

Georgetown University Law Center
Law and Policy of International Economic Regulation

Law J/G 1218-08
Fall 2016 Tuesdays 1:20-3:20pm, McDonough 588

Professor R. Michael Gadbaw
Adjunct Professor and Senior Distinguished
Fellow
Institute of international Economic Law
7609 Hackamore Drive
Potomac, MD 20854
Tel. 301-502-8769
rmg57@law.georgetown.edu

Professor Robert Thompson
Hotung 6012
Tel. 202-661-6591
thompson@law.georgetown.edu
Elizabeth Cavendar
Assistant to Prof. Thompson
(202) 662-9322
ecc85@law.georgetown.edu

Note: on September 28,2016, the school will convert to a new email system and the emails after that date will be rmg57@georgetown.edu, thompson@georgetown.edu and ecc85@georgetown.edu.

Seminar Syllabus

Contents

I. Subject of the seminar, grading, informal lunches and office hours	Page 1
II. Tentative class schedule and reading assignments	Page 5
III. Additional Resources	Page 13
IV. Research Papers and Deadlines	Page 15
V. Appendices.....	See Canvas

I. Subject of the seminar

Two dramatic developments over the past few months have highlighted the importance of international economic law to the democratic challenges facing the world and placed into question many of the assumptions about the benefits of the global legal order that has evolved since the Second World War. In essence, is globalization good or bad has been put at the top of the political agenda. In June, the British government led by David Cameron held a referendum on “Brexit” which put to a popular vote the question whether Britain should remain a member of the European Union. The decision in favor of Brexit resulted in not only a change of UK leadership but has also overturned to architecture or European integration with important consequences for the regional and global economy. Meanwhile, parallel forces have emerged in the US political system with both candidates for President

campaigning against a signature initiative of President Obama in the Trans Pacific Partnership agreement, the largest and most ambitious free trade agreement ever negotiated.

These developments are part of an evolving landscape and provide entry points for our consideration of the political, economic and legal issues that characterize international economic law and regulation. They come in the aftermath of the Financial Crisis of 2008-2009, a major shock to the international economic order with effects still being felt eight years later in the form of stagnant economic growth, manufacturing unemployment, unequal wage growth and political discontent with the impact of globalization. Taken together, these factors have called into question the entire framework of international norms and institutions known as Bretton Woods and the so-called Washington consensus around economic policies of free movement of trade and capital, market based regulation and macroeconomic stability.

The seminar has two basic objectives:

- **Go broad:** give students an opportunity to look under the hood at the different regulatory regimes that form the core elements of international economic regulation: trade, finance, monetary, investment and corruption;

- **Go deep:** assist students in the completion of a research paper on a legal topic of their choice drawing on the insights from the survey of regulatory regimes and issues.

This seminar was inspired by John H. Jackson who was actively involved in teaching and developing this seminar and the ideas we seek to explore until his passing in 2015. John was a pioneer in examining the fundamental character and role of legal norms, regulatory systems and international institutions in an increasingly interdependent world. He sought solutions to problems that are inherently global in character -- trade protectionism and financial stability -- even as national governments remain the center of gravity for political authority and accountability.

We will develop three broad themes in evaluating the coherence of our global regulatory order:

- How were our international economic regulatory structures shaped by crises?
- What are the key problems facing the international economy for which it is critical to have an effective international regulatory regime?
- Who are the people and what are the ideas that shape our thinking (past and present) about the role of regulations in the global economy?

The seminar proposes to address these questions by taking the global trading system as the point of departure because trade has the most advanced set of rules and an institutional structure that has been singular in its ability to provide dispute settlement and enforcement, even as it has failed in its attempts to adopt new rules through traditional trade negotiations. The critical question here is not simply how

the system works, but what combination of political economy, historical path dependency or the essential nature of the problems led it to take the form that it did and how appropriate is that form to the problems that lie ahead.

The seminar will consider to what extent other regulatory arenas lend themselves to a norms oriented approach, taking up questions such as micro and macroprudential regulation, currency manipulation and monetary policy, the regulation and protection of investment and capital flows and the use of regional trade agreements to promote new regulatory norms in areas such as antitrust.

The seminar will consider the nature of legal norms for dealing with different types of international economic activity; the role, governance and legal formality of international institutions; and the importance of national sovereignty and subsidiarity.

This seminar is designed to afford a special opportunity for study to a small group of students with special interests in the law of international economic relations. The spirit of the seminar is that of a group of scholars exploring together a subject of intellectual and policy interest. The professors will not be “teaching,” but jointly analyzing the subject with the students. Each student will be expected to participate actively in all sessions, including the sessions during which papers will be presented.

The seminar is organized with an initial set of eight sessions that will look at each of the major regulatory systems that deal with the regulation of key areas of international economic interaction, namely trade, finance, monetary, investment, corruption and antitrust regulation. The sessions are intended to give an overview of each individual area, looking at both the rules and the institutions that make up the global regulatory architecture. Because a number of important issues cut across regulatory arenas, we will consider how each arena works with the others.

Students will be actively involved in each class session, providing response papers, contributing to the weekly discussions and will be expected to write a research paper on a relevant topic under the guidance of one of the professors. The seminar will be taught by professors with a wide range of experience in academia, private practice and government service. Distinguished outside experts may also be called upon to address particular topics within this framework.

Each student will select a subject for a research paper in consultation with one of the professors. Lists of possible topics are identified in the Appendix to this syllabus (on Canvas). Professors typically meet with students to discuss their first drafts and again before the final paper is submitted. In the past, students have published a number of papers from the seminar and students are encouraged to pursue this opportunity.

Students will orally present the essence of their papers at seminar sessions 9 to 12, but each student will also be considered “the expert” on his/her subject during the

term. Each student should therefore begin to work on the research paper as soon as possible.

We will provide a schedule for these oral presentations later in the semester. For the oral presentation, each student scheduled should bring sufficient copies of a brief outline (2 to 4 pages) to hand out to everyone (including visitors) in the seminar, (i.e. bring no less than 25 copies to hand out). You should expect to speak no more than 15 minutes to leave time for questions and feedback on your topic.

Prerequisite: The approach of this seminar is to appeal to a broad spectrum of students ranging from those who have specialized in one or more aspects of international law to those with less exposure but who see the value in exploring the entire spectrum of issue. Students may want to familiarize themselves with basic principles of international economic law and areas of international regulation such as international trade, investment and financial regulation. An entertaining way to familiarize yourself with the issues we will address in this seminar is to watch the four hour PBS documentary produced by Niall Ferguson, *The Ascent of Money*.
<http://www.pbs.org/show/ascent-of-money/>

This seminar has helped inspire (and has been inspired by) a series of publications that the students are encouraged to use as background resources:

- a) Cottier, Jackson and Lastra, *International Law in Financial Regulation and Monetary Affairs*, Oxford University Press (2012).
- b) Gadbow and Thompson (eds.), *Trade, International Economic Law and the Challenges of the Global Economy: A Symposium in Honor of John H. Jackson* published in two editions of the Journal of International Economic Law Volume 17, Numbers 3 and 4, September and December 2014.
- c) A collection of articles as *A Tribute to John H. Jackson*, edited by R. Michael Gadbow, Journal of International Economic Law, Volume 18, Issue 2 (2016).

Grading:

Course grades are based on three factors: response papers prepared for each of the first eight sessions, class participation and the final research paper.

Students are required to write short response papers for each of the eight initial sessions that will form the basis for the discussion in each session. You must provide to Profs. Thompson and Gadbow (by 5PM on the day before class by email to thompson@law.georgetown.edu and rmg57@law.georgetown.edu) three paragraphs responding to the readings on what about the reasoning captured your attention, was particularly useful to your thinking or that you disagreed with and Why?

The approximate weighing for each in the grade will be:

Response Papers/Class Participation	(20%)
Research Paper ¹	(80%)

Response Papers for Each Session Students will be expected to prepare a short response paper for Sessions 1-8 and 13. The papers should provide a brief reaction to the reading or responses to the questions posed in the Syllabus for that session. Students should post their papers by 5:00pm on the Monday before the relevant class by cutting and pasting them into the relevant section of the Current Collaborations section of Canvas for the LAPIER seminar.

Seminar Research Paper - Important Dates

- Topic Due: 4th Seminar session (September 20)
- Outline Due: 6th Seminar session (October 4)
- Seminar Presentations with outlines, to be scheduled in November
- Draft paper due at seminar: November 22
- Final paper: January 10, 2017 unless graduating in January 2017 in which case, papers are due January 3, 2017.

Informal Lunches:

All students are invited to sign up for an informal lunch hosted by your professors to give us a chance to get to know each other. A sign up sheet will be distributed during the first class session.

Office Hours

Professor Thompson: Hotung 6012. Call 661-6591 or email thompson@law.georgetown.edu for an appointment or come by between 10:30 a.m. and 11:45 a.m. on Tuesdays.

Professor Gadbaw: Call (301-502-8769) or email (rmg57@law.georgetown.edu). Professor Gadbaw would be happy to meet with students individually or collectively before (12 to 1:15pm) or after class (3:30pm to 4:30PM) on Tuesdays. At other times, call for an appointment.

II. Class Schedule and Reading Assignments (subject to revision)

We will strive to ensure that all reading assignments are uploaded to Canvas or made available directly through a link.

¹ See the section on Research Papers for additional insight into the grading of the papers.

Session 1 – August 30: Organization of the Seminar and Overview of the Topics and Issues. (Professors Gadbow and Thompson)

- Introduction to the course: scope, basic concepts of IEL and approach.
- Role play based on the first session response papers.
- What is global economic regulation and why is it important?
- To what extent was the recent financial crisis the result of a regulatory failure?
- What have Brexit and the US election debate over TPP told us about the challenges facing international economic law?
- **Reading:**
 - The Syllabus for this course. (Available on Canvas.)
 - Hillary Clinton on Free Trade
http://www.ontheissues.org/2016/Hillary_Clinton_Free_Trade.htm
 - Donald Trump on Trade
http://www.ontheissues.org/2016/Donald_Trump_Free_Trade.htm
 - Bernie Sanders on Trade
http://www.ontheissues.org/2016/Bernie_Sanders_Free_Trade.htm
 - Theresa May's speech on Brexit
<http://www.conservativehome.com/parliament/2016/04/theresa-mays-speech-on-brex-it-full-text.html>
 - The Times, Saturday June 18, 2016, "Remaking Europe: the best outcome of next week's referendum would be a new alliance of sovereign EU nations dedicated to free trade and reform, led by Britain."
<http://www.thetimes.co.uk/article/remaking-europe-h7lcs8bw>
 - The Mail, Sunday June 19, 2016, "For a safer, freer more prosperous – and, yes, an even Greater Britain: why we urge you to Vote Remain."
<http://www.dailymail.co.uk/debate/article-3648681/THE-MAIL-SUNDAY-COMMENT-Vote-Remain-safer-freer-prosperous-yes-GREATER-Britain.html>
- **Response Paper:**
 - Completion of the response paper per Syllabus (see below).
- **Optional background reading:**
 - Look at the pdf describing the Brexit options; scan Vox EU e-book, *Brexit Beckons* and articles by Martin Wolf on Canvas.
 - *Trans-Pacific Partnership: An Assessment*, edited by Cathleen Cimino-Isaacs and Jeffrey J. Schott, July 2016. Also available as an e-book on the Peterson Institute website in two volumes.
<https://piie.com/publications/piie-briefings/assessing-trans-pacific-partnership-volume-1-market-access-and-sectoral>
<https://piie.com/publications/piie-briefings/assessing-trans-pacific-partnership-volume-2-innovations-trading-rules>
 - Review the Powerpoint presentation in Canvas: Gadbow, "The Law and Policy of International Economic Regulation."
 - Chapters 1, 6 and 7 of Jackson, Davey & Sykes, *International Economic Relations* 6th edition.

Required Assignment:

1. Complete the questionnaire in Module 1 of Canvas.
2. Sign up for lunch with your professors. (Optional)
3. Prepare a response paper (mandatory):

Please prepare at least a three paragraph paper addressing any aspects of the following hypothetical you find interesting. The exercise is intended to identify issues you might want to explore in the course of the seminar possibly in your research paper. Your strategic direction is an indication of your basic orientation toward globalization that we want to develop and possibly challenge. (The professors claim no ability to predict the election results or offer any commentary about a particular result, but offer a hypothetical for working through key current issues of international economic regulation).

You are a brilliant international lawyer and the managing partner of the international economic law department of your firm. On the same day, you and your London office are approached by the cabinet level appointee in charge of trade for the United States and the United Kingdom to help them devise their international economic strategy in light of the Brexit vote (for the UK) and the election of President Hillary Clinton (for the US). These representations involve a substantial retainer that would allow you to expand your practice with significant new hires as needed based on an outline of the key issues. You believe this is the opportunity of a lifetime for you personally and for your firm but you need to convince the partners in your firm that you have the ability to identify the key issues and the fundamental strategic direction each country should take. You also think there is synergy in advising both the US and UK governments at the same time. Happily, both clients agree and have offered to waive any conflicts of interest from the joint representation.

The point of departure is the position of the new leadership (Prime Minister May and President Clinton) from their statements in the course of their election. However, this is only the beginning because the challenge of governing is much more difficult than getting elected. Identify any areas where the campaign promises may pose the greatest challenges in governing.

Your clients are considering capturing their proposals in the form of legislation – the International Economic Strategy Act of 2017. What should be the key chapters: authority, institutions, negotiations, enforcement, etc.

Please address the following questions with particular focus on the critical legal issues as they relate to basic policy directions:

- Can support for trade/globalization continue to be the basis for your international economic relations or is it time to pivot away from trade/globalization?

- What adjustments to trade/globalization policy will be needed to:
 - address the costs of adjustment and the perceived effects on jobs and inequality of past trade agreements;
 - restore public trust in markets and government regulation;
 - reflect the relative priority of enforcement or new trade negotiations and whether the same person be in charge of both;
 - reform the architecture of global regulation (changes to WTO, IMF, the G20, a new WFO, etc.)?

- What are the implications of a pivot from trade/globalization for other international regulatory arenas (monetary, finance, investment, competition and anticorruption)?

- What are the most challenging aspects of this assignment? Where do you feel you have existing strengths? Weaknesses? Is there an issue here to which you would like to devote your research paper?

Do not be afraid if you have limited background from which to answer these issues. You will be evaluated on your participation and the quality of your research paper so your baseline knowledge is of only limited importance.

Do not be deterred by the breadth of these questions: we want your first impressions based on your background and any reading you have done relevant to this class. Your paper will provide a baseline from which to see at the end of class how much your thinking has evolved during the course. Just do your best in the time available to get you thinking about the issues we plan to address.

LLM Students: If you are an LLM student and would prefer to substitute another country for the United States or the United Kingdom in this hypothetical or if any student wants to substitute President Trump, feel free to do so.

Session 2 - September 6: Path dependence – The Historical, Economic and Political Setting for the GATT/WTO (Professor Gadbow)

- How did the global trading system evolve to be the most important systemic regulator in the history of mankind?
- How does this contrast with the evolution of the global financial and monetary system?
- What are the lessons of the recent financial crisis for the future of global regulation of trade and investment?

- **Assigned reading:**

- o *Systemic Regulation of Global Trade and Finance: A Tale of Two Systems*, R Michael Gadbow, 13 *Journal of International Economic Law* 551-574 (2010). (Available on Canvas.)

- R. Michael Gadbow, “The Prevention of Systemic Failure as a Unifying Principle of International Economic Law” 17 *Journal of International Economic Law* 823 (2014).
- John H. Jackson, “Policy Underpinnings of International Juridical Institutions” in Appendix to this Syllabus on Canvas.
- Review the Powerpoint presentation on the Canvas site:
 - The Historical, economic and political setting for the GATT/WTO by Professor Gadbow

Session 3 – September 13: International Financial Regulation (Professor Thompson)

- Consideration of the Turner Review analysis of the causes of the financial crisis.
- The evolving structure of prudential financial regulation.
- Stock taking and unfinished business – do we need a World Financial Organization?
- Assigned reading for 3rd session:
 - Robert B. Thompson, “Financial Regulations’ Architecture Within International Economic Law” 17 *Journal of International Economic Law* 807 (2014).
 - *The Turner Review; A Regulatory Response to the Global Financial Crisis* (FSA 2009) http://www.fsa.gov.uk/pubs/other/turner_review.pdf [pp. 7-9, 11-37, 52-53]
- Optional Reading
 - Thomas Cooley and Ingo Walter, Chapter 1: “The Architecture of Financial Regulation,” in Viral V. Acharya, *Regulating Wall Street; the Dodd--Frank Act and the New Architecture of Global Finance* (Wiley 2011).

Session 4 – September 20: International Financial Regulation Eight Years After the Financial Crisis: The Case of “Too Big to Fail (Professor Thompson)

Your response paper should focus on two issues:

First, we will discuss whether statutory reforms in Dodd-Frank and elsewhere will, as the President and others have said, prevent a similar meltdown from occurring again. More specifically, will the banking reforms prevent "too big to fail?" Persaud and Tucker (on Canvas) provide contrasting views of whether bailouts or bailins are effective responses. Take one of those as a starting point for your response paper, do other reading as are accessible to you and come prepared to add to the discussion of the extent to which you feel comfortable that regulation constrains or prevents the things that led us to the financial crisis.

Second we will focus on the IMF and its possible role in international financial regulation. Read the IMF Report on Cross-Border Bank Resolution (also on Canvas) with particular attention to what the IMF might do different from what it has done in the past and different from what the Fed and the other banking regulators are doing.

- Assigned reading for 4th session (available on Canvas):
 - o Avinash Persaud, “Bail-ins Are No Better than Fool’s Gold”
 - o Paul Tucker, “Regulatory Reform, Stability and Central Banking”
 - o International Monetary Fund, Cross-Border Bank Resolution: recent Developments <http://www.imf.org/external/pp/ppindex.aspx> (June 2014)
- Optional Reading
 - o Charles Piggott, Regulators Plan End game for “Too Big to Fail”, Global Banker (July/August 2014)

Session 5 – September 27: Regional Trade Agreements – TPP – What is It and What are It’s Prospects? (Professor Gadbow)

- What is the significance of the TPP?
- How is China affected by the TPP?
- What is regulatory coherence and why include areas like “Competition” in the TPP?
- **Assigned reading for Session 5:**
 - Jeffrey Schott, “Overview: Understanding the Trans-Pacific Partnership” in *Trans-Pacific Partnership: An Assessment* editors Cimino-Isaacs and Schott (2016).
<https://piie.com/system/files/documents/schott201605paper.pdf>
 - Scan the text of the TPP on USTR.gov and pick a Chapter for closer review: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>
 - Gadbow, “Chapter 18 Competition” in *Assessing the Trans-Pacific Partnership: Innovations in Trading Rules*, published by the Peterson Institute and available at: <https://piie.com/publications/piie-briefings/assessing-trans-pacific-partnership-volume-2-innovations-trading-rules>
- **Optional reading:**
 - Cimino-Isaacs and Schott, *Trans-Pacific Partnership: An Assessment* Peterson Institute (2016).
 - Hugn M. Hollman and William E. Kovacic, “The International Competition Network: Its Past, Current and Future Role” 20 Minn. Journal of International Law 274 (2011)

- **International Competition Law: A New Dimension for the WTO?** 1st Edition by [Martyn D. Taylor](#)
- Thomas J. Bollyky, “Regulatory Coherence in the TPP Talks” in Lim, Dims and Low, *The Transpacific Partnership; A quest for a Twenty-first Century Trade Agreement* (2012).
- Robert D. Anderson, “Systemic Implications of Deeper Transatlantic Convergence in Competition/Antitrust Policy” in Evenett and Stern, *Systemic Implications of Transatlantic Regulatory Cooperation and Competition* (2011).

Session 6 – October 4: The Cross-cutting Problem of Corruption and Efforts to Address It: The Prosecutorial Model v. Systemic Solutions. (Professor Gadbow)

- How important is the issue of corruption to the effective regulation of the international system?
 - How effective have international initiatives been in addressing corruption?
 - Is a prosecution model more effective than one aimed at dealing with the root causes of corruption?
- Assigned reading for 6th session:
 - o Ben W. Heineman, Jr., & Fritz Heimann, *The Long War Against Corruption*, 85(3) FOREIGN AFF. (May/June 2006). Available through WESTLAW (search term: 2006 WLNR 8849584).
 - o R. Michael Gadbow, “A 21st Century Strategy for Combatting Corruption” Presentation at CSIS, January 21, 2014. (Available on Canvas.)
 - Optional reading:
 - o Robert Leventhal, *International Legal Standards on Corruption*, 102 AM. SOC’Y INT’L L. PROC. 203 (2008). Available through WESTLAW.
 - o L. Murphy Smith et al., *A Multinational Analysis of Corruption and Economic Activity*, 16(1) J. LEGAL, ETHICAL, AND REG. ISSUES 15-20 (“Introduction” & “Review of Related Literature” & “Corruption Perceptions Index (CPI) and Transparency International” sections) & 31 (“Conclusions” section) (2013). Available through PROQUEST, ABI/INFORM COMPLETE.
 - o Eric C. Chaffee, *The Role of the Foreign Corrupt Practices Act and Other Transnational Anti-Corruption Laws in Preventing or Lessening Future Financial Crises*, 73 OHIO ST. L.J. 1283 (2012). Available through WESTLAW. [Parts I, III, IV, & V only]

- o Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. R. 351 (2010). Available through WESTLAW. [Parts I, III, V, & VI only]
- o Keith M. Korenchuk et al., *Emerging Global Standard for Effective Anti-Corruption Compliance: Meeting the Expectations of Governments Worldwide*, BLOOMBERG LAW, Feb. 8, 2013, available at <http://about.bloomberglaw.com/practitioner-contributions/emerging-global-standard-for-effective-anti-corruption-compliance/>.

October 11, 2014 – No class. This day is a constructive Monday

Session 7 – October 18: Private Capital Movements and the Protection of International Investment (Professor Thompson) and Currency Manipulation (Professor Gadbow)

- What are the key elements in the protection of international investment?
 - Why has the regime for protecting international investment evolved so differently from that dealing with trade?
 - Is there a convergence or divergence in the regulatory regimes for trade and investment?
 - Currency manipulation: How does the Joint Declaration of the Macroeconomic Policy Authorities of the TPP address currency manipulation?
- Reading for 7th session (Please check Canvas for possible changes or additions to the reading assignment for this session)

Investment

- o Joost Pauwelyn, “The Fat the Edge of Chaos? Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be Reformed”, ICSID Review (Spring 2014)
- o Investment chapter of the TPP: <https://ustr.gov/sites/default/files/TPP-Final-Text-Investment.pdf>
- o Theodore H. Moran and Lindsay Oldenski, “Provisions on Investment” and Gary Clyde Hufbauer, “Investor-State Dispute Settlement” in Cimino-Isaacs and Schott, eds. *Trans-Pacific Partnership: An Assessment* Peterson Institute (2016). Available at <https://piie.com/publications/briefings/piieb16-1.pdf>

Currency Manipulation

- o C. Fred Bergsten and Jeffrey J Schott, “TPP and Exchange Rates” in Cimino-Isaacs and Schott, eds. *Trans-Pacific Partnership: An Assessment* Peterson Institute (2016). Available at <https://piie.com/publications/briefings/piieb16-1.pdf>
- o The Joint Declaration of the Macroeconomic Policy Authorities of the TPP Countries. https://www.treasury.gov/initiatives/Documents/TPP_Currency_November%202015.pdf

- Optional Reading

- o José Enrique Alvarez, *The Evolving International Investment Regime: An Overview Chapter*, 344 RECUEIL DES COURS 211-220 (2009), available at <http://0-www.heinonline.org.gull.georgetown.edu/HOL/Page?handle=hein.hague/recueil0344&id=193&collection=hague&index=hague/recueil>.
- o R. Michael Gadbaw, *Creating a Legal Framework for Investing in Myanmar That Links Environmental Protection, Labor Rights and Social Governance With Economic Development* (Workshop Discussion Paper, Aug. 2012). Available on Canvas.
- o Claus D. Zimmermann, *Exchange Rate Misalignment and International Law*. 105 AM. J. INT’L L. 423 (2011). Available through WESTLAW.

Session 8 – October 25: Monetary Law and Regulation: Limitations of the Current Framework (Special Guest Professor Rosa M. Lastra, School of Law, Queen Mary University of London)

Drawing upon a multi-level governance approach, Professor Lastra will discuss the limitations of the current framework of monetary regulation, which relies mostly upon central banks (national institutions), with some functions being carried out at the regional level (the example of EMU/banking union or proposals for establishing an ASEAN macro prudential supervisor) and some other functions being performed at the international level, albeit under an incomplete and obsolete set of institutional arrangements with the IMF playing the key role, while the BIS and international standard setters also play a role.

The lecture will complement session 2 on path dependence (comparing the trade and monetary frameworks) and will expand and complement sessions 3 and 4 on international financial regulation.

The key institutional actors when it comes to money and finance are still central banks. Central bank cooperation is not enough to ensure financial stability as it relies on voluntary arrangements (e.g., central bank liquidity swaps) and soft law. Hence the starting point of any discussion of monetary regulation is the consideration of the status, functions and objectives of central banks (in particular Fed, ECB, Bank of Japan, PBOC and Bank of England).

After the crisis, not only have central banks expanded their traditional mandates (monetary policy into unconventional measures, and LOLR into programmes of liquidity assistance to non-banks) but they have also received new roles as part of their financial stability mandate as crisis managers and macro prudential supervisors. Mohamed El-Erian in a recent book refers to central banks as 'the only game in town'.

This raises at least two key issues for lawyers:

- (1) Central banks can no longer inhabit just a 'world of policy'. They need law, not only to govern their constitutional and administrative requirements but also to inform central bank policies.
- (2) The expansion of the mandate is along national lines (with the exception of the ECB). Central banks have become ever more powerful national institutions. The international spirit is often missing, except for banking union and efforts in the area of cross border resolution. This raises important considerations regarding the extraterritorial dimension of [national] monetary policy from the perspective of distributional justice (e.g. QE and new currency wars).

The lecture will then present the regional and international dimension, considering the 'financial trilemma' outlined by Dirk Schoenmaker. Professor Lastra will draw attention to the nature of the IMF Articles of Agreement and the need to rethink the Bretton Woods institutions to respond to the challenges of today's monetary and financial system.

Assigned reading for Session 8:

- Chapters 1, 2, 12 and 14 of Rosa M. Lastra, *International Financial and Monetary Law*, Second edition, Oxford University Press (2015).
- Dirk Shoenmaker, "The Financial Trilemma" (2011).
http://personal.vu.nl/d.schoenmaker/Financial_Trilemma.pdf
- Review Rosa M. Lastra presentation: "Legal Underpinnings of the Monetary and Financial System." Available on Canvas.

Optional reading:

- Rosa M. Lastra, "The role of central banks in monetary affairs: a comparative perspective" in *The Rule of Law in Monetary Affairs*, edited by Thomas Cottier, Rosa M. Lastra, Christian Tietje and Lucia Satragno, Cambridge University Press (2014).

- Rosa M. Lastra, “Do We Need a World Financial Organization?” *J Int. Economic Law* (2014) 17 (4): 787-805 first published online November 28, 2014.
- Chapters 10 and 13 of Rosa M. Lastra, *International Financial and Monetary Law*, Second edition, Oxford University Press (2015).
- Rosa M. Lastra, “Europe under Threat: The Political Dynamics of Brexit Interacting with Weakness in the European Financial System” Statement No. 42 of the European Shadow Regulatory Committee, September 16, 2016.
- Mohamed A. El-Erian, *The only game in town: Central banks, instability and avoiding the next collapse*, Random House (2016).
- Chris Brummer, *Soft Law and the Global Financial System*, Cambridge University Press (2011).

Session 9 – November 1 – Presentation of Student Papers

Session 10 – November 8 – Presentation of Student Papers

Session 11 – November 15 – Presentation of Student Papers

Session 12 - November 22 – Presentation of Student Papers

Session 13 – November 29 – The Shifts and Shocks – What is left to do in reform of the international regulatory architecture. (Professors Gadbaw and Thompson)

- In this session, we will try to identify the major challenges facing the international regulatory regime and what role international economic law should play in addressing them.
- Assigned reading:
 - The final chapter (“Conclusion: The Fire Next Time”) in Martin Wolf, **The Shifts and the Shocks: What We’ve Learned -- and Have Still to Learn -- from the Financial Crisis** (2014)

III. Additional Resources

Reference materials:

Especially important:

The breadth of issues to be addressed in this seminar pose a special challenge in identifying course materials. There follows suggestions with a focus on trade/financial/monetary/investment/corruption issues:

General

Martin Wolf, **The Shifts and the Shocks: What We've Learned-and Have Still to Learn-from the Financial Crisis** (2014) This book provides a very interesting overview of the economic and policy issues underlying the legal issues we will address in this seminar. His last Chapter is especially interesting.

Trade

- a) Jackson, Davey & Sykes, *Legal Problems of International Economic Relations* (6th ed., West Group, 2013).
- b) Documents Supplement to the 6th edition (West Group, 2013) Jackson, Davey & Sykes, *Legal Problems of International Economic Relations*, 2013 (West Group).
- c) This Syllabus, and its Appendices (Canvas site).
- d) Materials distributed in class from time to time for this seminar.
- e) Materials posted on the Canvas for this seminar (usually includes materials distributed).

Finance/Monetary/Investment/Corruption

- a) Alexander, Dhumale and Eatwell, *Global Governance of Financial Systems; the International Regulation of Systemic Risk*, Oxford University Press (2006)
- b) Chris Brummer, *Soft Law and the Global Financial System*, Cambridge (2012)
- c) Rosa Lastra, *International Financial and Monetary Law*, Second Edition (2015).
- d) Daniel K. Tarullo, *Banking on Basel* (2008)
- e) Ben Heineman, Jr., *High Performance and High Integrity (Memo to the CEO)* (2008) and *The Inside Counsel Revolution; Resolving the Partner-Guardian Tension* (2016)
- f) Alan Greenspan, *The Age of Turbulence* (2007)
- g) William L. Silber, *Volcker; the Triumph of Persistence* (2012)
- h) Viral V. Acharya, Thomas F. Cooley, Matthew Richardson, & Ingo Walter, *Regulating Wall Street* (2011)
- i) Barry Eichengreen, *Exorbitant Privilege* (2011)
- j) Raghuram G. Rajan, *Fault Lines* (2010)
- k) Benn Steil, *The Battle of Bretton Woods* (2013)
- l) Jose E. Alvarez, *The Public International Law Regime Governing International Investment*, Hague Academy of International Law (2011)
- m) Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law* (2nd ed., 2012) Robert Leventhal, *International Legal Standards on*

Corruption, 102 AM. SOC'Y INT'L L. PROC. 203 (2008). Available through WESTLAW.

- n) L. Murphy Smith et al., *A Multinational Analysis of Corruption and Economic Activity*, 16(1) J. LEGAL, ETHICAL, AND REG. ISSUES 15-20 ("Introduction" & "Review of Related Literature" & "Corruption Perceptions Index (CPI) and Transparency International" sections) & 31 ("Conclusions" section) (2013). Available through PROQUEST, ABI/INFORM COMPLETE.
- o) Eric C. Chaffee, *The Role of the Foreign Corrupt Practices Act and Other Transnational Anti-Corruption Laws in Preventing or Lessening Future Financial Crises*, 73 OHIO ST. L.J. 1283 (2012). Available through WESTLAW. [Parts I, III, IV, & V only]
- p) Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. R. 351 (2010). Available through WESTLAW. [Parts I, III, V, & VI only]
- q) Keith M. Korenchuk et al., *Emerging Global Standard for Effective Anti-Corruption Compliance: Meeting the Expectations of Governments Worldwide*, BLOOMBERG LAW, Feb. 8, 2013, available at <http://about.bloomberglaw.com/practitioner-contributions/emerging-global-standard-for-effective-anti-corruption-compliance/>.
- r) CHRIS BRUMMER, *SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY* (2012)
- s) Chris Brummer, *Why Soft Law Dominates International Finance – And Not Trade*, 13(3) J. INT'L ECON. L. 623 (2010), available at <http://0-jiel.oxfordjournals.org.gull.georgetown.edu/content/13/3/623.full.pdf+html>.
- t) Raghuram Rajan, *Fault Lines; how the hidden fractures still threaten the world economy* (Princeton 2010). [Chapter 8, beginning at p. 156]
- u) Christian Tietje & Matthias Lehmann, *The Role and Prospects of International Law in Financial Regulation and Supervision*, 13(3) J. Int'l Econ. L. 663 (2010), available at <http://0-jiel.oxfordjournals.org.gull.georgetown.edu/content/13/3/663.full.pdf+html?sid=16a20d69-1735-4343-b7c9-c13f005791e6>.
- v) Peter Conti-Brown, *The Power and Independence of the Federal Reserve* (2016).
- w) Lim and Mercurio, *International Economic Law after the Global Crisis; A Tale of Fragmented Disciplines* (2015)

IV. Research Papers and Deadlines

J.D. students should read the seminar paper requirements for J.D. degrees, which are contained in the [Georgetown Law Student Handbook of Academic Policies 2016-2017](http://www.law.georgetown.edu/campus-services/registrar/handbook/index.cfm) (Upperclass Legal Writing Requirement) See, <http://www.law.georgetown.edu/campus-services/registrar/handbook/index.cfm>)

LLM Students are encouraged to use the same format for their papers.

Special Note: Papers that are required to meet the upperclass legal writing requirement must be original work and at least **6,000 words** (excluding footnotes) which typically means **25 typed pages** using customary spacing and margins. (For further details, see the student handbook.)

Deadlines: See dates on page 5. The paper topics must be chosen in a written memo to the professors by the date given. An outline is due in September. The formal first draft is due in November. The final paper is normally due in the registrar's office in December, but an automatic extension is hereby granted until the date in January specified on *page 5*. Be sure to read syllabus statements and requirements for the form of the paper, both in draft and final. At the time it is turned into the Registrar, an electronic copy (on disk or by e-mail attachment) must be sent to Prof. Gadbow or Prof. Thompson.

Grading: Research papers will be evaluated based on the following: difficulty of the topic, quality of the analysis and the research, originality and completion of all requirements.

Topics:

An Appendix to the Syllabus has been uploaded to Canvas that includes helpful research guides and possible paper topics for students to consider as they choose a topic.

Administration: Each student will be assigned to a professor, who will comment on the outline and the first draft and grade the final paper. For administrative convenience, the professors will divide the students so that each professor will have an equal number of J.D. and LL.M. students, if possible. Within categories, assignment will be random.

Professors' Comments on Preparing Research Papers: A good legal research paper should generally do more than simply summarize a set of facts. It should not, for example, spend much space merely paraphrasing a treaty or statute. Basically, the paper should set forth a proposition or hypothesis that it intends to prove or establish with probability, or answer a question.

Tasks Required: A list of the important dates for the seminar is on the first page of this syllabus.

1. Selection of a Topic: Some topics appear in Appendix to this syllabus on Canvas. Your selection should be in the form of a one-page memo to the professors, with a very brief possible outline of major subtopics.

2. Outline and Partial Bibliography. This complete (but tentative) outline should be in the form of a memo to the professors.
3. Brief 15 minute presentation to Seminar of preliminary findings, with a 2-4 page outline handed out to everyone (to be scheduled). (Students must bring 25 copies).
4. First Draft: *Must be "as if final." Do not submit partial drafts, incomplete footnotes, etc. Rough, disorganized, or sloppy draft versions are not acceptable. This will count against your grade. If not adequate, the professor will not read the draft and will require a revision.*
5. Final Draft (due in early January as specified on page 5).

COPIES must be submitted to the professor to whom you have been assigned, the registrar, one copy kept by the student and a courtesy copy to the other professor.

The research paper should be on 8½ x 11 pages, typed, double-spaced, with adequate margins, and punched for a 3-ring binder.

The format of the paper should be as follows: (omission of any item on this list will count against a grade).

1. Title Page. At the top of the title page, include the title, the author (and J.D. or LL.M.), and the date. At the bottom of the page, include the author's address, telephone number, and email address, as well as the course name and number, "Georgetown University Law Center," the professor's name, the number of credits expected.
2. Statement of topic. State in one paragraph precisely what your topic is. For example, write the question you are attempting to answer in your paper.
3. Table of Contents. The second page will be the table of contents, titled at the top with the author's name. A table of contents is important in forming an outline to enable better reader comprehension.
4. The Text should then follow, divided by appropriate sub-divisions and sub-headings, as indicated in the table of contents. Normally for a three credit hour seminar, law students complete a paper of at least 6,000 word (excluding footnotes), which is approximately 25 typewritten pages. Unless permission is obtained, the text cannot exceed 40 pages. (More would normally be the case for more credit, although the quality and difficulty of the research is an important consideration and length alone is not nearly as important.)

In your discussions with the professor on the outline of your research, you will be able to get an idea of the extent of your paper that is appropriate.

5. Footnotes or Endnotes. Proper formatting of footnotes and endnotes for law papers should follow the law review “Blue Book” style, but bibliography entries should also include the author or issuing agency, title, date and city of publication, and publisher.

Note: The so-called “Blue Book” is a book published jointly by a number of law review staffs including Harvard, which, in elaborate detail, gives the system for legal citation used in most law reviews in the United States.

6. Appendices. (If any) e.g. documents or text of relevant treaty language, etc. You can have as much information in the appendices as you wish; however, the professors do not promise to read everything contained therein.

7. Bibliography. A complete bibliography should be included. The most significant five or ten items should be annotated, that is, there should be a short descriptive sentence or two about each of those items and their value.

8. If you use any confidential information, such as statements made to you in interviews that are “off the record,” the front page of your paper should indicate that confidential statements are included, and there should be a separate page at the beginning (following the table of contents) that indicates where each of those confidential statements can be found in your paper, so that we can be sure that the confidence of those statements will be maintained in our files.

Please be careful to follow the format specified above, and in particular, be sure to include an outline or table of contents at the beginning, as well as statement of the problem.

For illustrative purposes, here is the list of last years LAPIER research papers:

- Development Finance, Climate Risk, and Moral Hazard: Issues and Possible Responses
- Global Imbalances and the Future of the International Monetary Fund
- How Ethical Corporations Can Combat Corruption Through Foreign Direct Investment
- Risky Business: Providing an International Regime for Accurate Derivative Pricing
- Achieving International Economic Integration: Regulatory Coherence in the Trans-Pacific Partnership
- How Should the WTO Take Into Account the Prevention of Systemic Failure in Disputes Involving Threats to the Financial System?
- Enforcement in International Investment and Trade Law: History, Assessment, and Proposed Solution
- Current Corporate Governance Framework: Elements and Illusions
- Why a Global Bankruptcy Regime is not the Answer: a Proposal for Sovereign Debt Insolvency and Restructuring Reform

- The Road to Reform: the Dangers of the Federal Reserve's Extended Powers
- Risk, Causes and Solutions of a Corporate Bond Market Liquidity Crisis
- Exchange Rate Misalignments: the Nonviolation Complaint