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I. INTRODUCTION: BANKS AND NATION-BUILDING

It seems strange to have a discussion of nation-building devoted to the importance of a banking system. After all, when we think of nations, we think of constitutions, borders, and functioning governments. When we think of failed nations, we think of a lack of effective government, a loss of control over society, and a breakdown in law and order. Banks hardly figure into that discussion at all.

Indeed, in our society, while banks play an important role, they usually reside quietly in the background. Many of us never set foot in a bank. Our paychecks may be deposited in a bank, and if we need cash (a somewhat rare occurrence these days), we will go to an ATM. Of course a bank may be involved somehow in giving us a credit card or a debit card and may be involved somehow in providing an automobile or home loan. In many ways, banks are simply part of the general noise and clutter of modern society. We pay attention when something goes wrong, but otherwise banks are sort of like washing machines. They do their job, occasionally need fixing, but it is hard to think that a washing machine (or a bank) is all that important in nation-building.

This Essay proffers the proposition that a banking system is more than background noise. A banking system functions as the heart and lifeblood of any functioning economy. A banking system is the key to economic growth and development. It is essential to unlocking wealth, creating opportunities, providing jobs, and facilitating commerce. It provides a mechanism for individuals and businesses to participate in the global economy. Importantly, banks, when they do their jobs correctly, allow their customers to have a vested interest in a strong and stable society.

However, one no more builds a nation by establishing a banking system than one builds a nation by writing a constitution. A banking system is important in part because of the elements required to make it function: a legal system that respects contracts and agreements, honoring the rights of both debtors and creditors; an independent central bank; a judiciary that follows the rule of law; and a government that understands the importance of strong, healthy banks and provides sound supervision and a legal framework within which they can operate. Only then can the banking system accomplish its primary roles—that of providing a safe haven for the funds of the public and a means to devote those funds in productive loans to build the

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economy. A healthy banking system, then, not only helps build a nation for what it does, it helps build a nation for what it requires.

II. WHAT IS A BANK?

There are hundreds of definitions of a bank. Definitions appear in statutes, regulations, treatises, papers, and textbooks. An interesting and relatively straightforward definition is contained in the Banking Act of the Slovak Republic, where a bank is defined as:

> [A] legal entity with its registered seat in the territory of the Slovak Republic established as a joint-stock company, which (a) accepts deposits and (b) grants loans, and to which a banking license for performance of the activities under [letters] (a) and (b) has been granted.[1]

The elements the Slovakian law addresses are critical. Banks are (1) legal entities that are (2) licensed and regulated, subject to the laws of the chartering jurisdiction, and (3) empowered to accept deposits and make loans. What a bank does is deemed to be important. There is a societal interest in making sure that it performs these functions well. The Slovak definition is an elegant and straightforward exposition of what banks do and why they are important. It is certainly a more straightforward definition than that of New York, where a bank is defined as an entity subject to the banking laws.[2] Even Congress seems to fall all over itself in trying to define a bank. For example, the Federal Deposit Insurance Act defines a state bank as

> any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia.[3]

In other words, a bank is a bank, or anything acting like a bank, that accepts deposits and is chartered as a bank—hardly a model of illumination.[4] Most definitions, however, define a bank by focus on deposit taking—the acceptance of funds from the public accompanied by an obligation to repay those funds at par.[5]

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1. New Banking Act, Act No. 483/2001 Coll. on Banks (2001) (Slovk.), *available at* http://www.fifoost.org/slowakei/recht/sfln/2001/node90.php.

2. N.Y. BANKING LAW, § 2 (McKinney, Westlaw through 2007 legislation) ("A 'bank' . . . means any corporation, other than a trust company, organized under or subject to the provisions of article three of this chapter.").

3. 12 U.S.C. § 1813(a)(2) (2000).

4. The Bank Holding Company Act is another model of circularity. It begins by defining a bank as an entity chartered as a bank, but includes a broad definition designed to catch entities that perform the functions of banks, such as accepting deposits and making loans. 12 U.S.C. § 1841(c)(1) (2000). It then proceeds to set forth numerous exceptions from the definition. *Id.* § 1841(c)(2). In other words, a bank is a bank, except when it is not.

5. *See, e.g.*, GA. CODE ANN. § 7-1-4(7) (LEXIS through 2007 Sess.) ("'Bank' means a corporation . . . authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time.").

In the context of this Essay, a bank is a legal entity that receives funds from the public that are able to be withdrawn at par either on demand or at a stated time and deploys those funds in the form of loans or other permissible investments. There are many financial intermediaries in the United States that provide similar functions, but none provides the complete array of services typically performed by banks. For example, open- or closed-end mutual funds may permit withdrawals on demand, although the range of investments they make may well exceed the investment powers permitted commercial banks, but rarely grant personal or consumer loans. Insurance and investment institutions can provide products that are similar to deposits in banks, and of course a multitude of entities provide lending and credit services, but a bank is, in many ways, unique. A depositor's relationship with a bank is that of debtor and creditor, rather than as an equity holder. Insurance companies receive funds from the public and make loans, but rarely provide funds that are redeemable on demand at par, and do not provide any transaction account capacity. A bank provides a necessary "core" of fundamental financial services for the public. The key role played by a bank (or a similar financial institution or entity) is that of receiving funds from the public and mobilizing those loans within the economy in a productive fashion, primarily in the form of loans.

Banking systems vary from country to country. In the United States, we have thousands of banks, each competing vigorously for deposits, loans, and other banking services. Yet we also have numerous other competitors in the financial sector, and banks hold a relatively modest percentage of the financial assets in the United States.[6] Canada, by contrast, has relatively few banks, with the six largest banks accounting for over 90% of the assets of the banking industry.[7] Canadian banks account for over 70% of the total assets of the financial services sector.[8] Neither the United States nor Canada have government-owned banks competing in the private sector, in contrast to many countries, such as Russia, Egypt, China, or Indonesia, where state-owned banks predominate.[9] In several countries, banks have made few inroads into the economy.

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6. Information on the banking system in the United States is available from a variety of sources, including the FDIC. *See generally* Federal Deposit Insurance Corporation, http://www.fdic.gov. Although somewhat dated, the Department of the Treasury did an exhaustive study on the need to modernize the banking system in the United States and included extensive information on the importance of the banking system and its relative place within our financial system. DEP'T OF THE TREASURY, MODERNIZING THE FINANCIAL SYSTEM: RECOMMENDATIONS FOR SAFER, MORE COMPETITIVE BANKS (1991). Particularly note the discussion detailing the financial assets held by the depository institutions as a percentage of the total financial sector. *Id.* at 3-4.

7. *See* Department of Finance Canada, Canada's Banks, http://www.fin.gc.ca/toce/2002/bank_e.html.

8. *Id.*

9. Information on the banking system in many other countries is available from the International Monetary Fund (IMF) and the World Bank. Since 1999, the IMF has conducted a Financial Sector Assessment Program (FSAP) designed to promote the soundness of financial systems in member countries. The FSAP reports seek to "identify the strengths and vulnerabilities of a country's financial system; to determine how key sources of risk are being managed; to ascertain the sector's developmental and technical assistance needs; and to help prioritize policy responses." Int'l Monetary Fund, Financial Sector Assessment Program, http://www.imf.org/external/np/fsap/fsap.asp#R. Russia's FSAP Report is a good example. *See* INT'L MONETARY FUND, IMF COUNTRY REPORT NO. 03/147, RUSSIAN FEDERATION: FINANCIAL SYSTEM STABILITY ASSESSMENT (May 30, 2003), *available at* http://ww.imf.org/external/pubs/ft/scr/2003/cr03147.pdf.

In Morocco, for instance, less than 80% of the citizens have any connection whatsoever with the banking system—no deposit accounts, no loans, and no banking services.[10] Indonesia and Russia struggled with bank insolvencies, particularly during the late 1990s during their respective currency crises.[11] In spite of these differences, banks within those banking systems perform remarkably similar functions—they serve as repositories for the funds of the public and recycle those funds within the economy in the form of loans. The efficiency and effectiveness of the banks in carrying out those functions, however, vary substantially.

When we attempt to correlate the strength of a nation with the strength of a banking system, we come to some interesting issues. How does one measure the "strength" of a nation or of a banking system? Certainly one would conclude that the United States, Canada, and the countries of Western Europe are all strong nations with strong banking systems. By virtually every measure—per capita income, education, use of technology, strength of civil institutions, strength of national identity, and so on—we rightly think of these countries as "strong" nations. Banks and other financial institutions play an important role in these countries. By contrast, sub-Saharan Africa struggles in every measure. The economic data on these countries reflect that their economies are anemic and banks are relatively insignificant.[12] Other countries struggling with maintaining a civil society likewise have poorly functioning banks: Bosnia, Afghanistan, Iraq, Kenya, and Pakistan come to mind.

As will be discussed, the functions banks play in an economy are tremendously important in terms of facilitating economic growth and development. This growth and development build vested interests in a civil society governed by the rule of law. However, in order to accomplish these functions, there must be an environment in which banks can operate effectively. It is the confluence of these elements—those that banks create and those that must exist for them to operate—that builds nations.

III. WHAT DO BANKS DO?

If we analyze the role of a bank, we find that it performs several unique and critical functions.

A. Banks Provide a Safe and Effective Method of Storing Individual Wealth

A bank accepts deposits from the public that are redeemable at par, either on demand or following the passage of time. From the point of view of an individual

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10. INT'L. MONETARY FUND, IMF COUNTRY REPORT NO. 03/212, MOROCCO: FINANCIAL SYSTEM STABILITY ASSESSMENT 13 (July 17, 2003), *available at* http://www.inf.org/external/pubs/ft/scr/2003/cr03212.pdf.

11. *See* Abigail J. Chiodo & Michael T. Owyang, *A Case Study of a Currency Crisis: The Russian Default of 1998*, FED. RES. BANK OF ST. LOUIS REV., Nov.-Dec. 2002 at 7, 9, *available at* http://research.stlouisfed. org/publications/review/02/11/ChiodoOwyang.pdf; Steven Radelet & Jeffrey D. Sachs, *The East Asian Financial Crisis: Diagnosis, Remedies, Prospects*, BROOKINGS PAPERS ON ECON. ACTIVITY 1:1998, at 1, 62-63; Steven Mufson & David Hoffman, *Russian Crash Shows Risks of Globalization: Speculators Ignored Economy's Realities*, WASH. POST, Nov. 8, 1998, at A1.

12. INT'L. MONETARY FUND, IMF COUNTRY REPORT NO. 06/321, CENTRAL AFRICAN ECONOMIC AND MONETARY COMMUNITY: FINANCIAL STABILITY ASSESSMENT 4-6 (Aug. 28, 2006), *available at* http://www.imf.org/external/pubs/ft/scr/2006/cr06321.pdf.

seeking to deal with liquid funds, the choices would be to (1) keep cash on hand in a safe place, (2) hold goods or valuables or acquire some other tangible asset, (3) invest the funds, or (4) place the funds in a bank. Cash can get lost or stolen, and earns no interest. Goods, valuables, or property can be lost or stolen, and are susceptible to physical damage and catastrophic events. Importantly, converting cash into goods, valuables, or property (or converting goods, valuables, or property back into cash) may entail significant transaction costs and delays, as well as possible fluctuations in value. Investments, whether in debt or equity interests, will entail risk of loss. A deposit in a bank should avoid all these problems.

B. Banks Provide Efficient Means of Transferring Value

Banks create instruments that facilitate the transfer of value from one party to another. Again, the use of alternatives is inefficient and fraught with risks or costs. Swapping goods or services (bartering) may work in certain situations, but each barter transaction requires negotiation, as the parties must agree on the relative values of the exchange. Swapping investments can be equally problematic. Cash is, of course, a useful method of transferring value, but it is cumbersome and inefficient for large transactions and entails risk of loss. Banks, because their obligations are both safe and redeemable at par, can facilitate the transfer of value through the use of checks, drafts, wires, account transfers, or other instruments.

C. Banks Provide an Efficient Mechanism to Pool Funds to Finance Economic Activity

Both businesses and individuals need funds. Individuals require financing for education, housing, automobiles, and other significant expenses. Businesses must make capital improvements, finance inventories, purchase goods and services, and meet expenses. It is certainly possible to secure financing from well-off sellers that have the financial capacity to defer the receipt of payment, but not every seller has such capacity. It is also certainly possible to secure financing from a number of individual sources until such time as the necessary funds are acquired, but it is cumbersome and inefficient, as each potential lender must make its own evaluation of the proposal and establish its own terms. Many individual lenders will lack the expertise to make informed evaluations. A bank, then, acts as a centralized source of funds as well as a centralized source for credit and risk evaluation.

D. Banks Make, and Facilitate, Market-Based Decisions

From the point of view of a bank, the economic world is fairly simple. A bank obtains funds from the public, for which there is a cost involved. The cost relates not only to interest, but the costs of attracting the funds and operating the institution. It makes money by lending and investing the money generating returns that exceed its costs. If successful, it can repay its depositors as required, but equally importantly, can make additional loans and investments. Given these obligations, a bank must become an arbiter with respect to planned uses of funds, limiting behavior seen as risky or foolish, as such behavior will jeopardize its ability to be repaid.

With the exception of state-owned banks, where lending decisions may be made on perceived social, public policy, or governmental interests, and where loans may be more of a government subsidy than a real loan that is expected to be repaid, a bank's existence depends on the prompt and timely repayment of its loans and investments. The image of the hard-nosed, steely-eyed banker may be a stereotype, but it is a stereotype grounded in the harsh reality of the business of banking. A bank must judge between those lending propositions that will result in repayment and those that will not. Too many of the wrong choices result in failure. A steel mill in a rural village might be great for prestige, publicity, employment, or the ego of a dictator, but a bank will carefully examine its costs, supply sources, labor supply, markets, transportation, and a variety of other factors before it commits funds to the project.

E. Banks Facilitate Markets

Markets are mechanisms for the exchange of goods and services. Generally we think of them as physical locations, but there are plenty of virtual markets, where buyers and sellers participate without face-to-face contact. Can a market exist without a bank? Certainly there are localized markets where goods and services are bought and sold without a bank in sight. Cash and barter are feasible methods of exchanging goods and services, but absent the features, functions, and tools provided by banks, those markets remain small and inefficient.

The use of money greatly facilitates markets. It allows buyers and sellers of goods and services to provide those goods and services and receive a medium of exchange, without the necessity of finding the specific good or service the provider ultimately desires and striking a bargain with that provider. The shoemaker can make shoes, exchanging the shoes for currency, later finding the seller of vegetables, the maker of clothes, or the babysitter who will take money, rather than shoes, for their product or service. Money permits the shoemaker to hire laborers without worrying about compensating the employee in shoes. And banks facilitate those transactions, providing a safe repository for the funds, facilitating the transfers, and permitting cash substitutes.

F. Banks Unlock Wealth

Hernando de Soto's book, *The Mystery of Capital*,[13] sets forth a fascinating proposition: one of the primary causes of poverty in the world is the lack of clear property rights.[14] He notes that the world's poor often have the use of property upon which they grow crops, build homes, and operate businesses.[15] He also notes, however, that the poor generally lack clear title to the property they use, and are thus locked out of the formal, legal economy—and that is the root of their poverty.[16] As de Soto notes, "[t]hey have houses but not titles; crops but not deeds; businesses but not statutes of incorporation."[17] The poor, lacking formal legal title to their property, are

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13. HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000).
14. *Id.* at 15-16.
15. *Id.* at 6-8.
16. *Id.* at 5-6.
17. *Id.* at 7.

unable to use their assets as collateral, and cannot get bank loans to expand their businesses or improve their properties. He estimates that over $9.3 trillion in assets held or used by the world's poor could be unlocked if such property rights were recognized.[18] To put this sum into some perspective, it represents over 80% of the gross domestic product of the United States, and dwarfs the amount of foreign aid given to the developing world since 1945.

Of course, simply recognizing their property rights and converting them into viable economic growth requires a financial intermediary. A bank is necessary to accept the land as collateral, to permit a mortgage, pledge, or hypothecation in exchange for credit. It is what banks routinely do—monetize the asset to permit the deployment of funds in productive uses. Indeed, one of the problems in many countries where the rule of law is less developed is that banks are unwilling to lend unless there is "hard" collateral.[19] The untitled land and the unincorporated business may be valuable, but unless the bank can be confident of the ownership, it will not be in a position to risk its funds.

G. Banks Serve as Multipliers of Wealth

The "Deposit Multiplier" (occasionally referred to as "Multiple Deposit Creation") describes the ability of a bank to transform or multiply cash through its deposit taking and lending activities. In its simplest form, it represents what happens when an individual deposits $100 in the bank. Because the depositor will not need immediate access to his or her funds, the bank may lend out much of the funds it receives. The loan will in turn be used to purchase goods or services, the proceeds of which can be returned to the bank, and may be loaned again and again. There are of course constraints on the process. The bank must be able to meet the demands of its depositors, and the regulator may impose a "reserve requirement" mandating that certain funds must be maintained in the bank and not re-lent, but the process itself can take a single dollar deposited in a bank and transform it into five, six, seven, or more dollars in circulation.[20]

It seems somewhat magical, and in some respects it is. For a clearer illustration, suppose Depositor A places $100 in the bank. Bank lends $90 to Borrower B, who purchased a car for $90 from Depositor C. Depositor C places $90 in the bank, and Bank in turn lends $80 to Borrower D. Borrower D buys fertilizer for her crops from Depositor E. This process can continue, and with a single $100 deposit, many multiples of that amount can be dispersed through the economy.

Compare the above illustration with that of a cash-based economy. Individual A holds on to his $100 until he wants to spend it on a good or service from Individual B. Individual B does the same until she wants to buy a good or service from Individual

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18. *Id.* at 39.

19. *See, e.g.*, INT'L MONETARY FUND, IMF COUNTRY REPORT 04/138, ALGERIA: FINANCIAL SYSTEM STABILITY AGREEMENT 15 (May 17, 2004), *available at* http://www.imf.org/external/pubs/ft/scr/2006/cr04138.pdf [hereinafter IMF, ALGERIA].

20. FREDERICK S. MISHKIN, THE ECONOMICS OF MONEY, BANKING, AND FINANCIAL MARKETS 262-71 (2d ed., 1989); DAVID H. FRIEDMAN, MONEY AND BANKING 83-85 (4th ed., 1998) (detailing the "Multiple Deposit Creation" process).

C. These transactions transfer the wealth from A to B and B to C, but no loans are created, and economic activity must wait for the $100 in circulation to be transferred directly in transactions between the participants, rather than taking advantage of the transformative power of a bank to multiply the economic power of that $100. While a car may be bought by Borrower B, or fertilizer may be bought by Borrower D, that will not happen until such time as Borrower B or Borrower D have accumulated enough cash to make the purchase. Banks, then, provide an almost magical effect on economic activity, increasing both the level of economic activity and the frequency with which it occurs.

H. Banks Make it Possible to Participate in the Global Economy

Cash and barter may suffice in a local market, but they are tremendously inefficient in a global economy. Time and distance make the necessary face to face negotiation difficult. All of the obstacles that limit the efficiency and effectiveness of cash or barter transactions are multiplied in cross-border transactions. Differences in currencies, laws, and customs simply increase the obstacles.

I. Banks are a Catalyst for Good Governance

Banks must evaluate the financial condition of their borrowers and must become an expert analyst of credit and risk, performing the critical functions of being able to evaluate the prospects of being repaid in full in a timely fashion the funds it loans. A bank thus becomes a catalyst for imposing accounting standards, requiring clear and timely reporting, and creating a degree of transparency in financial matters. A bank will want a borrower to have competent management, may insist on a degree of independence at the supervisory level, may impose restrictions on self-dealing, and may require the observance of various legalities and formalities.

IV. WHAT DO BANKS REQUIRE?

As important as banks are, equally important are the essential elements that are required to permit them to carry out their functions.

A. Society Governed by the Rule of Law

When we talk of the "rule of law," we refer to more than simply the presence of laws. Certainly it is important to have provisions governing enforcement of contracts, negotiable instruments, security instruments, bankruptcy, and so on. These, in fact, are the easy part of creating a society governed by the rule of law. Much more difficult, and much more important, is creating a society where there is a general expectation that those laws will be honored and parties should be bound by the agreements they have written.

Every deposit, every loan, and every transaction represents an agreement between two parties. Virtually every one of these agreements is voluntarily performed by the parties without incident or dispute. However, underpinning this voluntary performance is a recognition that there will be a mechanism where disputes will be resolved fairly, impartially, and rapidly.

It is easy to see why banks depend on such a framework. With every loan, a bank depends on the obligation of the borrower to repay the loan in accordance with its terms. It recognizes that there may be reasons why that may not occur (financial difficulties or extraordinary events), but it will not be particularly interested in putting itself at risk if repayment is simply dependant on the whim of the borrower. The fact that there is recourse encourages both the bank to lend and the borrower to repay. Likewise, the depositor, who entrusts funds to the bank, does so with the expectation that she will be repaid as promised.

A closely related issue is corruption, endemic in many countries. The impact of that corruption is often evident in the banking system and in the economy as a whole. Corruption, of course, taints more than judges. It affects the provision of services, the receipt of licenses, and access to privileges. It can make the difference between having title to property or not, being able to obtain a business license or not, being able to have verifiable income, or simply being able to receive a birth certificate or identification papers. Each of these factors can affect the ability to obtain a loan or participate in the banking system.

A recent World Bank Policy Research Paper addresses the relationship between access to the banking system and economic growth.[21] While conclusions are tentative, the paper addresses barriers to access such as affordability, physical accessibility to locations where deposits can be made and loans granted, required documentation, and minimum loan size. The paper finds a high degree of correlation between those countries where it is difficult to access the banking system and those experiencing poor economic growth. The countries where these obstacles are high include Cameroon, Nigeria, Sierra Leon, Philippines, Bangladesh, Algeria, Bolivia, and Georgia—all countries that struggle with a variety of challenges. While one might argue that the instability of a country creates high barriers to access to the banking system, it seems an equally forceful argument that an effective and accessible banking system demands a stable country. Perhaps focusing on which is the cause and which is the effect is less useful than simply acknowledging that there is a strong correlation.

A similar conclusion can be drawn from the annual Heritage Foundation *Index of Economic Freedom*, where monetary freedom, investment freedom, and financial freedom are key components of the ranking.[22] Financial freedom is particularly relevant, for it is defined as "a measure of banking security as well as independence from government control. State ownership of banks and other financial institutions . . . is an inefficient burden, and political favoritism has no place in a free capital market."[23] The correlation between economic freedom and economic development is clear. Conversely, the lack of economic freedom constrains that development and growth.

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21. Thorsten Beck, Asli Demirguc-Kunt & Maria Soledad Martinez Peria, *Banking Services for Everyone? Barriers to Banking Access and Use around the World* (World Bank, Research Working Paper No. 4079, December 2006).

22. THE HERITAGE FOUNDATION, 2008 INDEX OF ECONOMIC FREEDOM (Kim R. Holmes, Edwin Feulner & Mary Anastasia O'Grady eds., 2008) [hereinafter INDEX OF ECONOMIC FREEDOM].

23. William W. Beach & Tim Kane, *Methodology: Measuring the 10 Economic Freedoms*, *in* INDEX OF ECONOMIC FREEDOM, *supra* note 22, at 39, 41.

B. A Sound, Impartial (and Rapid) Judicial System

As noted above, underpinning a society governed by the rule of law is a fair and impartial mechanism for resolving disputes. Many countries struggle with soundness and impartiality, but even the problem of delay adversely affects the banking system. India is legendary in this regard, although it has taken steps to ameliorate the problem at least as it affects commercial transactions. Many commercial disputes took decades to resolve, finally reaching some form of resolution long after the original disputants had deceased.[24]

Again, the impact on a banking system is obvious. If it takes forever to resolve disputes, regardless of the legitimacy, banks are less able to rely on the promises of the borrowers to pay when and as agreed. This uncertainly translates into either fewer loans made only to a limited number of trustworthy borrowers, higher interest rates and charges to compensate for the increased risks, or both. The economy and the nation suffer as a result.

C. Independence

It is true that a state-owned bank can perform many of the functions described above, particularly those relating to serving as a safe repository for the funds of the public. Indeed, state-owned banks are generally perceived to be "safer" than private banks because of the perceived implicit promise of the government not to let the bank fail.[25]

Where state banks generally fall short in accomplishing the objectives of a banking system is in the function of turning those funds into productive loans creating economic growth and development. It is not that they cannot perform this function; rather, it seems to be the almost irresistible temptation on the part of the government owner to use the funds for socially or politically desirable purposes. Credit gets allocated not on the basis of the economic viability of a proposal or the prospects of repayment, but rather on the criteria established by the governmental authority.[26]

Who suffers in such a system? Privately owned banks are at a disadvantage in attracting funds. They lack the implicit (and occasionally explicit) subsidy provided by the government, and must pay more for deposits. Private banks generally need a return on equity, something state owned banks generally need not worry about, but which will translate into higher loan rates, fees, or other charges. The biggest loser, however, may be the entrepreneur who cannot get funding, the employees that will

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24. *See, e.g.*, Rajesh Chakrabarti, *Law and Finance in India—An Overview* (August 3, 2006), *available at* http://ssrn.com/abstract=924323; S. ASIA HUM. RTS. DOCUMENTATION CTR., LEGAL REFORMS AND INVESTMENT PROSPECTS IN INDIA, HUMAN RIGHTS FEATURES REPORT 154/06 (2006), *available at* http://www.hrdc.net/sahrdc/hrfeatures/HRF154.htm.

25. *See generally*, KHALED SHERIF, MICHAEL BORISH, & ALEXANDRA GROSS, STATE-OWNED BANKS IN THE TRANSITION: ORIGINS, EVOLUTION, AND POLICY RESPONSES, (2003), *available at* http://lnweb18.worldbank.org/eca/eca.nsf/Attachments/State+Banks/$File/State+banks+Final-022803.pdf; A. Michael Andrews, *State-Owned Banks, Stability, Privatization, and Growth: Practical Policy Decisions in a World Without Empirical Proof* (Int'l Monetary Fund, Working Paper No. WP/05/10, 2005), *available at* http://www.imf.org/external/pubs/ft/wp/2005/wp0510.pdf.

26. *See, e.g.*, Andrews, *supra* note 25, at 5, 6.

never get hired, the goods or services that will never get sold. The economy suffers as a result.

The history of state-owned banks is generally one of poor economic performance, tied directly to the poor loans these banks are forced to make. These banks constantly require additional funds from the government to make up for the losses incurred, amounting to a tax on the populace.[27] It is the privately-owned bank that has the incentive to make economically viable loans that will funnel funds into productive parts of the economy, simulating growth and development. As noted above, it is not that state-owned banks cannot perform this function; it is that they often do not.

D. Government Oversight

While it is important to have private banks, it is also important to have oversight. Because banks play such a critical role in the economy, a bank failure can have devastating consequences. Several groups are at risk when a bank fails. The most obvious group is the depositors, who will likely not only lack access to their funds for some period of time, but also run a serious risk of loss. Borrowers, too, are at risk, because many lending relationships depend on continuing access to the bank to address credit needs, modifications, and other banking services. Those that rely on the bank for services (such as cash management, custodial or trust, letters of credit, funds transmission services) will not only need to find alternative sources for these services, but critical relationships will be disrupted and assets or collateral may be at risk. Suppliers will have lost a customer, and may be at risk of not getting paid for past services. Shareholders generally lose their investments. Employees are in jeopardy of losing their jobs. The economy will have lost a source of credit and banking services. These are not trivial events.[28]

Even a bank in danger of failing poses problems. The struggling bank faces the temptation to pay high rates on deposits to assure continued liquidity, adversely affecting other banks. Likewise, there is the risk of engaging in imprudent and risky lending, in an attempt to generate necessary income. Since the shareholders are likely to lose their money anyway, the temptation to gamble with the depositors' funds can be irresistible. If their gamble succeeds, their investment is worth something; if their gamble fails, they are no worse off. "Normal" considerations of safety, soundness, and prudence disappear.

Because of the broad economic impact of failed and failing banks, the government has a strong role in assuring that banks operate in a safe and sound fashion. A framework of what banks are permitted to do, a system of supervision to assure that the banks operate within that framework in a prudent fashion, and a system of enforcement designed to punish those banks that fail to do so are all essential. While it is unlikely

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27. *See, e.g.*, IMF, ALGERIA, *supra* note 19, at 5, 6.

28. *See generally*, FED. DEPOSIT INS. CORP., DO BANK FAILURES AFFECT ECONOMIC ACTIVITY, (2005), *available at* http://www.fdic.gov/bank/analytical/cfr/2005/sept/cfrfall_2005_Cramirez_Pshively.pdf.

that even the best regulatory system will prevent failures,[29] addressing problem banks promptly and mitigating the effects of failing banks is extremely important.

Part of the mitigation effort generally involves some form of deposit insurance protection for depositors.[30] Depositors are generally in a very poor position to evaluate the strength or weakness of the banks to which they entrust their funds, relying instead on the government to identify and address problem institutions. The loss of those funds can be devastating to individuals, who actually will lose the funds, but also to businesses, which may lose working capital or payroll funds. Even delays in accessing those funds can have serious consequences. Accordingly, the best deposit insurance schemes attempt to provide access to at least some of the funds promptly following failure.

Indeed, one of the most significant developments in the United States' banking system was the development of federal deposit insurance, an explicit promise by the government to protect the funds of depositors in the event of a bank insolvency. The FDIC was created following the severe banking crises that accompanied the Great Depression of the early 1930s.[31] As Milton Friedman and Anna Schwartz note in their 1963 work on the monetary history of the United States:

> [F]ederal deposit insurance . . . has succeeded in achieving what had been a major objective of banking reform for at least a century, namely, the prevention of banking panics. . . .
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> . . . [B]anking panics have occurred only during severe contractions and have greatly intensified such contractions, if indeed they have not been the primary factor converting what would otherwise have been mild contractions into severe ones. That is why we regard federal deposit insurance as so important a change in our banking structure and as contributing so greatly to monetary stability—in practice far more than the establishment of the Federal Reserve System.[32]

Friedman further notes, "Federal insurance of bank deposits was the most important structural change in the banking system to result from the 1933 panic, and, indeed in our view, the structural change most conducive to monetary stability since state bank note issues were taxed out of existence immediately after the Civil War."[33] John Kenneth Galbraith concurs, stating that "[t]he anarchy of uncontrolled banking had been brought to an end not by the Federal Reserve System but by the obscure, unprestigious, unwanted Federal Deposit Insurance Corporation."[34] He additionally

29. Indeed, there is a real question as to whether preventing all failures is good for the economy, as a system designed to prevent all failures may unnecessarily interfere with healthy risk taking. In fact, Wright Patman, then Chairman of the House Banking and Currency Committee, once declared: "I think we should have more bank failures. The record of the last several years of almost no bank failures and, finally last year, no bank failure at all, is to me a danger signal that we have gone too far in the direction of bank safety." FED. DEPOSIT INS. CORP., THE FIRST FIFTY YEARS: A HISTORY OF THE FDIC 1933-1983, 7 (1984).

30. *See, e.g.*, FED. DEPOSIT INS. CORP., PUBLIC-POLICY OBJECTIVES FOR DEPOSIT INSURANCE SYSTEMS (2002), *available at* http://www.fdic.gov/deposit/deposits/international/guidance/guidance/index.html.

31. FED. DEPOSIT INS. CORP., *supra* note 29, at 3-4.

32. MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, A MONETARY HISTORY OF THE UNITED STATES, 1867–1960, 440-42 (1963).

33. *Id.* at 434.

34. JOHN KENNETH GALBRAITH, MONEY: WHENCE IT CAME, WHERE IT WENT 197 (1975).

stated that "[i]n all American monetary history, no legislative action brought such a change as this."[35]

The experience of the United States is repeated elsewhere. Deposit insurance explicitly protects against bank runs, permits a more stable source of funding, provides banks greater comfort in extending longer term loans, and facilitates greater economic growth and activity.[36]

E. A Functioning, Independent Central Bank

It may seem strange to state that a central bank is necessary to a functioning banking system since the United States operated without one for over 120 years. Yet in a modern society central banks play a critical role regulating the money supply, fighting inflation, and serving as the lender of last resort. Most central banks also provide essential payment services, facilitating transfers of funds between financial institutions.

An independent central bank is one that has the autonomy to carry out its functions free from political interference. Such interference would typically come from the executive branch, or ministries of economy or finance, that may prefer short-term economic growth rather than a stable currency or low rates of inflation. Again, it is not that a central bank that is not independent *cannot* carry out the critical functions described above; rather, it is that they typically do not, succumbing instead to the pressures to compromise their roles for the political objectives of other parts of the government. In that light, central banks that are not independent are much like state-owned commercial banks.

There are certainly private sector alternatives to some of the functions of central banks. For example, prior to the creation of the Federal Reserve, the stories of J. P. Morgan calming panics by providing necessary liquidity into troubled markets are legendary.[37] Today, however, few private financial institutions have either the credibility or the financial resources to serve such a function. And without a lender of last resort, banks run the risk that, notwithstanding the strength of their balance sheets, they will be unable to meet with demands of depositors seeking their funds in times of stress or panic.

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35. *Id.*

36. *See* Gillian G. Holway Garcia, *Deposit Insurance*, *in* PREVENTING BANK CRISES: LESSONS FROM RECENT GLOBAL BANK FAILURES 255, 266 (Gerard Caprio, Jr. et al. eds., 1998); Gillian G.H. Garcia, *Deposit Insurance: A Survey of Actual and Best Practices* 24-26 (Int'l Monetary Fund, Working Paper No. WP/99/54, 1999). There is some evidence that an improperly designed or implemented deposit insurance program may increase bank instability, notwithstanding the protection it provides to depositors. Robert Cull, Lemma W. Senbet & Marco Sorge, *Deposit Insurance and Financial Development* 2 (World Bank Policy Research Working Paper, Paper No. WPS2682, 2001), *available at* http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2001/10/19/000094946_01100404003817/Rendered/PDF/multi0page.pdf.

37. *See, e.g.*, RON CHERNOW, THE HOUSE OF MORGAN: AN AMERICAN BANKING DYNASTY AND THE RISE OF MODERN FINANCE 122 (Simon & Schuster Books, 2001) (1990).

V. WHAT DO BANKS MEAN IN TERMS OF A "NATION?"

It may be simplistic to assert, but a nation exists when a sufficient number of people have an interest that it exist; and when individuals have something to lose, they become more interested in a society that will protect what they have. Experience validates this proposition. A property owner becomes concerned about property rights, zoning, taxation, eminent domain, and permissible land use. A business owner becomes concerned about taxation, laws that affect the hiring and firing of employees, the enforceability of contracts and agreements, and the fairness and efficiency of the judiciary where disputes can be resolved. The property or business owner may also be concerned about relatively mundane things such as roads, telecommunications capacity, and predictability of transportation services. The automobile owner will become concerned not only about the automobile, but about roads, availability and quality of fuel, a tort liability framework, and insurance. Much of this can only be provided by a stable government, the hallmark of a nation.

When banks function as they should, individuals and groups are tied together in a multitude of ways. Depositors and borrowers, employers and employees, vendors and purchasers are all tied together by a web of economic relationships, each of which involve a bank. While these participants all have divergent interests, one common interest is that banks continue to fulfill their functions. It is not just the economic ties that are created; it is the common interest in a society that permits those economic ties to flourish.

Businesses and individuals depend on predictability for their economic decisions, and predictability is generally provided by the government. The arbitrariness of the warlord or the dictator is not conducive for business. Property may be confiscated on a whim. The enemy of the warlord or dictator cannot be assured of physical safety, much less economic safety. The ability to make long-term plans, establish long-term relationships, or enter into binding contracts for supplies or services is impossible because the foundations upon which these matters rest simply do not exist in such societies.

If one is merely raising a crop for familial use, with excess being bartered to others for their goods or services, one may have little need or interest in contracts, courts, insurance, zoning, or the like. Economic transactions are immediate, personal, and consummated quickly. While the subsistence farmer might well benefit from access to credit and greater market information, he has more immediate needs. Concepts such as a "nation" that might create, preserve, or protect rights are relatively far removed. The economic advances facilitated by a strong, vibrant banking system will broaden the outlook of the farmer. The farmer will both expect and require more.

Banks themselves must operate in a system where there is an infrastructure that may only be provided by a government. There must be a system where contracts are enforced, where rights of creditors (and debtors) are clearly set forth, and where such rights are consistently applied. Monetary policy must be predictable, so that a bank can make appropriate plans for the long-term deployment of its own funds and the funds entrusted by depositors. Accordingly, a group of stakeholders emerges with strong economic interest in promoting the rule of law within the society.

Benjamin Friedman's book, *The Moral Consequences of Economic Growth*, sets forth an interesting thesis that the periods during which advances are made in civil and political rights are those of increasing economic growth.[38] He argues that economic growth has the potential to improve the environment, reduce poverty, promote democracy, and make for a more open and tolerant society.[39] The analysis focuses not only on the United States, but also various western European and several other countries, and attempts to track measures of what we would define as civil rights—expansion of voting rights, passage of anti-discrimination laws, and the like.[40] He finds strong evidence that it is the advance of economic security that permits the existing political powers to relax their grips on society and to permit greater political participation in the society commensurate with the greater economic power being dispersed.[41] If banks drive (or at least facilitate) the economic growth of a nation, a strong, functioning banking system is critical to the advances in civil and political rights that follow.

An interesting observation is made by Muhammad Yunus in his book, *Banker to the Poor*, where he recognizes access to credit as a powerful tool for addressing social problems.[42] He points out that access to credit allows people to address their own problems, without the need for extensive (and expensive) aid programs:

> Worst of all, economists have failed to understand the social power of credit. In economic theory, credit is seen merely as a means with which to lubricate the wheels of trade, commerce, and industry. In reality, credit creates economic power, which quickly translates into social power.[43]

Each of the benefits described above—creating stakes in a civil and just society governed by the rule of law, promoting an interest in sound government, advancing political freedoms, and empowering social reform—is a critical component in building a nation where people have an incentive to be bound together in a system of justice and fairness. While a strong banking system may not be sufficient to create a nation, it certainly appears to help.

VI. BUILDING A SOUND BANKING SYSTEM AND, HOPEFULLY, A NATION

The objective is relatively simple, but the methodology is quite difficult. The objective is to create a banking system where people have access to deposit and credit services in an environment that will facilitate economic growth, giving them a vested interest in a stable, civil society governed by the rule of law. Achieving that objective, however, demands a holistic approach that generally encompasses the following requirements.

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38. BENJAMIN M. FRIEDMAN, THE MORAL CONSEQUENCES OF ECONOMIC GROWTH (2005).
39. *Id.* at 4, 395.
40. *See id.* at 103-294.
41. *Id.*
42. MUHAMMAD YUNUS, BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY (Public Affairs 2003) (1997).
43. *Id.* at 150.

A. An Appropriate Framework of Laws

This is perhaps the easiest part of the process, although the means of achieving it is different in each country. It is important to define what banks can do, who can own a bank, how they expand, and how they operate. The objective is to assure that the banks have the power and authority to carry out their essential functions of serving as safe repositories for the funds of the public and as productive lenders into the economy.

B. Strong Supervisory Functions to Protect Banks and the Economy

The ability of banks to be "safe repositories" and "productive lenders" are critically important. The problems that arise when they fail at these functions are enormous. The country has a tremendous interest in assuring that banks operate safely, soundly, and within the parameters established for their operations.

The United States has one of the most sophisticated regulatory regimes in the world,[44] yet it is something we would be loath to recommend to any other country. We have multiple regulators performing essentially the same function, a result of our peculiar history.[45] We also have thousands of banks vigorously competing, something few other countries enjoy.

The principles of supervision and regulation, however, are universal. Through a combination of on-site examination and off-site monitoring, the supervisors assure that banks are operating within the bounds of the laws that govern their operations, that they maintain adequate capital to carry out their operations, and that they are able to meet the claims of their depositors. When a bank strays outside the permissible boundaries, the supervisor must have adequate tools to force corrective action. Importantly, if a bank fails, the supervisor must have sufficient tools to remove it from the system with minimal disruption.

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44. We have multiple regulators for banks: the FDIC for state chartered non-Federal Reserve member banks; the Board of Governors of the Federal Reserve for bank holding companies and state chartered Federal Reserve member banks; the Office of the Comptroller of the Currency for nationally chartered banks; the Office of Thrift Supervision for savings institutions; and state regulators for state chartered banks. The enforcement authority of these federal regulators is outlined in 12 U.S.C. § 1813(q) (2000). Various powers are vested in one or the other regulator with little apparent reason. For example, the Federal Reserve is given authority to implement the Truth in Lending Act, 15 U.S.C. §§ 1601-1615 (2000), and does so through Regulation Z, 12 C.F.R. § 226 (2007), while the FDIC is given authority to determine certain other permissible activities for state-chartered banks and savings institutions. 12 U.S.C. §§ 1831a, 1831e (2000).

45. We have periodic calls for reform of our regulatory structure. The most recent, *Blueprint for a Modernized Financial Regulatory Structure,* released on March 31, 2008, would eliminate much of the duplication and focus regulatory efforts on financial stability, prudential regulation, and regulation of market conduct. DEP'T OF THE TREASURY, BLUEPRINT FOR A MODERNIZED FINANCIAL REGULATORY STRUCTURE (2008), *available at* http://www.treas.gov/press/releases/reports/Blueprint.pdf. It is a vast, ambitious plan that would dramatically affect regulation of banks, securities firms, insurance companies, and government sponsored enterprises such as Fannie Mae and Freddie Mac.

C. An Effective, Independent Central Bank

The importance of the "behind the scenes" role played by a central bank cannot be overestimated. In a very real sense, a central bank assures that the basic infrastructure of a financial system is in place. It facilitates a sound, viable currency, addresses inflationary concerns, generally operates the inter-bank payment and settlement system, and is vested with the overall governmental responsibility to assure the fundamental safety and soundness of the economy as a whole.

D. Effective Protection of the Deposits of the Public

Whether or not a country elects to establish a deposit insurance system is not as important as whether it takes affirmative steps to protect at least some portion of the deposits in the banks. Most countries will designate a level of deposits that will assure that essential funds will be protected, and will attempt to do so by assessing the banks for the benefit provided.

This assurance is critical, for it recognizes that individual depositors are not in a position to evaluate the financial strength of a bank. Absent protection for deposits, depositors have a strong incentive to withdraw their funds upon the first rumor of weakness, for if the rumor turns out to be correct, they will lose their funds. If the rumor is false, all they have incurred is some minor inconvenience. The presence of a deposit protection mechanism has the salutary effect of assuring a stable source of funding and preventing bank runs.

E. Education of Lawmakers and Judges on the Importance of the Banking System

Banking and financial markets are complicated. Issues such as required capital, loans to one borrower, affiliate transactions and enforcement powers, bank insolvency laws, debtor and creditor rights, secured transactions, and negotiable instruments are all critical to a functioning banking system, yet seem technical, uninteresting, and unimportant to a legislator. Because banks play such an important part in the economy, however, unintentional legislative steps can have a significant, and often significantly adverse, impact. Complaints that banks charge too much for loans can result in mandatory interest rate caps, making lending unprofitable and drying up credit.[46] Complaints about fees or charges can result in prohibitions, making it unprofitable for banks to offer deposit or transaction services.[47]

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46. For example, in 2002, Georgia passed a very tough predatory lending law designed to affect what it perceived to be high-cost or abusive mortgages. Because the bill imposed liability on participants in the secondary market, there was a huge outcry by potential investors in mortgage-backed securities. *See, e.g.,* Lynn Woosley, *Uncertainty in Georgia's Mortgage Market*, PARTNERS IN COMMUNITY AND ECON. DEV. (Fed. Reserve Bank of Atlanta, Cmty. Affairs Section, Atlanta, Ga.), Vol. 13, No. 1, 2003, *available at* http://www.frbatlanta.org/invoke.cfm?objectid=B7017D3B-52DB-4461-8422AF7B7276F06D&method=display.

47. The American Banker reported that various House Judiciary Committee members are drafting a bill to limit permissible interchange (the fees charged by the credit card associations on merchants in connection with credit card transactions). *See* Stacy Kapers, *Interchange Limit Heats Up on Hill*, AM. BANKER, Feb. 21, 2008, at 1.

Disputes involving banks are complex and difficult, and often involve pitting the interests of the bank against those of very sympathetic debtors. A judge may be tempted to protect the borrower at the expense of the bank, not realizing that by so doing he makes it difficult for the bank to continue to extend credit to borrowers under similar circumstances.

The point is not that every restriction on a bank is improper or that there should be no protection for consumers—far from it. Rather, the point is that a healthy banking system requires a sound and consistent framework of laws and a judiciary that will apply those laws fairly and impartially in the context of disputes.

F. Identification of and Support for Government Reformers

There are invariably powerful interests that are benefited by the status quo. This is particularly true in attempting to move towards a market-based economy, for in most state-controlled economies, those in positions of power are able to use that power for their own personal benefit. Part of reform involves devolving decision-making to market-based participants, and empowering them to make decisions on economic and financial criteria. There will be winners and losers in such a change, and many of those losers will be politically well-connected.

Reform of this magnitude cannot be imposed by outsiders; it requires committed individuals working within the system desirous of improving the economy, and the country, through change. It is often thankless work, and occasionally requires incredible sacrifice.[48]

G. Strengthening the Practices of the Private Banks

Moving from a system of state-owned and state-controlled banks to a system of private banks making market-based decisions represents a radical transformation. Instead of relying on the government to direct where loans are to be made without worrying about repayment, the bank must learn to judge creditworthiness, assess risk, establish appropriate terms and conditions, and worry about repayment. These are not intuitive steps. One of the critical issues for the economy is learning how to make small business loans in order to stimulate economic growth and activity—something state-owned banks rarely, if ever, did, and which requires particular skill and understanding.

H. Addressing the Distortions Caused by State-Owned Banks

State-owned banks generally distort the market in several ways. First, there is a palpable sense that deposits in state-owned banks are safer than deposits in a private bank. Due to the state ownership, and implicit state responsibility for its operations, depositors believe that even if the bank becomes insolvent, the state will assure that

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48. One of the most committed reformers in Russia was the First Deputy of the Central Bank of Russia, Andrei Kozlov, who was brutally murdered on his way home from a soccer match in 2006. He had apparently antagonized one too many powerful interests in his efforts to clean up the Russian banking system. His murder was widely reported. *See, e.g.*, Guy Chazan, *Blood Money: Murdered Regulator in Russia Made Plenty of Enemies*, WALL ST. J., Sept. 22, 2006, at A1.

they have access to their funds. This causes a disproportionate amount of funding to be directed to the state-owned institutions, making it harder (and more expensive) for the private banks to attract funds. Second, the state-owned bank typically engages in a significant amount of "directed" lending—that is, lending that has been directed by the state rather than made on the basis of a real economic, financial, or credit analysis. These loans will be mis-priced, as they will not reflect the risks of the loan, and in turn may prevent private sector banks from extending financially sound credit to such borrowers (even though they would do so on different terms), may extend the life of economically unviable, but perhaps socially desirable, enterprises, and divert funds from other, more productive, projects. Third, the state-owned bank generally worries little about profitability, return on equity, or other financial metrics. These measurements have little relevance when the owner is not interested in the financial return, but if measured, would generally be quite poor.[49]

To allow the growth of a healthy private sector, these distortions should be eliminated, or at least mitigated. Some form of state involvement in the banking sector may be necessary for a period of time (to provide, for example, banking services to remote villages or to engage in some form of economic development activity), but these should be phased out as soon as the market is capable of providing the funding. In general, deposit taking of state-owned banks should be restricted as quickly as possible, lending activities should be as transparent and as market-based as possible, and intended subsidies to socially or politically favored industries or groups should be on the books of the government, and thus explicit, rather than run through the banking system and hidden.

VII. CONCLUSION

Twenty-five years ago Gerald Corrigan, then President of the Federal Reserve Bank of Minneapolis, wrote a provocative paper entitled *Are Banks Special?*[50] The paper set forth an argument that due to the "special" nature of banks, it was appropriate to strictly limit their activities.[51] Ultimately, Mr. Corrigan's position was more or less repudiated when Congress opened the door for banking organizations to engage in securities and insurance underwriting, as well as a broad range of other financial and related activities.[52] Notwithstanding that Congressional action, Mr. Corrigan was absolutely right about the critical role that banks play in our, and any other, financial system.

Through what banks do, and by virtue of how they do it, banks facilitate transactions, create viable, vibrant markets, and build economies. Banks facilitate economic activity, prompting investment, creating goods, and providing jobs. Banks create opportunity. Banks create stakeholders in a functioning, civil society. Banks

49. *See generally* SHERIF, BORISH & GROSS, *supra* note 25; Andrews, *supra* note 25.
50. E. Gerald Corrigan, *Are Banks Special?*, FED. RES. BANK OF MINNEAPOLIS ANN. REP. (1982), *available at* http://www.minneapolisfed.org/pubs/ar/ar1982a.cfm.
51. *Id.*
52. *See* Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified at 15 U.S.C. §§ 6801-6809 (2000)) (allowing banking institutions to engage in various investment and insurance-related services).

create vested interests in societies governed by sound, predictable laws. Banks give people something to lose.

Banks, however, cannot exist, or at least cannot carry out their functions, in societies lacking sound, predictable laws and a functioning judicial system. A functioning banking system further requires a viable central bank and effective bank supervision. Significantly, the more a bank carries out its essential functions, the greater the societal interest in assuring the existence of the sound laws, the functioning judiciary, the viable central bank, and the effective bank supervision. In other words, the more a bank carries out its essential functions, the greater the people's interest in assuring the existence of a government and a nation.

Nations exist because people want them to exist. Obviously, much more than a bank goes into building a nation. Yet the process of building a functioning banking system necessarily involves the process of building a nation. And the benefits of that exercise are enormous.