



# IS LAW MACROPRUDISH?

**Anna Gelpern**

**Georgetown Law and Peterson Institute for International  
Economics**

**EUROPEAN SYSTEMIC RISK BOARD  
ANNUAL CONFERENCE  
SEPTEMBER 21, 2017**

# Overview

**I. Where were the lawyers?**

**II. Where is the law?**

**III. What now?**

# I. “Macprudential”

(Clement 2010)

The first appearance of the term in a public document seems to date back to **1986**. The ECSC report on Recent innovations in international banking (Cross Report) devotes a few paragraphs to the discussion of the concept of “macroprudential policy”... as a policy that promotes “the safety and soundness of the **broad financial system and payments mechanism**” (citation omitted)

# I. Where were the lawyers?

(Meissner 1985, MacCallum 1987)

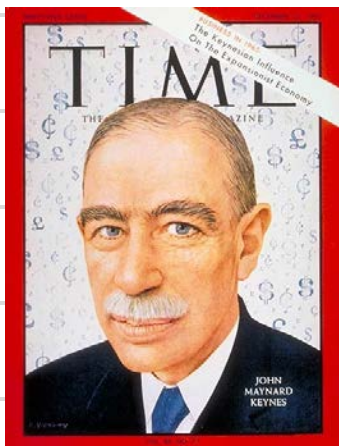
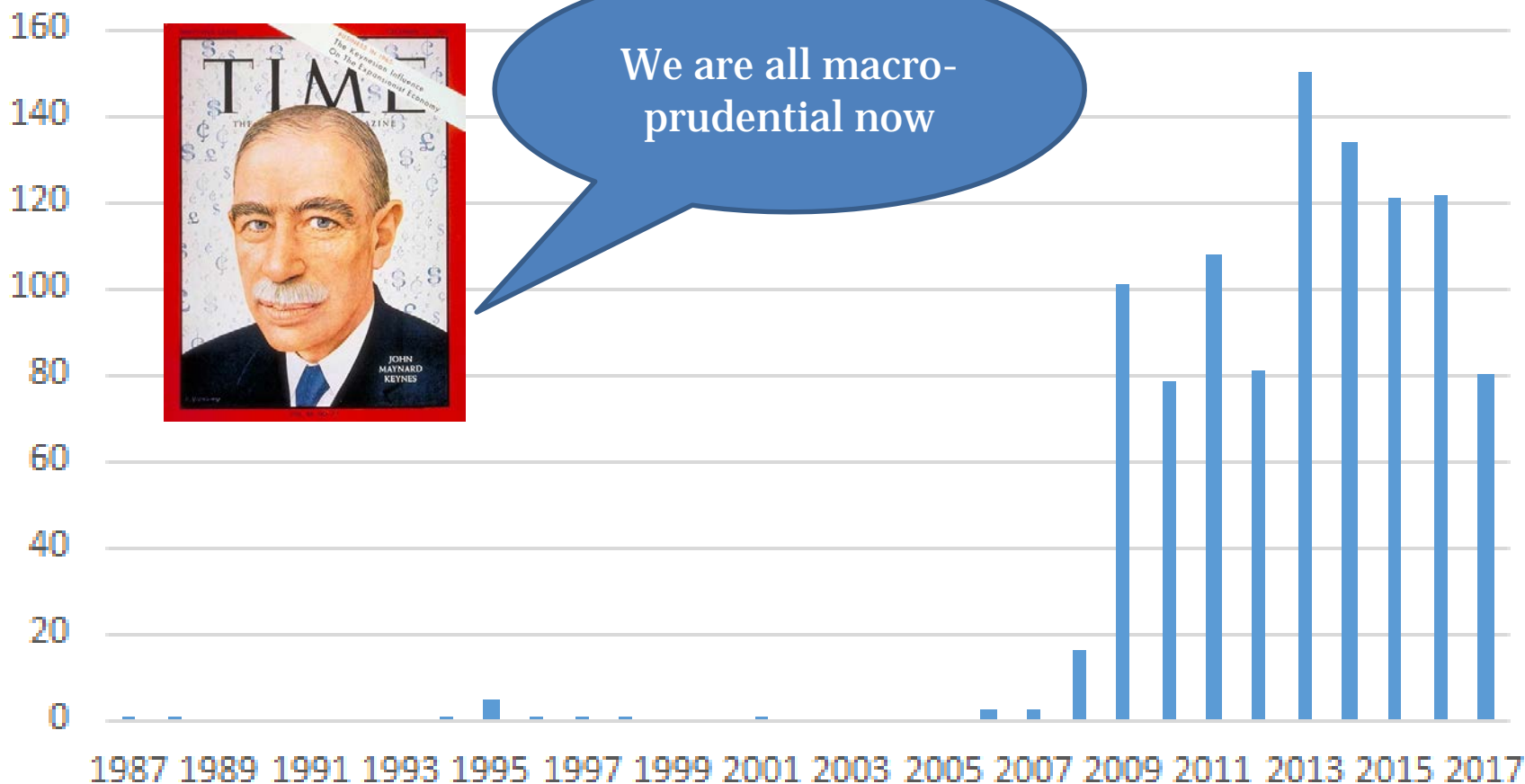
The agencies that formulate the broad thrust of foreign economic policy make up the first U.S. Government subset. They include the Treasury, the State Department, and the Federal Reserve Bank. These agencies are primarily interested in assuring the stability of the international financial system and of the governments in the debtor countries. They argue for “macro-prudential” policies that stabilize the broader system of the world political economy.

The large money-center banks, as compared to regional or local banks, earn a larger and more significant proportion of their income from international loans. A larger proportion of their assets is in the form of sovereign debt.<sup>33</sup> Money-center banks are concerned with macro-prudential issues,<sup>34</sup> with the result that their interests are much the same as those of the sovereign: if the sovereign and the money-center banks are to extricate themselves from the economic

# I. “Macroprudential” *circa* 1985-1987

- Context:
  - Sovereign debt crisis and money center banks
  - Tension between microprudential and macroprudential objectives
- “Macroprudential” is concerned with ...
  - Stability of financial system as a whole
  - *International* financial stability
  - Political economy
  - (Big) bank-government\* nexus
    - State Department is a macroprudential agency

# I. “Macroprudential” in English-language Law Journals



We are all macro-prudential now

# I. “Macroprudential” Now(ish)

- Financial instability and financial regulatory response
- Money (Blair 2010, Ricks 2015, Desan 2015)
- Regulatory cycles (Gerding 2013)
- Legal ethics (Gray 2016)
- Political economy (Levitin 2010, Hockett & Omarova 2017)
- Law and macro (Listokin 2016)

## II. Where Is the Law?

- Instrumental (what “law” do we need to achieve XYZ policy objective, rules anchor expectations, law as intervention)
- Constitutional (global and regional integration, federalism, fiscal and monetary policy, public debt)
- Institutional (agency and firm structure, regulatory authority)
- Private law (contracts, norms)
- Endogeneity problem (regulatory cycle, boundary-drawing, “safe asset” construction)



# II. Constitutions and Budgets



## State Budget Office

Department of Technology, Management & Budget



[Michigan.gov Home](#)

[Budget Home](#)

[Budget and Office of Financial Mgmt. FAQs](#)

[Site Map](#)

[Contact Budget](#)



[Printer Friendly](#)

[Text Version](#)

[Text Size](#)

[Share](#)

[Executive Budget](#)

[Budget Process](#)

[News & Publications](#)

[Financial Reports](#)

[Inside the State Budget Office](#)

[Office of Financial Management](#)

[Office of Internal Audit Services](#)

### Frequently Asked Questions

#### Budget FAQs

Is the State of Michigan required to have a balanced budget?

**Answer:**

Yes. Article V, Section 18 of the Michigan Constitution of 1963 states, "Proposed expenditures from any fund shall not exceed the estimated revenue thereof."

- FAQ Categories
- Select a Category
- Budget FAQs
- State Finances
- Office of Financial Mgmt. - State Employee Payroll
- Office of Financial Mgmt. - Vendors and Payees

[Michigan.gov Home](#)[Budget Home](#)[Site Map](#)[State Web Sites](#)[Contact Budget](#)  
[Privacy Policy](#)[Link Policy](#)[Accessibility Policy](#)[Security Policy](#)[Michigan News](#)[Michigan.gov Survey](#)

# II. Employment, Regulation

Human Resources and Skills Development Canada / Ressources humaines et Développement des compétences Canada

Canada

**Labour**  
www.labour.gc.ca

Français Home Contact Us Help Search canada.gc.ca

Home > Employment Standards

## Labour Employment Standards

Labour Minister  
Overview  
Deputy Minister  
News and Events  
Employment Standards  
Health and Safety  
Workers' Compensation  
Fire Protection  
Labour Relations  
Equality in the Workplace  
Labour Law  
Workplace Trends  
Labour and Globalization


**Our Department**  
Ministers

*The fundamental principle of decency at work underlies all labour standards legislation...*

*Fairness at Work: Federal Labour Standards for the 21<sup>st</sup> Century*

Government officials, business leaders and unions have a long history of collaboration in negotiating fair and equitable employment standards for workers in western societies. Such standards protect the rights of these workers, foster positive workplace environments and proactive relationships between managers and employees and, ultimately, benefit the bottom line of any business.

While the Labour Program focuses on regulating workplaces in the federal jurisdiction, some programs do apply to other workers. Did you know that 90 percent of the Canadian workforce is covered by provincial or territorial labour laws? Only 10 percent of all Canadian businesses are federally regulated.



**Highlights**

- Labour Standards, Operations Program Directives
- Labour Standards, Interpretations, Policies and Guidelines
- Employment Standards Publications
- Laws and Regulations
- Wage Earner Protection Program
- Amended Ontario Fair Wage

# II. Contracts and Money

## ***Gold Obligations Are \$100,000,000,000; Federal Bonds Total \$22,000,000,000***

Obligations outstanding in this country in the amount of \$100,000,000,000 are, it is estimated, affected by the resolution introduced in Congress yesterday abrogating the "gold clause."

The gold clause, which came into general use in this country following the currency inflation of the Civil War, provides for payment "in gold of the present standard of weight and fineness" as to interest and principal on debts. It was designed to protect creditors from payment in depreciated money.

The largest item in the total of indebtedness subject to the gold clause is the \$22,000,000,000 debt of the United States Government.

In addition, upward of \$14,000,-

000,000 of securities issued by States and municipalities is estimated to contain this clause. Most railroad and other domestic corporation bonds contain the clause in their indentures.

Following are estimated totals of securities outstanding here, most of which contain the gold clause:

United States Government securities .....	\$22,000,000,000
State and municipal.....	14,000,000,000
Railroads .....	11,000,000,000
Other domestic corporations.	34,000,000,000
Foreign "dollar" bonds.....	10,000,000,000

In addition to the foregoing totals there are amounts of real estate bonds, farm mortgages, private debts and other contracts which probably call for payment in gold, the volume of which would bring the total above \$100,000,000,000.

The New York Times

Published: May 27, 1933

Copyright © The New York Times

	<b>Made Safe</b>	<b>Labeled Safe</b>	<b>Guaranteed Safe</b>
<b>Issuer</b>	Chartering qualifications (e.g., “fit and proper”) Balance sheet regulation prescribing Asset composition, incl. liquidity coverage Tiered (senior-subordinate) liabilities Net stable funding Minimum capital Activity restrictions Affiliation restrictions Risk retention <i>Portfolio construction</i> <i>Tiered (senior-subordinate) liabilities</i> <i>Negative covenants</i>	Charter, license Primary dealer designation <i>Credit ratings</i>	Eligibility for LOLR loans Eligibility for extraordinary support (institutions) <sup>94</sup> Central bank swap lines <i>Affiliate guarantees</i> <i>Third party guarantees</i> <i>Insurance and other credit enhancement</i>
<b>Asset</b>	Underwriting and product standards Collateral rules (minimum margin, haircut) Central clearing requirements Exemptions and priorities Bankruptcy safe harbors Depositor preference <i>Short maturity</i> <i>Collateral</i>	License to invest Exemptions from concentration limits Permitted investment designation High Quality Liquid Asset designation Asset risk weights Regulatory accounting Stable NAV <i>Credit ratings</i>	Deposit insurance Eligibility for central bank operations (monetary policy, lender of last resort) Eligibility for extraordinary support (contracts) <sup>95</sup> <i>Insurance and other credit enhancement</i> <i>Affiliate support, including bringing off-balance sheet claims on balance sheet</i>

# III. What Now?

## (Sources: ESRB, FSB)

Table 4

### Engagement of types of entities in shadow banking activities

Table 4 summarises the assessment of engagement, where the colours of the dot in the relevant areas of activity according to the coding specified in the notes below (intelligence and quantitative evidence if available). The data will be further updated to provide an update and extension of the data. SPVs have been added as a fourth banking activity, i.e. making use of information on the OPI residual presented in a new table funds in credit intermediation and maturity transformation at

	Other financial institutions			
	PfCs	SPVs	SCBs	PCUs
<b>Summary assessment</b>	●	●	●	●
<b>Risk transformation activities</b>				
Credit intermediation	●	●	○	●
Maturity transformation	●	●	●	●
Liquidity transformation	●	●	●	●
Leverage <sup>1</sup>	●	●	●	●
<b>Shadow banking-related market activities<sup>2</sup></b>				
SPVs	○	○	○	○
Use of derivative	●	●	●	○
Reuse of financial collateral	●	●	●	○
<b>Interconnectedness</b>				
Interconnectedness with banking system <sup>3</sup>	●	●	○	●

**Notes:**  
 1. Market activities through which risk transformation can be undertaken we focus on those market activities understood to be most susceptible.  
 2. Leverage refers to financial leverage and not leverage that is created through intermediation with the banking system as identified by the new assessment.  
 3. Interconnectedness with the banking system as identified by the new assessment.  
 4. While credit intermediation and leverage at the fund level may be less systemically important, they may be more important for the overall system by engaging in leveraged buy-out transactions.  
 PfCs stands for financial vehicle corporations (non-issued securities and derivative owners), WUV for vehicle net asset value and CNV for entities domiciled in the EU. Owing to data limitations and a lack of consolidated data, colour coding: ● pronounced engagement; ○ no engagement.



## Transforming Shadow Banking into Resilient Market-Based Finance – Implementation

Read about the implementation of policies to address shadow banking risks.

**Notes:** Data refer to individual exposures equal to or above 0.05% of eligible capital. The chart excludes investment firms and exposures greater than 20% of the institutional eligible capital (the large exposure limit).

Chart 30

### Euro area ETFs: assets by asset class and

Chart 31

### Euro area hedge funds: net issuance and total assets

(€ billions; last observation: Q4 2018)

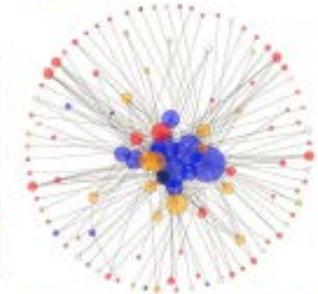


**Source:** ECB  
**Notes:** Three-month moving average for net issuance of shares. Reclassifications and revisions affect the series for total assets.

Chart 33

### EU CDS market: subset of a network of gross notional links

(€ trillions)



**Source:** DTCC DTCC credit derivatives single-name dataset (based on the processed 2012/2018 trade data report).  
**Notes:** Unlimited, unweighted network representation of gross CDS contracts for an arbitrary chosen underlying reference. Size = GTS outstanding gross notional amounts of "other financials" by their respective counterparty sector. "Other financials" comprise investment funds and other financial institutions.



**Source:** EPRS  
**Notes:** IRB, FX and CDS refer to the six-month EURIBOR fixed float interest rate swap, EURO Stoxx foreign exchange swap and single-name credit default swap respectively on 3 November 2015. The chart shows outstanding gross notional amounts of "other financials" by their respective counterparty sector. "Other financials" comprise investment funds and other financial institutions.

# III. What Now?

- Law as source vs. instrument
- Law and macro: basic questions of authority (eg, federalism), legitimacy, distribution

... back to ...

- Bank-government nexus
- International political economy
- New frame, old toolkit
- New tools?



# IS LAW MACROPRUDISH?

(NO)

**Anna Gelpern**

**Georgetown Law and Peterson Institute for International  
Economics**

**EUROPEAN SYSTEMIC RISK BOARD  
ANNUAL CONFERENCE  
SEPTEMBER 21, 2017**