

The Long Life of the Financial Institutions Set up in the Thirties

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1. *The Economic Interventions of the Thirties*

Today, half a century later, it has become abundantly clear that the nineteen-thirties represent an important watershed in the administrative history of the industrialized countries. Behind them lie capitalism's "roaring twenties", the time when the administrative "machine" was still of limited size and the public powers intervened only in a neutral manner, to guarantee social peace as it were, and they thus mark the beginning of a new epoch in which private enterprise became supplemented by a substantial public sector of the economy, the public powers affirmed an economic policy of their own, prepared — if necessary — to impose it on the private sector, and long-standing aspirations of "substantial" equality began to be translated into concrete practice by the provision and extension of universal education, health services and national insurance, and — albeit a little later — by guaranteeing the right to work.

All this came about in ways that differed from one country to another, it happened at different times and not necessarily always in the same order (in the United Kingdom, for example, the "welfare state" affirmed itself before large-scale nationalization), but represents a constant feature of the epoch, characterized as it is by the economic instability of the third and the fourth decade of the century, the fear of a crisis of capitalism to which this gave rise, and the various forms of dirigisme and "planning" that were resorted to in order to correct market "defects". One can note these elements everywhere, even in widely differing political regimes. In Germany, for example, where the Nazi authorities introduced a rigid system of public direction and control of production, using a set of intervention instruments that even to this day has not been equalled in any non-socialist country. In France and in Belgium, where socialist governments or coalition governments headed by socialists tried to follow new roads of public intervention in the economy. In Italy, where the promises — not maintained — of corporative planning (and therefore with the participa-

tion of both employers and workers, as we would say today) were matched by the reality of measures introducing public control over industrial investments, prices, foreign trade, etc., and numerous public bodies and enterprises. Somewhat later, (1941), Italy's example was to be followed by Spain, where the "Instituto Nacional de Industria" (I.N.I.) was set up as an instrument of government and autarchic policy.

Equally complex and far-reaching measures were adopted outside continental Europe. Indeed, one need do no more than take a look at the fourteen laws introduced by Franklin Delano Roosevelt during the first hundred days following his assumption of the Presidency in 1933 (Emergency Banking Act, Economy Act, Federal Emergency Relief Act, Agricultural Adjustment Act, Tennessee Valley Authority Act, Truth-in-Securities Act, Home Owners Loan Act, National Industrial Recovery Act, Glass-Steagall Banking Act, Farm Credit Act, Railroad Coordination Act, as well as the measures regarding the "gold standard" and those regarding the "gold clause" in agreements) to get a very good idea of the far-reaching impact they exerted on the economic system and the variety of the new institutions that were thereby created, since these acts range from the reform of the financial institutions to industrial and agricultural rationalization, to public employment and expenditure, to private employment, and ever include the setting up of public enterprises.

The nineteen-thirties thus mark the beginning of a long-term trend that was characterized by a decisive shift of decisional powers from the private to the public area, the consequent growth of the civil service and the public apparatus, and a considerable concentration of public powers in the hands of central governments. It is true that this latter phenomenon comes to the fore more readily in federal systems (where the heated debate regarding the federal government's powers to discipline credit activities that followed the introduction of the new banking law in the United States constitutes a good case in point), but it can be noted also in single-administration systems, where the central government took over control of many activities that had previously been regulated at the local level (as shown by events in Germany and Italy).

As regards the causes underlying this general trend, there are people who attribute a decisive part to the spreading of socialist (and populist) ideas in the second and third decades of the century and the coming into power during the thirties of governments that were either socialist (as in France, for example) or had been influenced, at least at the beginning, by socialist ideas (Italy, Germany); but there are also others who incline to attribute greater importance to the difficulties that were being experienced in the economic and financial fields.

For the immediate purposes of this paper, however, it is quite superfluous to inquire into the causes or even to continue this approach in general terms.

But it is very interesting to note that the trend or movement that we are here considering tended to propagate outwards from the financial institutions and their crisis. And this is really a very peculiar phenomenon when one bears in mind that the financial institutions normally live a life apart, almost shrouded in secrecy. But in the years with which we are here concerned they suddenly leapt into the limelight and became the earthquake centre from whence there moved the tremors that were to shake the "system" and thus give rise to the new course of public institutions.

2. The Financial Interventions of the Thirties: Short-Term Measures or Structural Reforms?

Having limited the analysis to the financial institutions, must necessarily face up to a general problem in their regard, namely whether the financial interventions of the thirties served only to repair the damage that the malfunctioning of the markets and capitalism in general had produced during those years or whether they had a deeper and more far-reaching influence, shifting the principal financial decisions once and for all from private hands into those of the public authorities.

Before trying to give an answer to this question, it will be as well to explain that while some countries were fully in the throes of the crisis, others were only barely touched by it (France and Spain, for example). For those who prefer explanations based on the history of ideas and their diffusion, it may be helpful to recall that the movement of opposition to what was called financial capitalism, a movement that for the most part aimed at "breaking the slavery of interest" and nationalizing the banks, may have found numerous followers in some countries (Germany and Belgium being cases in point), but did not make a great deal of headway elsewhere. And even where these ideas found fertile ground, they did not succeed in coming to fruition. In Germany, for example, notwithstanding the success of National Socialism and the widespread fear of financial capital, the Schacht Commission succeeded — albeit with some difficulty — in coming up with its "Germanic socialism", according to which "the state, being the expression of the people, concerned itself with the carrying out of the economic functions and partly even performed them itself" and, consequently, could not but construct a money and financial market. "The Commission succeeded in doing this by explaining that since the state could not finance itself by means of tax revenue alone, "the performance of its tasks inevitably required that it should have the possibility of obtaining loans. But this would be the case only if the savings of the people could be channeled and entrusted to it via the capital market".

3. *The Bank Laws*

A first element to be taken into consideration in answering this question concerns the bank laws adopted at the time. It should be made clear, however, that this is to be understood not only as referring to those passed during the years when the crisis was at its peak, but rather to the entire legislation put on the statute books during the long period of financial instability that, although varying from one country to another, ranged from the twenties right through to the forties.

As far as the West European countries are concerned, it is in any case symptomatic that Spain, Germany, Belgium, Italy, France and Switzerland all introduced new bank legislation during the ten years between 1931 and 1941. To these one must add the United States, Finland and Mexico, as well as quite a few of the countries in Eastern Europe. If we limit our consideration to central banks, the list can be lengthened by adding Denmark, Sweden, and Portugal.

We can get a good idea of the changes that were introduced by taking a glance at the two principal comparative works published in the banking field during this period, namely the American "Foreign Banking Systems" of 1929 and its British counterpart "Commercial Banking Legislation and Control" published in 1938.¹ These document a complete change in the legislative panorama within the space of ten years: countries that had previously left the banking system in the area governed by merchant law adopted legislation that conferred special "status" upon banks, while countries that already possessed banking laws made the controls even more stringent.

In this connection it is rather interesting to read the judgments that such contemporary observers as L.J.H. Dark, H.J. Witherbridge and S.R. Cope, writing in 1938, gave respectively of the new German, Belgian and Italian banking laws.²

After having described the new setup introduced in Germany, Dark concluded as follows: "The banking act is therefore an ingenious measure whereby the State is able both to safeguard the interests of the community and to use the banking systems in the furtherance of its economic policy, without assuming the direct responsibility towards the depositing public which complete nationalization would entail". In this way, the German law of 1935 "represents a compromise between a completely nationalized banking system and an entirely free one, by providing for a very far-reaching system of control through a Supervis-

¹ The first of these works is edited by H.P. Willis and B.H. Beckhart and forms part of the *American Business Series*, 1929; the authors of the second are A.M. Allen, S.R. Cope, L.J.H. Dark and H.J. Witheridge, while the publishers are Macmillan, London 1938.

² See the second of the works quoted in Note 1, pp. 183, 223 and 199; 102; 275.

ory Body (*Aufsichtsamt für das Kreditwesen*) and a banking commissioner (*Reichskommissar für das Kreditwesen*), who is responsible for the actual administration of the banking code and acts in accordance with the instructions of the Supervisory Board”.

The second of the three authors commented the Belgian law as follows: “One of the greatest potential forces for good resulting from the reform is the formation, in the Banking Commission, of an effective instrument for furthering economic policy as well as for carrying out general supervisory functions of the banking system. It is intended that the Commission shall work in close cooperation with the National Bank, and as some of its decisions require the approval of ministers, it is likely to be substantially influenced by the government in office”.

Lastly, Cope, after having commented the Italian banking law of 1936, reached the conclusion that “a powerful controlling organization had been created, which, if fully used, would make the Italian banking system a state organization in all but name”

The laws of all these countries thus form part of a single cycle of institutional development and, as we shall see later on, have essentially the same characteristics. At least from the comparative point of view, then, the details relating to the genesis of the various laws lose importance. The fact that the Italian law of 1936 had its distant origin in a decision of the Credit Corporation regarding the functional and territorial distribution of credit, or that the French law arrived late and after a long preparation that had begun even before public control over the Banque de France had been strengthened in 1936,³ or that the Glass-Steagall Act sprang from the revolt bearing a distinctly populist stamp against the Chase Bank and the National City Bank (or, as others hold, from a conflict between Chase and Morgan), all this pales to secondary importance as compared with the basic and common trend that lead to the adoption in all these countries of new banking laws that for the most part had matured outside the banking system or, at least, outside the central bank (this is true as regards France, Italy and Belgium, but not in the case of Germany).

Before passing on to examining the contents of these laws, it may be interesting to recall that in many of these countries several laws were passed, generally separated only by a few years, during the twenties and the thirties.

³ JEAN BOUVIER (see “Monnaie et banque d'un après-guerre à l'autre: 1919-1945” in *Histoire économique et sociale de la France*, t. IV, II vol., Paris, P.U.F., 1980, p. 721) writes as follows: “With a lag of a few years, and in forms peculiar to the Vichy ideology, the banking system thus set out on the road of controls that had been opened by the American legislation of 1934. And that is also why the laws of 13 and 14 June 1941 constitute a link between the 1936 reform and the one of 1945”.

Thus in Spain, where two laws were brought in 1921 and 1931, and thus also in Italy, where we again have two laws, this time in 1926 and 1936. The United States adopted as many as three new laws in the space of two years, namely the Emergency Banking Act of 1933, the Banking Act of 1933, and the Banking Act of 1935.⁴

The fact that new laws all tending in the same direction were adopted at more or less the same time still tells us but little about the impact of these laws. In actual fact not all the rather imposing administrative machine created in the thirties was to be of long duration. In Germany, for example, the banks that had come under state control were reprivatized as early as the mid-thirties, while a part of the institutions of Roosevelt's New Deal were dismantled after the Second World War. It is on evidence of this type that some people found an interpretation that sees the measures of the thirties as ephemeral events that were destined to pass away as soon as they had produced the desired effect of introducing order into the transitory disorder of a difficult phase of the economy. But this can certainly not be said of the banking laws, where — as a general rule — one must underscore the long life and duration of the new regimes: indeed, we need only recall that the Belgian, Italian, German and United States legislations have now been in force for nearly fifty years, albeit with some slight modifications in the case of Germany.

4. The New Controls Introduced by the Banking Laws

We have already seen that the banking interventions of the thirties were not only effected almost simultaneously over a wide geographic area, but also lived well beyond the crisis they were intended to solve. It will be interesting now to examine them more closely. This immediately brings out the first common feature of this series of laws: they all attribute a special "status" to the banks (and the financial institutions in general), removing them from the discipline of the commercial codes (characterized, in the countries on the European mainland, by the civil law tradition) or the company laws (in the countries subject to Anglo-Saxon common law). This is made particularly clear by the French law of 1941, which aimed at the "réglementation et à l'organisation de la profession bancaire", and the Italian one of 1936, which contemporary observers held to have placed a part of the economy outside the reach of the commercial code.

In this way the laws opened the door to the principal innovation, which was

⁴ As regards the history of the debate and the genesis of these three laws, see H.M. BURNS, *The American Banking Community and New Deal Banking Reforms 1933-35*, Westport, Conn., Greenwood Press, 1974.

constituted by the new controls. Banks and similar enterprises, which had previously suffered only a few rather limited controls, were now subjected to a large number of measures that all aimed at providing guarantees for the public, especially as regards "transparency" of accounts and the possibility of public intervention. Almost all these laws made the exercise of a banking business subject to a prior authorization (as also the opening of new counters or the transfer of existing ones), required the directors to possess adequate professional qualifications, imposed the submission of accounts conforming to models laid down by the public authorities, and introduced special winding up procedures and controls over mergers, as well as general inspection powers for the supervisory bodies.

A more detailed examination of the German case (proposals of the Schacht Commission and the 1934 law that put them into practice) will help us to understand the changes produced in this manner.

The Commission's report introduced the topic by observing that "only centralized government vigilance over all the factors of the money and credit economy could hasten the process of reorganizing and normalizing credit and create the conditions in the financial market that government policy needed if its tasks were to be carried out". It then proposed the introduction of a credit vigilance system, prior authorization of banking businesses, mechanisms that would ensure adequate liquidity, separation of the money and financial markets, and an appropriate apparatus for controlling the banking system.

The law that subsequently put these proposals into practice provided for supervision of "all businesses concerned with banking and savings" and laid it down that all banking businesses, regardless of their particular nature (i.e. public, private or cooperative), were to be subject to this supervision in an identical manner.

With a view to regulating the growth of the banking system, the law then introduced authorization procedures for both the exercise of credit businesses as such and for the opening of new branches, counters, deposit offices, etc.

As regards the matter of ensuring adequate system liquidity, the new law gave the supervisory body the power to establish an upper limit for investments in stocks and shares that the banks were not to exceed and also laid it down that credit institutes had to maintain a liquid reserve that was to consist of immediately available cash holdings and deposits effected with the Reichsbank and the German post offices.

A fourth group of measures aimed at avoiding all intermingling and confusion between short-term deposits and long-term investments. Here the law required all businesses concerned with the collection of saving deposits to employ the collected funds only in investments of a form corresponding to the

long-term nature of the deposits and, moreover, laid it down that the banks were to keep their accounts for matters involving savings separate from all other operations.

Lastly, the law defined and disciplined the control apparatus, but this aspect merits more detailed examination and we shall therefore defer it to a subsequent section.

The controls introduced in Belgium were basically not very different and in March 1935 Prime Minister van Zeeland characterized them as consisting of a "statute" for the banks, new disciplines governing capital and the use of funds, and supervision. The new regulations were introduced by a decree dated 9 July 1935 and applied to all businesses (regardless of their juridical nature) that collected deposits for the purpose of employing them in investments or credit activities.

The businesses defined in this manner were made subject to prior authorization; indeed, only such authorized businesses could henceforth describe themselves as "banks" or "bankers".

Secondly, the new law laid it down that the capital had to be entirely paid up and had to conform to certain minimum amounts. The reserves, moreover, had to be invested in particular stocks and had to figure as a separate item in the balance sheet.

Thirdly, the supervisory organ was given the power to determine the ratio between capital (including reserves) and deposits, as also the ratio between deposits and investments.

Fourthly, the accounts of all banks had to be drawn up in accordance with the model defined by the supervisory body.

Lastly, the law set up the Banking Commission and required a *réviseur* (accountant) for every bank (and we shall come back to this later).

The aspect that generally attracts the greatest attention (in retrospect) in these and other regulations concerns the manner in which the "mixed bank" was abandoned or, rather, the manner in which a limit was placed on the principal draw-backs of this type of bank, because — contrary to what is often believed — very few countries really abandoned the mixed bank. In actual practice the rigidity of these limits varied from country to country. In Italy, for example, the banking law did not prevent banks from acquiring and holding shares in industrial companies, but limited itself to requiring the prior authorization of the supervisory body for such holdings. The three banks of national interest (i.e. those that had been the object of the rescue operation of the thirties), however, accepted a more rigid limit on the basis of the conventions they stipulated with IRI, the national reconstruction institute, at the time in order to regulate the intervention of that public agency.

But there is also the case of the Belgian law of 9 July 1935, which laid it down that banks were forbidden "to possess shares or holdings in any form whatsoever in any commercial company, including companies commercial in form, or in any holding company whatsoever". The 1935 law thus completed the regulations of 2 August 1934, whereby the Belgian government obliged all mixed banks to divide into deposit banks and financial institutes (or holding companies).

The greater part of the other laws limited themselves to establish coefficients that defined the permissible ratios between fund collection and loans (and also between credit activities in the strict sense and permissible shareholdings).

One may say, therefore, that the mixed banks survived in some countries (Germany, for example) but not in others. Even the countries that abolished them, however, did not introduce any absolute prohibition that prevented banks from holding shares in industrial companies (the Belgian case being the sole exception). The power of controlling the growth of the banks' shareholdings was generally attributed to the supervisory bodies, which subsequently made very sparing and prudent use of their permissive powers.⁵

Quite apart from classifications, however, one is on the whole quite justified in saying that the laws of the thirties were successful in limiting the power of the big banks by introducing the distinction between deposit banks and merchant banks (and consequent separation of their boards and executive personnel), an aim that had been very lucidly outlined by De Man, one of the Belgian protagonists of the new legislation.

But one should also add that, as a general rule, the emphasis placed on this particular aspect has distracted attention from the other government controls that were introduced by the banking laws of the thirties. It is quite true that the separation of credit activities and industrial shareholding, to the limited extent to which this was effectively realized, was in line with the most immediate needs of the time. But the complex supervisory apparatus built up in the thirties and the associated procedures represent the really interesting part of the innovations introduced by these laws and was destined to last longer than any other aspect.

⁵ F. MERUSI (see his contribution "The peculiar features of the Italian credit system in comparison with the banking legislation of the thirties" in *Banca e Industria fra le due guerre - Ricerca promossa dal Banco di Roma in occasione del suo primo centenario*, vol. II "Le riforme istituzionali e il pensiero giuridico", Bologna 1981, pp. 339-340) puts forward a different interpretation and holds that the banking laws of the thirties have to be distinguished into two groups. The first of these, which comprises the American, German and Swiss laws, does not eliminate the mixed banks but rather regulates the credit system in such a way as to hinder their further development. The second, as in Belgium and Italy, obliges the banks to engage only in ordinary short-term credit.

5. *The Credit Control Machinery*

The use of such a wide range of new instruments called for the setting up of appropriate control or supervisory bodies and these, in turn, had to be provided with the necessary apparatus and means. Another element that the laws of the thirties have in common is therefore represented by the setting up and/or the strengthening of supervisory organs to control the credit systems.

This aspect of the laws has not so far been made the subject of a great deal of study, and one must therefore be particularly careful before making sweeping generalizations. But one is sufficiently safe in saying that the governments of the time were evidently torn between contrasting considerations. Although they could not but admit that a different attitude and conduct of the central banks would have avoided a part of the damage and the breakdown, it was equally obvious to them that outside the central banks it would be difficult if not impossible to find the personnel and the experience needed to govern the credit system.

Other elements came to be superposed on this basic contradiction and further complicated the general picture. In many countries, for example, the big banks maintained a critical or at least not fully cooperative attitude vis-à-vis the central bank. This attitude could be traced back to the time when the issuing powers and a certain position of supremacy had been attributed to one of the big banks to the exclusion of all the others. This had happened in the past, of course, but in a past not yet sufficiently remote to have been forgotten. As against this, however, the big banks were the very ones that had been particularly badly hit by the crisis and needed all the help they could get from the central banks.

Superposed on the construction of the supervisory apparatus we thus note these contrasts of various kinds and various epochs that, in one way or another, involved nearly all the protagonists. And this is also the reason why for the most part these laws were conceived and prepared outside the central banks, and sometimes even in contrast with them, but with a certain amount of collaboration from the world of finance (Germany, as we have already seen, representing an exception).

It may be worthwhile to dwell on this aspect for a moment to examine the views of some contemporaries that clearly bring out the weak position in which the central banks found themselves after the peak of the crisis.

Sir Cecil H. Kisch and W.A. Klein, in the fourth edition of "Central Banks" published in 1932, noted that the text had undergone many changes as compared with the first edition (1928), and also as compared with the third (1930), on account of the many modifications that had been introduced in the

discipline of the central banks, especially in the countries that had abandoned the gold standard. They added that "there had been a tendency in certain quarters to regard the failure of the independent central banks to maintain the stability of the currency as an argument for introducing government control". The authors went on to say that they thought the tendency would be of short duration, observing that the only way out of the crisis was represented by international collaboration between the central banks and between them and the Bank for International Settlements. But this required government control over the central banks to be reduced rather than intensified.⁶

Writing on central banking only a few years later, however, another author⁷ noted that first and foremost among recent trends had been the one "towards greater state participation and control". "In sharp contrast with the situation which prevailed for a number of years after the Great War, the state has in several countries manifested a strong tendency in recent years to claim a larger extent of participation in the ownership and administration of the central bank". The author quotes many countries, including Denmark, New Zealand, United States, Germany, France and Greece, as examples in support of this statement, since in all these countries the state gained greater control over the central bank either by acquiring a greater proportion of the share capital or without altering the capital structure. The most significant cases are those of France and the United States, both meriting a further look.

In France, for example, the *Conseil général* of the Banque de France had consisted of 15 members elected by the 200 major shareholders. In 1936, however, the composition of the Council was radically changed. The number of members was increased to twenty, nine of whom were to represent the "collective interests of the nation (including three as representatives of the Ministry of Finance, and another six as *ex officio* members in virtue of specific appointments held in public institutions). Another six members were to be nominated by the Minister of Finance at the suggestion of various commercial, industrial, agricultural and labour organizations. Seeing that the National Economic Council, the Central Committee of the Saving Banks and the Central Committee of the Bank of France were each given the right to nominate or elect one of the remaining members, this left only two vacancies to be freely filled by the general assembly of shareholders.

In the United States, again, the Presidents and Vice-Presidents of the Federal Reserve Banks, previously appointed autonomously by their respective

⁶ The book in question was published by Macmillan, London. The quotations here reproduced are to be found on pp. VIII and 174.

⁷ M.H. De Kock, "Central Banking", London 1939, King, especially p. 320.

Board of Directors, now became subject to the approval of the Board of Governors of the Federal Reserve System, which consisted of seven members, all appointed by the President of the U.S.A. Two things were obtained in this way: public control (albeit indirect) over the central banks of the member states and greater centralization of the American banking system at both the federal and the state level.

But, as De Kock noted, "the trend towards greater State participation and control was... to be noted not only from the statutes of many central banks, but also from increased State pressure on central banks for direct and indirect accommodation. This trend towards increased State intervention and pressure commenced in 1930 under the stress of the world-wide depression and its aggravation by the financial crisis in Central Europe in the middle of 1931, and was accentuated by the suspension of the gold standard over almost the entire globe". The explanation of this latter aspect was given in the following terms: "Whereas the gold standard automatically imposes a large measure of discipline on the economic life of a nation and demands the liberation of the central bank from political expediency, during periods of suspension of the gold standard the State is not subject to the same necessity of exerting itself to make ends meet. The State is the subject to the temptation of resorting to the central bank as a ready and convenient means of obtaining almost unlimited credit, which would enable the State to take the line of least resistance".

The contrast mentioned above also explains why the new control machineries tended to be predominantly double-headed structures. As a general rule, in fact, controlling powers over the credit system were attributed to two bodies, one of which was a government organ and the other the central bank. In one way or another, however, the new legislation established links between these two bodies.

Differences are to be noted, of course, from one country to another. In Spain, for example, where the central bank's peculiar function of being the banking system's banker had become finally established only by the *Ley de Ordenación Bancaria* in 1921, the organizational innovations of the 1931 law aimed primarily at strengthening State control over the Bank of Spain and achieved this mainly by giving the Minister of Finance the right to appoint three members of its Board of Directors and, further, making all decisions regarding the bank rate subject to the approval of the same Minister.

The prevalent orientation was the one followed in Germany, Belgium, Italy and France, all of whom created a government control organ to take its place by the side of the central bank. A more detailed examination of the four organizational formulas will help us to understand the new structures.

In Germany control of the quantity of credit was left in the hands of the

Reichsbank, but two new organs — one collegial and one individual — were attributed the powers to control its quality. Going into details, the first of the new organs, the so called Reichsaufsichtsamt, consisted of the President of the Board of Directors of the Reichsbank, who acted as Chairman of the new body, the Vice-President of the Reichsbank, a member nominated by the Head of Government, and of the Ministers of Finance, Agriculture, Economic Affairs and Home Affairs. The monocratic organ, i.e. the *Reichskommissar* (or Banking Commissioner) instituted by the new law, was to be appointed by the Head of Government on the advice of the Board of Directors of the Reichsbank.

The law attributes to the Supervisory Body such tasks as fixing the ratio between total loans and capital, determining the guarantee capital, determining the minimum amount of liquid reserves, etc.. The Commissioner was made responsible to the Minister for Economic Affairs and had the primary task of carrying out the decisions of the supervisory body.

In Germany we thus find both the elements mentioned above, namely a double-headed control machinery and a link between the two bodies, in this case constituted by the fact that the President and Vice-President of the central bank *ex officio* perform the same functions in the supervisory body.

We can note the same situation in Belgium, albeit in slightly different form. Here the 1935 law instituted a Banking Commission, laying it down that four of the Commission's seven members were to be appointed in accordance with the designations of the banks and the central bank.

The law attributes to the Banking Commission the tasks, *inter alia*, of determining the ratio between loans and liquidity, determining the ratio between capital (including reserves) and, respectively, deposits and loans, establishing the maximum rates of interest for particular credit operations, and supervising the issue of stock and shares.

The rather troubled events that accompanied the drafting the 1935 law and the interests that eventually prevailed have been summarized as follows: "Among the various hypothesis that have been formulated to explain the reasons that led Belgian legislation to entrust control of the banking system to an organ other than the central bank, the most convincing is undoubtedly the one that sees this decision as a concession to the private bankers and their fear that the Belgian National Bank might come to occupy an excessively preponderant position". "Seen from the point of view of the Belgian private banker, the National Bank was to be an instrument to meet the needs of free enterprise banking and, in any case, was not to have excessive powers". The twofold control by the Banking Commission and the National Bank was, moreover, the result of a series of compromises. According to the government's original proposals, the control organ was to be "the National Bank of Belgium or a body

responsible to it". Henri de Man, as a faithful proponent of "planisme", wanted the control organ to be responsible to the government, while van Zeeland, his principal opponent, wanted control to be entrusted to the central bank. In a certain sense, both of them therefore saw their point of view prevail, for the powers of control were eventually divided between the new Banking Commission and the central bank. The link between the two bodies, at first assured only by the fact that a number of the commission's members were appointed on the designation of the central bank, was subsequently strengthened by entrusting the chairmanship of the Banking Commission to the Governor of the central bank.⁸

The same course was taken in Italy, where the 1936 law created an Inspectorate for Credit and Savings (in addition to a Credit Committee consisting exclusively of ministers) and placed it at the side of the Banca d'Italia. But the Governor of the central bank was also to be *ex officio* head of the new Inspectorate. After the Second World War, however, the new supervisory body was suppressed and its functions transferred to the Banca d'Italia, which thus came to add the supervisory tasks to those involved in being banker to the banking system.

The solution adopted in France in 1941 is less clear, although it was essentially on the same lines. Let me quote what Jean Bouvier has written about the two laws of 1941 (see his work referred to in Note 3): "They were the result of a compromise, bitterly debated from September 1940 to June 1941, between the appetites of the big banks, who were anxious to be the only ones to control the profession, and the traditional concerns of the Banque de France, which wanted to remain supremely responsible for the currency. Let it be said right away that Vichy's banking legislation remained legitimately in force even after 1944, because it not only corresponded to an effective need but could also be very readily adapted to the needs of postwar economic policy. It was in any case the fruit of a very close (but sometimes also conflictual) collaboration between the technocrats of the Ministry of Finance and the technocrats of the big banks that took place between October 1940 and the Spring of 1941. Its "state control" was really a tentative self-discipline of the banking system under the direction of the dominant banks. The two laws organized the banking profession and the bank-life institutes into a structure of two

⁸ A convincing reconstruction of the Belgian vicissitudes is given by S. ORTINO in his contribution entitled "Banking legislation in the thirties in the United States and in Switzerland, Germany and Belgium" to *Banca e Industria fra le due guerre - Ricerca promossa dal Banco di Roma in occasione del suo primo centenario*. Vol. II "Le riforme istituzionali e il pensiero giuridico", Bologna 1981, pp. 388-389.

“professional associations”, one of which comprised the “registered” banks (300 French banks and 30 foreign ones) and the other the “financial establishments”, i.e. institutes working only with their own funds. Banks were required to possess a minimum capital (5 million francs in the case of joint-stock companies, 1 million francs in the case of “private” bankers). A Permanent Standing Committee of the Bank Organization (7 members, i.e. six bankers and one government commissioner) and a Control Commission (3 members, namely the Chairman of the Standing Committee, the Governor of the Banque de France, and the Director of the Treasury), albeit with their respective functions not very clearly delimited, were given the power to prepare regulatory decisions that the professional associations were obliged to apply”.

In the countries that we have just reviewed, however, the problem of designing the new control apparatus did not have to face up to the difficulties that elsewhere were created by a federal structure. This is the case of the United States, of course, where there was not only federal intervention but also that of the states, since the task of disciplining the economy is primarily a prerogative of the state governments.

Hence the importance of what has been called “allocation of control” over the money and credit system.⁹

The creation of these control apparatuses represents one of the most stable contributions made by the laws we are here reviewing. Indeed, one may say that — apart from some minor modifications subsequently introduced either by law or by *de facto* adaptation — these apparatuses have presided over the credit system right through to our own days. Consequently, the final establishment of public control over the central banks (as in Spain and France) or the strengthening of the central banks and the setting up of government administrations having supervisory functions (as in Germany, Belgium and Italy) also constitute particularly important contributions made by the banking laws of the thirties. This contribution is all the more important because the discipline introduced by these laws — taken on the whole — was a rather elastic one and left extensive discretionary powers to the control organs, old or new as they were, and these therefore acquired very ample and all-pervading authority. The use that was effectively made of these powers, of course, constitutes a differentiating element and varied from one country to another. It does not therefore come within the scope of this review, which is exclusively concerned with the common trends of the period.

It only remains to add something that is very obviously true for some countries and probably for all: the new arrangements made at the summit of the credit system

⁹ The expression is due to J.W. HURST; see his *A Legal History of Money in U.S., 1774-1970*, Lincoln 1973, University of Nebraska Press, especially p. 133 *et seq.*.

should at least lead us to doubt the frequently expressed opinion that the growing state intervention following the crisis has produced greater "statism". In actual fact, the setting up of several control organs without clearly defined and separate powers, and sometimes even in conflict with each other, tended to lead to a "multipolar" order rather than to one in which all powers were concentrated in the hands of the State.

6. *The Italian Case*

As a comparative analysis would readily bring out, not all the national histories followed the same pattern during those years. There were even countries (not, of course among those we have here considered in detail) that did not introduce any drastic changes in the thirties. In this connection, indeed, one need only think of the United Kingdom, where the central bank was not brought under full public control until 1947 and the first law that subtracted the banks from the discipline of the Companies Act had to wait until 1979 (until that time, in fact, the banks were disciplined by the 1948 Companies Act, even though this included a special section dedicated to the banks, with norms that partly superseded the law relating to other "companies").

Moreover, the reach of the measures adopted was not by any means the same and varied from country to country. Some countries limited themselves to reorganizing the credit system, while others went well beyond and regulated the relations between banks and industry, reorganized the industries involved in the crisis and even went as far as creating a public sector of industry in the truest sense of the term. The country where this process assumed the largest proportions was Italy. The Italian pre-crisis banks were holding companies rather than mixed banks: they had large and stable holdings in a relatively small number of industrial undertakings, which they not only controlled but actually administered. When the public powers took control of these banks, they therefore inevitably had to decide also the fate of the controlled enterprises.

These were entrusted to the newly created Industrial Reconstruction Institute (I.R.I.), which proceeded to reorganize them, selling some, merging others, creating new groupings and modifying both the management structures and the management objectives. Italy, therefore, not only did not limit herself to solving transitory problems or difficulties experienced at that time, but even went far beyond what one might call the "financial shell". Direct interventions in banking and in industry brought order to both these fields.

Although the interventions that take the limelight are the setting up of IRI (1933), its subsequent transformation into a permanent body (1937) and the banking law of 1936, there were other and equally important industrial

interventions that, even though they have attracted less attention from economic historians, extended over a longer period of time and continued until the middle of the century, including a series of sales and internal reorganizations that led to the setting up of sectoral finance and holding companies; Stet for the telephone companies and industry (1933), Finmare for the shipping lines (1936), Finsider for the steel industry (1937), Finmeccanica for the engineering industry (1947), Finelettrica for the electricity undertakings (1952), and eventually also Fincantieri for the shipyards (1960). The same period of time also witnessed a drastic reduction and rationalization of the banks and the counters they were allowed to operate.

It is however sufficiently well known that the reform of the credit system in Italy was accompanied by an extensive industrial reorganization. But very little attention has so far been paid to the organizational models produced by these interventions, and the figures of the public economic agency and the company in which the state is a shareholder have not fared any better. IRI, the archetype of all public economic agencies (for such agencies were later to become very widespread and common institutions), was conceived as a body that was partly public and partly private. Its activities are subject to private law: its contracts and agreements are governed by the ordinary law of contract, employment within the agency is subject to the ordinary labour laws, and in its entrepreneurial activities it has to comply with the Code of Civil Law like any other private enterprise. But the agency is endowed with State funds and is subject to public directives. But very little of it is really public. Indeed, IRI does not even have public objectives and was simply set up to manage the industrial shareholdings originally entrusted to it.

As regards the companies controlled by it (which also have private shareholders and are therefore normally referred to as "mixed" companies), these are in no way different from any other joint-stock company. Rather, unlike some of their predecessors, AGIP — the publicly owned oil company set up in 1926 — being a case in point, they do not even rank the State among their shareholders, the "public" shareholders being IRI and not the State. Here, therefore, public power has deprived itself of all its customary characteristics, organizing itself in completely "private" forms. Even IRI as shareholder acts like any private individual.

In Italy, too, the new institutions of the thirties were destined to have an exceptionally long life and survived the political changes that followed the Second World War. On the other hand, even though Fascism had created the political conditions for these interventions, it had nothing to do with either formulation or their subsequent management. In fact, both IRI and the banking law here conceived outside the Fascist-controlled corporations and were the

work of technicians whose formation had its roots in the liberal traditions of the preceding democratic period. Subsequently, moreover, both IRI and the Banca d'Italia were substantially placed outside the reach of the guidance organs and procedures created by Fascism.

7. Some Conclusions

The analysis made above has highlighted at least four points. The first of these is represented by the fact that the various political systems reacted to the crisis at more or less the same time, for all the principal laws were adopted between 1933 and 1936. Almost all the countries considered introduced a new banking law during the thirties.

The second concerns what one might call the power of imitation. The reader will have noted that, quite independently of the pre-existing situation and the solution eventually adopted (i.e. irrespective of whether the starting point was or was not constituted by universal banks, and also irrespective of whether the final solution was a system based on universal banks or on the tendential separation of business banks and deposit banks) and equally independently of the political regime (dictatorial as in Germany and Italy, with the participation of Socialists as in Belgium and France, or liberal-democratic as in the United States), the measures adopted in the countries considered had many elements in common. To be quite truthful, at the present state of historical research one cannot even say with certainty that this was a case of imitation. There can be no doubt that at the time there were close contacts between the experts of the sector in the various countries, as also between the various central banks, but we have seen that the banking laws were worked out without the participation of the leading financial circles. One may therefore suspect that this was a case not so much of imitation, but rather of simultaneous and spontaneous reaction of the various systems (a well known phenomenon that has already attracted the attention of both historians and ethnologists).

The third aspect brought out by this analysis concerns the choices made in the thirties or, at least, two of the more important ones, namely introduction of greater public control over the credit system and the creation of new public control organs. One may well say that these innovations changed the economic constitution of the countries concerned, since the activities of the central organs of their banking systems can no longer be considered as either alien to or independent of government policy (even though the central banks have continued to enjoy a certain autonomy). In all these countries the public powers have now accepted the task of safeguarding the interests of depositors and savers

and, when all is said and done, it is in their name that banking businesses were subjected to this far-reaching control.

Lastly, we have seen — albeit only very rapidly — that the new institutions of the thirties were destined to be of long duration. Even though some of the laws then passed have since been abrogated or changed (but many of them are still in force in their original form), the institutions they brought to life have remained unchanged. Here, once again, one can note a “displacement effect”: just like wars and major social changes, the long period of instability of the thirties, together with the brief but grave crisis in which it culminated, produced important institutional changes. The instability and the crisis eventually came to an end, but the institutions created to face them remained: the nature of the controls and the number of the bodies charged with applying them were not cut back to the previous level, but have remained just as intense and numerous as they were at the height of the crisis.

8. *Further Outlook*

The financial interventions of the thirties, therefore, did not serve merely to solve contingent problems. In actual fact, the remedies adopted almost simultaneously in many different countries (and with so many common features) were destined to last right through to our own days, albeit with some “face lifts” that did not really change the basic pattern (as in Germany, for example, where the banking law of 1961 followed faithfully in the footprints of its 1934 predecessor).

The institutional changes which as have occurred since the thirties seem to be mainly concerned with the central banks, which at times have regained something of their former position. But even in 1938 an observer had already noted that “despite the extensive rights conferred on the Supervisory Board and the Banking Commissioner, the Reichsbank remained, in the last analysis, in real control of the banking and credit system”. He went on to say: “Its direct powers under the Banking Act are comparatively limited: the right to receive statistics from the banks; the determination of the form in which the statistics shall be supplied; and the demanding of explanations of balance-sheets and profit-and-loss accounts. Indirectly, however, it has considerable influence in the administration of the act, as both the President and the Vice-President of the Reichsbank are leading members of the Supervisory Board”.¹⁰

As already mentioned, in Italy the personal union of Governor of the Banca d'Italia and Head of the Inspectorate for the Defence of Credit and Savings later

¹⁰ See L.G.H. DARK, *op.cit.*, p. 223.

came to an end and the supervisory functions of the Inspectorate were conferred upon the central bank, the Inspectorate itself being abolished.

In spite of these subsequent changes, however, the central banks never returned to being bodies operating independently of government policy. Although they enjoy autonomy, all of them are in the last resort responsible to their governments.

But let us return to the main point of our discussion, namely the long duration of the new institutions. As has recently been observed in the case of the United States (but with only very slight modifications the same statement could be made for other countries), "the economic legislation of the 1930s and 1940s changed the basic 'rules of the game' whether or not these changes may be discussed in narrow, legalistic meanings. In effect, the New Deal rewrote the political economic constitution. We are living with the results". In the thirties, as the comment continues, "there did emerge a basic change in the monetary constitution, one that has survived the tests both of time and of critical evaluation. Although it did not seize the day and create a full-reserve banking structure, the Congress in 1933 went for the next-best option and introduced governmental insurance of bank deposits...

Deposit insurance has modified the economic history of the half-century more than many other measures, and it stands in an extremely confined set of institutional changes that must be adjudged to have proved beneficial".¹¹

It is precisely for this reason that all the questions that are being raised today regarding the configuration and the functionality of the credit system are — at one and the same time — also questions regarding the choices that were made fifty years ago, and viceversa. In this connection one need only think of the research into the Italian credit system promoted by the Einaudi Foundation in the mid-seventies and the Mayoux and Gessler Reports (1979) in France and Germany, to say nothing of the Hunt Report (1971) and the 1975-76 Senate Inquiry in the United States or the even more recent inquiry undertaken by the Finance Committee of the Canadian House of Commons.

But if so many people are now wondering whether the rules ought not to be changed, this is explained very simply by the fact that today, half a century later, the situation has also changed. The universal "vocation" of the banks is again coming to the fore in the systems where the different types of credit have been separated. An increasing need is also being felt for simplifying procedures, made unduly complex by the existence of too many types of different credit rela-

¹¹ Quoted from J.M. BUCHANAN, "The Economic Constitution and the New Deal: Lessons for Late Learners", in G.M. WALTON (ed.), *Regulatory Change in an Atmosphere of Crisis: Current Implications of the Roosevelt Years*, New York 1979, Academic Press, p. 13 and pp. 17-18.

tionships (especially in France and Italy). In many countries, moreover, new economic crises suggest that some of the elements peculiar of mixed banking should be reintroduced into the system. One thus notes almost everywhere a tendency to move from a situation characterized by differentiation towards simpler arrangements.

In France, for example, it forms part of present government programmes to gradually confer universal-bank characteristics upon all existing credit institutions, thus enabling them to finance themselves from deposit and to distribute all types of credit. This implies elimination of the unbalance deriving from the fact that the large networks of commercial banks and mortgage associations at present collect 88% of the deposit but distribute only 70% of the credit, while almost four-hundred financial institutes collect only 12% of the deposits but account for 30% of the loan total.

While confirming the proper functioning of the German credit system, the Gessler report suggests that a limit should be placed on the shares in a given commercial or industrial enterprise that a bank is allowed to own, thereby ensuring that participation will not be turned into control (and, of course, preventing the mixed bank from becoming a holding company).

In Italy, again, there is now a strong school of thought in favour of harmonizing the statutes of all banks (quite irrespective of their juridical nature) and eliminating the limits that are at present placed on the operations of the public-law banks.

In the United States it has been said that "the time has come to examine the segregation of commercial from investment banking under the Glass-Steagal Act". "After fifty years, these two activities — though separated *de jure*—have been converging *de facto*". [...] "Let's look at just one area of convergence—corporate financial advice. It isn't even addressed by Glass-Steagal, yet it is traditionally thought to be a quintessential function of the securities industry.

Commercial banks have been able to exploit Glass-Steagal's ambiguity to establish a growing presence in this area of the business".¹²

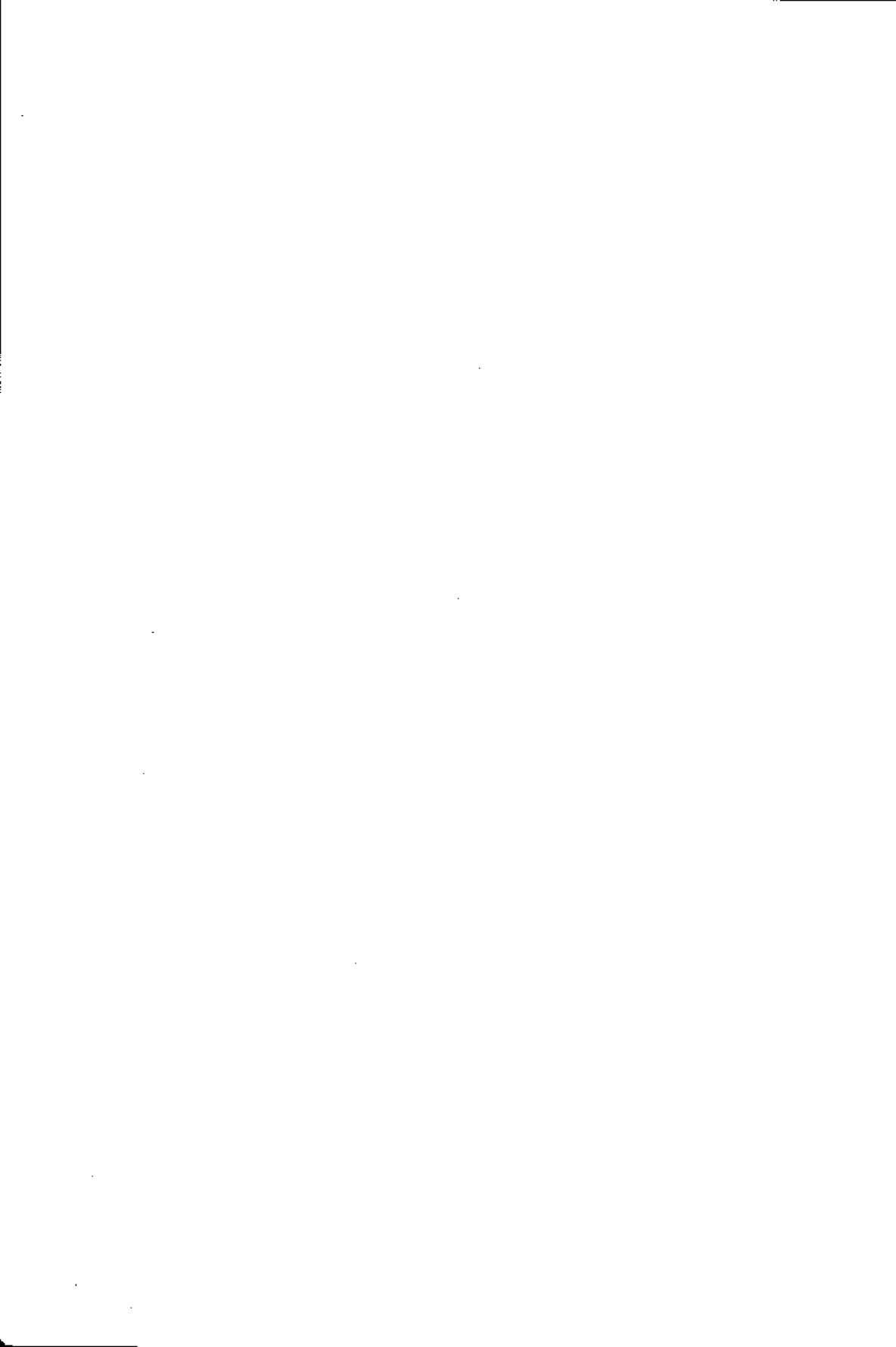
In the United States one also notes increasing pressure in favour of a simplification of government regulation.¹³

¹² D.T. REGAN, *Regulation and Reality*, talk (not published) given on 18 September 1981 at the George Washington University Law School.

¹³ This is borne out by three recently published volumes on banking "deregulation": L.G. GOLDBERG and L.J. WHITE (eds.), *The Deregulation of the Banking and Securities Industries*, Lexington, Mass., 1979, Lexington Books, Heath and Co.; A.S. CARRON, *Regulatory Reform of Financial Institutions*, Washington 1980, Brookings Institute Press; and *New Developments in Banking—Credit Controls and Regulatory Reform*, New York 1980, Law and Business.

In Canada, lastly, the previously mentioned report of the Finance Committee of the House of Commons proposed that "the total outstanding value of any single bank's loans should be limited to 25% of the bank's total capital, unless otherwise approved by the Federal Inspector of Banks".¹⁴

¹⁴ An overview of the regulations in force today is given in H. AUFRICHT (ed.), *Central Banking Legislation. A Collection of Central Bank, Monetary and Banking Laws*, Washington 1961, International Monetary Fund, but unfortunately this work has not been brought up to date.



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