

Note

Hidden in Plain Sight: The Federal Reserve's Role in U.S. Foreign Policy

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INTRODUCTION

Imagine that the Federal Reserve Board (FRB) had established swap lines¹ to the Central Bank of Russia in the midst of the financial crisis. Then suddenly, a diplomatic crisis broke out.² Would the FRB be forced to unwind those swap lines? How would the President and Congress coordinate with the FRB in crafting a foreign policy response? What legal authorities, conventions,

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1. During the recent financial crisis, the FRB provided temporary swap lines, i.e., dollar lending to foreign central banks or reciprocal currency arrangements, to ensure an adequate supply of dollar liquidity and stabilize international global markets pursuant to § 14 of the Federal Reserve Act. *See Central Bank Liquidity Swap Lines*, BD. GOVERNORS FED. RESERVE SYS., http://www.federalreserve.gov/newsevents/reform_swaplines.htm (last updated Dec. 9, 2014).

2. This is a hypothetical scenario. The FRB did not extend, or contemplate extending, swap lines to the Central Bank of Russia during the 2008 financial crisis.

or guidelines govern FRB decisions with implications for foreign affairs? The short answer is none.

No formal guidance, statutory or otherwise, governs whether or how the FRB should interact with the political branches on foreign policy matters. By design, the FRB is protected from political interference and gains legitimacy through such independence. It does not take direction from the President or Congress. And its decisions are intentionally shielded from public scrutiny.³ This independence complicates coordination processes and norms that govern other foreign policy actors.⁴ The limited legal scholarship considers the FRB from an administrative law perspective and places the agency in a domestic-centered conversation.⁵ While some have pointed out the FRB's role in international markets,⁶ legal scholars have yet to grapple with the effects of central bank independence in the context of foreign policy matters.⁷

3. The Federal Open Market Committee (FOMC) transcripts are voluntarily released on a five-year lag and provide a unique window into the important decisions made by the FRB in the recent financial crisis. The FRB has no statutory obligations to do so. *See also* note 30 discussion why delayed release is necessary. Congress intentionally exempted the FRB from transparency requirements commonplace for other federal agencies. *See* BOB WOODWARD, MAESTRO: ALAN GREENSPAN AND THE AMERICAN ECONOMY 252 n.28 (2012); Ben S. Bernanke, *The Fed's Road Toward Greater Transparency*, 28 CATO J. 175, 177 (2008) (detailing the Fed's voluntary transparency initiatives), <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2008/5/cj28n2-1.pdf>; MARC LABONTE, CONG. RES. SERV., R42079, FEDERAL RESERVE: OVERSIGHT AND DISCLOSURE ISSUES (2014) (outlining congressional transparency debates related to the FRB).

4. The "one-voice" doctrine has been a mainstay of U.S. foreign policy jurisprudence since 1827. It states that the nation should speak with a unified voice on matters of foreign affairs, and it carries strong intuitive and constitutional appeal. *See, e.g.*, *Zschernig v. Miller*, 389 U.S. 429 (1968) (discussing the limits of courts and state power in foreign affairs); *United States v. Belmont*, 301 U.S. 324, 330 (1937) (establishing the "sole organ" doctrine whereby the President represents the nation in external affairs); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304 (1936) (affirming the power of the President as the nation's sole representative in foreign affairs). But this doctrine diverges from reality. "The federal government itself rarely speaks with one voice in foreign relations." Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1688 (1997). Foreign policy is formulated and executed by multiple bodies: the President, Congress, courts, states, administrative agencies, and international bodies, among others. The FRB is merely one, previously underappreciated, actor within the U.S. foreign policy apparatus.

5. The administrative law literature draws comparisons to other domestic agencies and discusses mechanisms for political oversight. *See, e.g.*, Rachel Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15 (2010) (illustrating design mechanisms that agencies use to avoid agency capture); Adrian Vermeule, *Conventions of Agency Independence*, 113 COLUM. L. REV. 1163 (2013); Peter Conti-Brown, *The Structure of Federal Reserve Independence* 30 (Stanford Law Sch. & The Rock Ctr. for Corporate Governance, Working Paper No. 139, 2013).

6. *See* Barry Eichengreen, *Does the Federal Reserve Care About the Rest of the World?*, 27 J. ECON. PERSP. 87 (2013).

7. Indeed, Peter Conti-Brown argues that "the Federal Reserve, with the ability to influence nearly every aspect of public and private economic life, is one of the most powerful agencies in the history of the American Republic. Legal scholars have, for the most part, not taken note." Conti-Brown, *supra* note 5, at 2. There has been some attention to the intentional aspects of the FRB's actions by non-legal scholars. *See, e.g.*, Douglas W. Arner, *Adaptation and Resilience in Global Financial Regulation*, 89 N.C. L. REV. 1579 (2011); Luis Garicano & Rosa Lastra, *Towards a New Architecture for Financial Stability: Seven Principles*, 13 J. INT'L ECON. L. 597 (2010); Daniel Hemel, Note, *Regulatory Consolidation and Cross-Border Coordination: Challenging the Conventional Wisdom*, 28 YALE J. ON REG. 213 (2011). On international swap lines, see, for example, Colleen Baker, *The Federal Reserve's Use of International Swap Lines*, 55 ARIZ. L. REV. 603 (2013); and Michael J. Fleming & Nicholas J. Klagge, *The Federal Reserve's Foreign Exchange Swap Lines*, 16 FED. RES. BANK OF N.Y.: CURRENT ISSUES IN ECON. AND FIN. 4 (2010).

This Note stakes out new ground by describing the FRB's unheralded role in foreign policy.⁸ It explores this role using newly released data: 1,865 pages of Federal Open Market Committee (FOMC) meeting transcripts from the 2008 financial crisis.⁹ Specifically, during this period two policy decisions had substantial bearing on U.S. foreign policy: the FRB's international swap line decisions and global coordination of interest rate cuts. The transcripts reveal that the FOMC members carefully deliberated the diplomatic implications of their decisions. At times, the FRB consulted the Department of State to vet the diplomatic or national security repercussions of its decisions. Indeed, Department of State diplomatic cables confirm the salience of FRB decisions for foreign nations.¹⁰ The transcripts show that the FRB carefully sought to maintain its own fiercely apolitical and independent posture while avoiding conflicts with the politically-determined foreign policy agenda.

The Note proceeds in four parts. Part I discusses why and how the FRB's domestic role has overshadowed its international duties. Part II gives two examples of the FRB's influence on foreign policy using the 2008 transcripts: (i) extending \$850 billion of international swap lines to foreign nations and (ii) coordinating global rate cuts with foreign central banks. Part III locates the FRB within the U.S. foreign policy apparatus. It draws comparisons to other independent agencies, including the Central Intelligence Agency, Securities and Exchange Commission, and U.S. International Trade Commission, whose actions also have bearing on U.S. foreign policy. Part IV concludes that the FRB should create internal guidelines to clarify when and how it will engage with the political branches on international matters. Internal guidelines strike the appropriate balance between institutionalizing coordination norms and protecting central bank independence. Such guidelines would delineate what topics fall within or outside the agency's monetary expertise and clarify how to handle instances where economic and political goals diverge. Further research is necessary to fully assess the benefits and drawbacks of these proposed agency-created guidelines.

The FRB's foreign policy role is not new. But it has taken on new

8. Crucially, the FRB is not taking actions outside its statutorily assigned duties or wading into non-economic debates. Rather, its economic mandate inherently overlaps and informs foreign policy decisions. Its actions are primarily exercises in *economic policy* (aimed to impact financial markets, economic activities, employment and production, among others) with secondary *foreign policy* implications. Admittedly, the distinction between a decision with *implications* for foreign affairs and an *exercise* in foreign affairs is murky at best.

9. *Transcripts of the Board of Governors of the Federal Reserve System*, BD. GOVERNORS FED. RESERVE SYS., http://www.federalreserve.gov/monetarypolicy/fomc_historical.htm (last updated Apr. 10, 2014). For examples of press coverage of the release, see Binyamin Appelbaum, *Fed Misread Crisis in 2008, Records Show*, N.Y. TIMES, Feb. 21, 2014, <http://www.nytimes.com/2014/02/22/business/federal-reserve-2008-transcripts.html>; and Jon Hilsenrath, *New View Into Fed's Response to Crisis: From Concern to Hope to Urgent Action, a Peek Inside the Central Bank During 2008*, WALL ST. J., Feb. 21, 2014, <http://www.wsj.com/articles/SB10001424052702303775504579396803024281322>.

10. These diplomatic cables were released by WikiLeaks. They remained classified by the Department of State. My thanks to Professor David Grewal for suggesting to look at FRB actions received by foreign nations.

importance. As the United States operates in increasingly global and interlinked financial markets, the FRB's use of its \$4 trillion balance sheet¹¹ will only become more important to international affairs. The increased use of sanctions and other economic levers in foreign affairs makes the need for coordination more acute. Deepening political gridlock has put further pressure on central bankers to take unprecedented actions.¹² Therefore, calling attention to the FRB's role in foreign affairs is not merely a theoretical inquiry. It has practical consequences for policymakers and raises important questions about central bank independence beyond the water's edge.

I. AN UNDERSTUDIED ROLE IN FOREIGN AFFAIRS

A. *The Dual "Domestic" Mandate*

In 1913, Congress established the Federal Reserve System, along with twelve regional banks, to govern U.S. monetary policy. It operates under a "dual mandate" to maintain maximum employment and price stability.¹³ Fulfillment of this dual mandate has traditionally been measured in solely domestic terms.¹⁴ Congress, the President, market observers, and even the FRB itself have viewed it as an actor in *domestic* policy.¹⁵ While the FRB's statutory duties require its involvement in international matters, this role has largely been overlooked.

The dual mandate only captures a portion of the FRB's responsibilities related to monetary policy. Among others, Congress has tasked the FRB with moderating long-term interest rates, implementing an array of banking statutes and regulations, and monitoring "systemic risk" (a new charge added under the Dodd-Frank Act in 2010).¹⁶ These secondary and tertiary mandates have clear

11. BD. OF GOVERNORS OF THE FED. RESERVE SYS., QUARTERLY REPORT ON FEDERAL RESERVE BALANCE SHEET DEVELOPMENTS: AUGUST 2014 (2014), http://www.federalreserve.gov/monetarypolicy/files/quarterly_balance_sheet_developments_report_201408.pdf [hereinafter QUARTERLY REPORT ON FEDERAL RESERVE BALANCE SHEET DEVELOPMENTS].

12. See *infra* Part IV.

13. *What are the Federal Reserve's Objectives in Conducting Monetary Policy?*, BD. GOVERNORS FED. RES. SYS., http://www.federalreserve.gov/faqs/money_12848.htm (last visited Apr. 16, 2015). Occasionally, the FRB characterizes its statutory mandate as having three goals: "promoting maximum employment, stable prices, and moderate long-term interest rates." Press Release, BD. GOVERNORS FED. RES. SYS. (Jan. 25, 2012), <http://www.federalreserve.gov/newsevents/press/monetary/20120125c.htm>.

14. The FRB's established metrics for measuring its progress—namely, the U.S. unemployment and inflation rates—are entirely based on the performance of the U.S. economy. Press Release, Bd. of Governors of the Fed. Reserve Sys. (Jan. 25, 2012), <http://www.federalreserve.gov/newsevents/press/monetary/20120125c.htm>.

15. See Federal Reserve Act, 12 U.S.C. § 226 (2012). The FOMC makes policy decisions to expand or shrink the money supply at its eight annual meetings. After each meeting, the FOMC announces the rates for interbank, short-term loans (known as "the target federal funds rate"). The FRB uses four primary tools to conduct monetary policy: the federal funds rate, the discount rate, reserve requirements, and "quantitative easing." See 12 U.S.C. § 263(a) (2012) (creating the FOMC and delineating its responsibilities); Conti-Brown, *supra* note 5, at 7-10.

16. See Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301 (2012); see also Alexander Mehra, *Legal Authority in Unusual and Exigent Circumstances: The Federal Reserve and the Financial Crisis*, 13 U. PA. J. BUS. L. 221, 227 (2010) (describing the FRB's statutory

international dimensions. For example, the International Banking Act of 1978 requires participation in international rulemaking organizations and overseeing the systemic risk of foreign bank branches.¹⁷ In addition, the FRB plays an important role as a lender of last resort, providing liquidity directly to banks during times of crisis.¹⁸ As the 2008 financial crisis showed, U.S. banks are increasingly global, as are the risks that shook U.S. financial markets. Congress (with strong public approval) urged the FRB to act aggressively to stabilize international markets.¹⁹

Arguably, these international mandates are *in service of* the FRB's primary domestic responsibilities. In a 2012 speech, Federal Reserve Board Chairman Ben Bernanke acknowledged that "[c]oncerns have been raised about the spillover effects of our [quantitative easing] policies on our trading partners," but noted that these policies are aimed at the FRB's "dual mandate of maximum employment and price stability" and stated that "[a]ssessments of the international impact of U.S. monetary policies should give appropriate weight to their beneficial effects on global growth and stability."²⁰ The observation that the FRB's actions have international implications is not new. Since its creation, the FRB has played a role in foreign affairs by lending to other central banks, maintaining the gold standard, and protecting the dollar as the international reserve currency.²¹

In addition to its international duties, the FRB has always considered international ramifications as it executes its prescribed monetary duties.²² Indeed, it *must* consider international matters because firms, markets, and risks are increasingly global in nature. Notwithstanding this longstanding practice, its members and economists insist that the FRB is an agent of domestic, *not foreign*, policy.²³ Even economic scholars, who explore the FRB's international role in monetary policy, maintain that the FRB's domestic responsibilities are its priority.²⁴ The FRB itself has espoused this domestic-centered view. For

responsibilities).

17. See 12 U.S.C. § 3109 (2012); Conti-Brown, *supra* note 5, at 56-57.

18. Colleen Baker, *The Federal Reserve as Last Resort*, 46 U. MICH. J.L. REFORM 69, 84 (2012).

19. See *Gallup Poll Social Series: Economy and Personal Finance*, GALLUP NEWS SERVICE, (Apr. 4-7, 2013), http://www.gallup.com/file/poll/161726/Who_You_Trust_%20the_Economy_130410.pdf (revealing broad confidence in Chairman Bernanke to "do the right thing for the economy" during the height of the financial crisis); FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT xxi (2011) (criticizing the FRB's lack of a "comprehensive and strategic plan for [crisis] containment" and urging earlier interventions to protect the financial system), <http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

20. Ben Bernanke, Chairman, Bd. of Governors of the Fed. Reserve Sys., Remarks at the Bank of Japan-International Monetary Fund Seminar: Challenges of the Global Financial System: Risks and Governance under Evolving Globalization (Oct. 14, 2012), <http://www.federalreserve.gov/newsevents/speech/bernanke20121014a.htm>.

21. See Eichengreen, *supra* note 6 (providing an overview of the international dimensions of monetary policy).

22. See Eichengreen, *supra* note 6.

23. See Bernanke, *supra* note 20 ("All of the Federal Reserve's monetary policy decisions are guided by our dual mandate to promote maximum employment and stable prices.").

24. Eichengreen, *supra* note 6, at 87. See generally LIAQUAT AHAMED, LORDS OF FINANCE:

example, after an international meeting of central bankers, the Group of Seven (G7) Central Bank Governors and Finance Ministers issued a joint statement affirming that monetary policy “will remain oriented towards meeting our respective domestic objectives using domestic instruments”²⁵ As a result, its role in foreign policy has been hidden from view.

B. *Uniquely Independent Domestically*

Legal scholars have also considered the FRB to be an exclusively domestic administrative agency without international responsibilities.²⁶ Traditional legal theory assumes no relationship exists between political foreign policy actors and monetary policy experts. The FRB is touted as the ultimate independent agency. It is exempt from the typical checks and balances that constrain other government institutions and departments.²⁷ In fact, Congress removed the Secretary of the Treasury from the FRB governing board in 1935 due to concerns about external pressures.²⁸ The FRB has complete budgetary independence from Congress. Its members are appointed to fourteen-year terms with limited removability by the President.²⁹ It makes policy decisions behind closed doors and its transcripts are only released on a five-year lag and only as a result of a voluntary practice initiated by the FRB in 1995.³⁰ The FRB’s structure shields it from short-term political pressures and provides a steady hand to monitor the fragile financial markets. This focus on agency independence hides the FRB’s role in international affairs—a sphere that is conventionally seen as deeply political in nature.

THE BANKERS WHO BROKE THE WORLD (2009) (discussing the joint efforts of four central bankers at the Federal Reserve Bank of New York, Bank of England, Banque de France, and Reichsbank to navigate the global economy through the thorny politics of World War I).

25. The G7 is comprised of FRB representatives. John B. Taylor, *International Monetary Policy Coordination: Past, Present, and Future* (Bank for Int’l Settlements, Working Paper No. 437, 2013), <http://www.bis.org/events/conf130620/taylor.pdf> (quoting Statement by G7 Finance Ministers and Central Bank Governors (Feb. 12, 2013), <http://www.g8.utoronto.ca/finance/fm130212.htm>).

26. See, e.g., Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 VAND. L. REV. 599, 600 (2010) (discussing FRB independence in the context of domestic governance); Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769, 825, 841 (2013); Vermeule, *supra* note 5.

27. See Conti-Brown, *supra* note 5.

28. Barkow, *supra* note 5, at 28 (“Even if Congress is controlled by the same party as the current President, it may prefer a for-cause removal provision if the need for stability in policy is relatively great. This concern, for instance, was the driving force behind the removal of the Secretary of Treasury and the Comptroller General from the Federal Reserve Board in 1935.”).

29. Budgetary independence is particularly significant. See MICHAEL E. MILAKOVICH & GEORGE J. GORDON, *PUBLIC ADMINISTRATION IN AMERICA* 373 (9th ed. 2007) (arguing that the strongest way for the President to control an agency is to have control over its budget); Barkow, *supra* note 5, at 44 (“Interest groups can put pressure on members of Congress to exercise control over an agency through the budget, which Congress has done.”).

30. Conti-Brown, *supra* note 5, at 54 (“[T]he Fed’s relationship with the general public has changed dramatically over the last century, and is changing still. In 1995, the Fed began releasing, on a five-year delay, the full transcripts of FOMC meetings.”). During the financial crisis, Federal Reserve Bank of New York General Counsel Thomas C. Baxter, Jr. testified as to why delay is imperative: “[A]nnounc[ing] [unusual and exigent circumstances to the market] may have a negative effect on market confidence and so catalyze a self-fulfilling prophecy.” Mehra, *supra* note 16, at 227.

Many observers note that “the FRB has been a remarkable regulatory success story in that it seems far more responsive to economic science and market realities than to any kind of political or special interest pressure.”³¹ The primary constraint on the FRB’s power is the fact that the political branches could curtail its powers through legislation—an unlikely event given the current political environment. Legal scholars have highlighted the remarkable extent of the FRB’s independence, even as compared to other independent agencies. Professors Kirti Datla and Richard Revesz have shown that the FRB exhibits the key indicia of independence (e.g., removal authority, specified tenure, and partisan balance).³² Professor Adrian Vermeule goes further in characterizing the FRB’s independence. He argues that normative conventions, which extend beyond legal protections, prevent presidents from removing FRB chairs.³³ Professor Vermeule focuses almost exclusively on its institutional design and unusual independence.

The judiciary has affirmed the FRB’s independence and shielded it from legal challenge. Only on rare occasions have courts intervened in the FRB’s decisionmaking. For example, from time to time, courts will place transparency requirements on FRB decisionmaking.³⁴ In its capacity as a government employer, the FRB faces its share of employment discrimination and related labor claims.³⁵ But the judiciary consistently rejects suits related to the FRB’s monetary policy function. This precedent dates back to a Depression-era challenge in which the Second Circuit held that the FRB’s policy choices are not subject to judicial review. It emphatically wrote:

It would be an unthinkable burden upon any banking system if its open market sales and discount rates were to be subject to judicial review. Indeed, the correction of discount rates by judicial decree seems almost grotesque, when we remember that conditions in the money market often change from hour to hour, and the disease would ordinarily be over long before a judicial diagnosis could be made.³⁶

Subsequent decisions continue to employ this logic and do so in the plainest of terms.³⁷ Importantly, FRB independence is explained and justified almost

31. Steven A. Ramirez, *The End of Corporate Governance Law: Optimizing Regulatory Structures for a Race to the Top*, 24 YALE J. ON REG. 313, 349-50 (2007).

32. See Datla & Revesz, *supra* note 26, at 786-98.

33. See Vermeule, *supra* note 5, at 1198 (“Even apart from threats of legislative retaliation or political backlash, genuine internalization of norms of Fed independence may also play a role, although this is inevitably speculative. Perhaps Presidents either believe that the independence of the Fed Chair is good for all and thus have no desire to compromise it, or do not even consider attempting to compromise it (the cognitive hegemony of conventions).”).

34. See, e.g., *Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143 (2d Cir. 2010) (holding that the FRB must disclose information about financial institutions accessing the discount window during the financial crisis pursuant to the Freedom of Information Act); *Fox News Network, L.L.C. v. Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 158, 162 (2d Cir. 2010) (same).

35. See *Pending Cases Involving the Board of Governors*, BD. GOVERNORS FED. RESERVE SYS., <http://www.federalreserve.gov/bankinfo/legaldevelopmentscases.htm> (last updated Apr. 16, 2015).

36. *Raichle v. Fed. Reserve Bank of N.Y.*, 34 F.2d 910, 915 (2d Cir. 1929).

37. The Second Circuit discussed legal challenges against the FRB in *Huntington Towers, Ltd. v. Franklin National Bank*, 559 F.2d 863, 869 (2d Cir. 1977). A more recent decision, *Starr International Co. v. Federal Reserve Bank of New York*, held that the Federal Reserve Bank of New

entirely with reference to its domestic responsibilities. Legal scholars focus on the FRB's domestic charges like macroeconomic policy and bank supervisory authority. Executing these charges, scholars argue, requires protection from external pressures.³⁸ The independence that the literature describes and justifies refers almost entirely to the FRB's *domestic* mandate.

Scholars have not discussed—much less analyzed, praised, or criticized—the implications of the FRB's independence for its actions beyond domestic borders. Consequently, the FRB's relationship to the foreign policymaking apparatus has not been explored. Part II addresses the Note's central thesis that the FRB played an important role in foreign policy during the 2008 financial crisis. Parts III and IV then grapple with the implications of this insight.

II. THE FRB'S INFLUENCE ON FOREIGN POLICY IN THE FINANCIAL CRISIS

Newly released transcripts of meetings conducted during the 2008 financial crisis reveal that the FRB's policy decisions had substantial foreign policy implications that the FOMC understood and carefully considered.³⁹ This foreign policy role had two dimensions: the creation of a \$580 billion swap line program to support central banks in strategically important nations in December 2007 and “unprecedented” international coordination of interest rate cuts in October 2008.⁴⁰ The FRB made these decisions without any formal requirements to consult or notify the political branches. Nonetheless, the FOMC carefully cooperated with political actors to ensure its monetary choices would not undermine longstanding U.S. foreign policy objectives. It worked with domestic agencies like the Departments of State and Treasury, as well as international entities like the International Monetary Fund (IMF), to understand the foreign affairs implications of its proposals. The FRB balanced this desire to avoid conflict against its duty to remain apolitical—a duty that is central to the FRB's ability to maintain market confidence.⁴¹ To counteract any

York did not act outside of its statutory authority during the recent financial crisis and demonstrated high judicial deference to FRB actions. 906 F. Supp. 2d 202, 237 (S.D.N.Y. 2012), *aff'd*, 742 F.3d 37 (2d Cir. 2014), *cert. denied*, 134 S. Ct. 2884 (2014).

38. See *supra* text accompanying notes 27-29.

39. The primary theme of the media coverage on the 2008 FOMC transcripts was that the FRB underestimated the severity of the financial crisis. See *supra* note 9.

40. Jon Hilsenrath et al., *Central Banks Launch Coordinated Attack*, WALL ST. J., Oct. 9, 2008, <http://www.wsj.com/articles/SB122346445779914857>.

41. By design, independent agencies are almost entirely self-policed. The very idea of independent agencies is to *eliminate* political control, thereby separating “expertise” from “politics.” ROBERT POST, *CITIZENS DIVIDED: CAMPAIGN FINANCE REFORM AND THE CONSTITUTION* 3, 28-29 (2014). Woodrow Wilson advanced this theoretical distinction: “[A]dministration lies outside the proper sphere of *politics*. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices.” Woodrow Wilson, *The Study of Administration*, 2 POL. SCI. Q. 197, 210 (1887). Of course, expertise is not separable from policy in certain circumstances. First, in indeterminate situations, expertise can provide a range of possible policy options leaving experts to choose between multiple plausible options. Second, when an agency's decision aims to register social preferences, expertise may be irrelevant. Third, the line between expertise and policy is difficult to delineate in practice. See Matthew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431 (1989). Thus, “[t]he civil service system, with its

independence concerns, the FRB and Treasury released a statement that both acknowledged their close cooperation during “unusual and exigent circumstances” and affirmed the FRB’s “critical” independence.⁴² Nonetheless, these discussions validate the basic observation motivating this Note: the FRB’s economic decisions can impact U.S. foreign policy. Especially during the height of the financial crisis, one can plausibly argue that no policy decision was more critical to the international community than actions to stabilize the U.S. economy and its partner nations.

A. Extending Swap Lines to Foreign Central Banks

The first dimension of the FRB’s foreign policy role was its international swap lines program. Severe market stress meant that foreign institutions, which typically hold fewer dollar-denominated deposits than domestic ones, could not access dollar funding.⁴³ Even non-U.S. central banks were constrained in their ability to exchange their own reserves for dollars on the interbank market.⁴⁴ To alleviate pressures in dollar funding markets, the FRB loaned dollars to foreign central banks in exchange for guaranteed repayment with interest and collateral in the form of foreign currency held at the FRB. These swap lines were designed to forestall an international liquidity crisis, which would put even more pressure on the fragile U.S. economy.⁴⁵ At its peak, the outstanding swap lines totaled \$580 billion. This accounted for over twenty-five percent of the FRB’s total assets in December 2008.⁴⁶ Never before had international swaps

emphasis on merit appointments, expertise and professionalism, rests on the idea of discretion: the idea that administrative officials should be free to employ their expertise and training in the pursuit of the policy responsibilities delegated to them.” GARY C. BRYNER, *BUREAUCRATIC DISCRETION: LAW AND POLICY IN FEDERAL REGULATORY AGENCIES* 5 (1987). Since Congress and the President have limited oversight mechanisms—short of enacting new legislation—an agency’s staying within the bounds of its statutory responsibilities rests in the hands of agency technocrats. While some decry congressional abdication of power, agency delegations are widely accepted. The Supreme Court has not struck down an agency delegation since the National Recovery Act in the 1930s. *See* *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (drawing from the non-delegation doctrine); *see also* 33 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE: JUDICIAL REVIEW OF ADMINISTRATIVE ACTION* § 8365 (1st ed. 2005) (detailing the non-delegation doctrine case law); *cf.* *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (“[O]ur jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives.”). A rich literature discusses why agency experts may be preferable to political actors in certain circumstances. *See, e.g.,* Jerry L. Mashaw, *Prodelegation: Why Administrators Should Make Political Decisions*, 1 J.L. ECON. & ORG. 81 (1985) (arguing in favor of vesting agencies with flexibility and discretion on matters related to their expertise).

42. *See* Joint Press Release, Bd. of Governors of the Fed. Reserve Sys. & Dep’t of Treasury, *The Role of the Federal Reserve in Preserving Financial and Monetary Stability* (Mar. 23, 2009), <http://www.federalreserve.gov/newsevents/press/monetary/20090323b.htm>.

43. Fleming & Klagge, *supra* note 7, at 2.

44. *See* Linda S. Goldberg et al., *Central Bank Dollar Swap Lines and Overseas Dollar Funding Costs*, 17 FED. RES. BANK N.Y. ECON. POL’Y REV. 3 (May 2011), <http://www.ny.frb.org/research/epr/2011/EPRvol17no1.pdf> (describing the countries with swap agreements and documenting the persistent supply shortages in dollar funding markets).

45. Importantly, the program did not provide credit to, or mitigate the losses of, foreign financial institutions. *See* Fleming & Klagge, *supra* note 7, at 3.

46. *Id.* at 7.

been used on such an enormous scale to “serve as a backstop” to all nations deemed significant to U.S. economic stability.⁴⁷

The FOMC transcripts reveal that its members grappled with whether to extend support, what levels of support to extend, and the type of restrictions that should be placed on each nation’s central bank. Initially, only central banks in advanced economies, such as the European Central Bank, the Bank of England, and the Bank of Japan, were given swap line arrangements.⁴⁸ At the October 29th meeting, the FRB expanded swap line access to the central banks in four emerging market countries: Brazil, Mexico, Korea, and Singapore.⁴⁹ The Director of the Division for International Finance, Nathan Sheets, told the FOMC: “[T]he staff has conferred with senior officials at the Treasury and State Departments. In both instances, these agencies emphasized the global economic significance of Brazil, Mexico, Korea, and Singapore.”⁵⁰ However, he warned that “expanding the swap lines beyond this group could leave us increasingly vulnerable to a ‘pile on’ effect, which might manifest itself either in a large number of additional swap line requests or in political pressure.”⁵¹

A discussion of the foreign policy implications ensued. Some members highlighted the difficulty of drawing distinctions between nations.⁵² As Philadelphia FRB President Charles Plosser stated:

I don’t know where we draw the lines, and when we have to go to the State Department and start asking what countries we can or can’t develop swap lines with, I’m not sure those are the criteria we want to be using. We mentioned the countries already. What happens when [redacted]?⁵³

Other members noted the possibility of “stigma” if nations were rejected outright or if the FRB demanded additional collateral from them.⁵⁴ Several countries had approached the FRB staff asking for liquidity assistance,⁵⁵ but only four countries were recommended to the FOMC.⁵⁶ The identities of

47. The FRB extended swap lines during the Mexican Peso Crisis in 1995, around 2000 due to fears of Y2K computer failures, and after the 9/11 terrorist attacks. None of these swap lines approached the same order of magnitude as the draws on the swap lines established in the 2008 crisis. See Spence Hilton, *Lender of Last Resort and Central Bank Liquidity Swaps*, FED. RES. BANK OF N.Y. 4 (2012), http://www.newyorkfed.org/education/pdf/2012/Hilton_swap_lines.pdf.

48. See Goldberg et al., *supra* note 44, at 8 tbl.1.

49. Press Release, Bd. of Governors of the Fed. Reserve Sys. (Oct. 29, 2008), <http://www.federalreserve.gov/newsevents/press/monetary/20081029b.htm>.

50. *Transcript of the Federal Open Market Committee Meeting on October 28-29, 2008*, BD. GOVERNORS FED. RESERVE SYS. 11 (2014) [hereinafter *Transcript of the FOMC Meeting*], <http://www.federalreserve.gov/monetarypolicy/files/FOMC20081029meeting.pdf> (quoting Director Sheets).

51. *Id.* at 11-12.

52. *Id.* at 23 (quoting President Fisher); *id.* at 25 (quoting President Rosengren).

53. *Id.* at 35 (quoting President Plosser). Although the redaction makes this exchange difficult to decipher, the transcript reveals that FOMC members explicitly grappled with foreign policy concerns raised by the Department.

54. *Id.* at 23 (quoting Vice Chairman Kohn).

55. *Id.* at 30 (quoting Director Sheets).

56. U.S. GOV’T ACCOUTABILITY OFFICE, GAO-11-696, FEDERAL RESERVE SYSTEM: OPPORTUNITIES EXIST TO STRENGTHEN POLICIES AND PROCESSES FOR MANAGING EMERGENCY ASSISTANCE 118 (July 2011), <http://www.gao.gov/new.items/d11696.pdf>.

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nations that approached the FRB, but were rejected, were redacted from the transcripts for confidentiality reasons.⁵⁷ Chairman Bernanke firmly reassured the FOMC:

I spoke to Secretaries Paulson and Rice about this. There was an interesting confluence of agreement that, if you are going to do this, these are the right four countries and we probably shouldn't do more, both from an economic perspective and a diplomatic perspective in the sense that these are the countries that among the emerging markets are the most important from a financial and economic point of view.⁵⁸

Importantly, Chairman Bernanke's conversations with Secretaries Paulson and Rice were self-initiated, prudential measures to coordinate policy.⁵⁹ No formal guidelines requiring coordination exist.

In addition to soliciting advice from domestic policymakers, the FRB also worked with international institutions. For example, the FOMC members discussed the role of the IMF's liquidity program. Indeed, Chairman Bernanke explicitly noted his discussions with the IMF Director discussing the IMF's ability to provide needed financial support to emerging countries that would not qualify for U.S. swap lines.⁶⁰ FOMC members argued that the FRB needed to act for two reasons: first, the IMF did not have a large enough balance sheet to address the needs of the larger emerging market economies; and second, larger nations would not accept IMF funds due to stigma.⁶¹ Ultimately, the FRB agreed to extend swap lines to the central banks of Mexico, Singapore, Brazil, and Korea, and to leave other nations' monetary agents to request IMF assistance.⁶²

Notably, the swap line decisions were not driven purely by economic

57. The FRB invoked a b(4) exemption under the Freedom of Information Act (FOIA) to withhold this information. Freedom of Information Act, 5 U.S.C. § 552(b)(4) (2012). See Kara Karlson, Note, *Checks and Balances: Using the Freedom of Information Act to Evaluate the Federal Reserve Banks*, 60 AM. U. L. REV. 213, 234 (2010) (discussing FOIA's applicability to the FRB). A recent Second Circuit decision diminished the FRB's ability to keep the identities of banks that use the discount window from the public. See *Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143, 147-49 (2d Cir. 2010).

58. *Transcript of the FOMC Meeting, supra* note 50, at 16 (quoting Chairman Bernanke).

59. The transcripts imply that Chairman Bernanke initiated these calls. On the selection of countries for swap agreements, see *id.* at 11, 29-30, 35. It is unclear from the FOMC minutes whether India and South Africa actually requested swaps at the height of the crisis. The names of the countries that made swap line requests have been redacted from the FOMC minutes. However, they note specifically that Iceland and Indonesia were rejected in early 2009. In addition, other sources reveal that India requested a swap in October 2012 and "Fed officials were also very reluctant to discuss the idea." Eric Helleiner, *Still An Extraordinary Power After All These Years: U.S. and the Global Financial Crisis of 2008*, at 5 n.29 (June 2014) (unpublished manuscript), <http://web.isanet.org/Web/Conferences/FLACSO-ISA%20BuenosAires%202014/Archive/4e0e0a9b-2dfb-4f6f-814e-8e85e7bb78b0.pdf>.

60. *Transcript of the FOMC Meeting, supra* note 50.

61. *Id.* at 18 (quoting Director Sheets). He added:

So the \$120 billion that we're proposing today would be essentially half of what the IMF could do. In that sense I really see what we're proposing as our taking off the IMF's hands some of the largest potential liquidity needs, which then allows them to focus on a whole range of additional countries.

Id.

62. Press Release, Bd. of Governors of the Fed. Reserve System (Oct. 29, 2008), <http://www.federalreserve.gov/newsevents/press/monetary/20081029b.htm>.

factors. National security, geopolitical concerns, historical experience, and past negotiations also informed the decisions. For example, Dallas FRB President Richard Fisher defended the choice of Mexico, Singapore, Brazil, and Korea on largely non-economic terms:

I'd just like to comment on their importance to us. Mexico is obvious. It's a national security risk. We're interlinked economically. They have a sophisticated central bank and a very good central bank governor, and I think that would be number one on the list. Singapore is unique. I doubt that Singapore would ever go to the IMF. It would be beneath Lee Kuan Yew's dignity. It is a vital link in terms of that sphere of the world. . . . In terms of Brazil, I'd say that is the dodgiest of the lot. . . . It has made significant progress since Cardoso was president, and it is a robust economy relatively speaking. Every economy in Latin America borders upon it. It does have a unique negotiating history—and Tim knows this as well as I do, having spent a lot of time negotiating with them—but I would say that it is a critical part of our hemisphere and that is the justification for including them in the package. Finally, we have been trying to negotiate a free trade agreement with Korea for some time. . . . The only other country that I would include under the rubric that we might ever consider is Chile.⁶³

These non-economic factors—being a “vital link . . . to that sphere of the world,” having a “unique negotiating history,” offering “free trade agreement,” and posing “national security risk”—weighed on the FRB leadership.⁶⁴ One scholar noted that “[t]he Fed also initially opposed Korea's request for a swap in mid-October 2008, but then became very supportive a few days after President Bush's Oct[ober] 22 announcement of the upcoming G20 summit” speculating that this was due to “US efforts to mobilize support for its positions at that summit.”⁶⁵ Even if the G20 Summit did not bear on the FRB's decision, the transcripts show that FOMC members consulted with political actors. Thus, the emerging market economies that the FRB chose to support were picked, in part, because of their economic and non-economic strategic importance to the United States.

Indeed, the political import of the swap line program was explicitly recognized in Department of State diplomatic cables. Foreign ambassadors described the crucial impact of the swap lines to American diplomats. For example, Korea's U.S. Ambassador stated that his country believed the swap lines signaled the Bush Administration's confidence in Korea's financial markets:

The actions of the Administration, especially the Fed's October 29 announcement of a USD 30 billion currency swap line with Korea and President Bush's strong support for including Korea in the November 15 financial summit, were seen as a big vote of confidence for the Korean economy, loudly applauded by the Korean

63. *Id.* at 17 (quoting President Fisher).

64. *Id.*

65. Helleiner, *supra* note 59, at 5 n.29; see also Hyoun-kyu Chey, *Why Did the US Federal Reserve Unprecedentedly Offer Swap Lines to Emerging Market Economies During the Global Financial Crisis? Can We Expect Them Again in the Future?* (Nat'l Graduate Inst. for Policy Studies, Discussion Paper No. 11-18, 2012), <http://www.grips.ac.jp/r-center/wp-content/uploads/11-18.pdf>.

public.⁶⁶

Korean financial authorities and private bankers also praised the “decisive impact” of the swap line as bringing stability at a crucial moment of market panic.⁶⁷ Other nations used diplomatic channels to request, even lobby for, FRB support. For example, Turkey’s Treasury Minister asked its U.S. Ambassador to explore the possibility of a FRB swap line because he viewed the IMF as demanding too many fiscal cutbacks.⁶⁸ Similarly, the Governor of Chile’s Central Bank asked its U.S. Ambassador to Chile for a public statement from a senior Treasury or FRB official recognizing that Chile would have been eligible for a swap line but was not in need of one.⁶⁹

Thus, the foreign policy repercussions of the swap line program were not only foreseen and considered by the FOMC members; they are a recurring theme in diplomatic cables. The countries receiving the swap lines thanked the U.S. government. The countries denied swap lines asked the U.S. government to reconsider, or publicly signal confidence in their governments through other means. While much of the diplomatic correspondence around the swap line programs remains classified, the WikiLeaks documents provide a window into the international salience of the FRB’s decisions. It is clear the FRB’s swap line program had substantial implications for U.S. foreign policy in 2008. As then New York FRB President and later Treasury Secretary Timothy Geithner reflected in his memoirs, “The Fed would become the world’s lender of last resort.”⁷⁰

B. Coordinating International Interest Rate Cuts

The second dimension of the FRB’s role in U.S. foreign policy was its “unprecedented” coordination of a fifty-basis-point rate reduction alongside six strategically significant advanced economies.⁷¹ Specifically, the FRB successfully persuaded six other nations to act in unison with the U.S. and convinced the Bank of Japan to publicly express its support for this policy decision. On October 8th, the FRB announced:

[Central banks] have cooperated in unprecedented joint actions such as the provision of liquidity to reduce strains in financial markets. . . . Accordingly, the Bank of Canada, the Bank of England, the European Central Bank, the Federal Reserve, Sveriges Riksbank, and the Swiss National Bank are today announcing

66. *Scenesetter for the Secretary’s January 8 Visit to Seoul*, WIKILEAKS, <https://wikileaks.org/cable/2008/12/08SEOUL2502.html> (last visited Apr. 16, 2015).

67. *Visit of San Francisco Federal Reserve Bank President Janet Yellen, November 17-19, 2008*, WIKILEAKS, www.wikileaks.org/plusd/cables/08SEOUL2289_a.html (last visited Apr. 16, 2015).

68. *Minister Smisek Asks USG Help to Moderate IMF Fiscal Demands*, WIKILEAKS www.wikileaks.org/plusd/cables/08ANKARA1920_a.html (last visited Apr. 16, 2015).

69. *Chilean Central Bank President De Gregorio Upbeat on Economy, Asks for U.S. Statement*, WIKILEAKS, http://www.wikileaks.org/plusd/cables/08SANTIAGO0976_a.html (last visited Apr. 16, 2015).

70. TIMOTHY F. GEITHNER, *STRESS TEST* 141 (2014).

71. Press Release, Bd. of Governors of the Fed. Reserve Sys., *Joint Statement by Central Banks* (Oct. 8, 2008), <http://www.federalreserve.gov/newsevents/press/monetary/20081008a.htm>.

reductions in policy interest rates. The Bank of Japan expresses its strong support of these policy actions.⁷²

By coordinating with international partners, the FRB aimed to create a “multiplier effect.”⁷³ Chairman Bernanke argued that this would “have a stronger effect on the global economy and on the U.S. economy than our acting alone.”⁷⁴

Transcripts of an October 7th FOMC conference call authorizing coordinated action show that its members weighed the international dimensions of this decision.⁷⁵ First, the FRB’s ability to lead decisively in the international arena was as important, if not more important, than the interest rate cut itself. As Governor Kevin Warsh stated, “in thinking about this as a global, synchronized rate cut it strikes me that the first two words of that phrase are far more important than the last two and that the focus on global, synchronized action is an important symbol to markets not just here but abroad.”⁷⁶ FOMC members agreed that prior lack of international coordination hindered the FRB’s effectiveness. Chairman Bernanke urged the FOMC to approve joint action because “the lurching and the lack of coordination among fiscal authorities and other governments” had weakened market confidence.⁷⁷ Unlike other FOMC debates, Chairman Bernanke suggested that the members should not modify the carefully negotiated statement—only accept or reject it. In some sense, the monetary policy choice of a fifty-basis-point rate cut was secondary to the symbolic significance of central bank coordination. The FRB’s ability to lead internationally was paramount.⁷⁸

Second, FOMC members concluded that global markets demanded global solutions. Several members noted the interconnectedness of global economies, suggesting it would be “increasingly hard to find decouplers.”⁷⁹ Vice Chairman Donald Kohn argued that “people are consulting internationally and are willing to take decisive action,” action he called “a necessary step.”⁸⁰ President of the Atlanta FRB Dennis Lockhart called for an even stronger reference to

72. *Id.*

73. See *Transcript of the Federal Open Market Committee Conference Call on October 7, 2008*, BD. GOVERNORS FED. RESERVE SYS. 14 (2014) [hereinafter *Transcript of the FOMC Conference Call*], <http://www.federalreserve.gov/monetarypolicy/files/FOMC20081007confcall.pdf>. The October 8 meeting was called as an emergency meeting (outside of the FOMC’s eight annual meetings) and conducted as a conference call.

74. *Id.*

75. *Id.* at 3. Chairman Bernanke stated that “the only agenda item for this meeting is the discussion of a proposed coordinated action with five other major central banks.” *Id.*

76. *Id.* at 27 (quoting Governor Warsh).

77. *Id.* at 14 (quoting Chairman Bernanke).

78. Timothy Geithner underscores the remarkable level of global coordination between central bankers: “Ben [Bernanke] and the [European Central Bank]’s Jean-Claude Trichet, with my encouragement, worked with Mervyn King at the Bank of England and several other central bankers to launch the first-ever coordinated global interest rate cut. That was a remarkable act of cooperation for central banks that had always prized their independence and sovereignty, but it didn’t stop or even slow the collapse of the global markets.” GEITHNER, *supra* note 70, at 228.

79. *Transcript of the FOMC Conference Call*, *supra* note 73, at 27 (quoting Governor Warsh).

80. *Id.* at 22 (quoting Vice Chairman Kohn).

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international coordination:

In the statement, there is really no reference to the coordinated and global nature of the action. I'm sure that's purposeful. It does seem to me that we have an opportunity perhaps to reinforce the psychological power of this by referencing it. So my question is, Why not include some nod to that aspect, which in the minds of so many people seems to be the real power behind this decision?⁸¹

In addition, Chairman Bernanke stressed the “tactical issue” involved in convincing the European Central Bank to take more accommodative monetary policy steps.⁸² While the FRB successfully led the “unprecedented” international response in 2008, it also set a precedent for joint interest rates action. This precedent could be subject to the whims of international affairs and demands of other nations in a future crisis.

Thus, the newly released 2008 FOMC transcripts illustrate that in these two instances the FRB's leaders weighed foreign policy considerations alongside monetary policy ones. They worked with domestic agencies like the Departments of State and Treasury, as well as international institutions like the IMF, to understand the foreign affairs implications of their actions and to ensure their decisions did not undermine the thrust of longstanding U.S. foreign policy objectives. While economic factors drove the day, the transcripts show international factors were considered.⁸³ And further, diplomatic cables confirm that FRB choices had significance to foreign nations.⁸⁴

III. LOCATING THE FRB IN THE FOREIGN POLICY APPARATUS

The FRB's policy decisions during the financial crisis raise the following questions: should the FRB be conceptualized as part of the U.S. foreign policy apparatus, and, if so, to what extent? This Part attempts to locate the FRB on the spectrum of agencies whose actions impact U.S. foreign policy.⁸⁵ While the President is often considered the primary actor in foreign affairs or “the sole organ” charged with “the power to speak or listen as a representative of the nation,”⁸⁶ it is widely acknowledged that the foreign policy power is shared.⁸⁷ Scholars describe U.S. foreign policy as an “invitation to struggle” between Congress and the Executive Branch.⁸⁸ Any observer of foreign policy knows

81. *Id.* at 23 (quoting President Lockhart).

82. *Id.* at 12 (quoting Chairman Bernanke). Accommodative monetary policy refers to loosening credit supply by lowering interest rates and boosting the money supply in an effort to stimulate growth.

83. *See* text accompanying *supra* notes 58, 63.

84. *See id.*; text accompanying *supra* notes 66-69.

85. Importantly, this Note does not argue that the FRB's 2008 decisions are explicit exercises in foreign policymaking beyond its statutory mandate. Rather, the FRB's decisions were monetary policy choices with secondary, albeit substantial, implications for U.S. foreign policy.

86. *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936).

87. *See, e.g., Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1441 (2012) (Breyer, J., dissenting) (“The Executive and Legislative Branches frequently work out disagreements through ongoing contacts and relationships . . . [which] ensure that, in practice, Members of Congress as well as the President play an important role in the shaping of foreign policy.”).

88. *See* EDWARD S. CORWIN, *THE PRESIDENT: OFFICE AND POWERS* 171 (4th ed. 1957);

that the judiciary and the states also play important roles in shaping the U.S. foreign policy agenda.⁸⁹ In addition, a plethora of agencies help execute foreign affairs prerogatives including: the Department of State, the Department of Defense, the Department of Justice, the Office of U.S. Trade Representative, and the U.S. Mission to the United Nations, among others.⁹⁰

Legal scholars long have struggled to draw a precise line between policy *creation* and *implementation*.⁹¹ When an independent agency like the FRB takes actions with foreign policy implications, it does not fit neatly into this traditional “creation-implementation” paradigm. The FRB is neither subordinate to, nor working in service of, the political branches. It is deliberately shielded from political influence. How do independent agencies fit in the U.S. foreign policy process, which is traditionally led by the political branches? Whereas the Department of State is an *agent* of the President that executes his or her priorities, the FRB is a *principal* actor that makes its own policy judgments. This “principal-agent”⁹² distinction provides a useful heuristic through which to understand the FRB’s unique role. It is truly “independent” in all its decisions—foreign affairs or otherwise.

There are several independent agencies whose actions also have substantial bearing on U.S. foreign policy such as the Central Intelligence

Patricia L. Bellia, *Executive Power in Youngstown’s Shadows*, 19 CONST. COMMENT. 87, 114 (2002) (“As scholars have frequently noted, the Constitution’s limited provisions on the distribution of powers in foreign affairs provide the political branches [the Executive Branch and Congress] with an ‘invitation to struggle’ over power in the area. Although judicial decisions are few, the scholarly literature is vast.”). Well-known cases underscore this axiom. See, e.g., *Curtiss-Wright*, 299 U.S. at 320 (stating that in the realm of foreign affairs the President has “a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.”); *Zivotofsky ex rel. Zivotofsky v. Sec’y of State*, 725 F.3d 197, 210 (D.C. Cir. 2013) (examining the power to recognize foreign nations and discussing the longstanding struggle between Congress and the Executive Branch in foreign affairs); see also Louis Fisher, *Presidential Inherent Power: The “Sole Organ” Doctrine*, 37 PRESIDENTIAL STUD. Q. 139, 140 (2007) (describing a theory of “plenary, exclusive, and inherent authority of the president in foreign relations”).

89. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 700 (2001) (ruling on judicial review); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423, 427–28 (1964) (discussing state powers).

90. These agency actors have varying degrees of involvement with U.S. foreign policy. For some, it is their primary charge; for others, it is a secondary mandate. The FRB falls in the latter group. See *supra* note 14.

91. According to Robert Post, Woodrow Wilson first advanced this theoretical distinction: “Administration lies outside the proper sphere of *politics*. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices.” See POST, *supra* note 41, at 28–29 (quoting Woodrow Wilson, *The Study of Administration*, 2 POL. SCI. Q. 197, 197 (1887)). However, this distinction between expertise and policy is difficult to delineate in practice as discussed in Note 41.

92. The principal-agent concept is most often used in corporate law to analyze private contractual relationship (e.g., employer and employee, shareholder and manager, and landowner and tenant farmer). See, e.g., Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 309 (1976); Steven Shavell, *Risk Sharing and Incentives in the Principal and Agent Relationship*, 10 BELL J. ECON. 55, 66 (1979). This framework has been extended to political arrangements. See, e.g., McCubbins et al., *supra* note 41, at 438 (arguing that Congress seeks to control agencies through structural arrangements to constrain discretion); Barry R. Weingast, *The Congressional-Bureaucratic System: A Principal Agent Perspective (with Applications to the SEC)*, 44 PUB. CHOICE 147, 155–57 (1984) (characterizing the relationship between Congress and agencies as a system of rewards and sanctions through which politicians exercise control). My thanks to Professor Jon Macey for suggesting this heuristic could apply.

Agency, Securities and Exchange Commission, and U.S. International Trade Commission. However, all three agencies differ from the FRB in significant ways. Their actions affecting foreign affairs are intentionally directed or heavily influenced by political actors.⁹³ They are not truly “independent” in the realm of foreign policy. These comparisons underscore the FRB’s role as a uniquely independent agency acting as a *principal*, not merely an *agent*, in U.S. foreign policy matters.⁹⁴

The Central Intelligence Agency (CIA), for instance, collects and analyzes intelligence for policymakers in the Executive Branch (the President, National Security Staff, and Departments of State and Defense). It conducts covert action abroad and interacts with policymakers as they decide how to make choices based on the agency’s information. Since Congress knew it was creating an extraordinarily powerful agency, it carefully curtailed the CIA’s powers and provided for political oversight.⁹⁵ The National Security Act of 1947 stated that the agency would be “established under the National Security Council (NSC)” and would operate “under the direction of the National Security Council.”⁹⁶ For example, the President must authorize covert actions—the CIA’s most direct engagement in foreign nations.⁹⁷ Since the CIA’s inception, the Executive and Congress have heavily policed the line between permissible foreign and domestic activities. In 2004, the Intelligence

93. Theoretically, the judiciary acts as another constraint on independent agencies. However, the courts consistently award a high degree of deference to agency actors. *See, e.g.,* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 541 (2009) (Stevens, J., dissenting) (noting that there should be “a strong presumption that the FCC’s initial views, reflecting the informed judgment of independent commissioners with expertise in the regulated area, also reflect the views of the Congress that delegated the Commission authority to flesh out details not fully defined in the enacting statute”); *cf. id.* at 539 (Breyer, J., dissenting) (arguing that an independent agency’s “comparative freedom from ballot-box control makes it all the more important that courts review its decision-making to assure compliance with applicable provisions of law—including law requiring that major policy decisions be based on articulable reasons”).

94. Independence is a spectrum; each agency is idiosyncratic in the level of independence it exhibits. Even though independent agencies are theoretically free from outside control, political influence often persists and circumscribes an agency’s expert discretion. Some, like the FRB, are highly protected from political control. Others, like the CIA, operate under the direction of political actors. Many lie between these extremes, like the SEC and USITC. Even the definition of an independent agency is subject to debate. Elena Kagan describes the lack of presidential removal power with respect to the commissioners of independent agencies as “the core legal difference between these entities.” Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2376 (2001). Other scholars cite a broader list of defining traits. *See* Paul R. Verkuil, *The Purposes and Limits of Independent Agencies*, 1988 DUKE L.J. 257, 279 (1988) (outlining key characteristics of independent agencies).

95. *Weissman v. Cent. Intelligence Agency*, 565 F.2d 692, 695 (D.C. Cir. 1977) (“Congress was well aware such activities create a potential for abuse, and chose to limit the Agency’s activities to intelligence gathering abroad.”); *see also* Christopher M. Ford, *Intelligence Demands in a Democratic State: Congressional Intelligence Oversight*, 81 TUL. L. REV. 721, 735-36 (2007) (“From 1947 into the early 1970s, the Intelligence Community received little attention outside of the President, the NSC, and the other executive bodies charged with oversight or operation of intelligence activities.”).

96. National Security Act of 1947, Pub. L. No. 80-235, § 102, 61 Stat. 495, 497 (codified at 50 U.S.C. § 401 *et seq.* (2014)).

97. Stephen W. Preston, *CIA and the Rule of Law*, 6 J. NAT’L SEC. L. & POL’Y 1, 5 (2012) (“[T]he authority for covert action is ultimately the President’s, and covert action programs are carried out by the Director and the Agency at and subject to the President’s direction, Agency counsel share their responsibilities with respect to any covert action with their counterparts at the National Security Council.”).

Reform and Terrorism Prevention Act included additional oversight over the CIA and transferred some of its powers to a new Director of National Intelligence.⁹⁸ Thus, the CIA's considerable power in foreign affairs has never been fully independent from political branches. By and large, the CIA's foreign actions have been directed, and deliberately designed, by the President and the NSC, with attempted oversight by Congress. This institutional design starkly contrasts to the FRB, whose structure and conventions flatly prohibit political involvement.

The Securities and Exchange Commission (SEC) is similarly constrained by various political oversight mechanisms. Despite its popular perception as a domestic regulator, the SEC plays a role in foreign affairs through its enforcement of the Foreign Corrupt Practices Act (FCPA).⁹⁹ Working alongside the Department of Justice (DOJ), the SEC has vigorously enforced FCPA violations against both domestic and foreign actors. "In 2009, the DOJ brought twenty-six actions and the SEC brought fourteen civil prosecutions. . . . [Total penalties] were approximately \$1.8 billion."¹⁰⁰ The foreign policy implications of these actions are significant. The Department of State has repeatedly noted the impact of vigorous FCPA enforcement on diplomatic relations.¹⁰¹ However, the SEC's enforcement is constrained by political oversight—most notably, Congress's control over their enforcement budget. Should Congress choose to prevent FCPA enforcement, it can stipulate that no money shall be used for FCPA activities or decrease the SEC's annual appropriations. Furthermore, the SEC's actions are watched and debated by political actors:

On numerous occasions, the U.S. State Department attempted to convince the SEC or the Justice Department to refrain from disclosing the names of states or foreign officials involved in their investigations. The State Department feared such revelations could create internal political troubles for U.S. allies and, at best, result in strained relations between the United States and these allies.¹⁰²

Likewise, the U.S. International Trade Commission (USITC) is an independent, quasi-judicial federal agency with bearing on U.S. foreign policy. It investigates the effect of adverse foreign trade practices and adjudicates claims regarding imports that infringe intellectual property rights. Given its mixed mandate, its structure and enforcement mechanisms exercise independent agency, executive branch, and judicial authority.¹⁰³ Like the CIA and SEC, there are meaningful channels for political engagement and oversight.

98. Grant T. Harris, *The CIA Mandate and the War on Terror*, 23 YALE L. & POL'Y REV. 529, 544 (2005).

99. 15 U.S.C. §§ 78dd-1, *et seq.* (2014).

100. Emily Willborn, *Extraterritorial Enforcement and Prosecutorial Discretion in the FCPA: A Call for International Prosecutorial Factors*, 22 MINN. J. INT'L L. 422, 428 (2013).

101. See Nicholas M. Mclean, *Cross-National Patterns in FCPA Enforcement*, 121 YALE L.J. 1970, 1983 n.43 (2012) (quoting Kate Gillespie, *Middle East Response to the U.S. Foreign Corrupt Practices Act*, CAL. MGMT. REV. 9 (1987)).

102. *Id.*

103. See *About The USITC*, U.S. INT'L TRADE COMM'N, www.usitc.gov/press_room/about_usitc.htm (last visited Apr. 16, 2015).

The USITC, for example, cannot enforce a decision without concurrent action by the Department of Commerce. Since the USITC cannot take action on its own, it cannot act as a truly independent decisionmaker in foreign policy.¹⁰⁴ Presidents routinely take credit for the imposition of trade remedies by the USITC as a “tremendous victory” for U.S. jobs and businesses—a stark contrast to the FRB decisions upon which Presidents consistently refrain to comment.¹⁰⁵ The USITC also operates under judicial supervision: its determinations may be appealed to the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit or to a binational panel created by NAFTA for cases involving Canada or Mexico.¹⁰⁶ Even though the USITC plays an important role in foreign policy through its policy and prosecutorial choices affecting foreign nations, its decisions are constrained by the political and judicial branches—far more so than the FRB, the CIA, or the SEC.

The FRB, by contrast, is a *principal actor* making independent decisions bearing on U.S. foreign policy. The FRB’s statutory, conventional, and normative insulation from political control gives it great capacity to set its own agenda. It does not take orders or advice from the President, it is not dependent on congressional appropriations, and it is exempt from traditional oversight and accountability mechanisms. Three factors illustrate this unusual independence. First, the FRB has \$4 trillion with which to implement its policy decisions.¹⁰⁷ Its finances are excluded from the U.S. government’s consolidated financial statements because it is “not an agency or instrumentality of the United States Government” by law.¹⁰⁸ This determination alone speaks to the FRB’s hyper-independence. Second, it has a broad policy mandate unlike the CIA, SEC, and USITC’s carefully circumscribed responsibilities. Under the Dodd-Frank Act, the FRB’s newest mandate is the broad charge to monitor “systemic risk” in global markets. Third, political actors take great pains to demonstrate that monetary policy decisions are made without political influence. Even the transcripts analyzed in this Note are only released on a voluntary basis, without any legal or congressional transparency obligation. Congress intentionally protected the FRB from public debate and scrutiny or advancing policy goals proscribed by political actors. It is the most *independent* and *unconventional* actor within the spectrum of agencies whose policy decisions affect U.S.

104. See 19 U.S.C. § 1516a (2012).

105. See, e.g., Jacqueline Bell, *US Scores WTO Win in Chinese Tire Duty Row*, LAW360 (Sept. 6, 2011, 12:18 PM), <http://www.law360.com/articles/269531/us-scores-wto-win-in-chinese-tire-duty-row> (quoting Ambassador Ron Kirk, the U.S. Trade Representative, speaking on behalf of the Obama Administration).

106. *Id.*

107. QUARTERLY REPORT ON FEDERAL RESERVE BALANCE SHEET DEVELOPMENTS, *supra* note 11.

108. See Memorandum from Wendy M. Payne, Executive Director, Fed. Accounting Standards Advisory Bd., to Members of the Fed. Accounting Standards Advisory Bd., Federal Entity-Tab F (Dec. 3, 2009), <http://www.fasab.gov/pdffiles/fedent-tabf.pdf>. On federal financial reporting for statutorily independent, government-related entities, see generally Katherine Clark Harris, Note, *The Statement and Account Clause: A Forgotten Constitutional Mandate for Federal Reporting*, 32 YALE L. & POL’Y REV. 505 (2014).

foreign affairs.¹⁰⁹

IV. CLARIFYING THE FRB'S FUTURE ROLE

The FRB has played a role in foreign affairs since its creation, but its international role is more germane today than ever before.¹¹⁰ A number of factors inform this conclusion. First, the global economy is increasingly interconnected, and the United States represents a shrinking piece of global trade.¹¹¹ Globalization ensures that FRB policy choices will continue to have implications for international affairs. For example, maintaining the U.S. Dollar as the global reserve currency has become as much an economic goal as a foreign policy objective. Rising concerns about the Chinese Yuan have seeped into political debates.¹¹² The rise of “economic statecraft” like sanctions and trade deals has caused further overlap between the monetary and foreign policy arenas.¹¹³ Second, domestic gridlock increases the salience of FRB policy choices. For example, the FRB was relied upon to act when elected officials could not reach agreement at the height of the financial crisis. The FRB took extraordinary measures when congressional actions failed to stabilize the economy.¹¹⁴ It is possible that the FRB may be forced to deploy its massive

109. There are some exceptions where the FRB acts as an “agent” and executes congressional foreign policy goals. For example, under the Arms Export Control Act, Egypt and Israel are allowed to “cash-flow finance” their purchases from American defense contractors. *See* Security Assistance Act of 2000, Pub. L. 106-280, 114 Stat. 845 (codified at 22 U.S.C. §§ 2151-2797b (2014)). Unlike other foreign aid recipients, they can make commitments to purchase weapons using projected future foreign aid (as opposed to obligated funds). Operationally, this “cash-flow financing” occurs through an interest bearing account at the FRB of New York. Thus, the FRB merely executes Congress’s foreign policy decision and is not making independent policy determinations as to which countries receive funds. This contrasts to the FRB’s role in extending swap line or coordinating joint rate cuts with other nations. *See* JEREMY M. SHARP, CONG. RESEARCH SERV., RL33003, EGYPT: BACKGROUND AND U.S. RELATIONS (2012).

110. *See supra* notes 17-19.

111. Cross-border lending is one measure of global economic interconnectedness. In the first quarter of 2014, for example, cross-border claims of globally active banks stood at \$29.4 trillion—a \$580 billion increase over the last quarter of 2013. *See* Brian Blackstone, *International Banks Increase Cross-Border Lending*, WALL ST. J., Sept. 14, 2014, <http://online.wsj.com/articles/international-banks-increase-cross-border-lending-1410688801>.

112. *See, e.g.*, Helmut Reisen, *Shifting Wealth: Is the US Dollar Empire Falling?*, VOXEU (June 20, 2009), <http://www.voxeu.org/article/next-global-reserve-currency> (noting that China’s central bank governor has proposed replacing the U.S. dollar as the international reserve currency with an IMF controlled currency).

113. “Economic statecraft” refers to the use of economic levers such as sanctions, trade agreements, and financial regulation in service of foreign policy goals. Although political actors do not consider monetary policy to be part of the economic statecraft arsenal, monetary policy choices have bearing on financial market tools and vice-versa. *See* BENN STEIL & ROBERT E. LITAN, FINANCIAL STATECRAFT: THE ROLE OF FINANCIAL MARKETS IN AMERICAN FOREIGN POLICY 4, at 11-30 (2006) (describing how “the arsenal of economic statecraft began expanding in response to the growing importance of financial flows” in the mid-1990s); Andrew Jack, *21st Century Sanctions: Targeted Measures on the Rise*, FT DATA BLOG (Apr. 1, 2014, 12:26 PM), <http://blogs.ft.com/ftdata/2014/04/01/21st-century-sanctions-targeted-measures-on-the-rise> (observing the increased use of trade sanctions).

114. *See* Robert Rubin, Op-Ed, *The Search for A Monetary Policy Wizard and Political Moral Hazard*, WALL ST. J., Feb. 23, 2015, <http://www.wsj.com/articles/robert-e-rubin-the-search-for-a-monetary-policy-wizard-and-political-moral-hazard-1424734104>. Indeed, Trouble Asset Relief Program (TARP) legislation failed twice, leading to a nine percent drop in the U.S. stock markets the

balance sheet again and enact policies traditionally within the sphere of the political actors. Third, the FRB's "off-balance sheet" treatment allows it to take policy actions without incurring a direct cost to taxpayers or requiring congressional action by way of an appropriations bill. (Unlike most federal actors, the FRB is not considered a "federal entity" under public accounting standards and is excluded from the U.S. government's consolidated budget.)¹¹⁵ This is particularly significant in the face of constrained budgets and large deficits. These new realities suggest the FRB's role in U.S. foreign policy will only increase in the coming decades, thereby furthering the need for coordination between the FRB and other players in the foreign policy apparatus.

A. When Monetary and Foreign Policy Goals Collide

Ordinarily, coordination with political actors is neither required nor desired for the FRB to conduct monetary policy. The FRB's independence is a core facet of the institution and political interactions threaten that independence. Indeed, the informal consultations that occurred during the financial crisis are extremely atypical.¹¹⁶

This intentional independence leads to occasional instances when monetary and foreign policy objectives collide. For example, the FRB's recent decision to begin unwinding its quantitative easing program purportedly sparked riots in Turkey.¹¹⁷ At the very least, the FRB's decision was linked to deteriorating economic conditions in a region where the United States is actively working to maintain stability.¹¹⁸ The FRB's decision worked at cross-purposes with the Obama Administration's stated foreign policy goal. This example provides a rare instance of monetary policy choices at odds with foreign policy objectives. Such a stark case is admittedly anomalous, but more subtle examples are abundant. At international forums like the G7 and G20, the FRB's bankers often present a different view than the President's political representatives.¹¹⁹ Political actors consistently deny any influence over the

following day. See GEITHNER, *supra* note 70, at 220-21.

115. See *supra* note 108.

116. As discussed in Part II, the FRB acted in a careful and deliberate manner to avoid working at odds with the President's foreign policy agenda. FOMC members acknowledged areas where their decisions could impact foreign policy and attempted to avoid undermining politically-determined goals.

117. Daniel Dombey, *Turkey: Protests and US Policy Shape Events*, FIN. TIMES, Sept. 30, 2013, <http://www.ft.com/cms/s/0/e0046d90-1eb0-11e3-b80b-00144feab7de.html>.

118. *Id.*

119. For example, William Greider's classic history of the FRB describes a fight between President Jimmy Carter and FRB Chairman Paul Volcker in the 1970s. At an IMF Conference in Belgrade, Yugoslavia, Chairman Volcker discussed his plan to tighten rates with the Secretary of the Treasury and the Chairman of the Council of Economic Advisers (both of whom are political appointees that serve at the President's pleasure). Both men expressed concern that Volcker's plan would produce volatility in interest rates and fluctuations in credit costs. In turn, it could lead to a global recession heading into the President's re-election campaign. Unmoved by political concerns, Volcker ceased informal discussions going forward much to the frustration of the President's advisers. Reflecting on this episode, Greider writes: "Volcker's informal communication with the Carter Administration illustrated the ambiguous terms that linked the Federal Reserve with the rest of the Federal government. . . . The

FRB's actions and disavow responsibility when other nations complain that FRB choices create tension within diplomatic alliances.¹²⁰

Indeed, the tension between monetary and foreign policy objectives is not simply a U.S. phenomenon. From time to time, it has arisen with respect to central banks in other countries. The Bank of England provides an extreme historical example of the critical importance of coordination. When Germany invaded Czechoslovakia in March 1939, the U.K. government placed a freeze on all German assets held in England. For two months subsequent to the invasion, the Bank of England continued to transfer £5.6 million of Czechoslovakian assets to Germany despite the asset freeze. A Bank for International Settlements report from 1950 explains: "Outside the Bank and the government the Bank's position has probably never been thoroughly appreciated and their action at the time was widely misunderstood."¹²¹ Nonetheless, this stark example suggests the need for some coordination between central bankers and political actors—particularly since central banks often operate with limited transparency.

B. *Crafting Internal Guidelines*

These examples raise the question of whether more formal consultation requirements are warranted. Should FRB decisions with ramifications for international affairs be made behind closed doors? Should there be formal requirements to consult the traditional custodians of foreign policy in Congress and the Executive Branch? How would clearer legal guidelines strengthen or weaken the FRB as a monetary policy institution? Is it possible or practicable to formulate guidelines for these instances?

This Note is not the first piece to observe the interplay between monetary and foreign policy objectives.¹²² The FRB itself has grappled with the question to what extent its policy should be influenced by geopolitical concerns.¹²³ While scholars have long analyzed and debated the appropriate balance of

relationship was nowhere expressed in concrete rules and obligation. Instead, its boundaries were value and subjective." WILLIAM GREIDER, *SECRETS OF THE TEMPLE: HOW THE FEDERAL RESERVE RUNS THE COUNTRY* 48, 118 (1987).

120. *Id.*

121. *See Bank of England Helped in Sale of Looted Nazi Gold*, BBC NEWS, July 31, 2013, <http://www.bbc.com/news/business-23513654> (quoting a 1950 Bank for International Settlements report).

122. *See, e.g.*, MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES 1867-1960* (1963); Günter Coenen et al., *International Transmission and Monetary Policy Cooperation*, in *INTERNATIONAL DIMENSIONS OF MONETARY POLICY* 157 (Jordi Gali & Mark Gertler eds., 2009) (discussing gains from policy cooperation and spillovers between central banks); and Richard N. Cooper & Jane Sneddon Little, *U.S. Monetary Policy in an Integrating World 1960-2000*, 54 *NEW ENG. ECON. REV.* 33 (2001) (discussing how international forces influence U.S. monetary policy due to increasing trade and money flows).

123. *See, e.g.*, Stanley Fischer, Vice Chairman, Fed. Reserve Bank of N.Y., *The Federal Reserve and The Global Economy*, Remarks at the Per Jacobsson Foundation Lecture, 2014 Annual Meetings of the IMF and the World Bank Group (Oct. 11, 2014), <http://www.federalreserve.gov/newsevents/speech/fischer20141011a.htm>.

central bank independence and transparency to the public,¹²⁴ they have yet to do so in the context of the FRB's growing importance in U.S. foreign affairs.

This Section considers three policy prescriptions that could clarify the FRB's role in the foreign policy apparatus. At one extreme, FRB skeptics might advocate for total "democratic" oversight: complete transparency to the public and increased congressional control. History has shown that political actors are subject to short-term election pressures. Given the opportunity to control monetary policy, they will likely favor inflationary measures that provide short-term cheap money and lead to damaging "boom-bust" cycles.¹²⁵ For these reasons, it seems unwise to sacrifice FRB independence to improve coordination around FRB decisions that impact U.S. foreign policy.

At the other extreme, FRB champions are likely to argue for maintaining the status quo of limited transparency and oversight. Pointing to the recent financial crisis, one could argue that the FRB *does* defer to the political branches when necessary and that the public should entrust the FRB with the discretion to do so in the future. But this argument is unsatisfactory for two reasons. First, the FRB has failed to coordinate in some instances, as discussed above, where political coordination on matters affecting foreign policy could help ensure a unified foreign voice.¹²⁶ Second, ad hoc coordination endangers the perception (and reality) of insulation from political pressures. The FRB appears most independent if political coordination is predictable and rules-based. Therefore, more systematic coordination between the FRB and traditional foreign policy actors would be beneficial.

This Note offers a middle ground. The FRB should voluntarily issue guidelines as to when and how it will engage the political branches on foreign affairs. This proposal is intentionally moderate. It seeks to balance two goals: maintaining central bank independence and clarifying its role in foreign policy. Congress and the President should not have a permanent role in the FRB's

124. See Christopher Crowe & Ellen E. Meade, *The Evolution of Central Bank Governance Around the World*, 21 J. ECON. PERSP. 4, 69-90 (2007); Alan S. Blinder et al., Central Bank Communication and Monetary Policy: A Survey of Theory and Evidence (NBER Working Paper No. 13932, 2008), <http://www.nber.org/papers/w13932>; *What Does It Mean That the Federal Reserve Is "Independent Within The Government"?*, BD. GOVERNORS FED. RES. SYS., http://www.federalreserve.gov/faqs/about_12799.htm (last updated Feb. 6, 2015). Chairman Bernanke promoted central bank transparency as a key aspect of his tenure. See Ben Bernanke, Chairman, Fed. Reserve, *The Federal Reserve: Looking Back, Looking Forward*, Remarks at the Annual Meeting of the American Econ. Ass'n (Jan. 3, 2014) (stating that "[f]ostering transparency and accountability at the Federal Reserve was one of my principal objectives when I became Chairman in February 2006. I had long advocated increased transparency and, in particular, a more explicit policy framework as ways to make monetary policy more predictable and more effective").

125. See Ben Bernanke, Chairman, Bd. of Governors of the Fed. Reserve, *Central Bank Independence, Transparency, and Accountability*, Remarks at the Institute for Monetary and Economic Studies International Conference, Bank of Japan (May 25, 2010) (outlining the traditional arguments against political control of monetary policy), <http://www.federalreserve.gov/newsevents/speech/bernanke20100525a.htm>; Jerome H. Powell, Governor, Bd. of Governors of the Fed. Reserve, "Audit the Fed" and Other Proposals, Remarks at the Catholic University of America, Columbus School of Law (Feb. 9, 2015), <http://www.federalreserve.gov/newsevents/speech/powell20150209a.htm> (making a compelling case as to why "audit the Fed" proposals are misguided and potentially harmful).

126. See discussion *supra* Section IV.A.

affairs, nor should they rewrite the 1913 Federal Reserve Act. But it behooves the FRB to clearly delineate how and when it will factor foreign policy goals into its monetary decisions. Such guidelines would make its role in foreign policy more predictable and better coordinated. And, counterintuitively, protect its *strong and necessary* independence with respect to domestic affairs. Chairman Bernanke has explicitly made the case that the FRB should provide “clarity about the range of central bank activities deemed to fall under the heading of monetary policy,” activities in which the FRB acts independently, and “regulatory and supervisory activities,” activities in which the FRB “engages cooperatively with other agencies of the U.S. government.”¹²⁷

There is ample reason to believe the FRB leadership would honor voluntary guidelines that require political consultation in specific circumstances. Recent self-imposed transparency initiatives, like releasing FOMC transcripts every five years, publishing projections of interest rate targets, and communicating FRB policy through press conferences, show that the FRB makes serious efforts to abide by its own rules.¹²⁸ Furthermore, although the possibility of legislation curtailing FRB authority is small, reputational concerns and informal sanctions create pressures to avoid political clashes. As Conti-Brown writes:

the government and law focus pays too much attention to the relationship between the Fed and the President, or the Fed and the rest of the government. . . . In reality, the Fed faces a number of “audiences” . . . inside and outside government, inside and outside the Federal Reserve System—that shape Fed policy via a collection of legal and non-legal mechanisms.¹²⁹

The 2008 financial crisis also showed that the FRB carefully tailored its actions and avoided conflict with political objectives through informal outreach. For reasons of self-preservation, it is in the FRB’s interest to avoid confrontation with the political branches. While historical practice and informal pressures do not eliminate concerns about agency self-aggrandizement, they lessen concerns that the FRB will ignore guidelines when politically convenient. It is also possible that the judiciary could use guidelines to evaluate FRB actions on the few occasions that it exercises its right of review.

Much is still unexplored about the FRB’s role in foreign affairs and how its monetary policy choices intersect with foreign policy aims. What monetary topics typically bear on foreign policy and how could guidelines be crafted? Which political actors should be engaged when such a determination is made? Further research is needed to understand the interaction between FRB policy and foreign affairs before new policies are adopted. Importantly, there is not yet evidence that the FRB ought to be subject to more stringent coordination requirements. Absent further evidence, voluntary guidelines to define and

127. Bernanke, *supra* note 125.

128. Bernanke, *supra* note 124.

129. Conti-Brown, *supra* note 5, at 2, 16. Conti-Brown borrows the concept of multiple “audiences” for agency actors from Daniel Carpenter. See DANIEL CARPENTER, REPUTATION AND POWER: ORGANIZATIONAL IMAGE AND PHARMACEUTICAL REGULATION AT THE FDA 18 (2010).

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clarify the FRB's role are prudent. Most importantly, this Note does not seek to answer these important questions about the FRB's role in foreign policy. Rather, it initiates a conversation about the role of independent central banks in matters of foreign affairs.