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THE HISTORY OF BANK SUPERVISION IN AMERICA AND THE ROAD AHEAD

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WELCOME AND INTRODUCTION:

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"PRIVATE FINANCE, PUBLIC POWER: A HISTORY OF BANK SUPERVISION IN AMERICA"

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KLEIN: Good morning. I'm Aaron Klein, I'm the Miriam K. Carliner Chair and Senior Fellow in Economic Studies here at the Brookings Institution. And on behalf of myself and the Center on Regulation and Markets, it is my great honor and privilege to welcome everybody for a book launch and a full conference. The topic of the conference is bank supervision, nothing should get people more excited than bank supervision. And I say that. Both a little bit tongue-in-cheek but also this entire town is focused on bank regulation everybody i'm an economist and when i came in uh... And started working my first job on the senate banking committee we're very much focused on regulation what were the regulators doing what were the rules what laws did we need to put in place to empower regulators to write more rules or not. And one of the big things I've learned through my career is one of flaws in the way economists see the world, is that we assume that the rules are implemented and followed, and we kind of wash away the actual difficult part, which is implementing the rules. Rules that sound like they make a lot of sense. My kid's bedtime is 10 o'clock sharp. Well, the implementation of that can be a little tricky on a day-to-day basis. And it's in that implementation that so much of the magic, as the book describes, is made or lost, is where the rubber meets the road. And in this book that Peter and Sean wrote, Private Finance, Public Power, A History of bank supervision in America. It really opened my eyes to a few realities in terms of how bank supervision hasn't changed that much. You would think going back in history through 1980 and going all the way back to the 1830s that what would that have to show about society today? The answer is quite a lot. I found myself repeatedly going and looking and saying, wow. I remember when we faced that problem in the financial crisis. I remember we faced a problem in accounting crisis. Well, wait a second, you know, that story on the front page of the newspaper today about whether the Trump administration wants to merge the regulators. That's exactly what was happening in the beginning of the Roosevelt administration as FDR was busy creating more regulators. And so What Sean and Peter have done here is an incredible service to this giant debate and discussion that we've been having in this town for decades, centuries now, which is to go back in history and look at how banks were actually supervised, who the players were, what was happening, what meant. And I think it will provide an incredible amount of scholarship and insight for those who read it. And I recommend everybody read it and there'll be copies for those who are here at the Brookings bookstore which is about to open, I think we even have a little sale, so get your copy here in person or if not online in your favorite retailer or online seller. When you read it you're beginning to get a set of insights into how banks are supervised and what it means to be a supervisor one thing the book does fantastically is goes into the story of some of the lead supervisors where they're from what their experiences were how some of them were publicly tarnished or ridiculed how some them got things right and you know became heroes or got things wrong back in an area where you know your reputation was was defined by by your community and not by some kind of online blogosphere And it shows the history of this world that is critically underappreciated in this intellectual space that gets so focused on regulation and overlooks supervision. And by tilting this field and giving supervision its due as its own unique concept, Peter Sean took a great risk. They took a risk that folks would care about this. It is difficult to write about the thing that people aren't talking about. It is incredibly easy to write another piece about a thing everybody else is talking about, and I think by the evidence of a full room here today of everybody online and by what I think will be a massive contribution in the scholarship and in reshaping the thinking of how we approach this, this giant risk has paid off. So, if you will join me... And congratulating Peter and Sean on their book and give me the great opportunity to bring them up. Sean, a senior lecturer in financial history and policy at the University of Glasgow. Peter is the class of 1965 associate professor of financial regulation at the Wharton School at the university of Pennsylvania. Peter and Sean, the floor is yours.

VANATTA: Wow. Have you ever been on a flight and you're right about to take off and the captain comes over the loudspeaker and says, the destination for this flight is Dallas. And if you do not intend to go to Dallas, please speak to a member of the cabin crew. This is a talk about the history of bank supervision, a topic that my own mother steers away from whenever I bring it up. So if you're not here for the history Under bank supervision, this is your chance to exit the aircraft. If you are here for that, then what we're going to do today is talk through a bit of framing and key themes for the book. We'll talk about the evolution of bank supervision as institutionalized risk management by the public sector of the private financial system. And then we'll think about some of the implications that our historical narrative has for present day policymaking, and that will segue nicely into the remainder of the programming. As Aaron mentioned, as people start to kind of think about the way that the government interacts with the financial system, scholars, academics, policymakers, industry practitioners, the first focus tends to be legislation, right, the laws that Congress writes. And the second focus tends then to be regulation, the rules that come out of those laws either directly or which are then later created by administrative agencies. And when we started this project... We realized that there really wasn't a good analysis of, or a good understanding of this process of supervision, the way that the government tries to manage financial risk on a day-to-day basis by interacting with the private sector. And so that's what we set out to write in this story, is to understand how these unique institutions, unique risk management practices were created, institutionalized, and evolved within the US political system. Now to do that, it required to some extent defining supervision, and if you go to something called the purposes and functions of the Federal Reserve, which is a document the Fed has published effectively since its founding to explain itself to the public, if you got to the most recent version of that, you'll find this helpful infographic. And what you see at the top in the red is the process of regulation. Congress enacts laws, administrative agencies write rules, there's a notice and comment period, and then the rules are on the books. And you kind of transition down into the blue this is supervision this is how the fed explains its supervisory functions and in two thousand twenty one the most recent version of this the fed primarily explain supervision as compliance so supervision is about evaluating institutions compliance with regulations about determining compliance about uh... Ensuring compliance and so you can be forgiven as an outsider for assuming the supervision is merely about compliance. But if we look back in time, if we look at, for example, the 1954 version of this same document, the Fed used to project a much more dynamic vision of what supervision was. So here again from 1954 is a much beefier definition, one that doesn't lend itself well to an infographic. And the Fed describes supervision as the issuance and enforcement of regulations. The requirement, requiring a bank management to correct unsatisfactory and unsound practices, even the rendering of counsel and advice to small, particularly small banks. And so we might then ask this question, so today it's compliance, in the past it was more dynamic, what has changed about supervision? We can imagine a story that beginning with the Reagan revolution in the 1980s, the supervisory remit shrank, right? The Fed is simply doing less or it's doing, has less discretion, is more focused on compliance. Now maybe that story doesn't hold. We think about things like the stress tests might challenge that. So maybe the Fed is not doing less, but in the political environment or under its culture of secrecy, the Fed explaining what it's doing as mere compliance for particular reasons. And I think overall the important point here to take away is that supervision is what supervisors say it is. So the way that supervisors present what they do to the public might not reflect what they're doing behind closed doors in their day-to-day interaction with the financial system, but what makes supervision what it is, is that process of self-definition. Is that supervisors define the reasons for acting and they make discretionary choices about what actions. And so now Peter's going to talk about the themes of the book.

CONTI-BROWN: You know, when we set out to write this book and took it as our defining presumption that supervision is a distinct body of practices, not merely the extension of compliance of laws and regulations, we then had the challenge of understanding exactly how do you go about writing that history, since most of this is wrapped in such extraordinary secrecy. And so uh... Over over many years of of research and trying to bring to earth the uh... These institutions uh... The secrets these dynamics these relationships found these themes that helped orient us toward that history what is exactly happening behind those closed doors not simply what supervisors describing that's in the what legislators are uh... Uh... Blaming or crediting supervisors for having done. But what is the nature of that give and take? And so we have three themes that we want to talk to you about that animate the through line through this tumultuous history. And the first is this idea that comes to us in the title of the book of what exactly is public versus what exactly is private about the risk taking and the management of that risk taking that occurs in the financial system. This is a great debate among scholars, historians, legal scholars, economists, that came with a specific kind of question in the 1980s, and that was this. Are banks special? We have this idea, banks are special. What is special about them? What makes them distinct from other kinds of corporations? Now, in some sense, of course, this answer, this question answers itself. In the late 19th century, we moved from a regime of specific incorporation of all business entities led by New Jersey and Delaware toward legislatures creating general incorporation laws. Banks, however, did not follow suit, not exactly. Bank charter is itself something quite special. And supervision is a part of that question of what makes banks special. What that doesn't answer, however is where the line between the government-ness of... Risk management, and the privateness of risk management comes. That's not a line that can be defined, not etched in stone in any case. That is a blurry line, and our graphic here is trying to give that sense of that exact tug of war. And so some of the debates that you will see in our book throughout, and some of characters, take up this question. Where should banks be left alone to take risks and bear losses? Where must the be to catch the residual risk there. Now one of the places where we weigh in on this debate is we don't see banks functioning as a kind of franchisee of the government, in part because in the 19th century what constitutes sovereignty of the Government is itself so ill-defined, so subject to debate and contestation. What we have instead then is supervision as the space of that contestation, where supervisors And in from the public and bankers in the private negotiate the kinds of responsibilities for risk taking and ultimately risk management throughout the system. Another debate that will be familiar, I was thinking about this as Aaron was giving that wonderful introduction to the book. Today we debate questions about how much supervisory discretion is appropriate within our traditions of rule of law and due process in America. Now we don't weigh in on this debate directly for 2025. One of the things that we're proudest of in this book is that we got both Randy Quarles and Dan Tarullo to blurb back of the book. A rare feat indeed, but they themselves hotly contest exactly what is appropriate between a rules-based supervisory system versus a discretion-based supervisor system. The way that we think about these kinds of questions, and the reason we think of discretion so importantly at its center, is that what makes supervision different from regulation, these rules is the way that discretion is institutionalized. And what we mean by that is that the way that supervisors exercise discretion itself has a procedure to it, has a mechanism to it. And so this raises questions about examiner independence, which is highly relevant in the 2020s. It raises questions about the relationship between presidents who on the one hand want to make sure for political reasons that bad banks suffer in ways that might make them look good or much more often. Uh... That bad banks do not suffer so that presidents look good so they can avoid crises that relationship between political accountability and supervisory discretion is itself uh... Uh... Very important one of the most important facts that we see in the three line through this history is just how much congress loves a discretionary supervisor And this is because Congress, after crisis or scandal repeatedly, calls in bank supervisors in hearings, yells at them for their failures, and then passes law that expands their discretionary bailiwicks. What's happening here? No hypocrisy. No real logic. The answer is that over time, through processes of design and evolution. Supervision has been able to catch the residual risk of the financial system primarily financial risk but also political risk too congress sees in that residual catch-all something extremely important an answer to many questions and so as more crises and scandals emerge and congress sees as an opportunity we don't know how to solve this problem for the supervisors I alluded to this already, and I said that there's this question of both design and change. Now, when we originally wrote this book, our original title was The Banker's Thumb, and that was the title for many years. Many of you know the book manuscript by that title. We changed it to Private Finance, Public Power, for a variety of reasons, in part because the story we were telling was much larger than this specific theme. But the theme is very important. The banker's thumb is an homage to evolutionary biologist Stephen J. Gould, who wrote first an essay then a book called The Panda's Thumb. And this is in the 1980s. He was weighing in on a debate about intelligent design, an all-knowing, all-loving God who creates animals with each of their features, versus his perspective as an evolutionary biologist thinking about processes of natural selection and punctuated equilibrium that might create the same phenomenon. He singled out the sixth digit of the panda. Anyone who's observed a panda sees that it spends most of its waking hours with that little sixth digit coming off of its elongated wrist bone, peeling bamboo shoots in a way that looks pretty effective. And so some have said, see there now, that's God taking care of pandas. And Gould said, pandas spend 12 hours a day doing this. It is not efficient. But there are better ways that God might have given a panda a bamboo peeling digit. And his answer then was, this isn't evidence of design, it's evidence of evolution. That it works just well enough. Now with the brain power in this room, we could sit down together and in a couple of days we could design a much, much more efficient bank supervisory system. If we did, it would not include probably dual banking systems where we have at the state level, different chartering authorities than we have at the federal level. It probably would not have what we call in the book federal bank disharmony, which means that we have fractured supervision across different kinds of agencies, creating a lot of inefficiencies. And in fact, most countries that have modeled supervisory discretion on the United States – this is a U.S. Export – they have not followed suit in dividing macroeconomic stability supervision from deposit insurance supervision, from chartering supervision, and federalize it, too. We're a distinct minority in that respect. And so this invites a lot of reformers to say, let's blow the whole thing up. Let's start from scratch. Surely there's a better way. Now, we're resistant to this idea, because one of the key themes here is that none of us starts from scratch, all of us are building on the institutional design choices that have preceded us. And this creates what political scientists call institutional layering. Now our argument is both positive and normative. The positive argument here is this is just a fact of life. Right? You cannot erase what has come before, even if you write a statute that purports to do so. The normative argument here, is a little bit like the panda's thumb too, in the sense that it's incredible that not only with all of the inefficiencies that disharmony and banking might create. What is the many benefits that come from this system? Benefits that can include experimentation in the laboratories of democracy of the states. Benefits include how a differentiated orientation towards supervisory risk that might occur inside the FDIC, zealous and jealous of the deposit insurance fund. Supervisory priorities inside the Fed, thinking about medium-term macroeconomic stability. And supervisory priorities in the of the currency. That has had to define and redefine itself in the face of institutional change over 160 years, that these competing elements themselves can create important dynamics that yield information, risk management, and other benefits that aren't available in other ways. The bottom line is that in the history of bank supervision, and as we debate policy questions about bank supervision today, we run headlong into the fact that the United states here as in so many other elements. And it's evolved to fit a purpose clumsily at times, but effectively at others, that is worth understanding. And our book is about that understanding. This leads to four key insights, and then I'll turn it to Sean. First is supervision is one about the relationship between individual actors and government and individual financial institutions. Where the rubber hits the road of government and market power, what Aaron was alluding Like, all right, so we've written these laws. What happens next? Supervision is about what happens next. It's further defined by evolutionary processes and resistant to efforts to impose a defining single ethos. One of the great virtues of supervision, if you'll recall in the early 2010s, there There was a big debate after a whistleblower at the New York Fed. Revealed uh... Some uh... Very collaborative quite cozy uh... Discussions uh... Regarding supervisory risk with goldman sachs hearings followed and in the debate between uh... Senator elizabeth warren and then new york fed president bill dudley that a contestation about what exactly supervisor should be senator warns saying this is you've got to be cops on the beat you've to be ready to go after the bad guys who misbehave. And President Dudley said, no, no. You're thinking about it wrong. We're fire wardens. Supervisors should be in response to save those whose houses are burning. We don't actually ask the questions, were you smoking, or was this an electrical fire, until after we have resolved the fire. Which is right. Well, the great thing about supervision is that's not a question that can be answered definitively. And that's because of the great architecture of supervision, lends itself well to those two and many, many other conceptions of how to co-manage that financial risk across a public-private divide. Now that fact leaves supervisors in Congress to use supervisory discretion to choose among competing conceptions of what that relationship should be. That's part of the way that Congress expands the discretionary bailiwick. Continuing to expand what supervisors must do, supervisors then must choose, and that choice in another field we would call that prosecutorial discretion, in supervision that becomes discretion itself. And then finally, this system has proved so resilient to change and so amenable to expansion because supervisory discretion functions as a risk absorber for entire financial system.

VANATTA: So to sort of develop those themes, it's a historical story. It's a story that begins in the 19th century with a wide variety of experimentation and how the government is going to participate in financial risk management. That includes special chartering, so deciding who gets to run a bank and who doesn't, early experiments with central banking, experiments with liability and even deposit insurance, early examination regimes. And a variety of other practices that primarily state governments were using to try to make sure the financial system was stable, provided the money and currency that businesses needed and didn't blow up. With the U.S. Civil War, the federal government, particularly policymakers like Treasury Secretary Samuel Chase, or Republican Ohio Senator John Sherman, sought to re-centralize. Uh... The banking system under federal control creating the national banking system in the comptroller of the currency and initially the vision was to have much more kind of public influence in public power over the banking system these policymakers wanted the comptrollers you guide bankers toward proper safe banking practices towards politically legitimate forms of lending they imagine that examiner's would be able to root out fraud and corruption within the banking system. But ultimately, there wasn't enough institutional capacity to do this. It's just hard in the 19th century to visit banks as frequently as you would like when you're riding around on a horse. The bankers, the sort of supervisors themselves could be corrupted and were corrupted. And so over time, through the 19 century, you see a gradual pullback in the public ambitions for public risk management and a heightened emphasis on private risk management. First through. Individual in individual banks through corporate governance and individual liability of bank shareholders and then in the overall system through things like the New York clearinghouse. The Comptroller didn't have a balance sheet. It couldn't act as a lender of last resort. And so you see private risk management coming to dominate in the 19th century. Of course, those of you know the history of the Gilded Age know that the 19 century is also punctuated by frequent financial crises. And so, after the panic of 1907, we get the founding of the Federal Reserve. And so this then creates two supervisors with different risk management, ethoses and practices. The Comptroller primarily operated on an information regime, so examining banks, gathering information, informing bank shareholders and boards of directors when the practices were unsafe and unsound, but leaving it to the private sector to manage those risks. And the Fed operated as... Counterparty as a bank as a lender of last resort that would provide liquidity to the financial system what we also see is is the emergence of institutional conflict so uh... The fed and the comptroller were effectively at war throughout the nineteen twenties uh... There's a guy called john skelton williams whose comptroller of the currency uh... Who is actively trying to keep any information the comptoller collected from the federal banks, the Fed was likewise trying to absorb the Comptroller into uh... Its authority the nineteen twenties are period where no banking supervisors really uh... Had much glory to claim given the long agricultural depression where thousands of small banks not themselves fed members were failing through the early part of the decade and of course the great depression we see uh... Catastrophic banking failure uh... Afterwards and this brings us effectively to a hinge moment in the book up through The 1920s, there's still this active debate. Is it the private sector that holds the ultimate residual risk of the financial system, or is it the public sector that should take command and exercise authority? And what happens is Roosevelt is elected in November of 1932. The banking system begins to collapse. And what we tend to remember from this moment is the banking holiday. Roosevelt shuts the banks. He comes on the radio, tells Americans that... The government is going to rescue the banking system that no sound bank will reopen, and that when the banks reopen about a week after Roosevelt is inaugurated, depositors rush to the banks not to take money out, but to put money back in. So Roosevelt succeeds in using public power to save the financial system. But it's not just Roosevelt's personality. It's not these fireside chats that accomplish this. So Hoover 2 was trying to use a sort of moral suasion to convince the american people that the banking crisis uh... Was going to be short lived who was trying to show strength by ordering supervisors not to close banks on the hope that the economy recovered than the bank balance sheets recovered and everything would be okay but ultimately what happens is as the banks continue to fail as depositors continue to take their money out this system of showing strength by keeping banks open demonstrably fails. And so what makes the holiday successful, in relation to what Hoover had done before, is this combination of bureaucratic expertise and political legitimacy. What the supervisors had been doing since the Civil War is collecting information on banks. And so although the holiday only lasts for a week, the supervisors have the active information, they knew which banks were sound and which were unsound. And so they're able, through this combination of political legitimacy that Roosevelt brings With his electoral mandate and technocratic expertise to guarantee the resiliency of the financial system. And from that point forward, there is an effective federal guarantee. The federal government claims ultimate ownership of residual financial risk, and the system begins to solidify where public moves to the forefront and doesn't look back in terms of its command of the Financial System.

CONTI-BROWN: Now, that chapter five is both the numerical midpoint of the book, but really hinges on everything Ashan was saying. There really is a before the holiday and after the holiday in the history of bank supervision. And coming out of the holiday with this extraordinary mandate, the key difference that Roosevelt seemed willing and indeed was willing to liquidate banks aggressively where Hoover was not, lasted for a few weeks. Because after that, Roosevelt faced what every politician face, which is failing banks are a political liability. And so to solve these problems, we saw an explosion during the New Deal period of other institutions that were brought in to manage exactly this question. The two key institutions that came during this period were the Reconstruction Finance Corporation and the FDIC, the latter of which was originally temporarily chartered by the Glass-Steagall Act of 1933 before becoming permanent in 1935. Uh... And at the time we see we sought conflicts as Sean mentioned in the nineteen twenties between the fed in the occ uh... But those those conflicts uh... Seemed relatively minor compared to what happened we found for example in the archives uh... A press release that we think manner echoes did not issue that announced the control of the currency had been liquidated and shut down something that he was he was chair of the fed at the same He had no authority to do it, only Congress could do it. And it wasn't an April Fool's joke. Behind closed doors, both he and Henry Morgenthau, the Secretary of the Treasury, agreed on very, very little. They agreed that Comptroller Jeff D. O'Connor was a total disaster. But these conflicts showed a different kind of question, which was not just the question of personal conflicts, though we highlight all of them. They're too juicy to skip. But they show a kind of institutional conflict. Between the orientation of a chartering supervisor and a macroeconomic stability supervisor and insurance supervisor. And those New Deal institutions reveal exactly those conflicts even in the face of total war. Now, after the war, we see a question coming for one of the first times in American history. U.S. Banking history is unusual in a lot of ways. It's unique in its history of unit. Banking, a legal protection for very small quasi-monopolies in bank charter and specific areas, the legal prohibition of expansion across various dimensions, but mostly state lines. This starts to erode in the 1920s, but in the 1950s, we have for the first time a major discussion about how we should supervise. And Congress comes up with two different overlapping mechanisms. One is to supervise through a holding company and looking through what bank holding company supervision might look like, and the other is trying to make sense of a question that bedevils us even still today, which is, what makes bank antitrust different from regular antitrust? And Congress tried to answer that question twice, in 1960 and 1966. Failed both times, because bank supervise, uh, bank. Antitrust is a problem not simply of competition, but also a question of stability. And that question, which may have relevance to other areas of antitrust, becomes the central question in the 1950s and again throughout. Thereafter we get one of the most colorful figures. I always like to ask this question of the audience. Does anybody know who James Saxon is? Well, we're among friends, uh... And only for review uh... Raise your hand James Saxon was the comptroller of the currency under the Kennedy and Johnson administrations a Democrat and a liberal and we would argue one of the most important figures in the history of bank supervision. His story will leave for you in the book but he takes up the question of whether we've got too big of a Great Depression hangover too fearful of bank failure. And that we needed to tilt the scales toward greater risk taking in the banking sector. And then finally we conclude the book by looking at the ways that through the 1950s and 60s and then thereafter Congress continued to add non-prudential supervisory priorities to the supervisors in creating some conflicts along the way. So what does this history mean? Well, we hope it means that you'll learn a lot about America. And about the world throughout the period that we cover, and of course about bank supervision. But it also has a lot to do with the debates that we are participating in today. So here's something that we have heard from bankers many times. Bank supervisors simply do not know the business as well as bankers do. And this is often meant as a critique of bank supervision, so how can bank supervision possibly co-manage or be ultimately responsible for residual risk when they don't even know what they're doing, right, relative Uh... Uh... Bankers and we say to that argument that's a non sequitur we can see the premise you will never find a bank supervisor you rarely find a banks supervisor who understands with the same level of sophistication the risk the banks are taking but reminds me of uh... Of my fourteen-year-old who anytime he grabs a hold of my phone and uh... What because i'm absent-minded he uh... Flashes it towards my face and so it then opens He can completely change its interface, the size of the icons, all of this other stuff, because he understands the app store better than I ever will understand. The technological sophistication he has about my iPhone terrifies me. But here's what he does not understand. I'm his dad. And I get what's happening in a 14-year-old brain. And I know that his technological sophisticate is not adequate to understand what I'm looking Which is his medium term potential Now, some bankers are going to wince at that infantilization comparison, but I think it tracks, because what bankers have and in the nature of what makes banks special is an inherent conflict. They have a profit motive. They are the private finance and private finance public power. That gives them a much more sophisticated understanding of the risks they are taking for the purposes of their profit maximization. What bank supervisors have is a different orientation. So the fact that they are vastly outstripped in sophistication at the frontline risk does not obviate their need to be there for the residual risk. Now another thing that we have heard and we've alluded to already is that supervisory discretion violates the rule of law, and we say under specified. There are instances where bank supervisors use the authority, the Weberian authority of the state to put the boot on the neck of private citizens and private corporations. In ways that would violate the rule of law and due process, and it requires thoughtful reform. But there are also ways where supervisory discretion engages in co-risk management in ways that will be adverse to the bank's supervise that doesn't have such thing. The bank's supervision is discretionary, that we cannot eliminate that discretion without eliminating supervision. Here's something that we hear on the other side of the argument. So, so far, folks from government are nodding along saying, yes, all right, we have our champions here, bring them into the ring. But now I've got some hard things to say to bank supervisors. One of the things that we here very often is that effective supervision must be held at the highest levels of confidentiality. There must be a presumption, barely rebuttable, that anything that happens between bank supervisors and banks must never be disclosed. Uh... And we say this is dramatically overused and abused we need a better balance between accountability confidentiality we get put a fine point on it in twenty twenty three the federal government declared a banking crisis invoked emergency authority to resolve it and in congressional hearings and by the fed's own report post-mortem uh... The blame was pinned on supervisors the regional banking crisis of twenty twenty-three had many. Contributors, but one was bad supervision. Everybody seemed to agree on this. But there's an alternative narrative available to us. What if the 2023 banking crisis was an unbelievable supervisory success? What if in the 9,000 insured depository institutions, all of which in 2020 faced the same duration risk that Silicon Valley bank faced, exited those trades successfully because their supervisors nudged them in that direction? And that case then we have a handful of banks that failed t uh... To listen to their supervisors uh... And uh... An unfilled themselves that would mean that the 2023 crisis was an example of unbelievable supervisory success I have absolutely no idea. We cannot know. Because the questions of whether supervisors are succeeding or failing behind closed doors is wrapped in a funky, jangled, mostly made-up legal doctrine called confidential supervisory information. Meaning that we cannot give to bank supervisors their successes when credit is due. And we cannot hold them accountable for their failures when indeed they have failed. Because scholars, bankers, shareholders... Politicians are kept in the dark. So one of the consequences we hope to see from this book is a much more thoughtful engagement about what kind of information deserves to be free. And perhaps we can change the rebuttable to presumption to say information belongs in the economy. There may be exceptions. Now with that, we'll turn it over to you for questions. Yeah, please.

AUDIENCE QUESTION: So talking just the last example you gave just now, it depends whether you consider the supervisories as success or failure, depends on what the role was. To go back to the conversation between the New York Fed and the senator there, when she said, you have to go after them before they do anything wrong, and the Fed continued to say, no, I will do as a firefighter's job. Depends how you interpret that. If Fed continues to say, till the crisis happens, I'm not going to go and tell them what's going to happen, then obviously that would be the result what happened in 2023.

CONTI-BROWN: I didn't hear a question mark on that one. But I will say that that debate is an extremely old one. That this question of when you preempt risk taking because of potential adverse actions and whether you respond to those adverse actions when they come is part of the supervisory discretion. Now there's an institutional tilt toward risk taking in both banks and supervisors that creates an asymmetry. On the one hand, we have uh... A kind of uh... Call it bailout culture where aggressive private risk-taking uh... On the upside is given over to banks and then when that feels on the downside it's socialized and so the residual risk-taker uh... The government has to absorb it that can lead for all kinds of reasons for bank supervisors to be extremely conservative in what they're willing to do. Conservative in the sense not of saying, you cannot take those risks, although we saw a regime like that in the 1950s, but conservative in the sense of, we're not going to stick our neck out and try to pick this fight. What we would say there is that that balance of risk taking, when you talk to bankers about their risk management processes. You hear a lot of thoughtfulness about leaning into some kinds of risks, leaning away from others. And we would encourage bank supervisors to have similar kinds of conversations to make that sort of institutional conservatism, do not stick your neck out, so to speak, something that can evolve with the times as well.

AUDIENCE QUESTION: Your last point raised a sort of professional historian's question. What kind of archival documentation exists about the supervisor-banker interaction and when, I presume this will become available in 20 or 30 years or whatever the limitation is, when does it become available and how useful is it? Thank you.

VANATTA: So the presumption is wrong, so far as we know. So you can get US bank examination reports for national banks through about 1930. So you actually see a lot of this interaction both through the examination reports and through correspondence with the comptroller up through that period. You can get summaries of FDIC examinations and the comptrollers examinations that come to them through about 1965. I'm not sure that we're actually supposed to have access to that, but they let you do it in the national archives. Otherwise, yeah, it's really dependent on personal correspondence, the Federal Reserve, the Frasier system was immensely helpful for us in writing this book. It's the Federal Reserves online archive. And that gives you a lot of kind of policy documents, again, kind of up through about the 50s, and then things start to trail off. You're often then reliant on Congress and what Congress kind of unearths to document the later, both the kind of discussion of anti-monopoly and also anti-discrimination consumer protection. So it's a typical sort of rich archive in the 19th century that increasingly diminishes as this confidentiality becomes more important. And there isn't, so far as we know, plans to open things up. We've even heard that some of the Federal Reserve Banks actively destroy their examination records because they knew we were interested and they felt like they weren't really willing to risk that even examination reports from the 1920s. And so there is this problem of confidentiality also is a problem that historians face and will face unless there's major kind of cultural reform.

TAHYAR: It's so interesting, the timing that you've just laid out there, Sean, and I think this is a tragedy. I always thought that the need for heightened secrecy was because the risk of bank runs in a pre-FDIC deposit insurance world, and yet what you've laid out is that we've gotten more secrecy in a more insured world. So to what do you attribute the increase in secrecy?

CONTI-BROWN: You're exactly right. I mean, there were 19th century information regimes evolved a lot. The call report was initiated in the 19th Century. There were even newspaper publications of sections of examination reports in the nineteenth century, which indeed led to some instances of bank runs when those reports were unfavorable. You know, we can speculate. I don't know that we have a fully worked out periodized history, but the moral arc of bank supervision bends toward intense addiction to secrecy. And we don't why exactly, but it is bending in that direction. One of the things that we see, for example, in the 1930s, the federal securities laws that is borrowed in part from the states but mostly invented exists on the opposite end of the spectrum. That the presumption is absolute disclosure, and that's written by Congress. Confidential supervisory information with two exceptions was not written by Congress. Two exceptions are Exemption 8 and FOIA, and there's a criminal liability associated with examiner disclosure of confidential supervisory information. But the workhorse here has been created by bank regulatory staffers and lawyers to create this kind of a locked-down system. My my hunch is that while it might be justified in the name of uh... Protecting uh... Banks from uh... From from failure from from run risk uh... The bigger issues might be too the giving a benefit of the doubt and interpreting is charitably as possible is to protect the quality of the discourse behind closed doors If banks and supervisors both can trust that everything they will say will stay strictly between them, then they're more willing to disclose risks as they come. The less charitable interpretation is the bureaucratic institutional conservatism. We cannot disclose anything because what will happen if Congress yells at us kind of thing. And so that's where we see an opportunity for real. Uh... For real reform and to credit the the agencies themselves we've talked to people the highest levels of these agencies about this issue uh... And most people we've talk to you say yeah i think that we can do something differently to do something better and in fact in february twenty twenty three a senior official said you know what peter i think we're finally ready to do some thinking in a call from us we're going to go and and open this up uh... Probably next month he said ominously And then March 2023 happened, I never heard another thing since.

VANATTA: Can I just, I think the run risk is even more real because it's the FDIC that bears that risk. So if large depositors pull out their money, the bank liquidates its good assets, all that's left are the bad assets and that's what the FDIC has. So if there's a problem with the bank, the FDIC's interest is in sort of closing the bank while it still has a functional portfolio instead of the bank liquidating a lot of that portfolio in the presence of that run. And so because the risk has shifted onto the federal government, that incentivizes the secrecy because the government is the risk bearer, should there be a run.

KLEIN: To contrast your note of optimism on secrecy, last year, right here on this stage, then-NCUA Chairman Todd Harper announced that credit unions were going to be disclosing overdraft information just like banks. Same reporting requirement the banks had had for a long time. Just a few weeks ago after President Trump fired Harper and the other Democratic board member, the sole remaining said that we will no longer be giving that public information, in fact it is now CSI, what was previously public on the call report, because, basically embracing the industry's argument that there's a reputational risk if people knew how reliant a certain number of credit unions were on high-cost fees to their lowest income members for these non-profits. In your answer to the question, you kind of didn't talk about industry capture and how confidentiality and when I saw the head of the credit union regulator essentially mimic the talking points of industry in taking public information private, and then asserting a CSI privilege, which felt odd that after a year of this being public, somehow it would be so confidential and damaging that you couldn't take it private. At what level do you see industry capture promoting secrecy or other elements within your book in supervision problems in that space?

CONTI-BROWN: It's a great question. I've always felt a little uncomfortable with the metaphor of capture in banking, not because I don't think the idea that banks have a megaphone that other bank stakeholders do not have in the regulatory process, but because federal banking disharmony means that we have some interest groups pitted against each other. Unfortunately in credit unions they dissolved that architecture because the two lobbying groups, one representing small credit unions, the other representing larger ones consolidated and so there's only one voice. For the record, I've said this publicly, I agree with Aaron Klein, I think credit unions seem like an arbitrage that we should close. Honestly, very little justifying their existence at the high end, the large end. That said, what's interesting for us is as we have talked to many bankers, including CEOs and others, and talked to bank examiners and supervisors, is the heterogeneity of use here? When we were researching some of the 21st century history of supervision, which will be for another project, another time, it was extraordinary how much the ABA opposed publication of the SCAP, the March 2009. Stress tests, which then chair Bernanke credits with the end of the financial crisis quite readily. And indeed, when some readers who participated like Aaron in the 2008 period read our chapter on the bank holiday, I just said, I'm having PTSD. This is exactly what we went through. And the ASCAP looked a lot like this supervisory exercise. What's fascinating to me is that you'll have sometimes bankers insist on this secrecy. And other bankers insist on disclosure and transparency. They're not equally situated. A cynic might say, the good banks really want to advertise how good they are, and the bad banks really don't want to advertise how bad they are. But I think this is a place where we can have real quality associated with that disclosure because of that very heterogeneity, because the constituencies of the Fed, OCC, and FDIC differ. And that leads to, that's one of the great benefits of our jangled system, our panda's thumb, so to speak, is that it lends itself less well to quote unquote capture because the constituent interests of the industry are scattered across those agencies. For all you credit unions out there, you can't say the same for your industry, just structurally.

AUDIENCE QUESTION: You alluded to this issue in passing, and that is on the consolidation of the banking agencies. When I was with the Office of the Control of the Currency, I did a study of over 40 bills and studies, and over half of them proposed one regulatory agency. I was wondering what your views were with regard to that.

VANATTA: I mean, that's certainly a story that we find, from the inception of supervisory disharmony with the creation of the Fed, there's constant efforts from that point forward to consolidate the agencies. And I would just echo what Peter just said, having multiple perspectives, like in our system, each of the supervisory agencies operates through a different risk management framework. So the Comptroller operates through a kind of chartering and information regime. The Fed operates through as a central bank and a macro prudential supervisor. Now it wasn't always the case. The FDIC through deposit insurance for a while, the RFC as a beneficial owner of the banks that it supervised. And so having that diversity of supervisory perspective of risk management strategies creates resilience in the system, I think we would argue. And as Peter said, it means that... These different institutions will have different priorities at different times, they're not all moving in one direction. And that can be beneficial because the financial system is so dynamic, you want supervision to be dynamic as well. If you have one supervisory institution, you can imagine if not regulatory capture then some version of groupthink or a kind of singular perspective, which makes it harder to catch the dynamic risks that the financial systems creates.

AUDIENCE QUESTION: You want to go after me, Adam? I realize you're focused on banking and it's a fairly unique industry, but other industries are regulated and they make the same sort of choice there about the extent to which there's discretionary enforcement of regulation. So I know, again, you're focusing on banking, but there's some cross-sectional variation across regulated industries and that could be revealing. I'm just wondering if you looked at that and if that sheds light on. Whether there are features of industries that drive this choice and where the boundary is drawn, or is it entirely personalities of regulators and their history. So anything you might've learned about that.

CONTI-BROWN: It's a wonderful question, and when you become a banking scholar, you have to take a religious oath that you will protect the idea that banks are special, because it gives us definition for why we're doing what we're doing in such a specific and idiosyncratic way. I don't know about Sean, but I lost my religion in this project a little bit. I think that banks and bank regulators have exaggerated their specialness in some sense. That I think that you are right, that residual risk in the economy exists in a lot of different ways. You know, as I've read through a lot the primary sourcing, for example, on Chrysler and GM bankruptcies in 2009, that looks a lot like banking. And indeed, the TARP was used for exactly that purpose. One key distinction, however, is that banks and bank regulators have thought they were special for a very long time. And the difference between supervisory discretion and enforcement discretion or prosecutorial discretion is simply the number of arrows in the government's quiver. I think there's substantial overlap. And a lot of the inspections, examination of course not coming from nothing, even in the 19th entry. I looked at inspections in freight and in shipping. In the early 20th century, we've had examinations in food safety and the like. A really interesting project, and maybe something that we should sponsor, is inviting scholars from those substantive areas, food and drug, environmental, even securities, and gather together and say, all right, What is happening at the non-pure rulemaking? Discretionary enforcement supervision level and where are there key distinctions. My operating hypothesis would be that there would be important distinctions following evolutionary logic, that not all pandas have thumbs in the same way. But I think you're right that there will be a really important set of inquiries available to us to think through how this kind of what one scholar called in the 1980s street level bureaucracy might mean when we're not talking exclusively about handcuffs and enforcement, but we're talking about co-managing risk. And my hunch is there that, in fact, banks, there's nothing special about them, that I think that we have the government interacting with markets at that blurry line throughout the economy. One more question.

AUDIENCE QUESTION: At the outset, you put up the phrase, rendering advice, I think was on there. I grew up as a bank supervisor, a central banker. The best examiner I ever saw rendered advice to banks and helped them navigate the craggy shores of their risk taking, avoid problems, et cetera. These days, bank supervision feels like it's a lot more adversarial, a lot less rendering advice and more gotcha. Can you comment on the nature of the relationship in that regard? Does it have to be adversarial in this day and age? Could it be collaborative?

VANATTA: I'd say for a long time, the emphasis is on collaboration. Before this, I wrote a book about the history of the credit card industry. And what you see is when banks get into the credit card market, their supervisors say, Congress, step aside. We're going to work with the bankers to figure out what the proper practices are that can make this market function, that can it work for consumers. And that's in the 1960s. And I think going back into the 19th century, it really is this. You become a banker in part by being, you become a bank supervisor and that's your key entry point into banking. So there's this back and forth, this constant collaboration between the supervisors and the banking industry. Examiners see a lot of banks, they understand the industry in particular ways, they can see how other banks are managing risk and can advise banks that are not managing risk as well, how their competitors are doing it. And so I wonder then about this change, whether it's a post-2008. Change, whether it's a change that comes with the kind of consumer revolution and civil rights revolutions with more focus on enforcement that those statutes brought in the 60s and 70s. I'm not entirely sure where the kind pivot is or if it's around particular issues where forward-looking risk management we can collaborate but backward-looking anti-discrimination and we can't, and how do those... Boundaries within the supervisory institutions and cultures within the institutions blend and change over time.

CONTI-BROWN: You know, the last thing I'll add is, in our conversations with current bankers, you're right that many would regard the relationship with supervisors to be broken. I had a conversation with a bank CEO that started out on another topic, and I said, listen, now that I have you, I have lots of questions about bank supervision. He told me about his lead examiner, who always brought cookies to their in-person meetings that he himself had made. Was that was that uh... Was that we're present here and said it was honestly marvelous and i've loved every conversation i've ever had with this examiner and then i asked him so what's the why the reputation for some of the supervisors of office that's because the other regulator supervisors are all morons but mind minds good and i thought that was really interesting i don't know how generalizable it is but i think that there is still a world where collaboration can occur uh... And some get places where contestation is more appropriate We did an oral history with Dan Tarullo early in this process. And he said, when we were talking about contestation versus collaboration, he said you're missing the third C. Sometimes these relationships are just simply correct. So kind of rim-rod, straight posture, very correct. There's a little bit of skepticism of each other, but they know that they have a job to do. They're not fighting, they're not friends, they're this third other thing. And I think that those traditions are available for both the bankers and supervisors that want to explore them. With that, thank you so much.

SMITH: Well, thank you all so much for being here. I'm Colby Smith with the New York Times. I'm thrilled to be moderating this panel today. Peter and Sean's wonderful book doesn't necessarily focus specifically on the issue of independence, but it's mentioned throughout the book, and that's what we're gonna tease out in this next session, especially through the lens of the unitary executive. So this topic has obviously taken on newfound relevancy in recent months. In February, we had a new executive order from President Trump that sought to grant the White House more authority over some of these independent agencies. Then came the Supreme Court's decision to let the president temporarily remove leaders of two independent agencies, so there's a lot to unpack here. And I'm thrilled to do this with this panel. We have Jeremy Kress, the University of Michigan, Naomi Lamoreaux of Yale University, Christina Skinner of Wharton School at the University Pennsylvania and Meg Tahyar of Davis Polk. So we have about an hour to get through this. We'll leave some time at the end for some questions. And we also have some audience questions to incorporate in the conversation. But I'd like to start with you, Naomi. What does history suggest about how thinking around political independence of these regulatory and supervisory agencies have evolved over time?

LAMOREAUX: Now the independence issue is really seems to be important because in the course of determining what the President's removal powers are, they seem to be – various people seem to be intent on creating exceptions that, well, this is an independent agency, but this is This is the commission. This is not. In the 19th century, there's really... None of that. There are lots of agencies that are created by Congress in the 19th century. None of them are independent in the modern sense. They're all placed in cabinet departments. So the controller that we learned a lot about that from our two stars today, the control is in the Treasury. There's a board of supervisors of steamboats. That's placed, I think, in Treasury. There's the Patent Office is first in the State Department and then in the Interior and later in the Commerce Department. But they're in these departments mainly not for broad constitutional reasons, but really because Congress is cheap I think. Congress is always... You know, not paying these people enough, and they will put them in departments just to, so they don't have to create any more budget lines, I think, and can squeeze them in these budgets. But they don't mean it. The housing in these cabinet offices and cabinet departments doesn't mean anything. And one of the beautiful parts of the book by Sean and Peter as they show how. The control and the currency, the controller just, he's in treasury, but he's just developing his own independent ideas of what is going on, and to the extent that he's checking in with government, it's checking in with Congress and not the executive. The executive is really out of the picture in the 19th century, and that's true of all the agencies that are created in the 19th century. They really just develop. They're created to solve problems, and they operate independently to solve those problems. And some are set up as commissions, some are setup as single heads. And that seems to be just pragmatic. The steamboat supervisors are setup essentially as a commission because they are each given responsibility for a different part of the country. But the controller is the single head of an agency. And is actually operating tremendously with a tremendous amount of independence. So it's not a meaningful thing historically. It's an invention of the 20th century.

SMITH: Does that suggest that it's not as durable as a concept? Christina, I'm curious your thoughts on this because

LAMOREAUX: It being?

SMITH: The independence.

LAMOREAUX: Yeah, I think Congress was really trying in the 20th century when it created independent agencies. Specifically remove them from executive oversight. So think of the Federal Trade Commission, for example. It takes over the information and to some extent the personnel and the budget lines of what was called the Bureau of Corporations, which was in the Commerce Department. But it's deliberately not put in the commerce department and The Bureau of Corporations was Teddy Roosevelt's pet project. And so I think this was really an attempt to distinguish. So yeah, it does political work, but it's not constitutional. It's really just about how things are going to work in the government and who's going to control this.

SMITH Christina, I'd love you to weigh in here.

SKINNER: Thanks, Colby. So I have a little bit of a different take on the history and certainly the constitutionalism around the notion of independence. And I would agree that the durability of independence is questionable for a number of reasons. So I mean, going back to the 19th century and certainly before the creation of the Interstate Commerce Commission, the reason that agencies that were helping the president to administer the law as early and rudimentary as they might have been at that time were specifically housed within the executive branches because the founding generation and the framers firmly believed in accountability in government, right? So Alexander Hamilton certainly did like banks, but he also really believed in a vigorous executive to ensure that there would be accountability in government. So there was really no question. At least in the sort of earliest days of agencies and administration, that they were clearly within the executive branch, and nothing has changed in the Constitution. There are still only three branches of government, and sort of the simplest way to explain the unitary executive theory is that if there are three branches of government then executive branch agencies, administrative agencies that exist to help the president enforce the law. Definitionally must sit within the executive branch because there isn't a fourth branch of government. But getting a little bit more specific in terms of this durability question that you asked, I'm sure we'll sort of apply this to supervision in a moment, when the legal understanding of independence arose in the 1930s, along with a case that even the non-lawyers in the room will have surely heard of by now, Humphrey's executor. Right, Humphrey's executor, if you look at the case in the context in the Supreme Court's conversation there, they're really envisioning a very small subset of government that would perform in the language of the Supreme court case, these quasi-legislative or these quasi judicial functions, right? And so, you know, when we think about what fits within that narrow core, right, we might think about the Fed's monetary policymaking function, right. Because when the Fed is dealing with price stability, It's really sort of. Exercising this quasi-legislative function that appears in Article

One of the Constitution for Congress to coin money and regulate the value thereof. But when we get into other kinds of agency actions, including bank supervision, right, then we start to really go well beyond the scope of Humphrey's executor, right? Because bank supervisors, whether they're cops on the beat or whether they are firefighters, at the end of the day, right they're doing things that are sort of paradigmatic. Executive functions. So let me stop there because I know we have a lot of territory to cover, but I think that you've opened the conversation in a really productive way because there's a lot of attention now to this question of the durability of independence. And what does independence really mean and what is its legal foundation?

SMITH: Meg, Meg. Where are you on this debate?

TAHYAR: Well, I think what I'd like to do is shift from history to the future and have the discussion be there. Because as the practicing lawyer here, I'm going to be in practical real world. And practical real-world is that Humphrey's executor, which even my sons have heard by now. It's amazing. Humphrey's executor is going to be either overturned or narrowed. I think we can see that from what happened two weeks ago and there are a lot of clues and hints in recent Supreme Court cases showing the path to that overturning or narrowing. I suspect that we're going to be in Peter and Sean's evolutionary world. I don't think we're gonna get a clean unitary executive. I think we're going to get a messy unitary executive. You know, if you look at what the Supreme Court said about why the Fed is different, that's a result that I'm sure that many in this room like. It's also very weak intellectually. Now, there's going to be a year, 15 months, for lots of amicus briefs to come in and say why it maybe have some better history. But the reality of what I think we ought to be doing and what I hope we'll be discussing in the panel is now that we know where we're going, what should it look like for the future? Because a debate about the history, about whether there's independence or not, for me, that's done. And for me the interesting part of the debate is, okay, what should it look like next?

SMITH: Absolutely. And Jeremy, you recently wrote an op-ed, came out yesterday, actually just on we shouldn't mourn this regulatory independence. So in the spirit of kind of looking ahead, So, what is this new system that you think needs to be considered here?

KRESS: It's uh... I mean the system that i think we ought to move toward is one of alignment across uh... Different political eras i think uh... We've been in an uncomfortable situation uh... Over the past few presidential administrations where uh... Regulatory agencies supervisory agencies uh... Align themselves uh... With republican presidents and then feign this independence when Democrats are in charge, so. I guess it's important, number one, to realize just how dramatic the Executive Order 14215 is in terms of purporting to bring the supervisory agencies under White House control, coordinating all supervisory priorities through OMB and the White House, giving the White house authority to dictate legal interpretations for the supervisories agencies. A really massive shift from how we've seen the purportedly independent agencies operate in the past, we will eventually come to a time post-Trump and we as a country are going to have to confront the question of how we deal with these agencies going forward. And I think there will be an impulse among many to return to the system of independence that we've had in the pass. And what my op-ed yesterday said was, We should resist that urge to reflexively return to the system of independence. At a minimum, we need to evaluate whether that system of Independence was working the way we wanted it to. And Seth Frotman, former CFPB general counsel who I co-authored with, Seth and I think that independence wasn't really working quite as well as we would hope. And we have convincing evidence of problems, of repeated financial crises, unchecked. Consumer abuses, growing financialization, and market power of the largest financial institutions. There are, of course, many reasons why all of those bad outcomes have happened, but I think the purported independence is one. Independence has become code word, I think, for supervisory capture. In the absence of presidential direction, these agencies. Tend to start viewing banks and financial institutions as their clients rather than the American public. And so I think at the end of the day, and when we get to the end of the Trump administration, we should at least be open to the idea of maintaining this system of political control, the unitary executive, and to finally put it to use for progressive purposes.

TAHYAR: So I think it's super interesting, Jeremy. It won't surprise you to know that I fundamentally disagree with your facts and your logic and your premises. And yet, astounding --

SKINNER: You said it, not me, Meg.

TAHYAR: -- astoundingly, for very different reasons, I'm sympathetic to your conclusion. I'll take it. And I'd like to add if, I do think that independence has been a little, for very different reasons than what you think, but independence has a little bit less independent than the independent agencies have been flagging. And so, you know, one disadvantage which we should discuss of aligning to the president is are we going to then have. Eternal flip-flops, or will things settle down when the political realignment settles down? But another thing I would suggest we need as we're moving away from what I'll call strong and sometimes feigned independence into political accountability is accountability means more transparency. And here's where I agree with Peter and Sean, really rethinking this invented doctrine of CSI, and being able to really evaluate. Let's give the supervisors credit for when they do things right. Let's criticize them for that when they get it wrong. Are they captured?

LAMOREAUX: May I answer the point about history? So on one level I completely agree with Meg, that the real question that we should be focusing on is what shape bank supervision should take in the future. The reason history is important to that is because the unitary executives are using history to justify a particular. Version of that. So it's important to say, I would say there's no reason we should take what evolved from the past as optimal and we should change it. But we shouldn't change it by using a kind of a constitutionalism to short circuit the process of deciding what are the appropriate institutions in society. And that's really what's happening. And so. Say la la, is that how you pronounce it? I'm not sure, I think it's C-la, I don't know. I'm a lawyer, so you know, so this is a case that's brought to challenge the CFPB and it's challenging the CFB by saying that this is uh... Violates the uh... The appointments provisions of of the constitution and it is not aiming, I mean it's perfectly legitimate to have uh... Make a case if the. President removes someone contrary to Congress and the court has to decide whether Congress had overstepped its authority. It's an entirely different thing to try to overturn regulations that are within Congress's normal bailiwick. By saying that the particular clause in it, which is on the appointments clause, is unconstitutional. And then it's determined to be unconstitutional for historic reasons, right, because the founders. And it basically comes down to, this historic reason often comes down to Alexander Hamilton. Sorry, he was just one guy. And other people who were framers disagreed with him. And you have debates all through the 19th century about what the removal powers are.

SKINNER: If I could just jump in on that thread. So two points, I think the conclusion that Jeremy and Meg have both arrived at, I want to join in on and I think it's really important that we focus on this. The narrative around independent supervision is not helpful. It's an illusion, maybe it always was, but it certainly is after 2008, when the global financial crisis and the Dodd-Frank Act. Enacted a massive paradigm shift into what supervision is and what it would become. You know, I think you can certainly see examples of supervision being politicized by both sides of the aisle, right? I mean, I mean I think we could rattle them off. It doesn't matter. But the point is that rather than focus on this question of whether supervision is independent, what we really should be focusing on is how to make supervision accountable ultimately. To the people. And that's where I think unitary executive theory is so compelling and constitutionally correct. And I don't think you need to rely on history to support the unitary executive theory. I mean, it's really a point about the structure of the constitution and the separation of powers between the various branches. And ultimately, what kind of power, What kind of state power is banking supervision?

TAHYAR: And end all independent agency quote-unquote independent agencies –

SKINNER: Correct.

TAHYAR: -- because for me this is broader than supervision which is and the point that i was making wasn't that history's unimportant but knowing the history, knowing what we know, where do we go from here? Because in whatever that court case is coming that's going to overturn or narrow Humphreys Executor, how should it be narrowed and overturned? What should be the scope for Congress to do? It's not just about removal - sorry, I interrupted you. I didn't mean to, but.

SKINNER: Not at all. That was a very helpful intervention, thank you. I mean, I think it's also worth pointing out that Congress, you know, fortunately, Peter and Sean give us a lot of space to talk about the modern era because they stop it in 1980. So, you know, in the modern area, you know, Congress has gestured toward its recognition that supervision is an executive function, right? I mean if you think about some of the centerpiece reforms in the Dodd-Frank Act, right, Congress created the Financial Stability Oversight Council and put macroprudential policy within the Treasury with the Treasury Secretary at the helm of that. And other jurisdictions around the world have also recognized that macroprudential policy is essentially a political endeavor. Congress also enacted reforms to the Fed's ability to intervene in crises under Section 13.3 of the Federal Reserve Act and gave Treasury more oversight. And control of that operation, recognizing that modern-day lender-of-last-resort functions, which are supported in some sense by supervision, are inherently fiscal operations. And so I think, you know, we have been headed in this direction for a long time, but the independence narrative has just, you know, stuck around, I think, unhelpfully.

SMITH I'm just curious, though, I mean, given the carve-out for the Fed that's tacitly in there, what does that do in terms of challenging the theory, though in a way? I mean does it not suggest that the, you know, if it's not applied to all, I mean, does it undermine that to a certain extent?

TAHYAR: Well, let me suggest some areas for research for the esteemed academics on the panel because I have a day job and don't have time.

KRESS: But you can tell she's a partner law firm because she's giving assignments, right?

TAHYAR: Right. Only suggestions. Because I do think, look, the Supreme Court put the sentence it put in in that recent opinion. I think they had their eye on the markets. I think it was practical. I think they were…those of us who clerked on the Supreme Court remember Justice Brennan and his rule of five. And I think that was the operation of the rule of five.

But as we're thinking about any exception for monetary policy, and whether it's whether it can be intellectually grounded, the assignment I would suggest is can we look around the world to other central banks, you know, the Bank of England, the ECB, the bank of Japan, and ask how they're doing it. How do they separate banking regulation and supervision from monetary policy? Do they? And I imagine we'll come up with some kind of nuanced framework. And there are other things that we could look at around the world to say. What's happening with respect to independence or removability. I haven't had time to reread Paul Tucker's book in this debate, but maybe looking into that. Because it could well be if we're trying to create space for policy decisions that Congress could make lessons from other countries, not in constitutional interpretation, but in policy decisions, might make some sense. I'm hoping someone in legal academia will take that up.

SKINNER: I've done it. Yes. I rehearsed my research agenda here, but I think it's an astute question. Other jurisdictions have set up their central banks in different ways with more executive oversight and accountability, and not to the detriment of their overall quality of economic policymaking. I think certainly the European Union, perhaps the cleanest example of this, though, is the Bank of England. Where the Bank of England gained its monetary policy independence in 1997, but it was structured in a way that the Bank England is statutorily required to pursue price stability, but subject to that to have regard to economic policy of government. So they've structured independence in a ways that nonetheless opens the door to the chancellor, you know, annually sort of defining what price stability means for the government. Through an annual remit letter and basically opining on how, within a broad framework, the Bank of England should go about thinking about price stability. And that, for a very long time, for decades, didn't really have any meaningful payout, but it has in recent years, with the primary example of that being the government's initiative to green their financial system, to facilitate a transition to a greener economy. You can agree with that policy objective or you can disagree with it, but the fact of the matter is the way that the Bank of England has set up its price stability mandate, meant that as part of its asset purchase facility, the Chancellor was able to request that the bank of England green part of that in line with its perception of what is a financial stability risk and what its price ability objective should be.

TAHYAR: I'm sorry I haven't kept up on your research. Would you, before 1935, the Secretary of the Treasury and the Comptroller sat on the Fed Board. Now, that was a pre-Eccles Board. It didn't have as much power. The Federal Reserve Banks had more power. But I'm wondering what others on the panel think about that as a policy idea.

KRESS You're suggesting cross-pollinating the regulators sitting on different boards?

TAHYAR Well, I'm suggesting discussing it. I'm not sure it's been helpful at the FDIC to have the OCC and the CFPB on the FDIC board. But I'm just wondering, has anybody, and sorry I'm gonna give another assignment out here, Naomi, has anyone gone back and looked at, historically, the functioning of the Secretary of the Treasury and the Comptroller on the Federal Reserve Board? Did that work? Did it help?

KRESS: You know, I'm not sure, Meg. I think the modern FDIC definitely raises questions about whether that's a viable model. If I could just return to Colby's question about the Fed obviously being the gigantic gorilla in the unitary executive debate. Although I suggested that there may be good things about the unitarian executive, I don't think I would have suespante ended agency independence. I think my position is more one of. Let's just not have a double standard. We can't have unitary executive for one party and independence for another party. And so I think that the Fed question is really one that the proponents of the unitary executive theory have to answer in the first instance. Because to me it's not immediately obvious how the Fed can be half independent. Independent on monetary policy and subject to White House control on regulatory and supervisory policy. So, I mean, I think. The proponents need to answer that. Maybe one answer is the Fed isn't going to do regulation and supervision anymore. And if that's the answer, then we should have that conversation. But I do think we need to define the contours of the debate, because we have to resolve the Fed before we can have a coherent vision of the unitary.

SMITH: Before getting to that debate, though, I just want to kind of put this in the current context of, you know, Chair Powell talks about this in relation to inflation. You know, you don't change the parameters of the inflation target, let's say, when you're in an above inflation target environment. And I guess I just wonder if this is the moment to start making changes to what the Fed's responsibilities are from a supervision and regulatory point you at a time when you know, there are these big questions about independence floating around. I mean, Meg, to your point about the Supreme Court footnote, let's say, on the Fed being there to placate bond markets, it kind of speaks to the nervousness in general of this moment that I'd like to just talk about kind of that backdrop first, and then maybe we could talk about the kind of separation. So I don't know if anyone has anything there to respond

LAMOREAUX: I wanted to go just go back to the the previous question a little bit as a way of getting to this question.

SMITH: Um, yeah, I mean, if the if anyone had anything on just like the current backdrop, and then I think we go back, I think that would be great.

SKINNER: Yeah, just quickly before I pass it back to Naomi, I mean, I, I agree. I think that the structure of the Fed in the modern era causes some real challenges to the rationale and justification and support for its independence. You know, I think ideally there would be more of a structural separation. You know if the Fed is going to engage in supervision and regulation to the extent that it does in a post global financial crisis world, then there should be more separation of function. Because cross-pollinating the supervisory function, which is an executive function, with the monetary policy function muddies the waters of its monetary policy independence if there is to be an intellectually coherent argument made for preserving independence over monetary policy. So that's point one. I mean, one step, I think, that I've written about before is rethinking the structure of the vice chair for supervision. You know, I've argued in my scholarship that that should be a removable at will position consistent with the Supreme Court's precedent in Celia law and other things that it has said, right? You know there are lots of institutional design questions that we could ask, right. I mean, the Bank of England has a statutory committee model where the macroprudential, the microprudencial and the monetary policy functions are separate. You know, it's not perfect because the governor sits on all of those committees, right. But that's at least a step, I think, in improving things in terms of the justification for independence. Because I do think it's the Supreme Court will have some work to do. You know? I mean, it issued an opinion, you know, last term about the funding of the CFPB. And that opinion fundamentally misunderstood the Fed's balance sheet. Right, it overlooked the fact that the Fed is not always in a state of the world where it is making a profit and it actually has any revenues to remit to the CFPB. I did not find the structural historical point that was made in Wilcox terribly compelling at all. I think if they want to pull on that thread, they should think harder about the separation of powers point and what is actually a quasi legislative or legislative function that is distinct, if at all, in monetary policy, but it will be difficult to bundle debt together with supervision.

SMITH: Jeremy was shaking his head, so I'd like to go to him next.

KRESS: Oh, I think on the narrow CFPB point, we'd probably differ in terms of what the Fed's earnings are. But maybe I could just back up and note that this problem is one of the Fed own making, at least in recent history. Let's rewind to the Biden administration. President Biden issued an executive order in July of 2021 on promoting competition in the U.S. economy. One of the provisions in there encouraged, did not direct, encouraged the banking agencies to work with the DOJ to modernize bank mergers, bank merger review. The Fed not only did not comply with that recommendation, it actively impeded the other agencies from updating the bank merger guidelines. Fast forward to March of 2023, post-SVB, the White House issued a list of recommendations for how to strengthen to strengthen bank regulation in light of the regional bank failures, including pretty common sense reforms like long-term debt and capital, the banking agencies implemented not one of those recommendations. Fast forward to the Trump administration, and you saw very quickly the Federal Reserve fall in line with Trump executive orders on climate financial risk, on DEI, on staffing levels within the government. And when he was asked about it, Chair Powell said, you know, we make every effort to implement White House, comply with White House executive orders. I think that's pretty clearly proven false by the experience in the Biden administration. So right now what we have is a one-way ratchet where when adherence of the unitary executive theory are in power, the Fed falls in line. When administrations like the previous democratic administration who tried to respect regulatory independence, uh nothing gets done.

SKINNER: But Jeremy, what about everything the Fed did on climate change?

KRESS: What did the Fed do on climate change?

SKINNER: Well, plenty, plenty. There was an entirely newly devised climate scenario analysis that the banks were voluntold to engage in. There were two distinct supervisory committees that were created specifically for the purposes of assessing micro and macro prudential climate risk, not to mention the work that went on at the Reserve Bank level in examinations that we don't really know about for reasons that we now know.

TAHYAR: I guess I will, in only very slight defense of the Fed, the long-term debt, AOCI filter, Basel III Endgame that are huge, complex, and hard. Removing the climate guidance, aligning to some of the other kind of social and cultural goals of the Trump administration was actually easy to implement. If that's the... I'm willing to accept that, Meg, but if that's case, Chair Powell should say that. Fair enough. Fair enough, and I do think, and again, I think, Jeremy, you and I, we don't agree on premises and reasoning. But I do agree that some of what the Fed is currently facing is of the Fed's own making. And I define here the Fed, unlike the Supreme Court, as, you know, the Federal Reserve Board going back almost generations. It's not just the current board, it's just going back generations. And I guess, Christina, just one way is very interesting, the Bank of England and what's going on there. One thing I think we need to be careful about. Is we are the largest, most complex, most geographically diverse economy in the world. The UK is a very small economy. So as we think about reshaping, what none of us on the panel here have said, but I think underlies what we're saying is, whatever the Supreme Court does on so-called independence, there's actually another branch of government, Congress. And Congress needs to do its job. Hopefully, when the Supreme Court does better work, they will create a space for Congress to also act around independent agencies, including the Fed, and thinking about what needs to be done. And that's why I think thinking things through, like who should be on the board. You know, there's very little justification for having the CFPB on the FDIC. There's just what is the intersection there. But maybe there's justification for the Treasury Secretary. I don't know, but I think there's a. There's a lot to consider and the missing element here is Congress needs to do its job.

LAMOREAUX: So can I say amen to that? And I think the problem here, and the problem with the Supreme Court's little footnote carving out the Fed is that we do not want the Supreme Court to be designing the administrative agencies.

TAHYAR: Can I say amen to that? And then can I be the pedantic law firm partner? Because I had a discussion with a friend about this over the weekend. It's actually not a footnote, it's right in the middle of that opinion. And why I think that's important is they wanted to make sure that it was read by the media.

LAMOREAUX: Right, right. So, but what that carve-out suggests is that it's all the contortions and the epicycles that you have to go through to make this a constitutional question and really what we need to do is return to a world where Congress makes policy and the president has veto power and that that's the way we set these things up.

TAHYAR: Part of the original sin here is that Congress is not doing its work.

LAMOREAUX: And throughout history, Congress has been present and absent, present and absence sometimes. But yeah, they should be doing their job now.

SMITH: And how does the Fed fit into that, though? Do they need to be more active in what they do or do not want to kind of comply with or have more of a view? I mean, they've kind of said, we'll align where, you know, it's suitable and applicable with the law, but that's a kind of passive approach, I think, to some of this.

TAHYAR: And the Fed, let's be realistic about the fact that the Fed and the Comptroller have had enormous influence on the laws that have shaped themselves over the years. They're practically written by the agencies. And then delivered into them. Always, historically. Always. All right, I shall accept that. And there really does need to be some rethinking. We also live in this large complex world, largest economy. It where you know we do need an administrative state from my perspective we have an administrative states has gotten out of control so that there's got to be maybe I'm the only centrist left in the world but there's gotta be a centrist way to come to a better path.

LAMOREAUX: I agree with that completely. I mean, the administrative state, and this is in a way the story that we've gotten away from Peter and Sean's book, but the story they tell is a story of administrative agencies essentially creating themselves and creating the administrative state. And that's what happened throughout the whole administrative sector in the 20th century and then. In the 20th century, people started asking the question that Meg just answered. Well, it's kind of gotten out of control. How do we do this? Starting with Taft, you had commissions that looked at the efficiency of the different agencies and tried to establish best practice. Then you have that occurring repeatedly in the early 20th Century. And then you get the Administrative Procedures Act an investigation which was an attempt to sort of regularize this in some way. And the problem is, the problem we really face is that when administrative agencies create themselves and especially when they have conflicting missions, how is it that you get order? And it's a very, very difficult question.

TAHYAR: And accountability and you know I think it political accountability can I just make one quick comment about the Federal Reserve banks because I've really evolved in my views on the role of the Federal reserve banks over time I mean in 2010 at the time of Dodd-Frank there was this faint for about two minutes to get rid of the federal reserve banks which died quickly almost as quickly as consolidating the agencies and at the Time I thought hey that would be efficient it would be efficient to get rid of the Federal Reserve Banks. But I've grown to understand the really important role that the Federal Reserve Banks play in – and the Federal Reserve Bank boards play in the development of monetary policy and in research. You know, the Federal Reserve Bank of Dallas knows what's going on in Texas in a way that nobody in Washington does. And the Federal Reserve Bank Cleveland knows what is going on in the Midwest. You know, better than anybody else, and that information that they are bringing up, I think, to the FMOC is really precious and really very helpful. That said, I think there could be more efficiencies somehow.

SMITH: Are we setting up a scenario though where it's somewhat of a slippery slope that in today's version of events we have the Fed carved out and protected, but if we start to make some of these changes that are more fundamental in nature, that it is the reserve banks that then start to come under scrutiny? I'm just curious kind of how, for an institution like the Fed, how can this potentially be somewhat of slippery slope in a way?

SKINNER: Can I just jump in here? I think it's quite important to not just refer to the Fed in these debates as sort of a monolithic concept because if there is a shard of independence that will be preserved after Humphrey's Executor’s narrowed or overruled, it would be in the monetary policy domain, I think, for Article 1 reasons. But the other things that the Fed has been doing, which I think we're circling around and goes to your question about. You know, what can the Fed do, and other panelists' comments about this is, you know the Fed's own creation. I mean, it does a lot now, which does not properly fit within this independence narrative. Supervision is one, but so too is crisis management, right? Arguably so too is its payments functions. So I think, you now, I'm not worried about the slippery slope because I think to be sort of honest about. You know, how economic policymaking happens in this country, we need to acknowledge that the Fed is doing a lot of things that don't properly fall under the heading of whatever we wanna say independence will be in the future.

SMITH: And before we turn to audience questions, I do want to go back to the point about the kind of overcorrection if we're in an environment where presidents in the future are going to have more power over these agencies. I mean, there is this worry that you're going to see every political cycle, really. You're going get a whole new host of rules and a new culture in place, or there's just going to be this push to kind of change depending on the political winds and that can be a very volatile environment for the institutions that are being supervised by these agencies. And so we can maybe wrap up there but I am wondering just on what does this look like going forward if the political influence perhaps is just a bit more direct.

TAHYAR: There is a risk of that, and we have seen some of that say the last eight years. My perhaps overly optimistic hypothesis is we are right now going through a massive political realignment in this country. Not something we do every four years or every eight years, but something we every 80 to 100 years. And once that sorts itself out into whatever the new normal is going to look like, I'm hoping I can't prove it, but I'm hoping that we will go back to less of a whipsaw.

SKINNER: And just to add on to that, ultimately the answer to your question lies at the feet of Congress, because part of Congress's constitutional responsibility is also not to overdelegate. And so if Congress can craft mandates so that it's not giving away its legislative power, that inherently narrows the scope of maneuvering that agencies can do, because what the agencies are supposed to be doing is enforcing the law, not writing it, and the Supreme Court is probably going to take another look at its delegation doctrines as well, and so we'll have to look at how the whole picture emerges.

SMITH: Any other thoughts?

LAMOREAUX: Well, can I just – about the WPSA, I think this point of a realignment is important, that the way the political parties have worked historically in the U.S. Since they really emerged in the late 19th century is that they move together – they move to the center over time, and then there are groups that feel unrepresented, that they're not – their parties get pulled apart. And when they get pulled apart and get polarized, that's exactly when you get these whipsaws. And this is a period much like the late 19th century, where the two major political parties are very closely balanced, and you go back and forth. And the policies – and now – but the difference now is that what happens at the executive level is much more important than it was in the late-19th century. And so the policies are just whipsawing back and fourth, and this is through the government, not just. The financial agencies, but I could tell you stories about when I was chair of the history department at Yale and we faced NLRB things for graduate student unions that changed every time the administration changed, radically. And so this is through the whole government. We can't, part of independence is trying to moderate those swings. You don't want do away with them, but they need to be moderated.

KRESS: I do think we would see more pendulum swinging and I think that's okay. I think we should get comfortable with that. I think it's one of the lessons of Peter and Sean's book. I'm going to quote here from the conclusion to prove that I read the book and that I made it to the end. Peter and Sean say because bank supervision is the institutionalized management of residual risk we should see changes and should want to see changes in risk tolerance that follow electoral cycles. The highest form of accountability available in democracy.

SMITH: All right, well with that, let's turn to some audience questions. If you could state your name and affiliation, that would be helpful. All right. We'll start in the back.

AUDIENCE QUESTION: Can you hear me now? Okay, great, thank you. Rob Hollister with the State Department, and your closing was perfect because I'd like to go back to the evolutionary metaphor of the first speakers and ask the panelists if banks are dinosaurs that are going extinct right before our eyes. And I ask that because, you know, as we look around us, banks are turning into Starbucks faster than we can keep track. I think half of all global financial assets are in non-bank financial intermediaries, hedge funds, private equity funds. And the fintech sector is just exploding, you know, virtual lending, virtual payment processors, virtual e-bond accounts. So how relevant, how much longer will traditional banks be relevant to financial markets and is the regulatory architecture that Was created when we were supervising banks on horseback Is that adequate for today's financial fintech world?

TAHYAR: Banks will be around forever. Give space to others too.

SKINNER: I mean, I agree with that basic intuition. I mean the business model of banking is fundamentally distinct from those other important players that you just mentioned, right? I mean banks key distinguishing feature is engaging in the maturity and liquidity transformation, taking deposits and sort of generating economic growth and credit intermediation from that. I mean they occupy a space that other players can't occupy. I mean I think it's really important to have a pluralistic financial system so that. You know, when banks have to retreat for various reasons, other credit providers can provide counter-cyclical sources of capital to have lots of consumer competition and choice in payments. But I do agree that banks will be around forever. And you know, it's also important to take a step back and think not just about the role that banks play domestically in our economy and in the U.S. Economy, we do have this really important three-tiered structure of banking which serves different segments of the economy and it's really conducive to our growth and innovation. But also banks play a key role in our economic security, right? I mean, there's whole foreign policy element to banking and thinking about how they effectuate our national security goals around the world. And so I agree with Meg that banks will be around forever, but they do need space to evolve and innovate. And that's ultimately a public policy question too, how to best support that.

KRESS: Question raises a really interesting issue of what can we learn from Peter and Sean's account of bank supervision and perhaps apply to the non-bank financial sector that you I think that there is a lot of bank-like activity going on outside of the banking space, including risky maturity transformation, and perhaps that ought to be supervised in a similar way. Christina mentioned the Financial Stability Oversight Council created in 2010. That was in a way designed to brings some supervisory oversight to the non-bank space. That authority has been hollowed out and neglected so much that I'm not sure it's salvageable. But I think it's important where you see bank-like activity and bank- like risks for supervision to follow.

SMITH: All right, we have another in the back.

AUDIENCE QUESTION Hi there, Chris Hughes from the Wharton School. Excuse my voice, I'm recovering from losing it over the weekend. From the beginning of the panel, there seems to have been a consensus that regulatory and supervisory capacities at the Fed have failed. And outside of a little discussion about climate change, which to my view, the Fed did very little on, I've heard very little about what is the problem right now with supervision and regulation at the Fed. And then the second part of my question is, why is it the unitary executive that should be the method of accountability and not Congress, the legislative branch that ultimately designs the institution, manages the institution and is constantly revising how the institution actually works?

TAHYAR: I'll just take the first part of your question and leave the second to others. I'm not sure there's, I think it's a slight overstatement, Chris, to say that supervision, and I would say not only at the Fed but at OCC and FDIC, has failed. I would re-characterize it as there are, there is a need to reform supervision and improve the bass. And there are lots of good ideas out there right now on how that could be done and how it could be modernized. So I think we can look at some individual banks where we can say that some teams or some of those who are managing teams failed. But I think, we don't really know because of the culture of secrecy. Where it has failed and where it had succeeded but i think we do have this strong intuition particularly those of us in our day jobs see what they're doing that it can be improved

SKINNER: I can answer the second part of your question very quickly. Why is it the unitary executive? Well, that's just what the Constitution requires. Banking supervision is executives' powerful stop, and the Constitution required that the president has to be able to supervise and control his executive officers. And in terms of congressional oversight, I mean, I agree with you, that's an important part of the picture too. Congress created these agencies, defines the scope of their mandate, and so Congress is also obligated in as much as it exercises legislative power to also effectively exercise oversight power. Whether it can or does is a separate question, but it certainly has that responsibility alongside the executive's responsibility to oversee his executive officers.

LAMOREAUX: I will jump in here. I disagree with Christina, but I don't want to repeat that. But it seems to me that a lot of what we're seeing is issues about policy that are deflected into other issues that people can then apply the Constitution to or something else. I just would say that I don't assume that the Fed failed in supervision at all. I think it's complicated, right? But that the issue of Fed independence is not, the political issue of fed independence is NOT about supervision. You know, it's really about monetary policy and this is a deflection, a defection because Congress clearly has the authority over the currency and so this is a way of challenging that independence without in any way getting into that constitutional issue. So I don't think we're really, in public, really talking about supervision when we're talking about Fed independence.

JUDGE: Sorry, Christina, I have to jump in here. So this has been a great panel, I've loved the whole conversation, but it is really interesting because we are having a core conversation over constitutional design. And I feel like constitutional structure has been used as an explanation in ways that I think go beyond the text of the constitution, beyond how it's historically operated, and in a way that cuts out, actually, I think, fundamental features, perhaps, of the Constitution. So I do think, I mean, going back to Chris's, I think very good question, I think it's premised from the fact the structure of the Constitution makes Article I not just first, but by far the longest and by far the most powerful because Congress is meant to be the most powerful branch. I think all three of you agree with that. And I think the tension around the notion of a unitary executive is how much actually does that infringe on Congress's authority to set up the structure of government and to take the steps that are necessary and proper to make sure the government structures and is able to carry out the functions that we wanted to. And so, Christine, I'd just love to have you and potentially, I'd really invite all of you. To talk a little bit about the opinion clause. I mean, Article II is very short. It says executive power is vested in the president. It says that he has a duty to take care that laws are faithfully executed. And with respect to the authority that he has for officers, which admittedly are executive officers, it says that has the authority to demand or to require opinions from those officers. And again, I feel it's hard for me to understand what that means if he has broad authority to fire or to engage in directive of authority. So, if you could just tell me what your understanding is of the opinion clause, I would love to understand that a little better.

SKINNER: So it sounds like you're not quibbling with my interpretation of the Constitution, but rather the Supreme Court's interpretation of the Constitution in regard to its past couple of opinions specifying its vision, its understanding of executive accountability in terms of removability. So where the Supreme court has focused, as you know, is the exercise of executive accountability in term of removability, being able to have the president have plenary power to remove his executive officers And the stick for exercising accountability. And I'd, you know, we have one minute left. I'd welcome to have a conversation with you about the opinions clause offline, but that's not really where the Supreme Court has rest its justification for executive control over executive officers. It's more so focused on the separation of powers questions, the structure of the Constitution, and therefore the president's authority to remove executive officers, I don't know if, Meg, you wanted to add to that?

TAHYAR: I think there's only 39 seconds left, so.

SMITH: Do we have time for maybe just one last question? All right, just right in the front.

AUDIENCE QUESTION: Hi, I'm going to take this fire from the constitutional elements. It's interesting to me that all of your discussions about independence and different models for independence, I agree with Meg, we need to think about these, have all been about monetary policy. And in my view, I am going to challenge you guys to find an example of politicized supervision that works. Because this is what my career has been about, financial crises. And I haven't seen any example of politicized supervision working well. Japan in the 80s, which we all thought was gonna take over and dominate the world. It turned out when they told their banks who to lend to, it didn't work out and led to a multi-decade depression. Germany, where lots of the banks are government owned, has the least efficient, least deep financial markets of all of Europe, which is very surprising, giving it strength in other forums. And emerging markets around the world who have engaged in directed lending have ended up in bad, bad crises. I mean, the huge asset that we have in the United States is that we deep financial markets. People trust it, it's the rule of law. They can use them, they support our economic growth. So I'm trying to understand how you think politicizing supervision is going to help our economy. So, step back from the constitutional discussions and think about what is the practical structure that we need to be thinking about to make sure that our financial markets and financial institutions remain sound, strong, and the envy of the world.

SMITH: Who wants to take that?

TAHYAR: You raise a great point.

LAMOREAUX: Great question.

TAHYAR: Definitely a discussion that we need to go. Maybe we can have that be the next panel and Aaron's next --

SMITH: Can we have a preview maybe of some thoughts?

SKINNER: I'll just say you know I think that the point that we were trying to emphasize here is you know that's the reality of supervision and so pretending that it's independent is not helpful. The question should be around accountability and I think even you know Jeremy read the last you know last couple of sentences from the conclusion, and I'm not sure that Peter and Sean, you know, disagree with the fact that supervision is politicized. The question is, you know, how do we, how do we deal with the accountability question from there?

KRESS: Just a few offhand from the book, maybe areas where we don't necessarily immediately think about supervision, but chartering, bank antitrust, chapter seven is all about anti-discrimination, community reinvestment. These are areas very much within the supervisory realm where different administrations, different congresses have had different policy preferences, and I think we have. Over time seen that flow through despite the supervisory independence and you know I think those are areas where you might see more of the pendulum swinging in a more politicized supervisory realm.

TAHYAR: But I think, Susan, fundamentally, you're really talking about a government directing lending and directing credit. I mean, your examples are really great. Something if we had more time to tease out is how much is that supervision and how much is that credit policy?

SMITH: Are we all set? I just didn't know if there was a back and forth. Well, thank you all so much for joining. This has been such a great panel and a great discussion.

KLEIN: And if I may, this is a chance to take a 15-minute break to get some food and snacks there, and we'll reconvene, I think, at 11.15 for the next panel.

GUIDA: Hello everybody. You wouldn't mind taking your seats. We're about to start the next panel. Hello, welcome back. I'm Victoria Guida. I'm an economics correspondent at Politico and I'm delighted to be hosting this panel on supervisory discretion. I have a great panel with me. I have Kate Judge who is a law professor at Columbia, Jarryd Anderson who is partner at Paul Weiss, and Ed Balleisen who is a professor of history at Duke University. So I, without further ado, wanna jump right in. This is a. Very timely panel, we just had a speech last week from the new vice chair for supervision at the Fed in which she touched about on a whole range of supervisory issues. So the thing that I wanted to start with was there seems to be a focus under this new round of regulators, if you will, on focusing particularly on material risk, safety and soundness and I guess I'm just curious, do you all feel broadly that supervision should hew specifically to those kinds of risks? I'll start with you, Kate.

JUDGE: Um, so I think supervision actually has to be broader than that to even be able to achieve that is the short answer. I mean, so, I guess the problem is, like, before you're trying to fix a problem, you want to figure out, like what is the problem you're tying to fix? And I think the real interesting dynamic right now is, as we've heard alluded to a little bit on last panel, certainly came through in Vice Chairman Bowman's speech or Vice Chair Bowman speech is this question of, like supervision, is it broken? And it is broken. And we really need to fix it because it's not doing a good job. But we have this great working paper actually that just came out from Stephen Luck and other folks at the New York Fed I think a month or two ago. Basically, supervision is actually working exceptionally well. Supervisors are very good at identifying problem banks long before they end up failing, that they actually engage in much more rigorous attention to those banks, and that actually it's that process of more rigorous supervisory attention. That results in banks actually providing more accurate financial information in call reports and other settings. For example, they find in the five years before a bank fails, half of the reduction in capitalization is attributable to revisions in call reports that immediately follow visits from bank supervisors. I don't know what's going on within the supervisory structure. One of the challenges is I have not been a bank supervisor, and unlike some of the partners here, I don't sit with banks. And see all the information that they get. But I actually do start off with the premise that actually it looks like from people who have access to a lot of that data, that there's a lot room for improvement. There's certainly room for improvement I think when it comes to bank supervision, but they're actually doing a pretty good job. A lot of what we actually get in terms of accurate financial reporting wouldn't be happening without the work that the supervisors do. So I guess part of it is I guess going in and asking hard questions is part of how we get the accurate financial data that we need to figure out is a bank actually kind of healthy.

GUIDA: Jarryd, what about you?

ANDERSON: So, first of all, it's always great to be at Brookings, I'm glad to be back. Much thanks to Aaron Klein for organizing this event and hosting such a timely discussion. I think it's somewhat serendipitous based on Sean and Peter's book and the publication kind of aligning with bank supervision being the topic of the day. I'd be remiss as a former staffer at the Federal Reserve not to recognize the hard work. Um... That bank examiners do i think they oftentimes don't get enough credit uh... For their efforts largely because they are so critical to economic prosperity in the united states to have a safe and sound banking system is really uh... Largely derived from the work that the banks do in supervising institutions and because of that institutions are able to extend credit and serve as engines of economic activity across the country. And I think that the bank examiners play a really critical role in our system. So that's just something I want to frame at the outset. I think Governor or Vice Chair Bowman, I guess now, has elevated a lot of really important ideas to the forefront and I think it's a net positive for the industry to revisit largely the 2008 sort of post-financial crisis framework and whether or not that structure. Still works in today's modern macroeconomic environment. So when Dodd-Frank was passed in 2008, a lot of the products and services and business activities that banks engage in were pretty elementary or didn't even exist. Real-time payments, crypto and digital assets. Online banking, and just the ability for customers to move money at light speed. Those are not really challenges that were at the forefront of Congress or Supervisor's minds in 2008. So it is reasonable and a good idea to kind of revisit the framework and gage whether or not what we have today really makes sense for where we are and where we're going in the future. Um, so I think, um, From the broader question of whether financial metrics should be overemphasized or there should be less weight on some of the operational or management or reputational risk types of ratings, I think that bank supervision in many respects is both an art and a science. And in order to effectively supervise an institution, It's important to have experienced bank examiners who know when to kind of push and pull and can be transparent and forthcoming in their communications with their institutions. But the policies and procedures, that aspect of banking and supervision and risk management is critical and it should be weighed as a factor obviously in exam ratings. Sometimes it is. Um... Overly weighted and it serves as a stand-in for the composite rating for you know whatever your management is and effectively that's how examiners might rate the bank uh... But i think it seems that there's a shift from the regulators as well as from the industry and kind of pushing and and appropriately weighing the uh... Material financial risks against some of the operational and and and process oriented uh... Items that show up in exams.

GUIDA Yeah, well, and Edward, I want to bring you in, too. I mean, one of the reasons why I've been thinking about this is, you know, Wells Fargo was an example of examination that fell short, and that didn't really seem to relate to material risks or safety and soundness. It was just, you, know, customer abuses. So I'm curious how you all think about that, and, Edward, all.

BALLEISEN: Well, let me first just respond to the initial.

GUIDA: Yeah, sure.

BALLEISEN: I read that speech, at your suggestion, actually, and one response that I had was to see it in the flow of the history that Sean and. And the book really lays out, which is to say, at moments when bank supervision has been successful, when it shows institutional capacity, there's a tendency to layer on more responsibilities, more areas. There's an expansion of the scope. And that can generally, eventually concerned about overreach or too much. Being asked of supervisors or of the system. So at one level, I see Bowman's concern in that light. But I'm also struck by the rhetorical move at the beginning of saying, we need to focus just on one thing, on safety and soundness. And then you read through the speech and there are all these other regulatory goals laid out. So we need focus on fostering innovation, whether that's with respect to digital assets or crypto. Uh... We need to make sure that there's geographic diffusion of economic opportunities so we have to look out particularly for smaller banks in rural areas and we need a have a completely different tailored approach to those entities uh... We need to worry about check fraud The speech has a whole host of other concerns, which then, of course, raises the question of policy trade-offs. How do you worry about safety and soundness with respect to all of these other issues as well? So I don't think it's just safety and sounds that Bowman is concerned about, although her list of regulatory objectives certainly varies enormously from the last presidential administration. With respect to these issues.

ANDERSON: So Victoria, if I can just jump in and respond to your question about Wells Fargo. I think that oftentimes it gets lost maybe in the media or in the general public about sort of the connection points between each of the component parts of the camels rating and where policies and procedures kind of fit in. So whether the sales practices were inefficient and at Wells Fargo and. And cause undue risk taking or fraud in some cases of opening up checking accounts or providing products and services to individuals who didn't ask for them. Even though that might not show up in the liquidity metric or on the capital metric, it does speak to challenges from management and the overall functioning of the institution which. Does have a downstream impact on the balance sheet, right? So if you don't have effective policies and procedures, and then you have gaps in internal controls, and then those gaps in the internal controls may translate to increased or undue risk taking, and then, those additional risks translate to losses. So the civil money penalties that Wells Fargo had to pay as a byproduct of the management issues do have a direct financial impact on the institution. And I think oftentimes we get kind of lost in isolating the capital adequacy or the asset quality or the earnings or the liquidity or the sensitivity market risk. And you don't see how management plays a role in each of those. So I think it's important to kind of not lose the force for the trees. Obviously all of these metrics are important. Management rating in camels is the only sort of qualitative metric, and it is highly subjective. So I think it opens itself to criticism, but that's just, I think, part of how the risk management framework works. And I think to Kate's point, it does a pretty decent job of keeping our industry and the bank safe.

GUIDA: Well, and Vice Chair Bowman, I'm going to get used to calling her that, Vice Chair Bowman also made the point that there is this disconnect between the financial health of these firms and the ratings, and it does seem like some of the subjectiveness that you're talking about might play into that, and is that a problem?

JUDGE: I think it's really important to be careful in defining financial health. So one way of looking at financial health is just when we're looking at all the income statements and the balance sheet, how healthy does an institution look? I'm the treasurer for the non-profit and advocacy organization. We had our board meeting yesterday. So one of the things I could have done is just go through all the financials and I spent a little time looking at first quarter financials. But as a practical matter, we're in the food insecurity space. We just lost our... The head of development in an unexpected move, it's not the organization's fault. But as a practical matter, if I want to understand the financial health of the organization, I have to say, look, we're not dependent on government funding, but a lot of our major donors are also giving substantial amounts to other organizations that have suddenly lost a huge portion of their income, and those donors are telling us that they're trying to figure out what to do and how much they can increase and how much they're going to have to reallocate. And we had somebody who had been with the organization for a long time, we lost, it's not the organization's fault. But that could also result in shifts in the relationships. So when I'm talking about the financial health of the organization, I'm looking at our first quarter results, but I'm also really thinking in a much more forward-looking way over, what are the things we could happen? I think this was the point that Jared was making about management and the subjective elements is when you're thinking about things like operational risk, like if you have all of your servers in a place where the hurricanes could come through, that's not going to show up. In any of your current numbers. But that's an incredibly significant risk that supervisors need to be paying attention to. Cyber, I mean, you talked about Wells Fargo. I'd say TD Bank is another really interesting example. Like there was like an incredible failure of compliance that in the short run made the bank look financially healthier because they were systematically under-investing in AML compliance. And so they actually looked like they were more profitable and they were building up capitalization. But actually what they were doing was building up this massive accrued liability that didn't show up anywhere. Because then they were gonna owe all this money as a result of really having fundamentally failed in their obligations. So I think just like we have to think really, and it comes through beautifully in the book, but this is why managing residual risk is what supervision is all about. It's a lot of things that actually don't come through on a bank's financial statements that are the types of risks that supervisors need to be supervising and helping to make sure that banks are actually addressing in a meaningful way.

BALLEISEN: The other quick thing I would say about the Wells Fargo example, as I understand it, is it was not unrelated to mergers and acquisitions. And so if I had questions to bring to the supervisory records that we don't have access to, it would be, how much did the supervisors think about organizational mismatch or organizational culture questions raised by the merger because the older branches. In Wells Fargo were not the ones that were mostly engaged in this type of activity.

ANDERSON: I think of just the strongest criticisms against the sort of notion behind transparency and supervisory discretion that I tend to hear from clients, particularly post Silicon Valley Bank and the 2008 financial crisis, is really that supervisors are very quick to downgrade ratings but very slow to upgrade them. So I think that that is an issue and it should be addressed because if you have an institution that experiences stress during a period of a broader risk exposure to the economy or to individual slate of institutions and examiners identify that, you put corrective actions or remediation plans in place, they satisfy and execute on those strategies, Then I think that they should also be improved in their ratings and be able to engage in certain types of activities that they otherwise would have if they're a one or two rated bank as opposed to a three or four rated bank, for example. We saw that a lot. I think that's part of the criticism and where the industry has sort of complained that, look, we have strong financial metrics. Our earnings and our balance sheet is strong. However, we get criticized on this. Subjective management rating and ultimately that has an impact on our ability to grow and our ability engage in our businesses and sometimes the ratings can be a handcuff to that type of activity.

GUIDA: Yeah, so that's a good segue to the other part of this conversation, which is what guardrails should there be around supervision, right? You all have laid out reasons why it's good for there to be some subjectivity in supervision. I'm thinking back to the tenure of Vice Chair Quarles when at the beginning of 2020 he gave this speech where he talked about all the things he was gonna do to sort of bring more of a process to supervision, and I think one of the things that he said was for example, making it so that matters requiring attention or matters requiring immediate attention had to be actual issues of law, which would be a pretty significant change. Of course, he never got really to do any of that because then the pandemic happened. But do you think that there should be more of an administrative procedures act type framework work around, you know, what's... You know, should supervisors put out more rules around this kind of stuff? Should there be more of like a this is what qualifies as an MRA, this is what qualifies an M.R.A. Like what are the, are there additional guard rails that we should put around the supervisory process?

JUDGE: So I'll jump in. Guardrails is always a really interesting term to use. So in terms of should it be forced to fit into an APA, which is the administrative procedure act like process, the clear answer is no. And that is the reason this book is so incredibly powerful. And I think they rightfully define supervision. And here I'm overly improvising as institutionalized bilateral discretion. To manage the residual risks associated with this vital activity we call banking. And so I think when you're talking about residual risk, you mean like, okay, well, once we actually know what a risk looks like and how it becomes manifest and how we can manage it, then we move it over to this thing called regulation. And over time, the rule book has gotten much more detailed, perhaps I think too detailed. But in other ways like that, once we understand what we're looking for, then it can fit into the rulebook. But as a practical matter, whether it's because of innovation, whether it is because of gamesmanship, Banks are always engaging in activities at the margins, where they are taking on risks that are not neatly captured by the existing rule book. There is a public component to this because there's a real cost that arises whether through bank runs or financial crises that is going to put the public on the hook in a very significant way, and it's going to be costly to society in very significant ways. So I think we inherently need this discretionary space. That doesn't mean there should be no accountability. And I think that we started off the conversation very beautifully thinking, okay, what are the different ways we can think about accountability in this space? But that certainly doesn't means that we can reduce this and actually not have there be a significant cost to the health of the financial system in ways that actually end up being a cost to the healthy economy.

ANDERSON: So I think one piece, I will keep going back to Governor Bowman's speech last week because I think it had a lot of really good valuable nuggets that are important data points and help to just add to the broader dialog of ideas. But one thing that she pointed out is this notion around material financial risk and whether that threshold should be incorporated into the issuances of. Of MRAs and MRIs. So I think that that's a really important notion that should be incorporated because you don't want what could be an informal letter to a bank that identifies potential weaknesses or operational issues that you want to see addressed to quickly be escalated to MRAs and MRIs and then enforcement actions. So, if you find a way to mandate that those subjective determinations are tied to material financial risk, then I think you kind of get to where your question is leading us by, again, weaving in the notion of subjective risk that examiners have identified, whether they're systemic, whether at the horizontal of institutions that are of similar size. Or whether idiosyncratic to that bank based on its geography or its customer relationships or its businesses or its strategic plan, whatever the case may be. And I think that that's probably a pretty reasonable step so that banks have a little bit more comfort that the subjective components of the analysis and an exam aren't outweighing the financial strength that they have and the overall strength of their businesses.

BALLEISEN: Another idea in this speech that's I think really worth everyone paying attention to is the emphasis that she put on... So, Kate, you emphasize the significance of where the puck is going to be, the fact that there's so much change in the system, Jared, you mentioned that as well. And are we sure that the supervisors are remaining abreast of those changes and the implications for not just how individual banks are operating, but how the system is evolving? So I think that's an area that may be worth paying attention to. Another idea that's circulating is creating maybe a new category matters. Requiring discussion as opposed to matters requiring attention. So there may be a typology there that's worth exploring too.

GUIDA: Is discussion more intense or less intense than --

ANDERSON: Less intense. A new category with new letters that need to be defined, so.

JUDGE: I think it goes back, but that I think responds to part of the question that Jared was indirectly raising because one is you don't want banks running around responding to a bunch of things that even in worst case scenario aren't going to be material. On the other hand, part of what luck study indirectly reveals is examiners are learning a lot about the bank that a lot of people in management at the board level might not actually understand. And so part of the role of examination that can be incredibly positive. Is actually surfacing what's actually going on inside the bank to other constituencies within the bank that might actually have a real interest and capacity to respond to that new information. So, I mean, there's one thing about creating materiality thresholds, but you don't want it to suddenly, in trying to create materiality, prevent really useful feedback getting back to different parts of the bank, that might be able to act on that information in ways that are beneficial to the bank. And potentially beneficial for risk management.

ANDERSON: So I think that's a really interesting point, Kate, because if there are issues that are identified in an exam that reach a certain level of importance, oftentimes examination teams will meet with the board or meet with senior management after they have the initial exit meeting. So the examiners have the discretion to elevate concerns to the senior. Levels of an institution if they think they're severe enough and might ultimately impact the safety and silence of the institution. Now, I do think that when we talk about the sort of the engagement of supervisors in management decisions or those sort of supervision through enforcement type of mechanisms, it's important to think about the size and the complexity and the sophistication of the institution when you're talking about those things. So if you have a smaller community bank that's a few hundred million dollars or a couple billion dollars, oftentimes they don't pay for big fancy consultants or very big powerful expensive law firms. So to have a supervisor come in and identify ways in which they can improve their business or help them see around the corner for market developments or for potential competition risks. That serves as a net benefit to the board and to those executive management at smaller institutions. A place like a four trillion dollar bank like JP Morgan doesn't really need that type of handholding, if you will. Uh... Uh... Because they are incredibly sophisticated institution and they have legions of people whose job it is to to track and identify risks and business opportunities it's it's somewhat of a uh... A delicate balance and i think it does depend on the size and scale of the institution that you're supervising and part of it is the examination team should be understanding of the qualifications and capabilities of the professionals that work at those institutions.

GUIDA: Yeah, and I feel like we should also talk about Silicon Valley Bank, which falls somewhere in the middle of your examples there. I'm curious, I guess to go back from the conversation a minute ago about the extent to which you need to focus on material risks, there's been some criticism that SVB is an example of how examiners aren't focusing on sort of core basic risks like interest rate risk. Do you all think that that is what happened here from an examination perspective. It also seems like, from a lot of the information that's come out, that the examination team for SBB had a lot, you know, of chaos, and then they were also growing, so they went into a different tier of supervision. So do you think this, I guess my question is, do you that this was more of SBB sort of falling through the cracks, or do you this was examiners looking at the wrong thing rather than the thing that was in plain sight?

JUDGE: My answer would probably be both, and I think it's important to look not just at SUV, but signature and the other regional banks that fail and think about collectively, and also not extrapolate too much. Part of what's interesting here is I would actually say that this is a sign that we need to increase regulatory discretion. What's really interesting about the saying that they're overly focused on processes is that is actually the paradigm that most people would associate with neoliberalism and what. Supervision should be a neoliberalism, which is banks already have really good incentives to manage their own risks. So all we're going to go through and do is make sure that they have the appropriate committees, they have to governance structures, that they kind of the processes in place, because we want them to be primarily responsible for managing risks. So in some ways, Vice Chair Bowman's speech is an invitation that is incredibly empowering of supervisors to say, Not necessarily don't do that stuff, because I do think you actually, in my view, need to do some of that stuff. But you also ought to be taking a step back and looking very big picture of the Fed as increased rates at an incredible rate. We know that interest rate risk is a classic risk for banks. Let's look at that. Let's at the other classic kind of red flags, like rapid growth, massive increase in borrowing from federal home loan banks. I mean, like, let's look at what have been classic big red flags. Alongside kind of doing the day-to-day. And I think there is a lot of sign, partly because of the change in team, partly because one team doesn't wanna be overly critical of the other team, so you don't wanna elevate too quickly. It's kind of the opposite of what you said in terms of rapidly downgrading. It certainly looked like they were too slow to respond. But I would say if you look more broadly at kind of Signature and Silvergate, it also looks like we had these banks that were in crypto partly potentially because they didn't have good enough risk management. I mean, one of the things that I feel like has been a missing piece in the conversation after these failures is we've got these beautiful reports, at least not beautiful, they were well done in the timeframe that they were done, but they were done incredibly quickly, and I think they were really important because they provided a look under the hood of bank supervision in ways that were incredibly useful. Signature, we didn't get what was going on with respect to AML, because AML that's completely orthogonal to what caused the bank to fail, so we don't have to pay attention. I have a very hard time believing the signature could have gotten as deep as it did into the crypto space without significant efficiencies in its AML compliance. And so, and this goes back to your very first question of when you're looking really broadly, might you also be identifying risks that at some point might end up being material? And so I think we actually still need more information, but I think for some of these, there could have been problems brewing in plain sight. I think Credit Suisse is a really interesting example. It's not a US example, but we shouldn't like take it off the table. We're like... You had a bank that didn't have a viable business strategy for over a year in many ways when we were really honest about kind of the risks that it had not managed to fundamentally correct internally and it was like just sitting there waiting to fail until things like rapidly occurred. So I think there's a lot of different lessons to be learned here.

ANDERSON: Yeah, I think the Fed's post-mortem report on the failure of Silicon Valley Bank highlighted a lot of these issues. And I think more than anything, SVB's collapse really identified the pitfalls of sort of losing the forest for the trees. So there were a number of financial indicators, whether it was the over-reliance on uninsured deposits, whether it was mark to market of the the bond portfolio. The absence of appropriate hedging for interest rate risk, the concentration of customer deposits in a small subset of industries. All of those, I think, are pretty clear metrics of risk that was brewing at Silicon Valley Bank that examiners for whatever reason, because they didn't feel empowered or because of leadership limitations or whatever the. Um, the argument is for why those things weren't escalated, but I think the culture of bank supervision kind of must lend itself to having very experienced examiners and supervisors who have a set of lessons learned from prior experiences and they have the confidence and really the trust of leadership within that supervisor organization to be able to elevate and escalate concerns. Uh... About a particular institution Problem with the regulators is that no one really wants to be called on the carpet and blamed for closing a bank too soon or for making the wrong call. So there's a fair amount of stress on examiners to be accurate and to be thorough. And I think the post-SVB world, part of the criticism, which I think is just somewhat of somewhat of a byproduct of the moment in time. Is that people are documenting every shortcoming or potential deficiency that they see. And that doesn't necessarily translate well to good supervision. It just is more of a conservative exercise so that if things do go bad, you do have a thorough record and you get to show that you've done your job. Ultimately, I think providing some latitude for examiners to make mistakes. Is healthy because you get to learn from those experiences without putting undue pressure on the bank to comply with every small indiscretion that you see and then it just creates an adversarial relationship between the bank and between the supervisor when really the healthy sort of robust dynamic relationships with. Transparency and open communication I think are the best ones that banks tend to respond more positively to.

BALLEISEN: I mean, there's never going to be perfection. There are always going to mistakes. So how do you design institutions to learn effectively? In the first session, there was a question about other regulatory areas and whether there was possibility for comparative analysis. And I would raise the question of whether there might be some value in having an institutional capacity to look at things like failures of banks. And do an analysis of where the supervisory function was going, fell short, or was doing its job properly. So that, and one of the challenges is who actually makes those calls? Where do you get some independent analysis? Because the supervisors themselves have obviously a stake in the outcome. I would note that in transportation safety, you have a national transportation safety board. So if a plane crashes, it's not the FAA that's doing the analysis, it is the NTSB. They don't have responsibility for whatever the response to policy might be, but there might be an argument for ensuring the right kinds of feedback from these types of events to think about some additional institutional layering, to use the term stressed in the book. Because you want to react appropriately, but you also don't want to overreact, as Jared has suggested. You don't the outcome from a series of bank failures to be supervisors being overly aggressive in noting every conceivable problem. You want a tailored response that reflects good understanding of where the shortcomings were.

ANDERSON: I think another idea worth visiting is the notion behind examiner and supervisory incentives. So oftentimes, examination staff or supervisory staff, when they are harsh or critical of institutions, they develop a reputation within the industry of kind of being tough and very deliberate on standards and somewhat rigid. But I think that there's. Uh... Some downside and only being promoted or or only being incentivized if you're harsh on institutions and the other side of the coin isn't as as as transparent when you supervise institutions and institutions are doing well uh... Then you're not going to get the same type of of credit as an examiner, as someone who identifies. Really, really big issues that might lead to increased losses at an institution.

GUIDA: Yeah, I also want to come back to something that Edward said earlier, which is this notion of trade-offs in goals, right, where there's all these different regulations that supervisors are supposed to be looking at. And so how do you think about which things you prior, do you have to prioritize? Can you, because I mean, there's obviously, depending on how large the bank is, there a lot of different teams that handle a lot of different things. But I guess in terms of board and management attention, there are some things that you need to prioritize over others. And so maybe this comes back to, again, the material risk question, but within the scope of all of the positive discretion stuff that you all are talking about where you need to be looking at everything, how do you prioritize which policy goals you achieve over others? Edward, since you made the point, I'll pick on you.

BALLEISEN: You know, I don't know if there's obviously an easy answer there. I think it relates to the discussion in the previous panel, which is to say, where do you take your direction from? That balance is unlikely to be unchanging. So circumstances shift, the political balance of power shifts, and it seems to me that that's an area where you'd want to have clear direction from the higher levels in the banking regulatory structure moving down to supervisors with some clarity. But you're unlikely to have, that's not gonna hold for all time because circumstances are constantly changing.

JUDGE: I'll jump on this quickly, because I think it actually melds nicely with one of the insights of the book, which is supervision is at a place where you need both political legitimacy and technocratic expertise and information, and the two come together in a unique way in supervision. And I agree, this builds directly on the last panel and actually the Q&A that followed the last pan on some of the really helpful questions. And so on the one hand, when what you're talking about is, are banks healthy enough to withstand a financial crisis? Like, we don't want that overly politicized. Because usually the crisis is at some point in the future and you're having to make the investments now. And so like saying like, are there like threats that are building and weaknesses that are building and risks that are being taken in a way that actually could jeopardize the health of that institution or more importantly, could potentially jeopardize the health of the broader system because they're correlated across a bunch of term banks. Like those are things where you actually want to have them deeply institutionalized and you want to have some consistency across different administrations. Beyond that, I think there is a room and there's going to be a room and there probably has been room to say kind of. The additional aims that you might have are going to vary from one administration to the next. And that's part of the political process, and that's a part of elections having consequences. And so supervision is a little bit about balancing those two. So there's core aims, in fact, of the safety and soundness of institutions and of the system that we need to have consistent across banks because of the time consistency challenge and the fact that politics might not actually pull us to a socially optimal outcome. And so we kind of want to think about this in a different way. But then like different administrations are going to have different priorities because banking does a lot of different things and layered on top of those kind of core concerns, like I don't think it's inappropriate. And there's reasons that the vice-chair for supervision is a four year term as opposed to a 14 year term as it is with governors as we expect there to be, I think some changes in that regard.

GUIDA: So, I do want to get to audience questions soon, but before I get there, I'll just ask sort of a lightning round of what do you think that supervisors currently do the best and what's the area where they need the most improvement? Edward, I'll start with you.

BALLEISEN: Well, I think Peter's comment earlier is worth noting. The vast majority of banks are not failing all the time. The financial system in the United States is quite stable, actually. And so I think the capacity to keep the system moving forward and incorporating innovations of various kind on the whole has been fairly fairly successful. I think there are huge challenges around digital assets and the incorporation of AI into business practices that seem very contingent and are surely going to raise all kinds of questions that are unanticipated. So I think the need for flexibility in keeping supervisors abreast of changes of that sort and ensuring that they are communicating with one another? Around what they're seeing in order to have a learning culture seems to be something that would be really important to emphasize.

ANDERSON: I think that one way in which the regulators and supervisors could improve would be really touching on Edward's point, the notion behind supervisory coordination. Oftentimes large institutions have multiple regulators embedded within their organizations. And when you have joint exams, whether it's with a state supervisor or whether it is between federal supervisors, often times. It creates levels of complexity and inefficiencies just purely on the regulatory side. This has nothing to do with the banks. There are negotiations around what goes in and what stays out of an exam report, who is the one to deliver the message. And there's oftentimes like a jostling and positioning between supervisors. I think that gets reflected to, particularly on the enforcement side, when you see layers upon layers upon layers of. Enforcement orders or civil money penalties, and a lot of it is just duplicative in large part because of how the financial regulatory system kind of functions and works today. I think the missions and mandates of each of the federal banking agencies were probably a little bit clearer before 2008. Post-2008 there created a number of areas resolution plans as one of them. Where it requires a collaborative aspect between supervisors, and if people agree to the substance and the content of what should be communicated to the banks, then that's great. If there's disagreement, then sometimes the messaging to the institution is less clear. So, um, I think there are... Valid reasons for why supervision is a core part of what all the banking agencies do, agencies play in supervising institutions would be helpful. So that's one way to improve kind of the relationship in the system. As I started with, I think examiners just play a really critical key role in the broader economy. Uh, I think, um, I think that oftentimes they don't get enough credit for the hard work that they do. Overall, it's a really tough job. They're incredibly well-trained. I mean, they go through examiner commissioning programs for three to five years. The exam teams are rotating on a three to five year cycle depending on the size and complexity of the institution. So I think a lot of the overall structure around how banks are supervised and ensuring that the staff that examine institutions, understand the risks between a GSIB or super regional all the way down to a community bank. I think that kind of works pretty well.

JUDGE: And so big picture. I do think the recent empirical work does suggest that examiners are doing a pretty good job of identifying problem banks earlier, of bringing in more rigorous oversight. And as a result, enabling kind of relatively orderly resolution of many bank failures. So it does look like there's a lot of good things that are happening. In terms of the bad things, I put them in two different buckets. One, there is an overall cyclicality. And so it's not just that politics ends up affecting. Kind of like, what are the priorities on the margins? But it does seem like politics is actually going and potentially affecting in a fundamental way, kind of the rigor of safety and soundness. And are we really understanding the health of the broader financial system? So I do feel like, whether it's the difference between micro or macro, or just an overall cyclicality, where we go through these waves of being much more pro regulatory and then deregulatory in ways that have like very significant costs to the system, I don't think we've solved that problem. I mean, the other pet area that I'm interested in kind of goes back to my other comment, is AML. And it does seem like supervision is just not doing a good job there. It does seem that it's an area where it's become very check the box. Like areas like TD Bank, it actually was like the Department of Justice that realized all the weaknesses. It wasn't the bank examiner process. And so it does suggest that we need kind of like a fundamental different way of really trying to figure out whether banks are doing a job in that area because it just seems like an overall domain where the current paradigm isn't working as it should be.

GUIDA: So you actually gave me a good segue to an audience question we got, which is, you know, There are major ML scandals, not just it There was the TD Bank, which you mentioned, but there's also HSBC, BNP Paribas, et cetera, et cetera. How systemic is illicit finance at banks? Are banks criminogenic institutions, as some call

JUDGE: No. I mean, so what's really interesting about AML is there's a lot of reasons to be worried that actually the money flows where there's the least resistance. Right now, the least resistance is in a lot, like the crypto ecosystem and even in trade finance. I mean, there's always ways outside of the banking system. And so banks will say we put massive amounts of money and we are much, much safer in terms of the amount of listed finance we actually support or much better than non-banks. And I think that's probably completely true and completely accurate And at the same time, we have a problem that with the FinCEN leak, and as we know from all these other enforcement actions, the banks themselves still aren't very good. So I actually think AML is an area where we are imposing significant costs and there's still room for massive improvement in terms of the actual outcomes that we're achieving. If you look at the evidence, none of which is empirically all that well done, we are capturing between like a half percent and 2% of illicit flows, despite kind of very significant cost. So I do think that's an area. Where kind of comprehensive rethinking in a holistic way of the banking and the non-banking sector and how different flows are going, it really does seem like it's in order.

ANDERSON: Yeah, I agree. I think with new innovation and new risks that are entering the financial system, it's probably a pretty good time to rethink the BSA AMO framework and ways in which you can improve just identification of risk. I think overall, the banks do a pretty decent job of measuring the risk. Obviously, there are some outliers that tend to get a lot of the attention in the press, but All in all, I think banks are pretty decent at managing it. It's a question as to new policy priorities around digital assets and crypto and the entrance of new risk in the system and whether or not some institutions have the appropriate capabilities to manage that added risk. But I do think that it's important to establish a BSA AMO framework Treats all market participants and stakeholders like whether you're a bank or a non-bank. Banks shouldn't be disincentivized by engaging in certain activities because the BSAA AML framework only applies to their activities as opposed to roping in non-banks that also engage in similar types of business operations.

JUDGE: I have a small additional point. One of the really interesting challenges for BSA going back to that we already have a conversation about tailoring which is the only reason I'm making this. I do think that my share of women is very concerned with trying to make sure there's not excessive burdens in ways that I'm sympathetic to at smaller institutions. But you do have this interesting challenge where in terms of systemic risk, there's reasons like smaller institutions are posing less of a threat to the system, so you really don't have to be quite as worried about the quality of their assets, the financial risk they're supposed to do. You can launder a hell of a lot of money through a very small bank in the gap between when they're I assume you're not speaking from experience, Kate. So I think, again, this goes back to the fact that we need to think about this in a fundamentally different way, which is why I think AML is really important. But it needs a different paradigm that we haven't done a great job developing. And the book is incredibly good. And I think it does a wise job of also being much more focused on residual risks and seeing AML, I think as something different, if that's fair.

GUIDA: Want to take questions in the room. Do we have over here?

AUDIENCE QUESTION: Hi, I'm Brian Valerio with SW4 Insights. I'm curious for your thoughts on how much the individual plays in all this, because we've talked about systems and policy and direction from above, but as anyone who's ever dealt with a building inspector or the DMV or the post office, it's like it doesn't matter what the training is or what the policy is, if that person is good at their job, better at their jobs, having a bad day, or having to frame it, that experience or that implementation is very vastly different. So just curious for your thoughts on that.

ANDERSON: Yeah, thanks very much for your question. This is something that I generally tend to debate from time to time, because oftentimes people lose the fact that examiners and the bankers on both sides... Right, and they're imperfect. And expecting perfection from the bank or from the supervisor is just unrealistic. So oftentimes people go into meetings and this criticism is consistent on both sides, but they're going to meetings and it's just this predisposition about an adversary. And oftentimes the way I kind of have always thought about about examiners and supervisors, they're almost like in-laws, right? So it's really important to have a healthy relationship with your in-law, and it can be a net positive to your overall life. If you have a bad relationship with your in- laws, it could be disastrous to your household. So because of the DMV example, or even the food inspector, Those folks come in every once in a while, or you go to the DMV, I don't know, every seven years or whatever, because you're licensed renewed. The examiners you have to live with on a day-to-day basis, the larger the institution, the more sticky they are, right? So I think a little bit of grace in the business of bank supervision goes a very long way. And I think that trying to almost step in the shoes of the other person and understand that, look, they're an examiner, they have a job to do. Distill objective facts, put them in a report, turn the report, get it reviewed, go through the processes, and then have your exit meeting and get you your report. And then they move on to the next institution because that's their job, they're examiners. And bankers have to go through the process of sitting with the business, justifying why they made certain strategic plans or certain decisions, and that's just part of the business of banking. And I think if you just kind of, offer a little bit of grace to the people on the other side. Sometimes attention is unavoidable because of the risk or the mistakes that have been made. But I think having just an overall positive view of the other party is a net benefit to the relationship. Because it is a relationship, and it is an ongoing relationship.

BALLEISEN: The other thing I would add to that, reflecting on one of the key themes in the book, is that a higher level of leadership, individuals matter a lot too. Whether that's in identifying emerging issues or risks, or thinking about the need to reconceptualize training or the creation of networks between different types of agencies, or just fighting like hell against the person. In some other agency who you don't want to get their way. That's another way in which the personality in the system can have a huge impact.

GUIDA: There's a question over here.

AUDIENCE QUESTION: Thanks. So the recent Silicon Valley bank crisis is easily characterized as a failure of bank supervision. But most crises probably are not. I mean, one question I have for you is historically, if we think about the book, in the period of the control of currency, there's period of crises, lots of bank failures. But this is all shaped not by not so much by failure of supervision as by failure of the way the financial system was set up with reserves being pyramided in New York and lots of currency stringency at the harvest every year and multiple other failures of the design of the national banking system. The Great Depression, I don't think you can blame on bank supervision. That's an exogenous matter of the gold standard. And so, I guess what I would, my question is really have we moved, this is about the quality of bank supervision, have we move to a world where crises, where the kind of crises that we're facing are things that we would have expected to have been corrected by bank supervision? Or are we still in a world, where bank supervision just can't do it? It's like normal. Normal science, it just institutes whatever regime we're in and the changes are all going to come from left field and the crises are going to come left field, and bank supervision is doing as well as it can.

JUDGE: My instinct is a little bit of both, right? So there's going to be exogenous shocks to the system where no matter what bank examiners are doing ahead of time, it's going to increase risk in the structure of the financial system or in the operations. I mean, COVID was not something that you can say bank examiner is like. So there are truly exogenous shock. Uh, on the other hand, I look at something like the SNL crisis, which was not all that long ago and like, which many people I think is, think is the best analogy for SVP. And I'd say, look, there was a lot of forbearance that actually without, we could have had a much, much smaller crisis and Congress played a role facilitating a lot that in ways that I don't want to let them off hook for, cause like they played a big role there too. And so it's not like, okay, is examination the answer for everything? Like obviously it's. On the other hand, and this is where I love the last panel's responses to like, are banks going to go away? And they're like, no. And that's because like they are playing this really fundamental role in multiple regards in terms of credit, you know, financial intermediation, both in terms creating credit in terms or creating money and creating stability in the system. And like, and so I do think like whether examiners are doing their job will play a very big role over does the banking system aggravate? Or is it able to be a little more of a shock absorber when that hits? So I do think that there's actually still significant possibility for variation of outcomes that is not kind of determination just by bank examination, but is affected by it.

BALLEISEN: I mean, it does seem like the historical record suggests that the massive growth of any shadow banking increases the likelihood of a systemic structural crisis that is not going to be stopped by supervision.

GUIDA: In the second row.

AUDIENCE QUESTION: Yeah, looking ahead, my question is, what role do you think that AI is going to play in supervision? One thing I learned from the book is that examiners used to go through banks loan portfolios and review basically every loan, and now, as Kate said, it's much more about looking at policies and procedures. If AI can go through and look at the loan portfolio again, how are things like that going to change supervision?

JUDGE: I have no particular insight on this issue. My instinct is like, AI is going to improve a lot of things, but right now, it's going to be an evolutionary process. I don't think it's just about supervision. I think it is internal to the banks, right? So I may think the first impetus for AI, because it's also going to very costly, should be in like banks themselves, trying to figure out how can we use AI to better identify risks kind of within our system. I think one of the core challenges going back to cyclicality and going back to shocks is you're training that AI and data, and there's a real concern that you have an incomplete data set. And so you're overly, so I would not become overly reliant on anything that's trained to narrow a window of time because that's actually end up where then you end up with problems manifesting themselves across the system simultaneously.

ANDERSON: Yeah, I think that's right. Overall, I think AI is a tool, right? And it should be used to improve processes. Obviously, you would assume that whether it's on the bank side or the examination side that the processing and reviewing of data, whether their loan books or the accuracy of ratios and the like, that that would happen faster and more efficiently. Also, the identification of risks should be easier to spot a problem loan earlier in the process because of how payments might have been made over a certain duration. So I think that improves the efficiency, but I also don't think AI should be a substitute for human analysis and kind of like using your brain and your skills and your learned experiences as an examiner or as a banker. I could imagine for example to go back

BALLEISEN: to Kate's analysis of her role as a fiduciary in her organization. If you're not looking ahead, and if you're also not perhaps looking ahead with some historical... You could easily miss things, right? There was a lot of financial modeling before 2008, but it all presumed data that didn't go back to the point at which housing prices actually went down across the whole country at once. That wasn't in the model.

GUIDA: So unfortunately that's all the time we have. I think maybe the takeaway is we should have AI read Peter and Sean's book. The stories are so good you have to read it yourself.

BALLEISEN: It already has.

GUIDA: I believe next you have lunch and Aaron Klein will give you information on that.

KLEIN: So thank you, Victoria, and thank all the panelists. So the plan is for folks to go out there, grab lunch, come back, you can eat while Sheila and I talk, starting at 12.30, so you have enough time to grab your lunch. And if you want to head to the Brookings Bookstore to pick up a copy, because it's there right there around the corner in the Brookings bookstore, which is right around the corner from the restroom. So little break, and we'll see you back with a full plate at 12:30.

KLEIN: So if I could ask folks to start coming in, we're going to be getting started and hopefully super comfortable as you all eat, whether in person or online and having your virtual sandwich while this conversation kicks back. It's my great honor and privilege to have here Sheila Bair. Sheila is really the perfect person. Uh... To bring a lot of these thoughts together her experience she she needs no introduction anybody in this room but for for for the sake of people here and all around the world watching she will serve as chair of the FDIC during that financial crisis she served as assistant secretary for financial institutions in the treasury department uh... And she served as a senior financial policy advisor for Senate leader Senator Dole. So we have here in this conversation in the book constantly topics come up about the role of Congress, the role of the Treasury Department, the administration, and the role of independent agencies, all of whom bank regulators and supervisors are engaged in Provision in Chile. In your experience, you've sat in all of these chairs, you've seen how these different entities supervise, and what their roles should and are be. So who does it the best?

BAIR: You want me to pick among the agencies? The banking agencies? That's a dangerous thing. Yeah, no, I think, so I think I know you've been talking a lot about agency independence. I think the supervisory function does need to be independent, at least on the institution-specific level. I don't think you want political influence on doing examination ratings and corrective actions and enforcement actions. You don't to stay a million miles away from that. I think it gets blurrier when you talk about supervisory policies and even blurrier when you talked about regulation. But at least in my experience with the banking agencies, the supervisory function, at least on an institution-specific level, was pretty sacredly independent. And I think that's the way it should be and the way that it should stay. And I know that's not to say examiners are perfect. I got frustrated with some of ours sometimes. They make mistakes. Now, you've got a good anecdote you want to share as a good example of that, but you kind of need to look at the alternative, and we all have issues and concerns sometimes with how the supervisory process is played out, but I think it would be a lot worse if you had political influence infiltrating that process.

KLEIN: Right, so that's reminiscent of a question that Susan Baker asked the first panel about this. But let me push back on that kind of, because like, how do you balance, and the prior conversation was independence, and then you said, well, independent from whom? And certainly not from the rule of law, right? How do you balanced independence and accountability? And if it shouldn't be, when you say political, I'm reading into that, hey, this This is my friend, this is a donor, this... Right? Somebody that we want to please, versus the kind of question of wait a second, like there was a political decision made for this type of activity to be allowed or not allowed or this or that, you know, everything's a little bit political. I'm reminded of the --

BAIR: Yeah.

KLEIN: -- the great Woodrow Wilson comment, somebody asked him while he was stumping for the League of Nations, do you ever miss the ivory tower of Princeton where you'd been university president and gave it up to be president of America? And he said, I loved academia, but in the end the politics were just too much. Like, how do you balance --

BAIR: That’s true, I'm an academic too, so --

KLEIN: Yeah, right like how do you like everything's political depending on your definition of it How do you find the political that you want out of supervision? Yeah, and how do then take what's in it and keep it accountable?

BAIR: So there is still, you can have supervisory independence and still have accountability. So there are all sorts of checks on the system. There are IGs. There are potential lawsuits, it's arbitrary and capricious. Congress can still haul you up there and hold a hearing and go after you. You can do that too and that can have a chilling effect as well. So. There are ways, and the press, the media too. I mean, you know, if a particular bank feels aggrieved by the examination process or someone, or public interest group on the other side, they can go to the media, too, and there's media scrutiny. So I think there are plenty of checks already on the process. But I will tell you, at the FDIC, and this was part of our resolution process, not so much supervisory, though, I had members of Congress sometimes calling me about supervisory ratings as well, and I would say thank you very much, but I'm sorry this is. You know, I always supported the supervisors, but particularly the bank failures, it was not unusual. You know and people were, you know, they wanted to, so and so to be able to buy the bank or the first lady didn't want the bank closed and if it was closed they wanted so and so to buy a bank or buy certain assets. And you've got to have a shield against that. You know I would say where does accountability stop? Okay, they're members of Congress, they are one, two, three people calling me. I think legal independence for the supervisory function, in this case the resolution function as well, is really important and it protects leadership and helps them do the right thing.

KLEIN: So are you concerned the direction the court is moving which appears to be making all the regulators hold aside the fed is a monetary policy, but the FDIC, the NCUA the CFPB, well they've already done it with CFPB and FHFA…removable at will? Does that concern you?

BAIR: Yeah, so first of all, I agree. I think an earlier panel said that the Supreme Court might try to say the Fed is different, but it's not really. So they may do that anyway and contort themselves. But you can't really find a legal basis to do that. I mean, if it's quasi-private, I would say the FDIC is, right? We're totally industry-funded, premium. So we should be protected too. So look, I think you can have agency independence without job independence. You just can't. So I think that's really important and really problematic. And for FHFA and CFPB, fortunately, they are somewhat unique in that they had, you know, single directors, not nonpartisan boards with fixed terms. So, which is a model you have at the, well, not the OCC, but that's always been kind of a different animal. But at the others, you do have nonpartisian boards, or politically balanced boards, I shall say, with fixed term and explicit statutory language about, you now, what causes for removal are. I'm not encouraged based on what they've already said, but I hope they'll reconsider because I think it's really hard to have agency independence if you don't have job independence. If the president can fire you at will, that's gonna have a chilling effect on your decision-making.

KLEIN: All right, well, we'll see if the court upholds precedent or leans into this legal theory that's certainly pushing it in that direction. Let's talk about a different type of independence and role, which is the role of the Treasury Department. You served in the Treasury department. I served. I have my proud Treasury cuff link today for alumni. The regulators, the OCC is part of Treasury, but it's functionally independent. And the Treasury Secretaries role as essentially the president's point person on economic policy. You served as the assistant secretary in that role. What is the right role of the Treasury Department in structuring independence? Has the creation of FSOC and made the Treasury Secretary the chair of what I call the Jedi council, structurally change the Treasury Department's role in in it and for better or for worse how should we think about how the different regulators with their independence from the president right interact with the treasury secretary who should remain fireball at will i a at one point congress tried to pass a law to make cabinet officials not fireball i will and under president johnson in the court invalidated that What do you think the right role of Treasury should be?

BAIR: Well, I will tell you my philosophy when I was Assistant Secretary for Financial Institutions because it was our job to weigh in on bank regulatory policy, not the supervisory side of the regulatory policy. And we did sometimes with public comment letters, sometimes just verbally. I remember very distinctly objecting strenuously to OCC's expansion of preemption of, in mortgage finance, of consumer protections. And I stopped that. I mean, they... You have, maybe that was wrong, but I thought that was really a bad decision. I was seeing, Paul Sarbanes had sensitized me to what was going on with subprime. And it was getting very scary. And so based on their knowledge that I would publicly object, they just decided not to Of course, then I left. Somebody else came in. They went ahead and did it. And J.P. Morgan Chase shifted charters, and the rest is history, as they say. But I think you have every right to speak your mind, if you remember the administration, on on regulatory policy. I think you'd also respect that the final decision is with the regulator not with Treasury. But I think that you can speak out and should speak out, and I did on occasion and with some impact.

KLEIN: So maybe it's my personality in that I love discordance, musically as well as intellectually. And you were out there speaking against, my boss, Senator Sarbanes, was speaking, there's this common narrative that no one saw the subprime debacle coming, right? At the Federal Reserve, Governor Ned Gramlich was out there pretty forcefully, yet that wasn't enough.

BAIR: Yeah, it wasn't.

KLEIN: And, you know, it's also reminiscent that somebody who I think we both admire very much, Brooks Lee Bourne at the CFTC, was out there, you know, speaking about some of these problems and derivatives and, you know, had some statutory independence. But there's independence by law and then there's independence by assumed power. And at a certain point, this town is about power. And if you don't have enough power, it is hard to maintain that position with all due respect to the Assistant Secretary. It wasn't quite the full power throttle that that that was necessary to carry the day neither was being the chairman of the senate banking committee yeah that's true as as my boss was briefly you know how are we else are we better served when there's more vocal disagreement one thing that shocked me is like these committees tend to moved to a unanimity take f sock for example where there were a bit there been a few dissents in the very beginning. And now it just seems like it's become very pro forma. It's a very odd situation where Americans politics have become more politicized, but in some ways the regulators have become clubby.

BAIR: Yeah. I don't know about clubby. Maybe on the public face they look clubby, sometimes they are clubby and there are certain areas where everybody kind of works in lockstep. That used to be regulatory independence. I hope it still is. But I think FSOC was in, I don’t know if you remember this, but I testified on Dodd-Frank before your boss, for Mr. Dodd, and I suggest to the council, actually, I think we had envisioned more of a robust, having more powers actually, but I thought it would be controlled by the members and, you know, votes, how the council voted and each significant agency would be represented. That would be the governing structure and I did think at the time, and I still believe that there was not enough coordination and information sharing leading up to the crisis. I mean, God, we had, even after the crisis hit... Man, we were banging on the SEC's door to get them to wake up, so, oh, my God, you see what's going on, because a lot of this, you know, the mortgage, the private-label mortgage securitizations were driving so much of this. And the restrictions on the securidizations against being able to modify loans was such a problem. And we could not get, it took a long time before we finally got anybody's attention on that. So I did feel that, you know there needed to be more information sharing and awareness. And I think FSOC has filled that role, and I think it's, you know, I think Mr. Besson is right. He said he wants to use FSOc to ensure better coordination. I think that's fine. You know, and actually I think he's been pretty balanced, you know, because there was all, there were all these inflammatory headlines and leaks at the beginning about they're going to get rid of the FDIC, they're going to rid of this and that, some kind of radical things. He's backed off by and large, I'm not sure any of that. How real any of that was. Public statements have said he wants to use FSOC coordination. I think that makes sense. I don't think that's wrong. Because there are public meetings, there is some public exposure about it. That's a good thing too. I do think as one who was an FSOc member for a few years before I left the FDIC, it did force more information sharing and collaboration and sharing of views.

KLEIN: Yeah, one thing I found fascinating in the book was that the desire to consolidate regulators is as old as FDR. The second they're adding regulators, they're trying to consolidate, and they've never been able to do that. There's this entity that's been around to try and achieve consolidation among supervisors, called the FFEIC, the Federal Financial...

BAIR: Examination.

KLEIN: Examination Counts, right? And so you're supposed to get common training, you're supposed to get this, you're supposed to common that, how's that work?

BAIR: Yeah, so I think there still is a lot of tribalism among the agencies. I think it's just, you know, the Fed and the FDIC have long-standing issues. Just, it's not personalities so much, it is just their functions, right? A bank fails, insurance funds are going to take the hit, right. The Fed cares about financial stability and maybe they don't like bank failure. So it's, you, there's kind of this back and forth that's always existed. There's always been tension and still is between OCC and the state bank supervisors. There's just, there's always that. And has FIFIAC overcome that? But all this stuff is incrementally better. And I was chair of FIFIC when I was chair of the FDIC at the Chairmanship Rotates. But I do remember we did some positive things. Remember, one was we got agreement among all the regulators that we would not accept charter conversions if there was an ongoing enforcement action. So you just had to stand down until it got resolved. And once it got resolve, then the bank could shift charters that they wanted to. And so we did do that. So I think that's an example of some of the good that can. As far as I know, that's still in effect. So there is some good at Fifiac. But no, there's still a lot of tension. I said, if I may just do a little aside on it, especially on examinations, how this could be improved. I argued this in my book. It's probably pie in the sky. But I still think it would be great. Bank supervisors should be like the Foreign Service. It should be prestige. It should be restringent training, you know, screens, not everybody can be an examiner, they should be well paid, all of those things, but it also should be a life calling. And you should also, similar to the Foreign Service, you should rotate those examiners. The FDIC examinors should need to go over and work at the OCC for a while. The OCC should go to work with the Fed, and the Fed should work at OCC. If any, excuse me, the FD IC, instead of thinking themselves as assigned to particular to bank regulators with their own charters and they work for the system, right? And they get a glimpse at examining all of them. I think that could really reduce, at least at the ground level, reduce a lot of the strain and tension that I think still exists.

KLEIN: That's a fantastic and provocative idea. I love it. I see Justin Chardon in the back and when Justin and I were at the Bipartisan Policy Center with Richard Nieman and the late, great Mark Olson, we worked on a report that said that there should be a consolidated supervision and examination team led by, I modeled it on my old GAO days, which was the Analyst in Charge. Corresponded with the charter, but then everybody else was there. They were asking the same questions They had access to the same data in real time because I the regulators used to always point the fingers at each other and say Well, we didn't know that because we only had the most recent Camel report or the most call and there was an addendum and it was always being hidden from each other in this turfy --

BAIR: Yeah, that's right.

KLEIN: -- club and and and we thought this was a great kind of bipartisan ideal in some ways like your idea and absolutely yeah you know there's one thing that all the agencies could agree on it was that they did it the best coordinating with the other person and you read the book and you realize that these turf battles have been going on since the 19th century.

BAIR: That's true, but I would argue, if you think you've got the better examination team, then if you're OCC and you think your better than the state bank supervisor or the FDIC, then you know what, let your examiners come over to the FDC or the state banks supervisor and work there for a while. Maybe they'll learn from each other and maybe an FDAC examiner will go over to the OCC, maybe surprise you at the high quality. Of what's going on. So I think, again, when you have this identification with particular agencies who all have their own turf interest, you're going to get that kind of mindset. And it's not helpful. And my experience is they're all really good examiners. OCC's tops, the Fed is tops, and the FDIC is absolutely tops. And I know the state bank supervisors sometimes get a bad rap, and there's some unevenness there. I will agree But a lot of them, like New York DFS, California, Texas. They got some really good people. I mean, don't count them out. And I think it would be good and helpful maybe for the federal examiners to go work at the state level for periods of time.

KLEIN: No, I'll add Maryland to that list as a point of personal pride, even if...

BAIR: …I apologize.

KLEIN: Even if Baltimore is the largest branch city left in America without a big headquarter. While you're on the subject of being provocative, in terms of this question of independence, the supplementary leverage ratio looks like it's going to be the first rule sent from the regulators to the White House, the Office of Management and Budget OIRA, just put out I think a public notice saying your old agency the FDIC has sent for a wire review uh... What do you think of that?

BAIR: Well, I'm uncomfortable with it. I think this issue's been around a long time, too. You can't tag the Trump administration with this. There have been efforts over the years to get the administration, OMB in particular, to review bank regulations. And so I don't think it's a good idea. I think Treasury can weigh in as they do, or should do, informally or formally. And Treasury is the agency with the appropriate And the banking agency should be responsive to that. But no, I think this just gives another step for the lobbyist or whatever vested interest doesn't like the rule and wants a change in the rule, just gives them another place to go stop and make their case if they haven't won with their own regulator. So I don't think it's a good idea. I will say I know RRI has been reaching out to people. They want people to come in and talk with them about these proposed rules. And so maybe folks should do that, because it is what it is. But I don't like it. And I think it's going to be even more inefficient. It's so darn hard to get these rules out anyway and finalize. And adding this additional layer, I think, is not a good idea.

KLEIN: I'm going to turn to the audience, but before we do that, I want to get your take. There was a point in the book, and Peter made this comment earlier on about the people that have been telling him that they've had PTSD reading it, and I was one of those people. Because there's a point the book where they're talking about, I think it's the Reconstruction Finance Corporation and the FDIC at the bank holiday, and they're going through and saying, good bank. bad bank. Bad bank, uncertain. Good uncertain, good uncertain. So I served when I was at the Treasury Department on the TARP investment review committee. And by the time I got there, we're just dealing with the little banks. And the rule was if the primary regulator made a decision and if everybody, the other three regulators all agreed, that decision was followed. So the only ones that came to us were the ones where there was a disagreement. And it was a fascinating insight into the heterogeneity of America's banking system and the value of supervisory discretion and the importance of the art of supervision, because just formulas alone didn't capture the diversity of these institutions, many of whom were being shoehorned in the wrong box. But there's a story, and it reminded me in the exam, and I think it was the guy from Indiana who tried to put his foot down and got overridden. And I was that was me so there was that there was a national bank i give the specifics is important there's a national make there was owned by a tribe tribes do not like state charters if you know anything about native american issues you understand why and it was uh... Strong capital strong assets it had a horrible management and earnings camels its earnings were poor specifically because It employed a ton of tellers. And had a lot of extra branches. And the supervisor didn't like it because its earnings were below peer. And when management responded, they said, yes, that is a conscious strategy because the tribe owns the bank and we want to give jobs to our tribal members. The alternative would be profits which would be distributed in a per capita. And the single best thing to do for a community is to provide jobs, high quality jobs at a bank, not checks. Yeah. And their customer was a tribal casino, and it was very clear. And because the management wouldn't agree with the supervisor and was consistently low in earnings, they got a low management. And the other regulators saw what I saw, which was, at best, arrogance by the examiner, at worst, institutional racism, and nowhere in any charter did I read maximizing profits. As the only reason to have a bank. In fact, I saw other reasons in this book about the calling of public bank. And I put my foot down that this bank was gonna get TARP, and I got overruled, which to me still is, otherwise I thought TARp was a fantastic program. Did you, in your experience, see examiners and supervisors that were that far, in my opinion, off the rails? Is this a one-off thing, or is this an endemic problem where you have supervisors with a philosophy that I think... Is found nowhere in law and no method to hold them accountable.

BAIR: Well, it's interesting. I don't know if you read Michelle Bowman's speech a few days ago on supervision. I think there are going to be a lot of disagreements on that, but I think they're going to be common areas of agreement, too. And actually, some of the things she flagged kind of address your concerns. I think, first of all, the use of horizontal reviews and making that de facto rule, setting people up to whatever the peers are doing, as opposed to letting them have a customized business model. And so long as it doesn't present material financial risk, which is also another area where I think everybody agrees, we need to get examiners more focused on that, it shouldn't be their judgment. If somebody wants to have lower profits so they can pay their employees more, that's absolutely fine. Gosh knows we have enough banks that prioritize shareholder interest, right? So, you know, that's kind of a refreshing actually. And one thing a little more controversial, taking the management out of the camel, I'm not sure about that, but again, management is the area where there's the most play and that's what you were running into. So, yeah, one, no, I do disagree with that. I do screw with that exam, or whatever it was. I don't recall this ever coming to my attention, but I would have been with you if it had.

KLEIN: The FDIC, I would say, was supportive of giving them...

BAIR: Because that's the whole point of a lot of these community banks, they don't prioritize shareholder profits, they prioritize community needs and pay their people well and that's a good thing, not a bad thing. So I think this again, focusing on material financial risk, getting more focused on that and examiners understanding it is not their job to second guess. Business judgments and business models, if there's no material financial risks in what they're doing. And they're not on some trajectory that could propose material financial risk, then leave them alone. I mean, let them do that. So I think, again, there may be some areas of agreement here. I always get nervous because the pendulum always swings. So we had this crisis, arguably, the pendulum struck too far in favor of regulation, and I would certainly, it went on for too long. It's kind of a mirror saying that, you know, Basel III endgame. Most of that responds to the 2008 financial crisis. You know, that should have been put to bed a long time ago. But now we're seeing the pendulum go the other way, and you see these cycles, and so now we are going to deregulate. And I just fear that the pendulum is going to go too far the other way as it did during the Clinton and somewhat the Bush years, too, as you, you mentioned the deregulation of derivatives. You know, the weakening of bank capital standards, there's a lot of things, bad things are going on that fed the crisis and so I just fear that we're going to go too far the other way now and then we're gonna lead to another crisis and back it goes. So I do think people say, oh, well, you're so focused on the 2008 financial crisis. There were lessons to be learned that still apply, you know, right. Regulation should not be backward-looking. It should be forward-looking, it should be dynamic, it shouldn't be responsive to the issues that we see today. But so many of those issues are the same issues, exactly the same issues that we confronted in 2008, like excessive bank leverage, like risk-based rules that create distorted incentives about where you're going to allocate your capital. These are just issues continually with the abusive derivatives that create instability in our financial system. And people need to remember what happened in 2008 or need to know those lessons in crafting any kind of a future regime.

KLEIN: Well, there are a lot of smart people in this room, some of whom I've seen squirm a little bit through this conversation. So I'm hoping that there's gonna be a robust set of questions coming in. So let me open up the floor. Justin?

AUDIENCE QUESTION: I would just say what worries you most about the loss of supervisory independence as it applies to financial stability, systemic risk?

BAIR: So I think it will make the examiners timid. We are, you know, when I came to the FDIC, I had, I won't name names, but there had been some instances where previous leadership at the FGIC, the political leadership, had intervened, especially using backup authority, telling them to stand in, you don't, I had a lot of problems getting the examiner's convinced that I supported them going in and using backup authority, and OTS was really pushing against that. So just seeing how that damage was done, and that was kind of more behind the scenes political pressure. Making it kind of open and express and okay, I think you're gonna see a lot of really timid examiners. And, you know, the problem is... They will, they're highly sensitive tone at the top. Boy, you have to be really careful what you say at the top, because they will read whatever the statements you've made, and they'll take it. They'll take maybe farther than you want to go. So I think taking, robbing the independence of the leadership and ability to speak with authority that these are my policies, this is what we're going to do at least during my tenure. Taking even that away, you're going have a lot of scared timid examiners.

KLEIN: Christie?

AUDIENCE QUESTION: First of all, this is great. And you know I always love hearing from you, so this is wonderful. One thing we haven't heard about in a while is the workplace problems at the FDIC. And there's been so much focus on deregulation and what will happen with the FDIC, but what do you think needs to be done going forward? You know that her and I have talked about this quite a lot already and she always has good ideas.

BAIR: So I'm very worried about it. It doesn't seem to be. I mean, I think, look, there were clearly some problems. And what I hear continue to be some significant morale and culture problems at the FDIC, which breaks my heart because we worked really hard when I was there. And we had a very energized team when I left. And we reached that number one best places to work slot in the OPM survey and stayed there for many years. So it lasted a long time. And I'm not sure when it started to deteriorate, but it did. But I will tell you, I spent a lot of time on culture and employee morale. And some people thought, well, I get this crisis. Why are you spending so much time on this? I spent time on because I knew that I needed an operationally, an agency that was performing as best as It had to be performing with excellence, because we were in a serious crisis. We had an increasing cascade of bank failures. We had large banks that were teetering on the edge. I needed an agency that could perform. And demoralized agencies don't perform. They don't. And so I am concerned that this kind of, I think there were real issues, but I also think it was a political cudgel that seems to have now gone away because we have different, you know, people with different political affiliations in leadership positions, and it just isn't getting the priority. After making a big issue about it, now that they're in control, and I'm a Republican, it just doesn't seem like it's a priority anymore, and that does upset me a lot. So look, it's not, the FDIC is a great agency. I've never experienced an agency with a stronger esprit de corps, a stronger sense of history, legacy, the importance of what they do, the confidence they give, bank depositors, their Main Street connection. It is a good agency. It needs leadership. It needs communication, letting them know that you support them, you care about them. It needs better communications to get information in to figure out what the problems are. We did a survey when I came in because I had very low morale when I come in. We did the survey. A lot of it was overworked. There had been a lot of downsizing at the agency and those problems have resurfaced now. You've got IG reports and other independent reports saying the place is understaffed, even as they're talking about cutting. So that, I do worry, and I think that's gonna come back to bite the administration. If all of a sudden these bank failures are not being handled as smoothly as the public has gotten used to, they're gonna have a problem. And it's not just about protecting depositors. It's giving them seamless access to their money. If you have a bank failure, it's gonna take two months to get those checks out, you're gonna have bank runs on insured deposits. Because those are your checking accounts. You need that money immediately. So I don't think, I think it's an underappreciation with the leadership now about how important the FDIC is, how important morale is, and I don't think, from what I'm outside looking in, nobody there talks to me, so I don't know, but on the outside looking it, it doesn't seem to me like they're doing a whole heck of a lot.

KLEIN: So you used, Jeremy and then Adam, but before, as the microphone gets up there, used a word early, a calling for bank examination. And I've always found that fascinating. I experienced a calling for public service when I was 16, and it changed my life. And the only two occupations I've ever heard of for callings, I've never met anyone who said I had a calling to be an investment bank. The only two jobs I've ever heard people have callings for are public service and the priesthood or divinity. And I take your worry not just about the FDIC, but more broadly, when you're demonizing public servants and you have a desire to make the life of the public service worse, not holding them at a higher esteem. And I'm not trying to be political. That can be about a teacher. I mean, they're very public servant doesn't mean that you get a federal government paycheck right? Public servant means that you serve the public in whatever context it has been. I feel like we're at a societal point where we've stopped listening to callings from higher authorities, whatever those may be, and instead trying to get to things where if you're not in search of avarice and power and greed and wealth, then you're not fulfilling your moral obligation to society. And that, I think, ripples broader than just the FDIC. Jeremy?

AUDIENCE QUESTION: Hi, Sheila. I wonder if you could talk a little bit about the weaponization of administrative law and due process in bank regulation and supervision. I was struck when you were listing off the mechanisms of political accountability. You mentioned lawsuits because, to me, that is a mechanism of accountability to the banking sector, into private interests, but generally speaking, the public does not of standing to file lawsuits or. You know, even threatened lawsuits like the banking sector has done so successfully. So can modern bank supervision and regulation function in the current administrative law environment? And if so, how do we rebalance the power between the public and the private sector?

BAIR: It's a good question and clearly the stakes are tilted towards the industry interests that are regulated because a lot of these issues are so arcane, you're not going to get widespread public awareness. The media can help a little bit on that, but yeah, the comment letter is always going to be. And then industry puts out sometimes totally misleading things about what a certain regulation would be, so you've got to fight that. I don't, you know, I think it would be worse though. I do think it'd be worse. If you kind of, if you just made the supervisory process part of the political process and had accountability that way, I do think it would be worse. And there are things leadership can do. I mean, I know when we were doing our real writings out in the post GFC, I would have round tables with the board and we would proactively go out. We get the industry there, we get advocacy groups there, we get academics there, because I wanted a full range of diverse views, and I know the Comet process wasn't necessarily going to produce that. We had an open door policy, and we publicly disclosed who was coming in and meeting with who, and that wasn't real popular with everybody, but I said, no, okay, we want transparency, the lobbyist comes in, a public advocate comes in. Whoever it is wants to meet with you about a rule. That's going to go in the public log and we're going to let people see that you did that and I'm going to do that for myself. So there are ways I think that can help direct the process that you get a broader perspective. But so much of this, you know, we talk about structures and whether it should be independence or not, it should job protection or not. What the standards for litigation should be, all of this. At the end of the day, you can't come up with a structure or a framework that's going to work if you don't have people trying to act with integrity. And in the public interest. And that's why, going back to examiners, the training is so important. I was glad Michelle Bowman mentioned that in her speech, because just setting expectations, making sure they are trained well, but also that their job is to focus on material financial risk. Their job is not to practice favoritism or do friends, you know, management you like, give them a bye when you don't. I mean, all these people are human beings, and you need to set a culture and tone at the top. Where they understand what their job is and will do it with pride and integrity. If you don't have that, I don't care what you do, it's just not gonna work. And certainly, you're not gonna get that kind of energized aspirational workforce. Yeah, if people are just bashing off public services as bureaucrats and not worthy of job protections, et cetera. So I know that's not the easy answer, but personnel makes a difference. Not just on policy, but on process and integrity as well. And if you don't have that, you're not going to, nothing's going to work.

KLEIN: Adam?

AUDIENCE QUESTION: Hi, Sheila. Resolution plans. They've come a long way, but now run into the tens of thousands of pages. What's your take on how they've evolved? Is that information all necessary and valuable? What would you do with that program?

BAIR: Yeah, well there was always a fear of those, you know, those are turned into coffee table books and they were just, you now, I don't know, I'm pretty distant from that now. I was an advocate for resolution plans but I could see them starting to kind of spin out of control and become too detailed, too arcane, difficult. I mean I think this gets back to regulatory and supervisory complexity generally. And you lose that, the more complex, more detailed. That you require these kinds of submissions, the less chances that your boards are going to be able to meaningfully review them and understand them and whether they're any good or not. And I think it makes it more difficult for the examiners too. So I don't, I think that would be a ripe area for rethink. I know at the FDIC I think they're focusing now on the ability to not so much to set up a bridge bank and run it. They need have that plan because if you have a liquidity failure, if you have a sudden run. Then you're going to need to set up a bridge. There's just not going to be a way around it. But the first priority should always be, and this is, of course, for the smaller banks, is to sell it. And Jeremy, I'm sorry, you can have free time after that. But I just, look, we went through this at the end. There was a robust discussion at the FDIC what is there about whether we're going to set-up all these bridge banks and run these banks or whether we are going to sell them. And boy, we're going to sell them. And for a lot of good reasons, one, our losses were less. And I know there's some academic research challenging that, and I challenge it back. The losses were last. Importantly, we continued services to the community the banks served. You can only do that if you're selling one bank to another. And so I do think that being prepared for that, having a list of purchasers, doing an analysis of whether it makes sense. Sometimes it does make sense to just sell the deposits and some of the good assets. Sell the worst assets to troubled asset managers or other types of people, those who invest in distressed assets. So you need that kind of advanced planning. You need to understand the bank, especially if it's a troubled bank. So the smaller banks, I think the direction is going well. But the larger banks, just as an outside advisor, the resolution planning, as well as the stress test seem to me have gotten way too complicated, way too difficult to understand. Maybe not responsive to what we really need to look at. So I think if there's a rethink on that, it would not be a bad thing.

KLEIN: If there's we have time, I'm going to squeeze one more question and please be brief thanks.

AUDIENCE QUESTION: Two quick questions. Sorry, you mentioned the notice that was submitted by the FDIC. This was actually on Friday to the OIRA about supplementary leverage ratio. Do you know if that was the basic SLR or if that was the ESLR that only applies to the GSIBs?

BAIR: Well, that's a good question. I think it's the ESLR. That's what all the public comment has been about. But we don't know. We just don't now. And originally, I thought we were just talking about holding companies, and specifically broker-dealers, who are the ones who do the Treasury market-making, because this whole thing got started, because so is the way there's Treasury of liquidity. So we've got to have exempt. You take Treasuries out of the denominator of the leverage ratio, so they'll have more capacity, blah-di-blah. So what are you doing with the banks then? So we don't know. But, originally, I thought we were just talking about the holding company, and specifically to give relief greater capacity to the broker-dealers, and now I'm not quite sure what the game is.

AUDIENCE QUESTION: Okay, because the title says just supplementary leverage ratio, but …. word enhanced.

BAIR: Yeah. Well that's scary

AUDIENCE QUESTION: I was curious.

BAIR: Yeah, I don't, I'm sorry. I don't, but my insight is not any better than yours.

AUDIENCE QUESTION Second question to be just super quick here. So at the FDIC board, what I'm trying to understand is, so we've got Travis Hill there now as chair, potentially John Gould as another member, and if McKernan's spot at the CFPB is replaced, presumably those would be three Republicans on the board, which is the maximum number from any party. Is there a scenario where we envision the other two vacancies just remaining vacant?

BAIR: I assume that could happen. I haven't talked recently with the lawyers but I don't know why it couldn't. It certainly is not consistent with clear congressional intent to have politically balanced boards at these agencies, but I don't know, I don't know what would stop them.

KLEIN I mean, once upon a time when we served in the Senate and we had a lot of nominations, you needed 60 votes for a nomination. And so even if you didn't like the nominee, they would often get paired with a minority. It was kind of the minority would get someone and they'd go along with the package. And back then, votes were more not tests of would I have picked this person, but is this person within the realm of normalcy. The elections have consequences, the president gets --

BAIR: Yeah, yeah.

KLEIN: And I think kind of there's been a broad change both in the way how the Senate operates and the norms and meanings of what it means to vote for a nominee

BAIR: Mm-hmm.

KLEIN: That we're now seeing trickle down to these multi-member bipartisan boards that have ended at one level of this game theory of just not filling the minority slot.

BAIR: Yeah, and using acting too, so you don't even have to go through Senate confirmation. So yeah, both are kind of going on now.

KLEIN: Great, well join me in thanking and welcoming Sheila. I see Rob Blackwell bouncing around the room somewhere. Rob, if you could bounce your way on up along with the next panel and we will get started. We'll keep going, I should say.

BLACKWELL: We're waiting on a couple of panelists here for those that are online.

KOHN: I don't think I'm supposed to be up here by myself.

BLACKWELL: I was about to say, we can just do a one-on-one. I see Mike Hsu in the background, so I think we'll have someone else here too, so you won't be quite as lonely. It says you sit over there. Aaron, do you want us to go ahead and get started? Oh, she's right there. Okay, never mind. Just give us one second more.

KOHN: There she is.

BLACKWELL: Keep everyone on their toes, you know. Well great, thank you very much. We're all here. My name is Rob Blackwell. I'm the chief content officer and head of external affairs for IntraFi. Before I was at IntraFi, I was the editor-in-chief of American Banker, and was there for a long time covering the various agencies that all three of these distinguished panelists represent. We have a rock star of panelists. All three of them have been in government at critical times in the banking industry. I'm going to give a very brief introduction. You can read more about them in the bios. Because they're extensive and very impressive. I'm going to start with Sarah Bloom Raskin immediately on my left, the professor at Duke University, senior fellow at the Duke Center on Risk. She served in several supervisory roles. She was the Deputy Treasury Secretary in the second term of President Obama. She was a Fed Governor before that. She was Commissioner of Banks for the great state of Maryland, which I know Aaron loves before she came to the Fed. We also have Mike Hsu who served as Acting Comptroller of the Currency for nearly the entire Biden administration. Just ending in February of this year. Prior to joining the OCC, he was an associate director in the Division of Supervision and Regulation at the Fed Board of Governors. Last but not least, we have Don Kohn. He's the Robert V. Roosa Chair in International Economics and a senior fellow at Brookings. He is a 40-year veteran of the Fed system, serving as both a governor and vice chair. And he's served as an external member of the Financial Policy Committee at the Bank of England from 2011 to 2021. So thank you all for being here today. We're here to talk about agency consolidation and supervision. When President Trump won in November, not long afterwards, there was an article in the Wall Street Journal that said that Trump administration was going to take a run at consolidating some of these agencies. That appears to be something that they're not doing or at least not going to try anytime soon because they may have realized the political difficulties in doing this. The last real effort at this was Aaron's old boss, Senator Dodd, tried to sort of create a super OCC. But is this a mistake? Is this a time, I mean, at various times, at various decades, we have made attempts to reform the system, as Peter and Sean's book would say, I don't think anyone would design the current system this way. Should we be making a run at consolidating these agencies? Should we be trying to find a way to make the supervisory system more efficient? Don, you want to start? I'm going to pick on you.

KOHN: So I think the fact that there's been so many failures at this over time suggests, and I can remember from the 1980s and working with Paul Volcker on why the Fed needs to be still involved in supervision and that kind of thing, I think is probably futile. But, and so I think there's, and this has come up in various discussions, I think there's strengths to having. Different perspectives and different histories and different objectives among the agencies, diversity of views usually produces better decisions. I think the weakness is there's a bias to inaction. So when you have to get everyone consensus among all these different agencies, there's some agency that's always holding back that doesn't agree. And that agency then, in effect, has a veto power. And I saw this leading up to the global financial crisis. As Aaron said, Ned Gramlich was pointing out the problems with subprime loans. And I know that the Fed Supervision and Regulation Department was also pointing out these issues. We tried to get at least guidance on commercial real estate, where smaller banks, small, medium-sized banks had very big concentrations in commercial real-estate. They were lending to the people who were building the houses. It was very hard. It got watered down. Now, part of this was OTS, which lost its charter in this thing, but I think it's indicative of how difficult it is to move things along. Consolidation seems like an impossible dream and maybe not worth doing because you wanna keep some of these perspectives, but there's gotta be a way of moving faster, coordinating better, overcoming some of the objections so that if a risk is identified, it doesn't take three years to identify how to build the resilience against that risk. And maybe the Treasury Secretary is one way of. Trying to do this, but whether that person needs a little more authority here or how to do, I think we need to – I'd be very interested in Sarah and Mike's perspective on this, and I think that we need make it more effective and efficient if we're going to keep all those agencies.

BLACKWELL: Mike, you wanna weigh in? Is it worth it?

HSU: Yeah. So I think Don makes some excellent points. I agree with all of them. I come at this through two different lenses. So there's one lens that is basically like a political economy lens. And I think there is a bit of a large bank versus smaller bank issue here, where think of it as the large banks really are upset about the duplication of having so many regulators. And you've seen those conversations. I won't replay them here. Whereas the smaller banks like the choice. They really do. Like the, you can actually take this back to, since we've got some historians here, it does feel like Hamilton versus Jefferson, right? There's like a Hamiltonian centralized things, federalized things, let's money center bank view versus this more Jeffersonian, decentralize it, let's let the small guys thrive. And that tension's always been there. So I think that that's just one way to kind of explain why there hasn't been a whole lot of movement on this and we haven't reconciled that yet. Then the other view is kind of like an architectural view. There's three functions that we have to decide architecturally, do we put them together or do we separate them? Lender of last resort, supervision, and resolution. And there are some jurisdictions where they put them all together into one entity, sometimes in the central bank, sometimes not in the Central Bank. And here, through history, we've decided that these have kind of evolved separately. And I think in practice, it tends to be more of one of degree. Then people realize, because even if you were to stick it all in one institution, there's still different departments and divisions. There's still separate silos. So you have a lot of the kind of frictions, whether or not they're distinct institutions or not. Now, the politics and a lot the institutional dynamics are a bit different, but I don't know if they're as different as people think. And if you look at other jurisdictions where some of these functions have gone in and out of the central bank, like in the UK. If you gave them a different fact pattern, I'm not sure folks could tell, well, did this happen when it was in the central bank or out of the central back? So I think these are some design questions to think through.

BLACKWELL: I see. Sarah?

BLOOM RASKIN: Yeah, I mean, it's definitely a perennial, right? I mean this issue comes up so much. In fact, you could take stacks of all the studies that have been done on, you know, should there be consolidation or should there not be? So it's, you now, like kind of been there, been around the, you no, been around the rink on this a number of times. I'll tell you, the virtue, I think, of the current system is one that probably hasn't been particularly well tapped. But if you think about why supervision is actually why it rests at the different agencies, there are opportunities there that could actually enhance supervision if you figured out ways to combine them. So if you take, for example, you know, the Fed, okay, so the Fed could, if you really wanted to, like, enhance supervision that goes on, you, know, by the Fed of fed-supervised entities, think about kind of well. How about, what is the contribution that monetary policy could make at this moment? For example, SVB, could a stress test include, this is a head of SVB a kind of test on interest rate risk, which we know played a role. I wonder whether the agencies could, if they really thought about trying to do this better. Use some of their existing kind of what their strong suits are and enhance. FDIC, another example, they're there because they're the insurer of last resort, right? Or they're they're insurer. So they should be there. And query as to what that perspective can lend to the examination function. So I think the, OK, take the state, the state banking commissioners, right, the 50 state banking commissioners. They have authority over institutions that none of the. None of the federal regulators have. They'll have the money transmitters, they'll have the check cashers often. Query as to whether the perspectives at the state level could be enhancing supervision. So I think I haven't seen this done particularly well, this kind of using another core strength in your agency to enhance the supervisory process, but I think it suggests if we are trying to do this with an eye towards making things better. You could imagine making things better with the kind of current system and enhancing what's going on in the agencies.

BLACKWELL: So that's a very interesting point. I want to follow up on that, because there obviously are so many discussions about taking away, like separating the various roles that are already there. So the FDIC, obviously, deposit insurer, and it's a supervisor. The Fed famously monetary policy, and it's supervisor. And you're saying these could be made into more of strengths if we worked on combining them even at those agencies. Mike was earlier talking about, I mean, within the FDIC, there's, of course, a division of research and insurance and a division and supervision, and those two things are separate. How do we think about the structural rules you I mean I guess if you're saying that they could be combined more efficiently isn't that an argument for saying we should just have one uber regulator that does all these things that they’re the deposit insurer, they’re the central banker and they’re --

BLOOM RASKIN: No, that gets to be too much. I mean, that's just too much for a monolithic regulator to take on, I would argue.

BLACKWELL: So there has to be some different, somebody, some principal that's arguing with another principal.

BLOOM RASKIN: Right.

BLACKWELL: Mike?

HSU: Maybe I'll go back to something that Meg Tahyar said in the opening panel. The U.S. economy and banking system is significantly larger and more complicated than any other in the world. I think there are certain scale economies that make sense in terms of supervision regulation, but they're also just the resources required to stay on top of everything does require look at a large apparatus just to know what's going on across The 4,500 banks, 4,000 plus credit unions, check cashers, payments companies, et cetera, what is going on? That can't be done with just a team of 10 in one agency. So I think we do have to kind of keep bear in mind the denominators, so to speak, of what we're trying to cover. So I always attack it from that perspective. It's like, what do we need to cover? What's the best way to do that? And I go back to the point Don made. Some of these discussions feel a bit academic. Because if it's not in the probability space, then our time may be better off spent kind of thinking through what are the things on the margins, like Sarah was suggesting, that can maybe enforce some better coordination to get the better outcomes.

KOHN: So the Bank of England, which Christina raised this morning, is an interesting model. There you've got monetary policy, macro prudential policy, where I served on the committee, and micro prudental policy, all in the same institution. And for sure, discussions among, and you have three or four people serving all on the, there's a lot of overlapping membership. There are the external members, like myself, on each committee. But the internal members, there was a lot of overlapping. And for sure, insights from one committee helped to inform what was going on in other committees. And that doesn't mean there weren't some tensions every once in a while between these committees, but I think it was a helpful way. And one example is the stress test and the nature of the stress. So we would sit around, particularly with the microprudential regulators, but also with some of us that came from the monetary policy side and some of the people on the committee who served on monetary policy. What economic events are we worried about that we think banks might not be prepared for? And we did run rates up stress tests from time to time. It was associated with Brexit and inflation and things like that, but we did find a way of sort of melding all those things, and every stress test was an agreement between the micro and the macro prudential regulators and, you know, what are you micro guys worried about, can we help you out with our stress test, that kind of thing. So I think there there's room for a helpful synergies among these three things rather than necessarily rivalries.

BLACKWELL: It sounds like all three of you are at the position, and jump in if I'm wrong, it's not worth doing a big legislative package where we recombine or figure out with all the different constituencies what makes more sense, but it is worth undertaking the exercise of how we can do this internally with the system we already have. Is that about right?

BLOOM RASKIN: And I think that's right, and to Don's earlier point, I mean, what is broke, you know, if it's not broken, you don't have to fix it. But if there is still, like, this lethargy going on in terms of joint rulemaking, I'm not sure a monolithic regulator will necessarily fix that. And, you, know, and similar, if it is a problem of coordination, we've got to just figure out that problem. I don't think you have to go through a big wreck them all to put a new one in its place.

HSU: I mean, this is the argument for the dual banking system, is that you get these competitive, healthy competition, healthy competitive pressures between regulators that keeps the system kind of on its toes, rather than just being a monolith that will only get moved by a crisis or political pressure.

BLACKWELL: So competition is good.

HSU: Now, there's a flip side to that, which is the race to the bottom, which I think is hard to disassociate from that competition. But it's a feature. Not a bug in terms of how we've been set up and so it's something you just have to kind of manage and watch.

BLACKWELL: So the Trump administration's answer to this was they didn't try and pull a legislative package together. And then they were sort of talking about doing it by fiat. And Mike, you were raising the small banks earlier being very comfortable with the regulators that they have, particularly FDIC, where most small banks are supervised. And they put out a statement and said, don't do this. But the answer seems to be that Treasury Secretary Bessent has come out and said listen, I'm when it comes to regulatory policy, I'm the one in charge, I'm taking the lead. And I just want to talk about all three of your experiences because you've all been in chairs before. I'm going to start with you, Mike, because you answered to a Treasury secretary, but I had the sense that you had a fair amount of independence from Janet Yellen. And she wasn't coming to you and saying, you are going to do X and Y, and I don't think that's what's occurring right now.

HSU: That's correct, that's correct. I had a lot of alignment with Secretary Yellen in terms of priorities, values, etc. So there wasn't, I think we could fill in each other's priorities and things to focus on. So that may have been part of the reason for that, but that's exactly right. I was fairly independent at the time. I do think this question of independence should be broken down into independence for what purpose? I think it's one thing you can do is. Crisis is different than day-to-day supervision, which is different from regulation. So in a crisis, you absolutely need to have massive amounts of coordination. There has to be a quarterback. You need everyone on the same page. And in every crisis I've been in, that happens almost automatically. There's very little friction to that because the stakes are so high and everyone kind of takes off whatever jersey they wear and they're like, we just have to solve this problem every single time. In day-to-day... I think the argument for that kind of centralization in the political body loses its power because day-to-day it's lots and lots of decisions every day at a ground level that, why is that being elevated to the White House? And then regulation, I think, is somewhere in between. It depends on what the stakes are involved with that regulation. And to me, there's this question of the political system provides a feedback loop is one way to think about it. And so the job of the regulation is to ensure that you've got a system that's safe and sound and fair and earns the trust of the people. And part of that trust is dependent on that feedback loop. So it's not to deny it, but that feedback loop can sometimes go a little haywire. And so how do you manage that so that you're getting the best of what that feedback group provides and at the same time bringing technocratic expertise, which is really valuable, to make sure that's doing the best for the American people. And I think that's, there’s not an easy, one size fits, there's not a single answer to that in all cases.

BLACKWELL Sarah, what's your thought process as you were at Treasury? How involved do you think Treasury should be in dictating or guiding or at least leading on regulatory policy?

BLOOM RASKIN: I mean, there's a lot of great expertise at Treasury. Treasury has the FSOC, shares the F OC, and remember has the anti-money laundering piece. So generally, I mean Treasury doesn't have much in terms of bank supervision or enforcement, but when it comes to AML, it is like very, very critical and plays an important role. So I would not, you know, want to over, you know sort of overlook the BSA AML piece. In terms of the formulation of policy, I think the FSOC is actually a very good mechanism for bringing perspectives together, actually. So it is, as you all remember, as it was designed, it's the top people at the agencies. So there can't be any of this kind of shirking from any kind of risks that are developing in between the seams of the agencies, they really have to come together and try to confront this, they have to. Put out a report every year where they see stability risks. So that is all, I think, very good. And I would add one of the, at least in my time, what I saw happening that I thought was very functional was one-on-ones occurring between the secretary of the Treasury and each of the heads, so that there was a sense that people weren't necessarily gonna move into a group think, that the secretary could kind of see in the role of chair. Some things that might be percolating. So I think that is sort of an important feature and keep in mind that there is a lot of really good work going on under, sort of under the heads of the agencies. Very good non-stop, not just crisis related work, but very strong work going at the deputy below and staff level, which I think is exceedingly valuable. So I think Treasury is an excellent mechanism for actually having views and being able to move things forward.

BLACKWELL: Don, what's your view?

KOHN: So I think the Secretary, the Federal Reserve, as a member of the Federal Reserves Board, I felt like I had a responsibility for financial stability and that supervision regulation had to help bolster that, help me achieve that objective. It's not totally explicit in the Federal reserve act, I get that, but it certainly has been a responsibility for the Fed from 1913 on and often believed and been up there testifying often enough where they said, why did you let this happen when it had nothing to do with what the Fed was doing, right? So I think the public and the Congress holds the Fed responsible. So the Secretary of the Treasury and the board members have responsibilities under the Federal Reserve Act. So I the Secretary the Treasury's job, if he wants to move something forward, is convince the Federal Reserve Board that that it's consistent with their remit for financial stability. Kate brought up the issue in the previous panel of how these cycles go, and I worry that their amplitude of the cycles is getting bigger and bigger. So if the Secretary wants to reduce capital requirements for banks, then they need to And he... Needs to convince the Federal Reserve Board that that's, I think, is consistent with financial stability. So he can lead, but he needs to be persuasive. On FSOC, I think it's a great idea, and I always saw it as the analogy to the Financial Policy Committee at the Bank of England, but I think its been, and this came up previously, I think that it's been held back by the need to find consensus. And... It doesn't identify risks that the individual agencies don't agree to, it doesn't make recommendations that all the agencies, in fact, it makes very few recommendations, right? Or it has made very, very few strong recommendations, doesn't have that much authority. So, I think it's a great idea that, whose execution has waxed and waned with administrations. Now, some of that's fine. That's, elections have consequences. But I worry about the waxing and waning, amplifying the Kate Judge cycles that I worry about. So I think it could be better, particularly if it were less consensus driven. And the secretary was then held accountable for what risks she identified, how she identified, building how to build resilience having that whole commission have to, whole committee have to have to reach a consensus. Now I never served on it, Sarah has, Mike has. I don't know, tell me I'm wrong, that consensus building wasn't a problem.

HSU: I wouldn't say it wasn't a problem. Consensus building always, there's a saying, faster alone, farther together. So you can do things much faster if you're by yourself, but if you want things to last, getting that consensus can be worth it. My observation on FSOC, so I was at the SEC during the 2008 financial crisis, and I was part of a program that no longer exists that oversaw Lehman, Baer, Goldman, Morgan& Merrill. And I remember for Lehman Brothers, when Lehman Brothers was going down, we had one of the first meetings where it involved all of the regulators for the various entities of Lehman Brothers, and it was the first time that we were meeting each other in a room. It's like, wow, the OTS is here. Wow, it just, it was, no one knew each other, and suddenly you're having to share information, like, why am I sharing information with you? It was such a disaster. And so one of benefits of EFSOC is you are physically together periodically, And not only. For every open meeting, there's a closed meeting. In the closed meeting, you have private meetings. You're meeting in the hallway, you're talking on the side, you get to know each other. That has a lot of value that is very hard to quantify. It's kind of this intangible, but it makes it much easier to pick up a phone and call somebody when there's something going on, like an SVB or something like that. Those things all help, with those frictions, which makes it easier for principals to say, hey, let's get our staffs together to work on X. So I think that that is quite valuable, and it's quite different than pre-2008. Pre-2008, you have the President's Working Group, you have some other forums, but it wasn't like FSOC. Now, in terms of the output, I think that that has waxed and waned depending on who the Treasury secretary has been and how much investment there's been in the FSOCs staff in the process. And I think it's still kind of young, if you think about it, in term of its maturity. And, you know, perhaps we'll... Figure out the right groove where it can kind of get the best of both worlds, where you get those different perspectives, but it's not a veto-cracy, which I think is one of the concerns that Don rightly puts.

BLACKWELL: So I have a sort of journalistic perspective on FSOC, because I was there, I was a journalist when it was created, and then I've covered it for a long time, over a decade. And it gets at what you're talking about, these public and private meetings. The regulators, like you, will come out and tell me it's valuable because behind the scenes, you know each other, you get to interact, it's good. When there's, sometimes there's not a public meeting, it's private, there was a closed-door FSOCs meeting, so the public has... I mean, beyond a literally single sheet of paper, we don't know what was discussed and who said what. But then when we did have public meetings, I would say it wasn't much better than that. It felt very scripted. It was very Kabuki theater-esque. I'm gonna ask you this, you're gonna answer that. Peter and Sean talked about this at the beginning of today's symposium. They talked about that bank regulators seem addicted to secrecy. And I wonder, is there a way to have a public FSOC meeting where it doesn't come off as very carefully scripted, and would that help if we saw debate between agencies, even within the same administration, taking different points of view? Why do we always have to have these debates behind closed doors where the agencies are only speaking with one voice ever?

HSU: I think it's a very fair question to ask. I have mixed feelings about this, because I know what it's like. I've been in those meetings where, because it's closed door, people can speak more freely. And because people can talk more freely, you have a better conversation. Someone can voice something that, if it's not behind closed door, if its going to be on the record and it's going to get published, they are going to calibrate to that. Versus, hey, I disagree with that idea. Here's my thought. Let's have this discussion. And that's a fine line because I can tell you, like when I was sitting on the FSOC, we had some pretty detailed, just the mere fact of having a meeting to talk about, say, commercial real estate. There's a whole army of folks that input a ton of analysis, bring that to the table, and a lot of the debates have been had through that very process. And then you get to the principals, and now you're talking about, okay, what do we make of this, who should do what, all of that. And then you just get the perfunctory readout. The perfunctory readout is... It's unsatisfying. And I think that that does deserve some thought about, okay, is there something more that can be shared without necessarily turning then the closed-door meeting into its own perfunctory performative meaning? Because we've all been in those, and that's not a good use of people's time. I mean, that's a good, if you're gonna get principals around the table for a couple hours, you want that to be productive.

BLACKWELL: Right, I wanna see debate.

HSU: But once the cameras come on, it's, it does get in the way of kind of open, honest engagement. And then what happens, then it all becomes bilateral discussions in the hallway, in smoke-filled back rooms. So you're kind of chasing something that I think there's a better balance can be struck. I'm not quite sure what that is. But I think it does warrant more creativity in thinking and a little bit of risk taking probably by principles in terms of how to do that.

KOHN: I think about the Federal Open Market Committee as an analogy here. And beginning in 1994, we started releasing transcripts even five years later. Those meetings turned from very informal lots of give and take to people reading scripts. Now, every once in a while, a real discussion would break out, right, Sarah? But there was a lot of script reading there. And then at the end a one-page announcement comes out right now the one thing i thought about with with this is that's followed by a press conference right supposed to work press conference where the secretary had to answer questions related to financial stability and financial risk after this, even on top of this one page thing that might be an interesting press conference.

BLACKWELL: On behalf of journalists everywhere, we agree.

BLOOM RASKIN: You know, I'm just sensing, it sounds like people want to kind of bury FSOC, like FSOC isn't a good thing. I want to say one thing, just in defense of it, okay, but which is, by the way, it was put in place not really just to be a mechanism by which the heads would talk to each other, but remember enhanced prudential supervision? Do we remember that? Do you remember like the need that if you're above a certain threshold you would automatically be deemed systemically significant institution and you'd have to be sent over to the Fed for enhanced prudential supervision. That, by the way, was operative. That was working. There were institutions that went over the threshold, bank size-wise, and there were institutions that were non-banks that were deemed to be systemically-significant. Okay, so then what happened, what then happened, was that there was a, you know, challenges that those, that the non-banks that didn't like to be subject to enhanced prudential provision by the Fed. Challenged the findings of the FSOC, challenged either arguing that the right process wasn't taken or the right considerations weren't met, in fact met life being one of them and met life one in court. FSOC backed off, did not proceed with the designation. Prudential was another institution, did not proceed with the designation. And then there were institutions also that because of their size had been and complexity had been deemed GE Capital being one and then what happened with GE Capital it reorganized itself and it said wait a minute we've now reorganized ourselves in such a way that we they went back to the FSOC and said we aren't systemically significant anymore so they worked their way kind of through it which I think is kind of an it you know that remember if you think about what the goal is of The FSOC is to... To designate, to identify where these risks are outside of the banking system perhaps, then this idea of kind of reorganizing the way GE Capital did is actually kind of going according to plan. That's kind of according to what FSOC was meant to do. So if there is kind of this sense now that, hey, what is FSOCs, now we don't do designations by entity, it's going to be activity based, if there is this sense of... Kind of a weakening of it, I just want to remind us all what is, why it was created to begin with and what might need to get, what we might need to do to replace those functions.

HSU Can I maybe just add one thing? It is really hard. When do you know FSOC has been successful? It's very hard to know. It's very easy to say when it's failed. But it's very to say, when it has been successful. And so we'll take, for instance, there's been a lot of discussion about the rapid growth of private credit. So every single financial stability group that's been out there has written lots of reports and monitoring and surveillance about that. Knock on wood, so far that hasn't manifested as a financial stability risk, is that a victory because all of this apparatus has now trained a lot of firepower on this and therefore there has been, or not? It's a question mark and it really depends on what your counterfactual is. This is what makes this so hard. I think it makes supervision really hard. When do you know supervision has been successful? I think that's something that without a bit more transparency or communication of some kind. It's hard to have that in a way where the public can just buy it and so I'm just it's it's something i think that does deserve quite a bit more thought but how these things get discussed shared debated without kind of uh... You know killing the goose at least a golden egg of where it is doing the right work uh... There was an early discussion on CSI. If you had no CSI, I think the whole supervision process dramatically changes and is that good or bad I don't know. I think that that does warrant a lot of discussion.

KOHN: I have a comment and a question. My comment is, I think part of the problem with FSOC is that there's not a general acceptance by all the agencies that macro financial stability is part of their remit. And you saw when early FSOCs made recommendations on money market funds, some SEC commissioners said, wait a second, financial stability isn't our thing. Our thing is. Market functioning, et cetera. So I think it would be terrific to have all the agencies, this would take a law, have every agency on FSOC have its own financial stability, have a financial stability mandate, and have at least a group in the agency that would look at all the rulemaking and say, is this consistent with the financial stability mandate? And I think that would help to. Help to socialize the macroprudential thing a little better across. My question for my two colleagues here is, this is about supervision. Does FSOC ever discuss supervision? Or is that more on FFIEC? And how to think about the coordination in FFIEC or in FSOC on supervision?

HSU: So it depends. So, so I can say like after Silicon Valley Bank failed there was a lot of discussion of liquidity and the liquidity positions of banks generally, so you a lot a lot that macro analysis But then you really needed to specifically get down to because look everyone was running the same screens. Which banks have high unrealized losses, which banks have higher uninsured deposits. That's not a secret. And so the question naturally is like, well, you bank regulators, how are you comfortable with the liquidity positions of those banks that are in that risk position? So in that sense, it came up, CRE is another example, or commercial real estate. Again, you can talk in generalities and get all that great analysis, but at the end of the day, which institutions does there need to be a focus on, kind of discussion of? So in this sense, supervision definitely does come up. But it's not in a directive sense of FSOC saying, you know, supervisors go there, supervisors go there. It's more of kind of intel up. And then there's a discussion of, and I can just say, having to go and present and defend those things to your colleagues does exert pressure on the institution to kind of get its ducks in a row. And it does have a positive impact on outcomes.

BLACKWELL: Sarah?

BLOOM RASKIN: I'm curious as to Don's question, like why, what are you getting at?

KOHN: Well, I just was trying to bring it back to the subject of the book.

BLOOM RASKIN: Okay.

KOHN: Supervision. I mean, a lot of our – I mean the division, as they know, between supervision and regulation isn't really hard and fast in many respects, but I wondered whether this – the space between public and private and rules and discretion, all the stuff that was pointed out, whether that comes up in the FSOC and then also FFIEC.

HSU: So let me say a word about FFIEC. So I happened to be chair of FFIEC for two years when I was acting comptroller. And so the mission of FFIEC is uniform supervision. And I think this is one where, what's the Buffett saying, like when the tide goes out, you can see who's swimming naked. When you get certain events, you do get a better sense of where there's been uneven or inconsistent supervision. And I can say that. For interest rate risk and liquidity risk supervision it was not consistent and so one of the first things we did, I did as FFIEC chair is we are going to now do a review to make sure that this is consistent across all the federal agencies and the state agencies and everyone agreed with that that was you know I think it was a reinvigoration of we do need to be, uniformity is good doesn't mean we all have to have kumbaya consensus on every little…but putting that all side by side is good for the system. It does take quite a bit of work. But we do have mechanisms for that. Sometimes they just need to be re-energized a bit or refocused.

BLACKWELL: So you talked a little bit about the need for consensus ruining things, but I think Aaron and I are fond of bringing this up. The Dodd-Frank Act requires the Fed to write executive compensation rules. They put out a proposal, it got withdrawn. We are how many years, you know, 15 years past Dodd Frank, there is no rule like that. It seems to be…and it's required by the law. If Mark Calabria were here he would he he would…you know it's how do how does an agency be ordered to do something and then not do it? And it seems to have died because of the impossibility of finding consensus between everyone. Can, can we talk more about that, I mean like do those kind of examples of like how does that work when Congress requires uh... An agency to do something but it it can't get it done

BLOOM RASKIN: And not only did they require it, they required it with a deadline. There was an actual deadline. It didn't just say, you know, take it on in your free time.

BLACKWELL: 15 years.

BLOOM RASKIN: Like a deadline. Yeah, and years, years have passed on this. I can't believe, it's still not done, huh?

BLACKWELL: It is not done.

BLOOM RASKIN: Yes, I mean, I was working on it.

BLACKWELL: But, I mean, how do we fix it? I mean that seems like a problem, and how do we fix it? I've stumped the panel.

HSU: Because in that specific instance, you need six agencies all to agree on every single word together. That's tough.

BLOOM RASKIN: Well, it's been done before.

HSU: It's definitely been done before but --

BLACKWELL: Volcker rule? Volcker rule might have been even more than six, right?

HSU: But it's not impossible, it's tough, and then it comes down to what hill do you die on as a principal in terms of the changes you want to see made, and do the Venn diagrams overlap enough that you've got something that all six agencies can agree to and some rules, you can get there, and you know, that's...

BLOOM RASKIN: How about some oversight? Maybe that would do it. Some strong oversight from Congress saying this was directed to you to do by a certain date, sort of haul up the principles and make them explain kind of what's holding this up. There's nothing like that to actually force a consensus. I think you could get it done if there were some real oversight.

BLACKWELL: Sure, and I know at American Banker, we used to bring it up too at the Fed press conferences. You're referencing more press conferences, and the chairman giving a press conference is a form of accountability. But the answer was always the same, by the way. It was always, yeah, it's coming soon. And again, it has never come. I want to talk a little bit about the differences between the agency's cultures, because some of you have worked at multiple different agencies, and in the state regulatory system and at the federal level. Sheila talked about tribalism at the different agencies, but how are the cultures different between Fed and Treasury or Fed and OCC or Fed in FDIC and how does that make supervision more challenging?

KOHN: Well, I'm gonna, I'm going to let the people who were, were actually supervisors in the agencies start.

HSU: So, I mean, I would just start. At the Fed, there's different cultures. We often talk about the Fed as like one big Fed. Well, you've got the board and you've got reserve banks. And the cultures across reserve banks to the Fed certainly pre-2008 were quite different. Now, after 2008, you got the re-org where you've got the LISCIC program overseeing the GSIBs. That was an attempt to basically say this diversity of cultures led to a blind spot. It led to Lake Wobegon effect. Where everyone was above average. That just can't be the right way to do it. So there was an attempt there to centralize that to create a more singular culture around the supervision regulation of that cohort of GSIBs. But a lot of it is informed by the, kind of the core experiences of each agency. So at the Fed, it's a heavily PhD economic-driven monetary policy culture. That's in lender of last resort discount window. That is very, very, strong. And any time there's an emergency, those are the actions, those are hard decisions that the Fed has to make with regards to the banking system. The OCC, it's chartering and supervision. That's, in the DNA of the OCC. The FDIC is gonna be resolution. So these are three different kind of starting points, if you will, that really heavily inform the scar tissue that people build up over time. That really feeds into like. How you approach things, how you look at things. And I don't think that's a bad thing. I think that it's good for those to kind of coexist in that way. They are different, though. You just have to learn it, and that's what makes supervision interesting. Sarah, is it a good thing?

BLOOM RASKIN: I think it is a good thing. I think Mike just made one of the best arguments I've heard actually against regulatory consolidation. I mean, that's because these cultures actually... You want a lot of these perspectives. Let's be clear on this. Supervision, it is an art as much as a science. And so you really want some good judgment here that is deployed in these situations. You don't want it to all be just the PhDs. And you don't it to be all the people who have a different singular background. You like the idea, we like the ideas of actually bringing in. Perspectives. The states, for example, I mean, you have to be very pragmatic at a state level. You can't kind of boil the, sort of boil, the ocean on a regulatory matter because you've got limited resources and you're going to just be quite pragmatic. You want to figure out what is the quickest way to actually deal with the problem and be done with it, and be don't with it. And not have it, you know, not have it linger, not actually have every single expert weigh in on it, but just make a judgment call from your gut, you know, supported, but feel like you've got the right. You know, that you're doing the right thing, that is, I think that there's a role for that in supervision. And I like, you know what, that's one of the things I liked about, you know, being at the, at the being the commissioner at the state of Maryland, you know, seeing those kind of, you know, experts really give, really use, make good judgment calls. Like they had seen this before. These were seasoned examiners and they kind of had a sense as to, you know, what you do in this situation and how you act quite pragmatically and You move on. And what kind of enforcement piece you put in place, if necessary. How you put it in place and when you take it off and what you look for. It's really efficient. I like that. Would we want that mentality to pervade and be like the G-Sib mentality? Probably not. Probably not, there's a role I think for actually having some good macro analysis going on. In a GSIB context, but we've got a varied financial sector. We have institutions that are so completely different from one another, why would we not want supervisory cultures that are themselves different?

HSU: Can I maybe make a macro point about going forward? So there's all these charts now in the AI world of this acceleration of all sorts of things. And I do feel like in supervision, there's something similar going on. Banking, for a very, very long time, didn't change. The business of banking didn't change a whole lot. You take deposits, you make loans, you facilitate payments, like that. Those activities. You know there was innovation but that innovation took place over decades years now we're entering a phase where these things are happening very very fast and so i think i do think the supervisory culture does need to adapt to just and i think this gets to Don's point just being much more nimble that's not in the DNA of supervision and i keep it that is something we are going to have to work on is being able to assess a changing landscape and being able to modify what you focus on. How you focus on it, how you do things, what you escalate, what you don't escalate. And this is really, really hard when the public-facing part of supervision tends to get raked over the coals any time some little thing happens that can't be explained, as if that's the supervisor's fault. And I think this has kind of increased over time. And I know one of the earlier panels, I think it was Jared who was talking about defensive supervision. That's absolutely right. As a supervisor... Always lurking in the back of your mind is, if I don't cover this thing well and something happens, I'm going to get hauled up and yelled at. Or hauled in front of Congress, whatever the thing may be, which leads to a very much of a checklist mentality. And I think that's something we really have to guard against. And I've talked to some members of Congress in one-on-ones about, you know, look, if you want to have more risk appetite, if want to more denovo's, if we want more risk appetite within the banking system, Then there has to be a little bit of give when things happen in the banking system that it's not immediately like who do we blame for everything because that does seem to be part of the the ethos now around banking is that every single failure is bad like we have to find someone to blame uh... And I think that that comes down in ways that are not healthy either for supervision of the banking systems.

BLACKWELL: So I want to throw it out to the audience to see what kind of question we have. Already we have a first question over here, if you just wait for the mic to get to you. Una, I see you in the back.

AUDIENCE QUESTION: Mr. Kohn, you talked about a possible financial stability mandate for some of the regulators. There are actually a couple other types of mandates that are being discussed right now. Secretary Bessent, not a mandate, but has said that the bank regulators need to be concerned both with safety and soundness and with economic growth and the rule makings that they put out. Economic growth declared the digital assets clarity act at the house is going to be host financial services going marking up this week has a provision in it that would add a sort of mandate to the s e c that you didn't include innovation in the list of factors that it considers when doing rule makings i could see this potentially growing into something bigger where maybe other you know they would be other mandates for either economic growth or for innovation at other regulators. What do you all think about if that were to happen, would that be a good or bad thing?

KOHN: So I think a little bit, Christine talked about this this morning, what comes from the chancellor of the exchequer to the financial policy committee, to the monetary policy committee. This is your main goal. Subject to that, pay attention to the government's policies having to do with growth. So I would be very concerned if somehow the growth goal was elevated to even or certainly above the financial stability, safety, and soundness goal. So your first job, and it's a really hard job, is the safety and soundness of the banking system, the broker dealer system, the markets, whatever. Once you've taken care of that, or as you're taking care of that, think about these other things too. I don't have any problem with that, and those things will change with the administration. That's, elections count kind of thing. I don't see that as a problem but I would be very concerned if the growth goal started taking precedence because then you're just building a future problem.

HSU: I would maybe put a... I agree with Don on that there are jurisdictions where they've got the safety soundness goal paired with a competition goal and so that has coexisted in certain jurisdictions and what you see in those jurisdictions is that there's a higher tolerance for failure for bank failures uh... In a way that we don't have here and I'd I'd I think that's, it needs to be very carefully calibrated. And I think that that's that's the key because if you can calibrate that right that's not a bad thing uh... And I think it's good to kind of look abroad to see how that's uh...for evidence of that. I do worry though that that's a euphemism for let's just you know grow-grow-grow and we see where that where that usually leads eventually

BLOOM RASKIN: Yeah, I think supervision is hard enough. I really do. I would keep it just at supervision. And if there is a growth, sort of a growth agenda, figure out where that fits. But I would it away from supervision.

BLACKWELL: I have one question in the back and then Aaron

AUDIENCE QUESTION: Not so much questions, but posed in the form, would this be helpful? And I'm taking here some elements of, unsurprisingly, I'm much more familiar with the UK structure of regulation and supervision. First of all, I always get annoyed when if there's a bank failure, such as SVP, everybody turns on the supervisors, on the regulators. It's like turning on the police every time a criminal commits a criminal act. Sorry, but the leaders of the bank are, quotation marks the criminals involved here. And so that's where the blame should be focused. Could be easier if supervisors worked according to a set of principles. And I'll just mention two or three of the principles which guide all UK regulation, act at all times with integrity, be honest with your regulators, and ensure that skills and competence are available at every level as required. We also have senior management responsibility. So senior bankers are responsible for specific areas of the conduct, practices, money-making activities of the bank. They are the person responsible to have a named executive responsible for what has gone wrong with the bank And that person should only be appointed, allowed for the appointment to go ahead if the regulators agree that senior manager X has the requisite skills, knowledge, and competence to carry out that particular task. So these elements, supervisors have. The principles to act on, and just as a byline here, I would say that those principles also enable proper convictions to take place in courts. LIBOR was never supervised by the Financial Services Authority, but for a peculiarity of history by the British Bankers Association.

BLACKWELL: Una, I don't want to cut you off, but I want to get the panel's reaction.

AUDIENCE QUESTION: All those responsible for manipulation were successfully tried in court because they had broken one or other of the principles, not necessarily specific rules. And that's a very interesting and important point to me.

BLACKWELL: I think the overall question is, is there a country that you look at where you think they've got a system that the U.S. system could learn from, take inspiration from, something where they've seemed to have avoided a problem that we continually encounter, and maybe one of them is this need to blame someone whenever there's a bank failure.

HSU: I mean, the UK, the senior super, the manager's regime in the UK is very interesting. It is quite, there's a lot of overhead that's involved in terms of implementing that regime. And in the U.S., that would be very, very hard to do at scale. But there is, I totally agree, look, individual accountability when things go wrong at the bank level is, that's underweight. That's usually underweight relative to. Where the blame should be. And I think it kind of loops back to the exact comp discussion that we had earlier.

KOHN: And I think the senior managers regime involves much more intrusive oversight from the regulator into the bank. You have to approve a lot of managers, which would be very difficult to get implemented in the U.S. Or be a heck of a lot of resistance to them.

BLOOM RASKIN: I like the instinct behind the question that the safety and soundness of the institution rests with the institution. That is the primary place it rests. We can all really do things to make the supervisory process better, but ultimately the primary responsibility should be on the institution, and that would actually make it work better. I like that. Behind the question. And I also should say, It reminded me what was done in Sarbanes-Oxley, which you'll recall for those of you who remember Sarbanes-Oxley, it's sort of the CEO or CFO has to sign off on the representations and warranties that are being made. That's an accountability tool. That goes to the question of like, okay, do we own this? Do we own what we're actually saying in the institution? So I think there are mechanisms before we even, you know, think about other countries that we see in our own country where we could improve the accountability.

HSU: Maybe just for at least, I mean even to this day, if I'm at a party or a gathering with friends, people today will still ask me, how come no one's in jail for the 2008 global financial crisis? Which I think is a very, it's an important question because I think it gets exactly to the instinct behind the question is like, well, who is on the hook for these things? And I want to loop back to something that Peter opened up with in the morning is that supervision kind of lives in this liminal space that's outside of things that are explicit, because it kind of catches a lot of this stuff. But that means that supervisors are easy to blame for all of these things. If there's not enough growth, blame the supervisors. If something goes wrong, blame the supervisors, and so it just becomes like I remember when I first took a senior job, this is at the Fed. Uh... The person who who promote me said when things are bad you're gonna get blamed for not having done enough. And when things were good, you're going to get blamed for slowing everything down. This is the job. If you don't, if you're scared of that don't take the job because this is a job. And you know, you can kind of chuckle about that but I think we're hit, we're starting to hit the limits of just having supervision just absorb all of that without having an outcome that's... At the end of the day, you want to build trust. Like all of this is to just build trust in a system that works better. And I don't think we've kind of found that balance point quite yet, but I think a lot of these discussions are driving towards that.

BLACKWELL: I want to get to one final question from Aaron, and then we can wrap it all up, unless you want to.

KLEIN: I was going to try to go towards where the book ends. The book ends with a conversation about the expansion of bank supervision, not just from safety and soundness, but to what I would call consumer protection. Don't discriminate, illegally discriminate on race or on gender or on other areas. One of the things, tensions that was ultimately behind the financial crisis and I think was ever resolved fully was this tension between, what happens when ripping poor people off is immensely profitable? And banks that found the supervisor's role on the one hand on capital is earnings, right? Profitability. Sometimes it's really profitable to charge really bad and often illegal practices on lower income people. Congress attempted to resolve this by taking supervision for larger financial institutions out of this tension with the primary regulators who were so worried about failure in the insurance fund or about the earnings of their bank and rested it in the CFPB. Now, what we found going back to the earlier panel was the elimination of independence of the CFPB by the Supreme Court and a current CFPB acting director who sent all the examiners home. Period. We're not going to supervise for discrimination. I mean, I guess that's one way to not to say discrimination has been solved. How do you guys see the tension from where you sat at the Fed, at the OCC, at the state and at the Treasury level In this tension, the supervisor has... They seem to have no problem if the bank has too much of an earnings allocation on certain types of assets that are in their manual. But if their profitability stems from ripping off poor people, I've yet to find a supervisor that's willing to take tough corrective action and threaten that bank's solvency or business model, in my experience. How do you wrestle with that tension in supervision?

KOHN: So I'm going to take issue with the premise. I think the subprime crisis, I'm sure there was ripping off involved there. But it was more about encouraging people to buy houses, to get mortgages that were bigger than they really could afford, et cetera. And that had the backing of several administrations. Bush had the ownership society, et cetera, so I think we were... I'm not sure it resulted from, I think the supervisory failure was to see the risk that this posed to the financial system, a lot of which came from outside the banking system. All these mortgage originators were state-regulated originators, et cetera. So, I don't see that subprime crisis as having resulted from supervisors saying, go ahead and rip off the public.

BLACKWELL: I feel like Aaron's referring to things like fees, overdraft fees in particular.

HSU: I think about it at three levels. First of all, banks have to comply with the law, period. If there's a law against discrimination, they have to comply with that. If there is a law of fair lending, they have to complied with that, so that's just number one. Those are table stakes, and supervisors do supervise for that, both specifically and more generally. Second, earnings is not just more money good. Supervisors look at what is the quality of those earnings, what is sustainability of those earnings. There's a texture to it, and again, this is I know a CSI discussion is like. For different institutions, what is the supervisory view of those earnings? And that's case by case. But the third more general point is the one quibble I have with a lot of the discussion of safety and soundness, most people use that in a very narrow financial sense. I don't think that's right. I think of safety soundness as more broad, as simply safety and soundness is about trust. Can you trust the institution? Now a lot of that trust does rest on financial condition, but it also rests on if you're a financially, quote unquote, sound institution that's just ripping everybody off, that is not a trustworthy institution. And I think we learned that in 2008. And so I think there is, and the way, you know, I've always squared this is that the ultimate objective is trust. How do we get to the ultimate objective? And it really depends on both the institution and how these things come together in a particular case or for a particular policy issue. There can be those trade-offs that you're highlighting, Aaron, but I don't think it's as sharp, necessarily, as you presented.

BLACKWELL: Sarah, you want the final word? You good? Well, I want to thank the panel so much for being here. If you could please join me in a round of applause. Thank you. Thank you very much. I'm going to hand it over back to Sean.

VANATTA: All right, so at the beginning of the day today, I gave you all a chance to get off the airplane and yet here you are at our destination. So thank you. Wow, I mean, thank you all for coming. Thank you, Aaron, for organizing this. Thank you, Brookings. Thank you, Megan and all the other staff that helped put this event on. Thank you to the panelists. Thank you all coming. Thank you, Peter for not killing me in writing this book. So, you know, a lot of this has been a conversation about the kind of present and future of bank supervision, and that's often territory where historians feel quite uncomfortable, right? We write about the past, we think about the pass, but I think we also recognize that in our historical moment, the past really matters for policymaking. It matters for the reasons we discuss in the book, right, the institutions that have are the result of historical processes. They matter for what these institutions will look like in the future as the Supreme Court in particular is quite interested in certain types of historical interpretation for the decisions that it makes. And so this, I hope, is maybe a plug for incorporating more historical analysis into the policy conversations that are happening in this city or happening around these topics because the past really matters. As we heard today, we have supervision because the banking system is dynamic. The risks that it creates are dynamic. And so we need dynamic government oversight that's a bit more than just the rule book in order to ensure the safety and soundness, the proper functioning, even things like innovation and economic growth within our system. I would say, Peter, I might disagree about this, but I think the shadow banking system is one area where with. Uh... It's continued expansion at least if we look to the past that's often a danger when finance develops outside of what supervisors can see uh... That could be a real potential area of problem a catastrophe we heard a bit about that today i think today we also heard about consistent challenges in supervision so uh... I think might call it defensive supervision uh... Jared talked a bit of that over correction We have issues like the limited attention of bank management, so how do we prioritize supervisory advice, recommendations, requirements, and this consistent problem of supervisory duplication, overlap, and its relationship to potential consolidation. And then another area I think that was really important for me or interesting to me in terms of the conversation is this question of personnel. So we talked about a bit how personnel is policy in terms top-level decision-makers, personnel is a policy in terms Who the front line examiners are. We talked a bit about how important expertise is, and the only way to get expertise is really good recruitment, retention, and training within the supervisory agencies. And then I think the last point, and maybe the most important, is the value of public service, right? That to get people to take on these careers, to see supervision as a calling, if that is something we can imagine, means valuing public servants, valuing public service and making that career seem like one is not only financially rewarding but that is personally and professionally rewarding as well so those are kind of my takeaways from the conversations today about pass it to Peter and…

CONTI-BROWN: Thanks so much, Sean. It's so fun to be engaged in a project as big and meaty as this with someone who becomes like a brother to you. So it's a great tribute to that co-authorial bond. And also just my gratitude to Aaron, who's also in that fraternity. Aaron and I argue a lot about a lot of different things. He has an inexcusable and unjustifiable affection for the band Phish, for example. And most of our disagreements stumble from that. But otherwise, what Aaron does, and you saw this on display here, is Aaron is a great intellectual and he's a great convener. And those two things, he's also a great public servant. I want to pick up where Sean left off. Uh... With my concluding thoughts on this project in this conference the first is that we have not only uh... In the United States an extraordinary financial system with a great history a unique history but it's a history that is composed of and these people of course have their imperfections they have their incentives that their motives that their failures uh... But my one of the things that i hope that readers get from our book is just this kind of sense of admiration for just how hard it is to manage financial risk subject to so many limitations that we have just inherent in the system. Now, Sean is right. I do disagree with him a little bit on the shadow banking question, because shadow banking has been with us from the very beginning. For the supervisors at the control of the currency, another name for shadow banks are state chartered And we will always have supervisors who look through a glass darkly. But what's so extraordinary to me is how well they adapt, how well the succeed, sometimes because Congress changes the structure of these things, sometimes because the agencies do. But very often because the idea that examiners are just anchored and chained out of institutional fear to check the box compliance mentality. I think as a canard and a libel, I think examiners and supervisors make plenty of mistakes, most of which we can't know for certainty. They have had plenty of victories, most of which, we can know for a certainty. But what our book shows is that they're just actively, anxiously engaged in the project of managing residual financial risk in the system. Another question that came up in our conversation today. Was this really fascinating question about the risk-reward profile in private sector banks and the risk reward profile in public sector risk management they don't fit well together uh... And sometimes bank supervisors when they encounter something that is new they hate it because it is new uh... And some of this is a x explicitly written in the guidance documents that says if you do something novel we're going to be very skeptical of that novelty uh... What i would like to do is turn to chapter eight and uh... Public-private finance public power or we give an accounting exactly this debate in the nineteen sixties and i think it will reward bank supervisors who look at this and maybe have a little bit less allergy to both novelty and to failure. If I could turn a dial from 2023, I would say that the risk appetite for failure on the public power side was too low. We should have a greater appetite for a failure. And that failure should not be socialized, that we should allow the stakeholders of these banks, whether they're uninsured depositors or shareholders or executives, to absorb it and to absorb at all. That a little bit more confidence in the ecosystem and infrastructure that we've created leading up to this. And then, finally, we designed this day to be a symposium about the present and future that sat on top of a history. And to echo Sean's comments about this, that was explicit. A lot of people who are coming into this even told us, like, well, look, anything about the history, only from your book, I'm not going to be able to comment intelligently about that. Said, well, that's exactly why we want you to come and talk at this symposium. And I think what this means is, just to remember, that all of us, almost as a species, but certainly in these institutions, we are carrying on something that has come before, and we're passing it on to something that will come after. And if there's anything about this that I would encounter, I would invite us to approach that with a little bit of humility and a little of gratitude. So when you come in, left right or center as a swashbuckling reformer inform yourselves first about what it is that you're exactly trying to reform understand that system as it has come before and it's just bad social scientists science to disengage in cost cost analysis anybody can identify where things are inefficient in the system but it takes a special kind of wisdom in a special kinda rigor to say well What are the benefits of this thing that I like? Not very much. And how can I conceptualize those benefits, especially when I seek to reform them? In that sense, while our book does end in 1980, while the only normative conclusion that we offer is that bank supervisors should tell us more about what they're about and that CSI is mostly bunk, the normative project, I suppose, is that as we go through the incredibly important question of democracy, what some would dismisses politicization. Others would call accountability, is to recognize that that democratic accountability is part of a through line. And that through line has done a lot of different things, but one thing it has done has been associated with perhaps the greatest economic miracle in human history through the creation and sustainability of the U.S. financial system. And with that, I will conclude and thank you all for being here.

KLEIN: Thank you. Join me in thanking Peter and Sean, whose calling to write a 300-plus page book on bank supervision must have come from a higher power. I just want to say, Peter, as you were wrapping up and you talked about how bank regulators looked at something new and you ended with chapter 8, I thought you were going to talk about crypto because you could have easily have put that in that exact same word. History teaches us so much. About the president and informs us that in some way nothing new is has has come before us and we can learn from the wisdom and mistakes of are for bearers when you to first approached about holding this I thought to myself you you want to have three panels and spend an entire day on bank supervision, I really hope it's raining, because then once people come, they're going to stay. And instead, it's been beautiful and sunny in the room is just about as full now as it was uh... When we started at nine in the morning so we're going to end a little early to let everybody enjoy some of that son and soak in some of the taste of the chalk dust of the learning that we've had from this master seminar from you from all the prior panelists and all the speakers and the great audience participation in join me once again reminding you. You can pick this up right at the Brookings bookstore around the corner on your way out the door, which I think we even have a special on today. So thank you all very much.