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Democratically accountable adhocracy? The challenges of legitimating the responses to the 2008 financial crisis

By Philip Wallach

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INTRODUCTION

For the United States, the Great Recession ended in December 2009, at least according to the official statistics. Notwithstanding our painfully slow economic recovery, at that point America's economy began moving in the right direction. That same month, Greek sovereign debt was downgraded, beginning a drama that still embroils Europe half a decade later. Greece's spending cuts taken to reassure creditors inspired strikes and protests by its citizens, including some that turned violent in May 2010, and a full default seemed close at hand, threatening to drag down Portugal, Italy, Ireland, and Spain, and perhaps even the Euro itself. Needless to say, United States policymakers had little to no influence in determining how the situation would develop.

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As things actually played out, Europe avoided implosion. The EU provided Greece with extraordinary assistance that helped stave off a debt restructuring (a sort-of default) until October 2011, and Europe's economies have limped along without sparking a new round of global financial crisis. Policymakers in the U.S. were able to mostly ride out the crisis responses initiated in 2008 and 2009 as they oversaw America's economic recovery.

But holding steady would probably have been impossible if the European tinderbox had ignited. Recession officially over or not, U.S. headline unemployment in 2010 hovered just below 10 percent. A Euro crisis would have brought America higher rates of joblessness, another downturn in asset prices, a new round of concern about insolvent banks, and very possibly a double-dip recession. Combatting these negative developments would surely have required the federal government to embark on a new round of vigorous crisis responses.

That may well have been politically impossible. In the fateful autumn of 2008, America's political leadership mustered barely sufficient political capital to see through a series of truly extraordinary improvised responses to the financial crisis. Barack Obama's new presidential administration that began in January 2009 dissipated any honeymoon period it might have enjoyed by lending its support to those policies and initiating new ones along the same lines. Even as responses by the Treasury, Federal Reserve, and FDIC helped to stave off total financial collapse, the general public's trust in government fell to a historic nadir during this period.

Occupy Wall Street and the Tea Party provided the most vivid illustrations of this distrust, but it was much more widespread. In early 2010, 60 percent of Americans disapproved of aid to banks compared with 32 percent who approved, and those who felt that TARP and the auto bailouts actually hurt America's economy significantly outnumbered those who felt they had helped.[1] As a result, the executive branch found working with Congress to adjust the available crisis-response tools to be practically impossible. In the counterfactual world in which a Eurozone crisis brought on another wave of American distress, this inability to produce broadly legitimate policies through normal political channels could have been extremely damaging, both in terms of the ability to combat the crisis successfully and in terms of the crisis fighters' ability to retain some degree of democratic legitimacy. It is all too easy to imagine a downward spiral of inefficacy feeding illegitimacy feeding further inefficacy.

To ensure that our country never reaps such a whirlwind, we can and should do more than wish for a different kind of crisis leadership. We must think about the kinds of accountability mechanisms that can be put into place to respond to and channel deep public discontent with official crisis responses. My new book, *To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis* (Brookings Institution Press, 2015) offers an in-depth exploration of all of the key crisis responses and analyzes why some (but not others) became the sources of lingering resentment. In this paper, I offer a condensed version of some of the book's arguments and explain how accountability mechanisms can be attached to crisis responses to improve their legitimacy. While some of these were utilized during the recent crisis, with better effect than is generally appreciated, much more could have been done to create a sense of democratic accountability. Specifically, I recommend:

- More direct investment of scarce resources in legitimacy, even when this seems like a distraction from the central task of crisis fighting. In practical terms, this requires creating clear decision-making protocols and record-keeping practices that preserve the rationales behind important choices, serious efforts to educate the public about the nature of the responses, and the creation of special oversight bodies dedicated to ensuring the integrity of crisis response programs.

- Congress should set clear outer limits on crisis responses by actively using "thou shalt not" proscriptions or setting hard caps on the dollar amount of total government commitments.

- We should acknowledge that law is not up to the task of providing a detailed playbook for crisis response, especially in the early fast-moving stages of a financial crisis. To compensate, we should establish what I call an accountable slush fund: a form of targeted national savings designed to allow top policymakers almost complete flexibility in combating a crisis, provided that they publicly declare an emergency and subject their choice to a heightened degree of ex post accountability.

WHY WAS THERE A LEGITIMACY PROBLEM?

Before turning to ways of ensuring and improving government legitimacy in crisis response, it is worth first pondering why achieving legitimacy was so difficult for the crisis responders of the late 2000s.

Their first problem was the starting point of the federal government's diminished legitimacy in 2008. President George W. Bush began his last year in office with about a dismal 33 percent approval rating, and by October 2008 that would fall to a remarkable 26 percent.[2] While American presidents have typically stamped crisis responses with their own personality and legitimating force (especially Lincoln, Wilson, and FDR), Bush (perhaps wisely) shied away from attempting to play such a role in 2008. The two most prominent faces of the crisis response were Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke—neither of whom had a background in retail politics. That duo had sufficient credibility to rally congressional leaders to their cause when they finally decided that seeking newly legitimated powers was unavoidable, but they struggled to win the trust of back-benchers of both parties, not to mention ordinary Americans, many of whom were already distrustful of the Bush administration. As he tried to make the case for decisive action, Paulson self-consciously analogized the financial crisis to the threat of war, just as Franklin Roosevelt had done in 1933. But whereas Roosevelt could invoke the image of Americans decisively turning the tide of Europe's Great War, Paulson's comparisons implicitly called to mind the Bush administration's unpopular and inconclusive Iraq War, as well as what many considered to be the misleading claim of necessity made to justify it.[3]

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But if the Bush administration's general unpopularity offered a shaky foundation on which to build a politically legitimate crisis response, both the form and the substance of actions taken in 2008 also made achieving legitimacy more difficult. The tendency of improvising crisis responses with tenuous statutory support, which I call "adhocracy," exacerbated suspicions that the government was playing favorites rather than neutrally applying the law. And then the fact that bankers at some of the nation's largest financial firms—including those that seemed to be most responsible for bringing on the financial crisis—were the most direct beneficiaries of the government's responses made the legitimacy problem all the more difficult.

The lack of a clear playbook for responding to a new kind of financial crisis, in which bank runs took place at the wholesale rather than the retail level, gave rise to a series of improvised government responses over the course of 2008. In what made for thrilling action by policy standards, government officials at the Treasury, the Federal Reserve, and the FDIC were forced to devise novel maneuvers to head off the crisis. First came the Fed's interventions in March 2008 to keep the reeling Bear Stearns out of bankruptcy and instead help it into the arms of J.P. Morgan, ultimately by means of a Fed-created special purpose vehicle called Maiden Lane LLP, which removed some of most troublesome securities from the transaction. Although Congress passed a new statute over the summer to address the problems of Fannie Mae and Freddie Mac, those two giant firms' rescue (into government conservatorship) in early September 2008 still came off chaotically, with unclear implications for the firms' investors. And then came the pair of decisions that became emblematic of the government's inconsistent approach: Lehman Brothers was left to die an ignominious death while, the very next day, the Fed devised a colossal $85 billion rescue for insurance giant AIG. Later that week, the Treasury announced an arcane and legally questionable rescue of money market funds. Alongside these headline-grabbing rescues, the Fed created an alphabet soup of new facilities meant to provide liquidity to various corners of the wholesale funding markets: the TAF (December 2007), TSLF and PDCF (March 2008), AMLF (September 2008), CPFF and MMIFF (October 2008, the latter never used), and TALF (November 2008). *To the Edge* examines each of these crisis responses in detail, but here it is enough to emphasize that even experts had a hard time discerning any consistent principle behind these decisions, let alone being able to explain them as straightforward applications of preexisting legal structures.

One might think that once Congress acted to provide a new blueprint for action, adhocracy could be regularized and concerns of arbitrariness dispelled, but as things played out the Emergency Economic Stabilization Act (better known as TARP) passed at the beginning of October 2008 only partially mitigated the problem. The statute itself conferred on the Treasury Secretary tremendous discretion in deciding how to use $700 billion, with constraints defined with almost laughable imprecision. In many ways, TARP actually gave the Treasury more flexibility than Paulson had originally requested, as it allowed for the creation of insurance programs and equity injections rather than exclusively requiring purchase of "troubled assets." Treasury would make use of every bit of that flexibility, abandoning its original plan to remove hard-to-value assets from banks' balance sheets and instead opting to inject equity into first large banks and then smaller ones. By the end of the Bush administration, Treasury would turn TARP money to rescues of GM and Chrysler and special relief programs for Citigroup and Bank of America. Meanwhile, adhocracy outside of TARP was hardly displaced: instead, the Fed went right on engineering new facilities and reconfigured its support for AIG to include two more Maiden Lane LLPs, while the FDIC also got in on the action by extending the scope of its guarantees through the novel (and legally strained) TLGP.

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Many observers expected that the entrance onto the scene of the new presidential administration would fundamentally change the approach to fighting the crisis, especially since candidate Barack Obama had so prominently emphasized change in his campaign. But President Obama quickly and decisively chose policy continuity over political disjuncture, much to the dismay of those who saw the Bush administration's crisis response as fundamentally arbitrary or corrupt. Obama chose Timothy Geithner, who as president of the Federal Reserve Bank of New York had been third among the crisis fighters in 2008, as his treasury secretary, and would later choose to reappoint Bernanke. Adhocracy continued, both under TARP's auspices and outside of them. Chrysler and GM were shepherded through remarkably rapid bankruptcies which left in their wake bad feelings and new accusations of unfairness. The government's not-quite-nationalizations of Fannie and Freddie, as well as AIG, developed in unusual and legally problematic ways. All the while, Obama's administration struggled to convince the public that their crisis responses were legitimate, reasoned, and effective.

For all of the legal awkwardness and occasional brushes with outright illegality that were embodied in these crisis responses, it is remarkable how few of the people angriest about the government's crisis responses focused on legality at all. But the divergence of legality and legitimacy is a common feature of crises: what is legal may be regarded as illegitimate, and what is illegal (or extralegal) may be regarded as a legitimate response to truly exigent circumstances. While a few rule of law purists were infuriated by the government's irregularity most of all (and some others have wondered whether the erratic nature of the responses significantly worsened the crisis), the harshest critics of the government's responses see the ad hoc nature of the crisis responses as exacerbating other more important problems—when the adhocracy bothers them at all.

In many instances, public anger was quite clearly rooted in frustrations that the government failed to improvise *more* on behalf of what people believed were the obvious demands of justice—whatever the law had to say about the matter. When the government's legal powers as de-jure-non-nationalizer fell short of what people believed was fair for government-as-de-facto-nationalizer, the public tended not to fret about the law. This was clear in the treatment of shareholders of AIG, Fannie Mae, and Freddie Mac, all of which still occupy courts to this day.

But the most striking example of this was in the case of AIG retention bonuses paid out in March 2009, in many cases to employees of the financial products division that had brought the insurer low, which inspired the largest political outcries of any moment during the financial crisis. Based on the rescue that the Fed had engineered in September 2008 and the later modifications to it, including huge infusions of TARP money, AIG operated as a publicly traded company that happened to have the government own the overwhelming majority of its shares. Its executive compensation and bonus policies were restricted by law (as all TARP recipients' were), but these restrictions explicitly exempted preexisting contracts. Given AIG's corporate continuity, any government attempt to nullify preexisting contracts would almost certainly have run afoul of the Constitution's contract clause.

The public was nevertheless enraged, and it is not hard to understand why. It seemed as though taxpayer dollars were being transferred directly into the hands of the perpetrators, and it is hard to imagine anything more grossly unfair than that. The factual bases of that seemingly obvious perception were rather shaky, but that did not stop the House of Representatives from taking up its constituents' rage with great alacrity: by the end of March, the House had seriously considered passing something called the End GREED Act and had in fact passed a confiscatory 90 percent tax on companies fitting the description of AIG (i.e., AIG) with 328 votes in favor. President Obama briefly seemed ready to throw his weight behind the bill, saying: "I don't want to quell anger. I think people are right to be angry."[4]

That populist flirtation was not consummated. The Senate shied away from what was probably an unconstitutional bill of attainder, while at the same time fear of the public's wrath led many of the largest AIG bonus recipients to return the money. Legal limitations won the day. But in failing to provide a direct response to the single most intense manifestation of public preferences, the government sharply limited its legitimacy among the general public. For average informed citizens—even those sympathetic to the idea that government should act forcefully to fend off financial crises—the flurry of unsystematic government activity culminating in bankers receiving their bonuses, as if nothing had happened, was sure to seem grotesque.

Meanwhile, many voters resented how little they felt had been done to help Main Street Americans, with the plentiful aid to Wall Street adding bitter insult to economic injury. The most important disappointment here was the scant provision of foreclosure relief, which some had believed would be a major function of TARP. Treasury Secretary

Geithner would eventually make serious efforts to promote mortgage modifications through the HAMP program, but its performance came nowhere near expectations; promises of 3 million permanent modifications had come to just some 230,000 after a year, and even those were often of questionable value.

There are many reasons for this failure. The legal barriers to modifying securitized mortgages were more daunting than generally appreciated. The politics were anything but straightforward: after all, it was fuming opposition to the idea of bailouts for undeserving, irresponsible homeowners next door that helped spark the original Tea Party movement in 2009. But perhaps most important was that neither Treasury Secretary Paulson nor Treasury Secretary Geithner saw helping homeowners as having comparable importance as helping systemically important banks. Indeed, both saw relief for homeowners as distracting from the central work of stopping the financial crisis.[5]

Neither man had any delusions that this way of thinking would be popular, but both thought that the most important way to secure legitimacy was to effectively halt the crisis and contain its damage. Political legitimacy would flow from policy success. Geithner would eventually articulate this quite clearly: "The central paradox of financial crises is that what feels just and fair is the opposite of what's required for a just and fair outcome."[6] Doing things that cultivate wide feelings of illegitimacy is just part of the crisis fighter's job description, at least if they have a proper sense of priorities. And pandering to short-term political demands for foreclosure relief would have diverted important resources (money, but more importantly staff attention) from the prioritized task of containing the crisis, which naturally required a focus on systemically important institutions.

What I call Geithner's Paradox (following Gary Gorton[7]) undoubtedly captures an important truth: in the long run, people care more about results than process, and if policymakers have some way to tame financial crisis and thereby significantly improve their country's economic outlook, they should pursue it. In doing so, they will probably be serving to shore up their government's long-term legitimacy.

But being attuned to the primary importance of long-term success should not entirely crowd out attention to maintaining short-term legitimacy. At the margin, it will be sensible to invest some scarce crisis fighting resources in causes that may be less important to restoring financial stability but more important to strengthening the government's legitimacy by convincing ordinary people that it is fighting for them. Failing to make this tradeoff can actually jeopardize the ability to successfully execute long-term recoveries by depriving the crisis fighters of some tools that require trust in government to work.

That danger was evident as the Treasury Department attempted to belatedly get into the asset purchase business in partnership with private buyers through the PPIP. Although markets were initially excited by the announcement of the program, it was immediately savaged in the press and by the Special Inspector General for TARP, with the Geithner Treasury portrayed as either unwittingly or purposefully facilitating a rip-off of taxpayers. Congress quickly legislated new program requirements designed to address these fears, but the overall message to investors was clear: the Treasury Department is an unreliable partner, not just because of its own tendency to embrace adhocracy but because it has come to be regarded with so much suspicion by the general public and Congress, who can force it to change the terms of its involvement at any time.[8] Here was a limited but important case in which a lack of legitimacy led to program failure, illustrating the importance of tending to short-term legitimacy even as long-term recovery remains a more important objective. The logical question to ask is how crisis fighters might have done more to improve the legitimacy of their efforts without fundamentally compromising their ability to combat the crisis.

HOW THE SYSTEM CAN PRODUCE LEGITIMACY

For some observers, the solution to the legitimacy problem seems as plain as day: the government should have honored the rule of law, eschewed adhocracy, and thereby avoided any sense that the executive branch was acting arbitrarily on behalf of a favored few. This advice is hard to reject entirely convincingly, as the counterfactual world in which it was followed is unavailable for us to observe, but on the whole it seems rather facile and misguided. As already noted, often the government's worst legitimacy problems flowed from incidents in which it did follow the law; conversely, some of its most legally dubious improvisations were met with acclaim rather than censure. Whatever the naïve model of representative government might say, following the law and doing what people will find legitimate are two quite distinct things, sometimes directly in tension with each other. And in crises, there is a natural tendency toward adhocracy because of the need for rapid flexibility, while a wooden adherence to existing law will bring political ignominy. Just ask Herbert Hoover.

If we assume that some degree of executive-led improvisation is inevitable, we must then ask what can be done to make it more palatable to the general public. I offer three kinds of responses: making the adhocracy's actions more legible and ultimately accountable, setting the outer bounds of adhocracy, and forthrightly creating a sphere of action to be left entirely to the judgment of the executive early in a crisis.

Most directly, crisis fighters need to invest more in legitimacy, even when this strikes them as a ridiculous distraction from the crucial work of saving the world—and even when it seems insulting to have to establish one's good faith as a public servant laboring long, hard hours at a far lower salary than could be had elsewhere. For better or worse, public trust in our government is simply not high enough to allow crisis fighters the luxury of assuming that legitimacy will take care of itself.

Investments can come in several forms. First, clearer processes for decision-making should be established and followed whenever possible, even when not legally required. Of course there may be exigencies that make following any kind of deliberate process impossible, and we should not wish to hamstring the executive branch's ability to do the best it can in such moments. But often the relevant time frame for important decisions will be weeks or months rather than hours or days. When that is the case, bureaucratic process is extremely valuable in spite of its bad name. Especially as a new program is established, clarifying the policies surrounding it (and doing so with transparent record-keeping) will allay concerns about arbitrary dealing or abuse. If existing personnel are truly stretched to their limits, the organization should seek outside help, either from the GAO or some outside contractors. The Federal Reserve, in particular, needs to think about how it might make some it its decisions more open to scrutiny and thus amenable to reasoned defenses rather than appeals to trust, especially about legal rationales and judgments of collateral quality. If snap decisions during the chaos of 2008 are forgivable, repeat uses of these maneuvers in future crises will have no excuse for being hastily thrown together.

Second, the principal crisis-fighters also need to act as public educators in explaining to ordinary citizens why seemingly particularistic actions are necessary to protect widely shared interests. There is simply no reason to expect this to happen automatically. Of course, there is a widespread distaste of overactive "public relations" operations that offer spin rather than illumination, but historically crisis fighters have found a way to rise above this—with Franklin Roosevelt's fireside chats, the first of which addressed the banking crisis, providing the paradigmatic example. Our contemporary leaders must figure out some way to do the same. There were some very positive steps in this direction, as with Bernanke's appearances on 60 Minutes in March 2009 and December 2010. But other times, the

Fed seemed surly and defensive when asked to justify the particulars of its practices, and it missed opportunities to provide rationales that would be comprehensible to ordinary citizens.

Finally, where trust is lacking, accountability mechanisms with a harder edge can also serve to increase public confidence in policies' fairness. A program that has survived the adversarial scrutiny of a designated watchdog is less threatening than one affected under a veil of secrecy. The legitimacy produced by such oversight is likely to be backhanded: rather than a hoping for a stamp of approval, programs' reputations can be enhanced if harsh critics fail to produce any scandalous accusations. Thanks to provisions of TARP, this was the accountability mechanism most prominently deployed during the recent crisis. The special inspector general for TARP and the Congressional Oversight Panel each produced voluminous reports probing the specific details of the government's actions and harshly critiquing many program design choices. Both watchdogs felt it was unreasonable that decisions were made without process or better documentation; that the overall balance of programs poorly served normal homeowners; and that the government was too forgiving to big banks and their creditors. But, on balance, neither suggested that there was any serious problem with self-dealing or favoritism. Though their emphasis was on problems, the net effect of their scrutiny was to validate the core of the crisis responses. Though the adversarial rhetoric produced by these watchdogs was sometimes problematic, in general such accountability mechanisms importantly shaped the political responses to the crisis responses, often channeling distrust into constructive suggestions.

Besides explicitly seeking to produce legitimacy, I offer two other complementary recommendations for establishing the legitimacy of financial crisis responses: clearly setting the outer limits of action with "thou shalt not" legislative proscriptions, and clearly admitting that there is a useful sphere for unconstrained discretion and working to create non-deceptive conditions for making use of such discretion.

First, in spite of worries that the executive may find ways to wriggle out of any legal constraints that Congress devises, the legislature has the power to create effective legal limits when it truly wants to. During the recent crisis, the most important standing constraint was the Anti-Deficiency Act, which flatly prohibits the Treasury from committing any unappropriated money and thereby frustrated Secretary Treasury Paulson's desire to stand behind certain Fed commitments in 2008. In other cases where the government's statutory crisis powers seem to shade toward omnipotence, simple prohibitions could significantly clarify crisis responsibilities, for example by clearly defining an upper bound for government aid to Fannie Mae and Freddie Mac. More generally, setting explicit dollar limits, perhaps with additional language preventing levering of funds, is likely to be an especially effective constraint.

If Congress generally eschews this strategy, we should not necessarily be surprised. Legislators will naturally be cautious in tying the hands of future crisis fighters, and (despite occasional rhetoric) are unlikely to prioritize clear constraints for their own sake. By leaving the scope of the government response underdefined, legislators retain the right to criticize actions they see as over the line. But Congress should think carefully about what, if anything, it fears from an executive branch responding to a financial crisis, and legislate a ban accordingly.

This exhortation seems especially important when related to the Treasury Department's use of the Exchange Stabilization Fund to guarantee money markets in September 2008—a legally dubious maneuver that, in spite of being terrifically successful in preventing a run, irked Congress enough for them to explicitly prohibit a repeat performance. But rather than outlawing any money market rescue, or any "off-label" use of the ESF, Congress (in TARP) proscribed only the specific move of using the ESF for a guarantee of the money markets. This is puzzling, to say the least, and suggests that perhaps Congress prefers to keep the ESF as a kind of all-purpose salve—for everything *except* what it was used for in 2008, that is.

Whether that was consciously intended or not, it would be far more honest and conducive to legitimacy to officially designate a pot of money for this purpose. Put crudely, the Treasury should have a discretionary slush fund for combating financial crises—an idea also supported by Ben Bernanke.[9] Slush funds have a bad name, of course, but that is almost always because of concerns about unaccountable spending. But accountability would be front and center in any financial crisis emergency fund and could be produced with requirements of instant and comprehensive reporting, fast-track procedures for Congress to stop any outflows of money it found inappropriate, and even streamlined procedures for fining or impeaching a Secretary found to have misused the fund. In addition, time limits could be attached to restrict usage to the early, chaotic period, and of course there would be an upper dollar limit based on how much money was in the fund. Once committed, presumably it would take another act of Congress to replenish the funds.

Put crudely, the Treasury should have a discretionary slush fund for combating financial crises.

Creating such a system would be a victory for realism. Rather than being offended by the idea that crisis response will fail to conform to an idealized version of the rule of law, it would acknowledge that emergency scrambling is inevitable and put it above board, where it can be better scrutinized and subjected to ex post accountability. Far from depriving the nation of self-government, forthrightly acknowledging and cabining the realm for nearly unrestricted discretion can actually enhance the ability of the public and their representatives to effectively dictate medium-term crisis responses and the long-term reconfiguration of underlying regulatory structures.

WHY DOES LEGITIMACY MATTER?

Whether these particular suggestions are followed or not, government officials acting as crisis fighters need to prioritize ensuring public legitimacy, as distinct from any notion of policy success. Policy success will always be the best way to ensure legitimacy, but we should not delude ourselves into thinking that crisis fighters will always get things right or manage to succeed. In 2008 and its aftermath, though things looked truly grim for a while, our crisis fighters ended up performing fairly well (especially when reasonable and relative metrics of success are adopted). That is in part because they were good, and in part because they were lucky—hard-to-value assets acquired turned out to be less toxic than was feared, and no serious adverse shock, such as a European implosion, came at an inopportune moment. For the sake of America's long-term health, however, we need our system to be robust to good faith failures as well as successes.

There are reasons to worry that we are failing to maintain such robust legitimacy. Americans in the post–cold war world sometimes have a difficult time believing that our current system of government could meet any fate other than perpetual motion, but this is a dangerously complacent illusion. More than at any time in the past quarter century, we are beginning to hear murmurings about exhaustion of American government and the relative inferiority of our constitutional system.

This is not a wholly novel situation for the country. As Ira Katznelson argues in *Fear Itself*, the struggle to legitimate America's system of government was the overarching theme of politics in the 1930s, and the success of these efforts was not at all a foregone conclusion. Indeed, conducting the nation's affairs against the backdrop of widespread disaffection forced America's leaders into several troubling compromises and alliances that left an unfortunate legacy. Many of the conditions that made the 1930s such a perilous decade for democracy in America and in Europe thankfully seem remote today, but the comparison is not one that should be shrugged off lightly. Our form of government's ability to secure legitimacy over the past seventy-five years has been one of its greatest assets, but it should not be thought of as a permanent quality of American life incapable of being squandered. Rejection of our form of government is far from imminent, but neither is it unthinkable.

To the Edge provides future crisis fighters with foundations for thinking about legitimacy more realistically and proactively, so that when America confronts its next financial crisis it will not find its best policy options politically impossible.

Even if the country manages to steer well clear of governmental collapse, diminished legitimacy can potentially handicap what a government is able to accomplish. As James Gibson puts it, legitimacy "is a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences" and thus one of the most important enablers of long-term thinking in moments of calm and crisis alike.

In spite of its importance, the process of legitimation in many modern democracies, and certainly our own, is quite haphazard and uncertain. It is too often an afterthought for government officials who imagine they have a kind of Rooseveltian mandate that they actually lack and who do not think of maintaining and improving the government's legitimacy as their own responsibility. One could offer many different explanations for this failing, among others: the outsize influence of economics, the insulation of political principals by extensive staffs, the "thickening" of government which makes bureaucratic institutions capable of going about their business without much continuous political input. In any case, the poor reputation of the responses to the financial crisis should alert those in government that their underinvestment in legitimacy has costs. *To the Edge* provides future crisis fighters with foundations for thinking about legitimacy more realistically and proactively, so that when America confronts its next financial crisis it will not find its best policy options politically impossible.

ENDNOTES

1. Karlyn Bowman, "TARP, the Auto Bailout, and the Stimulus: Attitudes about the Economic Crises," AEI Public Opinion Studies, American Enterprise Institute, May 2010 (http://www.aei.org/files/2010/04/22/EconomicCrisis-2010.pdf). See Philip A. Wallach, *To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis* (Brookings Institution Press, 2015), p. 157. Readers interested in detailed documentation for this paper's claims should consult the book's extensive notes.
2. RealClearPolitics, "President Bush Job Approval" (http://www.realclearpolitics.com/epolls/other/president_bush_job_approval-904.html).
3. *To the Edge*, p. 85.
4. *To the Edge*, p. 136.
5. Paulson sometimes went so far as to claim that he had no legal powers under TARP to subsidize foreclosure relief, which would more or less entail expenditures rather than making loans or buying assets with resale value. *To the Edge*, p. 104. Needless to say, that position would be easier to accept if Paulson had not supported other extremely tenuous interpretations of TARP, including making (predictably money-losing) loans to the auto companies.
6. *To the Edge*, p. 149-152.
7. Gary Gorton, *Misunderstanding Financial Crises: Why We Don't See Them Coming* (Oxford University Press, 2012), Kindle edition, loc. 2799.
8. *To the Edge*, pp. 153-55.
9. "The Fed in the 21st Century: Independence, Governance and Accountability," Brookings Institution Event, March 2, 2015 (http://www.brookings.edu/~/media/events/2015/03/02-fed-21st-century/20150302_fed_21st_century_transcript.pdf): p. 53.

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