. As used in this book such conscious and deliberate attempts to alter the system by the adoption of new rules are the very essence of reform.

The perspective in this book, unlike *The GATT*, is detached, in part because there is no goal in monetary affairs that commands the intellectual and official assent that freer trade commands even today. To be sure, nearly everyone agrees that national monetary measures, such as exchange restrictions, can be as significant in distorting the allocation of world resources as tariffs and quotas, and therefore warrant international efforts to regulate them. But when one turns to the more central issues of the exchange rate and reserve asset regimes, one is more likely to find agreement on means than on ends. Even the notion that the international monetary system should be neutral with respect to its impact on domestic economic policy, a proposition that has a considerable intellectual appeal and that dominated U.S. official thinking during the early 1970s, is not widely accepted in central banking circles. Moreover, neutrality as a goal is losing support in the United States as outside

constraints on domestic economic policymaking are sought to limit the inflationary biases found in almost every country.<sup>1</sup> Therein lie the roots of the current nostalgia for the gold standard as well as the much more practical striving toward fixed rates among central bankers and many European statesmen. A detached, nonprescriptive perspective therefore affords a better understanding of how, for example, the alternate striving for autonomy and for external constraint in domestic economic policymaking shapes the international monetary system.

A word about the audience I envision for this book may be helpful to readers. On the one hand, I have sought to write about law in a way that will make it understandable to those readers whose primary interests lie in economic and political fields. On the other hand, I have also sought to write for lawyers who shy away from international monetary matters under the impression that the economics is too difficult or the institutions too mysterious to be approachable by lawyers. In short, this book will, I hope, expose to general view—for lawyers, economists, political scientists, and governmental officials alike—the legal foundations of the international monetary system as it has evolved from the gold standard period before World War I to the present day and will do so in a way that emphasizes the interrelationship of legal, economic, and political factors.

I should like to acknowledge a large number of debts. Perhaps the main one is to the ambiance at the University of Chicago. It led me to undertake a book that does not fit within any single discipline and that cannot be said to contribute to any narrowly defined body of existing scholarly literature. Although I have been a professional lawyer teaching in a law school, I very quickly became acquainted, not just by reading their works but also through personal conversation, with the thinking on international monetary affairs of my economist colleagues Milton Friedman and Harry Johnson, whose intellectual influence in converting world opinion on international monetary policy has been profound. In the Law School I have had the benefit of working within the Law and Economics group, a subset of the Law School faculty composed of both lawyers and economists who are devoted to bridging the gap that separates the two disciplines. The ideas in this book have been gradually developed over more than a decade and one-half of teaching law students a course most recently entitled *International Economic Institutions*. Surely students in most law schools would have found the course a hopeless hybrid that was neither law nor for that matter economics. But at the Uni-

1. On the changing attitudes on the role of the international monetary system vis-à-vis domestic economic policy, see Paul A. Volcker, "The Political Economy of the Dollar," *Federal Reserve Bank of New York Quarterly Review* 3 (Winter 1978-79): 1-12. See also Ralph C. Bryant, *Money and Monetary Policy in Interdependent Nations* (1980), 470-81.

iversity of Chicago future lawyers somehow became almost overnight passionate and accomplished advocates for and against each successive wave of international monetary proposals that absorbed the attention of contemporary finance ministry, central bank, and International Monetary Fund officials.

Another debt is to a group of U.S. government officials with whom I worked during the 1971-74 period, especially on the U.S. proposals to the Committee of Twenty. It is an interesting comment on the intellectual vitality of that group that they have continued to write and speak on international monetary matters since leaving government. Of that number, who were led by such major figures as George Shultz, Arthur Burns, and Paul Volcker (the last of whom has of course returned to the forefront of international monetary events as Chairman of the Federal Reserve Board), I recall particularly the analytical abilities and insights of Jack Bennett, Ralph Bryant, Richard Erb, Arthur Laffer, J. Carter Murphy, Robert Solomon, and Marina Whitman.

A particular word must be said about George Shultz, a former University of Chicago colleague for whom I worked in the U.S. government and who helped me immeasurably in understanding the international monetary events of the early 1970s as we later reviewed, meeting by meeting and conference by conference, the U.S. role in the swift succession of events from the collapse of the Bretton Woods system to the demise of the Committee of Twenty. The object of that review was the writing of the international monetary chapter of our book *Economic Policy Beyond the Headlines*, but traces of our joint work are also to be found in these pages. I should, of course, warn the reader that my own experiences during the 1971-74 period account not only for some of the necessarily undocumented statements I have made about U.S. policy but also for certain biases in attitudes expressed toward the issues of that period.

I have had the benefit of discussions with a number of Fund, U.S., and British government officials. Since active officials have a right to anonymity in return for discussing sensitive current issues, I shall mention only two—Joseph Gold and Jacques Polak—who have recently retired from full-time service with the Fund but whose unparalleled experience from the early Bretton Woods period to the present made their assistance particularly valuable.

A note is warranted about the special contributions of Joseph Gold, the Fund's former General Counsel, to the literature on the International Monetary Fund. His comprehensive writings on the meaning of the Articles of Agreement, and on their interpretation by the various organs of the Fund, not only have been invaluable to me but have relieved me of any need, perhaps I should say any temptation, to provide a legal treatise on the law of the Fund. More important, his writings provide for the outsider an in-

dispensable substitute for access to internal Fund documents. From my own experience when I did have access to Fund documents I realize that published documents often cannot be properly understood without access to prior drafts, to proposals and comments by national governments, and to memoranda by the Fund's legal and research departments. Gold's writings often extract the essence of these sources without betraying the spirit of confidentiality among participants that the Fund's niggardly publication policy seeks to protect.<sup>2</sup> At the same time his writings have over the years become so extensive and in some instances have come to cover the same ground from so many points of view that it may be useful to the reader to have at least a partial guide to the Gold writings. I have attempted to provide one, admittedly sketchy and imperfect, by setting forth a select list of those writings (see p. 362), and by referring to Gold's always authoritative and helpful published works when I have found them particularly striking in formulation or penetrating in insight.

Two British journalists with a scholarly interest in the history of money, Samuel Brittan and William Rees-Mogg, were generous with their time and knowledge. The value of conversations with Edward Bernstein, one of the architects of Bretton Woods and a highly informed commentator on the current scene, can only be fully appreciated by those who know this extraordinary economist and public servant. I have had the benefit of access to a comprehensive book-length, as yet unpublished, manuscript by Richard W. Edwards, Jr., dealing with the current law of the International Monetary Fund. Robert Aliber gave indispensable advice on historical sources and read a large portion of the manuscript. Samuel Brittan commented on several chapters.

Successive deans of the University of Chicago Law School, particularly the incumbent Gerhard Casper, made generous, even extravagant, concessions in adjusting my teaching duties to the demands of my research. The Law School library staff cheerfully met my unreasonable requests, especially for obscure and dated documents. The Law School's Law and Economics Program provided financial support. Without the research and editorial assistance of Barbara Donagan, a professional seventeenth-century British historian who admirably adapted her considerable talents to the twentieth century and to law and economics as well, I could not possibly have at-

2. In part, the gap created by the Fund's publication policy has also been filled by the official Fund history. See J. Keith Horsefield et al., *The International Monetary Fund, 1945-1965: Twenty Years of International Monetary Cooperation*, 3 vols. (1969), and Margaret Garritsen de Vries, *The International Monetary Fund, 1966-1971: The System under Stress*, 2 vols. (1976). But for outside scholars the Fund history is too little in the sense that most of the life has been drained from the disputes it chronicles, and too late in the sense that the most recent events described took place in December 1971, which in view of the tumultuous change of the 1970s must seem like the dawn of the modern era to most contemporary students of international monetary problems.

tempted, much less completed, this book. Glynis Gore researched various points, and Ralph Strohl typed all too many drafts of early chapters. Gayle McKeen ably turned her hand to research, typing, and preparation of the index.

*University of Chicago*  
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