FOREWORD: OF LAWYERS, LEADERS, AND RETURNING RIDDLES IN SOVEREIGN DEBT

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It is not enough to say, as the Frenchmen do, that their nation was taken by surprise. A nation, no more than a woman, is excused for the unguarded hour when the first adventurer who comes along can do violence to her. The riddle is not solved by such shifts, it is only formulated in other words.[1]

— Karl Marx

This volume contains the research and recollections of more than a dozen policymakers, market participants, lawyers, and academics, who both made and wrote the history of sovereign debt over the past four decades. They came together at a conference in late 2009—in retrospect, an innocent time when character actors like Iceland and Ecuador had the stage to themselves—on the eve of what would become the mother of all sovereign debt meltdowns in the Eurozone. The conference happened because Lee Buchheit taught us that we could not understand sovereign debt contracts, markets, or policies without knowing their history; he then prevailed upon us to gather the history-makers and history-writers together before memories faded. As always, his insight and timing were flawless.

Lee's career defines the modern legal history of sovereign debt. Just about every sovereign contract written since Mexico's 1982 debt moratorium contains a Buchheit innovation. He has been called the godfather, the guru, the patron saint—and occasionally, with grudging admiration, the evil genius—of the field. He always seems to know all the answers, and is equally gracious in sharing them with heads of state anxious to meet payment due dates, and graduate students crashing against paper deadlines. His disciples (ourselves included)

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This essay is also available at http://www.law.duke.edu/journals/lcp.

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1. KARL MARX, THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE 21 (Daniel D. Leon trans., 2d ed. 1907) (1897).

now populate the practice, policy, and academic fields of sovereign debt the world over. Beyond his practice and service, Lee's vast body of academic writing dominates the literature, with good reason: his knowledge, foresight, and citation count are unsurpassed, and his prose makes LIBOR sing.

In this introductory essay, we will avoid the usual business of summarizing the distinguished contributions to this volume. Their authors have long been the leading voices of sovereign debt theory and practice; our purpose in the conference and the issue has been to let these voices be heard directly and in full, not in quoted snippets stitched into a unifying gimmick. Instead, we will praise them by attempting to apply their history lessons to the evolution of collective action clauses (CACs) from the 1995 crisis in Mexico to the 2010 crisis in Europe.

Our attempt is necessarily tentative: the European crisis is unfolding as we write, and its implications may not be fully known for years. However, to a remarkable extent—and bearing out Lee's predictions—Europe has revived the policy and theoretical riddles of crises long ago and far away. In particular, we focus on the triumphant return of CACs as the legal and policy fix for sovereign debt distress. Several articles in this issue explore CACs' first moment in the sun, as a response to the sovereign crises of the 1990s and 2000s. Today, we are told by politicians and academics alike that, if only debt contracts in the Eurozone could be revised to include CACs, debtors and creditors would swiftly come to share the burden of an "orderly debt restructuring," paving the way for politically sustainable economic growth.

Below we offer a brief tour of the modern history of CACs, which may temper such optimism. But even before we get to the history, it is worth noting a few puzzling aspects of today's CAC revival. First, most of the sovereign debt contracts at issue already contain either CACs or even more powerful legal tools to promote restructuring. To our knowledge, no policymaker has tried to use them, or even to examine them comprehensively to see whether they could be used. Second, in stark contrast to the 1990s and 2000s, no policy maker has identified a collective action problem for collective action clauses to solve in European sovereign debt. To be sure, few doubt that there is a debt problem—but no one has described a coordination problem. Finally, the policy statements that trumpet CACs are notably incoherent as a legal matter: proposing to include standard-form clauses in contracts that either have them already, or could not possibly fit them because they use radically different drafting conventions. Again, to be sure, there is a way to make any debt contract restructuring-friendly—but that is quite different from grafting CACs onto anything that moves. All this raises the old questions—why CACs, why here, and why now?—which we tried, but failed to answer years ago. Inspired by the contributions to this issue, we try again.

I
A FIX IS BORN

CACs were first mooted as an answer to sovereign debt crises after the 1995 U.S. and International Monetary Fund (IMF) rescue package for Mexico, which topped $40 billion.[2] Although the loan was quickly repaid and made money for the U.S. Treasury, it caused much political, policy, and academic consternation. Critics complained that the package bailed out reckless private lenders and sovereign borrowers, and created expectations that public money would be on offer from here on out, along with perverse incentives to accumulate unsustainable debts. The response was twofold: first, the rescue package was the only alternative to a Mexican bond default, which would have had untold consequences for the global markets in general and the U.S. economy in particular; and second, to avoid future bailouts, governments had to devise ways to renegotiate their bonds in an orderly fashion, to make restructuring a plausible option when it mattered.

The view that bond restructuring would be unfathomably messy rested on a very specific element of sovereign bond documentation practice in New York: the contractual requirement that each bondholder approve a change in financial terms.[3] Because bondholders were generally understood to be dispersed and disorderly, this made New York-law bond contracts essentially restructuring-proof in the absence of a sovereign equivalent to bankruptcy. Mexico was the prime example of the problem, since it was one of the biggest emerging market sovereign bond issuers in the New York market.

The only glitch in this reasoning as grounds for the 1995 policy response was that this particular Mexican debt crisis did not implicate its New York-law bonds. The culprit instruments were *tesobonos*, Mexican-law, dollar-indexed debt that skyrocketed as the Mexican peso fell. To this day, no policy or academic work we know has reproduced or analyzed the restructuring provisions of *tesobonos*. Everything we know about the 1995 crisis suggests that such provisions, if they existed, did not figure prominently in the rescue decision. And even if *tesobonos* had contained a flat bar to restructuring, Mexico had a trump card against its bondholders: the power to enact a law to restructure the bonds by fiat. To be sure, creditors would have complained, and might even have shut Mexico out of the markets. Moreover, a restructuring might have caused knock-on effects throughout the world precisely of the sort that policymakers had feared. But it is hard to see how any of this would have changed by fixing a contractual flaw that may or may not have existed.

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2. For the history recounted in this essay, see generally Anna Gelpern & G. Mitu Gulati, *Public Symbol in Private Contract: A Case Study*, 84 WASH. U. L. REV. 1627 (2006); Anna Gelpern & G. Mitu Gulati, *Innovation after the Revolution: Foreign Sovereign Bond Contracts Since 2003*, 4 CAP. MARKETS L.J. 85 (2009).

3. No statute or case law mandated this practice; we return to this point in the next section.

In fairness to the policymakers and academics who pressed for CACs then, many of them looked beyond *tesobonos* at the large stock of New York-law foreign sovereign bonds, a market dominated by vulnerable Latin American states, and tried to expand policy options for the next sovereign crisis. But the next crisis, which struck in 1997, happened in Asia and involved corporate and bank debt, which could be restructured in bankruptcy. And by 2003, when Mexico led the New York market shift to adopt CACs, it was apparent that sovereign bonds with unanimity provisions were not restructuring-proof. Ecuador (represented by Lee Buchheit) engineered a debt exchange in 2000 that produced record levels of debt relief with the participation of ninety-seven percent of its bondholders, notwithstanding New York-style unanimity provisions in its debt contracts. Not until Argentina's default in 2001 did collective action problems in foreign sovereign bonds begin to sound like a plausible obstacle to restructuring, with CACs as a plausible, though hardly a critical, solution.

II
FALSE STARTS AND MUDDY HISTORIES

Apart from their awkward connection to the *tesobono* crisis, it is hard to criticize CACs on the merits. At worst, their advocates said, introducing them would do no harm—and there was a good chance that they could actually help if and when the right crisis rolled around. But the fact that the markets would have none of these apparently harmless CACs despite strenuous policy and academic overtures beginning in 1996, revived a nagging question: Why did someone insert unanimity terms in New York bonds in the first place, and why did they become market standard? This was especially perplexing since comparable contracts in the London market often could be amended with majority consent.

Finding the reason for unanimity was important because if bondholders had deliberately made their bonds hard to restructure, then bailing them out set up precisely the wrong incentives. Next time around, creditors would simply put in place another kind of contract barrier to restructuring, certain of getting paid from the public coffers. On the other hand, if there were a more innocent explanation for unanimity in sovereign bonds, it would help justify the policy response (official financing followed by contract reform) without distorting incentives.

A popular history of unanimity at the time traced its origins to more-or-less mindless copying from corporate bond contracts. Sleep-deprived associates in New York law firms had lifted unanimity clauses from corporate deals, either unaware of such clauses' provenance in the Trust Indenture Act of 1939 (TIA), which did not apply to sovereign debt, or perhaps under the mistaken impression that TIA applied to sovereigns after all. Since there was no TIA equivalent in the United Kingdom, this theory also explained the difference between New York and English law markets. Best of all, thus framed, the

problem was actionable: it could be solved by teaching market participants and their lawyers that the law did not mandate these irrational provisions. Statesmen, bankers, and lawyers of good faith would then come around to the more efficient English model, and bailouts would end.

This history of blind copying and misunderstood laws turns out to be problematic, which casts doubt on its policy prescriptions. First, differences in sovereign bond contracts do not map to the adoption of TIA in the United States. Most sovereign bond contracts in the United States and the United Kingdom alike used no amendment provisions at all from the 1950s through the 1970s. Although the sovereign bond market was relatively small in those days, its documentation practices were consistent with the way sovereign bond contracts had been written going back at least to the early 1800s, through the many booms and busts of financial globalization. The absence of amendment terms may have meant that negotiated restructuring was inconceivable to the drafters, or that the drafters had deliberately sought to make it inconceivable by refusing to chart a path for it. On the other hand, it might have reflected a history of delegating sovereign debt problems to the diplomatic process, which left limited room for contractual solutions or bondholder democracy.

The split between U.S. and U.K. amendment conventions appears to have begun in the early to mid-1980s. In the background, suing sovereigns had become easier because sovereign immunity doctrines were narrowed; states had begun to suspend payments on commercial bank loans; and high-profile corporate Eurobond defaults had shaken market faith in bonds' status as a privileged asset class. Sovereign bonds issued in New York then began to require unanimous bondholder consent to amend financial terms, and a simple majority to amend the rest. Bondholders could be polled at a meeting or in writing. Similar bonds issued in London began to require supermajority consent obtained in a meeting to amend any terms.[4] The causes of divergence between New York and London merit further investigation beyond the scope of this essay. However, it is at least plausible that the U.S. unanimity convention emerged as a result of the defaults and restructurings of the 1980s that began with Mexico in 1982 and culminated in the 1989 Brady Plan.[5] If so, then its purpose may have been to bind debtor and creditor governments irrevocably to their promise of no more restructurings. New rescue packages played into creditors' hands, paying out on the insurance policy written into the bond contracts.

From the perspective of the official sector—governments in wealthy states and international organizations—any such insurance was either underpriced or no longer sustainable as a matter of domestic politics. A new regime without implicit bailout insurance had to be devised going forward. CACs were central

4. If the meeting were postponed, the supermajority threshold went down dramatically.

5. *See generally* Ross P. Buckley, *The Facilitation of the Brady Plan: Emerging Markets Debt Trading from 1989 to 1993*, 21 FORDHAM INT'L L.J. 1802 (1998).

to the new regime, and here again, the reasons for their exclusion heretofore made a big difference. If unanimity had been a deliberate barrier to restructuring, one would expect the markets to resist CACs, and if resistance failed, to seek new ways to make their debt restructuring-proof.

III
INTERVENTION THEORIES

By the turn of the twenty-first century and the onset of Argentina's debt crisis, sovereign bond contracts embodied a double theoretical conundrum: they were written to exacerbate coordination problems among bondholders, and failed to change after the coordination problems were identified and publicized. This combined diagnosis of coordination problems and "stickiness" of apparently suboptimal terms suggested a market failure, and mobilized established academic theories for public intervention. Government action in the form of education, coordination, and moral suasion was especially appropriate if unanimity in New York had been a product of blind copying, rather than a deliberate effort to discipline the debtor or extort the public sector.

And educate, coordinate, and suade they did. Top national and international finance officials commissioned research papers, chartered groups of legal experts and economists, hosted conferences, gave speeches, and spoke to debtors and creditors. But for years, the mammoth public relations campaign failed to convince market actors to shift to CACs.

As best we can tell, the factor that tipped the shift in New York bond documentation in 2003 was a more muscular proposal by the IMF to resolve coordination problems with a treaty-based sovereign bankruptcy regime. The proposal dominated policy agendas for over a year, and came to be seen as a formidable threat by opponents of official intervention in the sovereign debt markets. The enduring policy salience of the bankruptcy initiative was a surprise to many observers. It was, in large part, a product of the idiosyncratic leadership at the U.S. Treasury and the IMF, the U.S. political transition, Argentina's debt crisis, and even the attacks of 9/11. When a treaty regime became more plausible, sovereign debtors and their bondholders became more enthusiastic about adopting CACs as a means of foreclosing further discussion of such a regime.

By late 2003, CAC proponents in the official sector were able to declare victory. Mexico issued a New York-law bond with CACs in February; within months, issuers were switching in droves, and soon over seventy percent of the New York sovereign market had CACs.

The relative merits of CACs and treaty-based sovereign bankruptcy have been debated for years; many of the key arguments are documented in this issue. It is not our place to arbitrate among them. However, as between CACs and unanimity, we have little trouble siding with CACs. We are glad that they have been adopted. Moreover, the fact that the CAC templates launched in the New York market have since spontaneously spread to London, displacing the

old English law template, suggests that markets saw merit in the New York innovation. Yet we remain uneasy about the stated premises for public intervention.

We have already noted that the blind copying history of unanimity looks questionable. Moreover, the view of unanimity as a complete bar to restructuring was unsettled (if not entirely dislodged) by debt exchanges in Ecuador, Uruguay, and arguably even Argentina, which got deep debt relief from over three-quarters of its CAC-less bondholders. This suggests that the coordination problem may be overstated. The theory of contract "stickiness" underpinning government action may over-reach as well. After the market had switched in 2003, it turned out that many small issuers (Qatar, Egypt, Lebanon, and Kazakhstan, among others) had been using CACs in their New York-law bonds for years with no official prompting.

Perhaps the markets were fully capable of adopting CACs when they wanted to. It was just that most participants did not have good enough reasons to use them. If participants in the shift are to be believed, few thought that the CACs they adopted would make any difference in their capacity to restructure, their chances of receiving public money, or the way in which any sovereign managed its debts going forward. Most said they adopted CACs on the assumption that they did nothing much for them, except the possibility of deflecting a sovereign bankruptcy treaty.[6] Comments to this effect question the case for intervention, but also the roles of academic theories and legal experts in brokering a market shift.

IV

EXPERTS AND EFFICACY

Having supplied a theory for government action to dislodge unanimity, economists and lawyers turned to bolstering the official sector's case to the markets, and designing alternatives to the unanimity terms in New York bonds. The fruits of their efforts raise the possibility that CACs had two distinct jobs: a political job of deflecting a bankruptcy treaty while signaling no more government bailouts, and a legal job of facilitating orderly restructuring.

The leading argument put forward against CACs in the 1990s and early 2000s was that they would raise borrowing costs for adopters by making restructuring easier, or by signaling that the borrower saw contract amendment as part of its debt management toolkit. To test the argument, economists studied bond prices in the New York and London markets, which presented a natural experiment in using different amendment terms in otherwise similar instruments. Although some studies suggested minor price differences between the two markets, others found none. Mexico's 2003 New York issue with CACs

6. Whether such a regime targeted the right problems and would have been effective in solving them is beyond the scope of this essay.

arguably confirmed the point: the price penalty was either minuscule or nonexistent.

We heard two explanations for such results during the CAC campaign. First, the absence of a big price penalty may confirm that markets do not know and do not care what debt contracts say. This explanation goes well with the story of mindless copying by lawyers: no one thinks about contract terms until it is too late. Second, the price penalty for making restructuring more likely may be offset by making it more orderly with well-crafted CACs. This explanation implies the polar opposite of the first: that bondholders care deeply about contract changes, appreciate their consequences for the restructuring process, and can calculate the likely outcomes with some precision. A third category of explanations comes from watching sovereign bond contracts evolve since the official sector stopped advocating for CACs: what if pre-2003 London bonds had contained hidden obstacles to restructuring, which made their CACs ineffective, and made them essentially the same as the New York bonds? Moreover, what if Mexico's CACs had made it no easier to restructure, and what if the CACs that followed had compensated for restructuring ease in other ways? In the alternative, what if bonds with and without CACs could be restructured with comparable ease, using slightly different restructuring techniques? Any of these scenarios would produce price convergence in New York and London.

Drafting and using CACs is a job for legal experts. Their work in the run up to and after the 2003 shift to CACs in New York might help test the third set of explanations.

Before the shift in New York, markets had seen several restructurings of English-law sovereign bonds with CACs, including the high-profile cases of Pakistan and Ukraine. Students and advocates of CACs were perplexed to learn that neither Pakistan nor Ukraine chose to use the CACs they had. Anecdotal reports from these restructurings blamed the mandatory meeting provision, then standard in English-law CACs. No debtor would want to broker a meeting among its creditors, lawyers said, because it risked uniting them against the debtor. If such anecdotes hold up, they would suggest that the meeting requirement had made English-law bonds resistant to restructuring much as unanimity did in New York. Traditional English-law CACs were suboptimal. This explanation appears to find support in market practice since 2003. Issuers in New York did not simply copy the prevailing English form when they moved to CACs; they replaced unanimity with supermajority by written consent. Meanwhile, English-law bonds after 2003 did away with meetings and adopted elements of the new New York form, unprompted by the U.K. authorities.

If CACs were an important prong of the official sector's anti-bailout commitment, and if old English CACs did not work, it is puzzling that governments refused to mandate *effective* CACs. By all accounts, the sponsorship of an expert drafting group by the Group of Ten (G-10) in 2002

was an effort to present an alternative to unanimity, not to mandate a contract template. No one had ever pressured issuers in London to change their form. No participant in any sovereign bond market was ever scolded for departing from the G-10 form. Moreover, since 2003, markets used the G-10 clauses, along with others developed by industry groups, as a basis for experimenting with different versions of CACs in New York and London with no official involvement whatsoever—even when some of them had partially resurrected unanimity.

Did all this experimentation make CACs a viable restructuring tool and—more importantly—one capable of preempting official bailouts? Perhaps, but the evidence is thin. CACs were used only once, in 2007, to restructure New York-law bonds issued by Belize (represented by Lee Buchheit). Belize was not a high-stakes battleground for burden-sharing between taxpayers and private creditors, unlike the half-dozen CAC-less restructurings that came before.

This mini-history points to the possibility that CACs' work as a symbolic statement to preempt sovereign bankruptcy and inveigh against bailouts was quite distinct from their work to facilitate orderly restructuring. The former was done quickly, and did not depend on CACs' efficacy as a restructuring tool. The latter is ongoing, and its success is hard to gauge. The tenuous link between CACs' political and legal efficacy finds a stark illustration in the 2010 debt crisis in Europe.

V
SECOND-TIME FARCE

Karl Marx's biting take on European history, *The Eighteenth Brumaire of Louis Bonaparte*, opens with the proposition that historical facts happen twice, "Once as tragedy, and again as farce."[7] CACs' return to the policy scene in 2010 may well fit the pattern.

As of 2009, policy and market interest in CACs had faded: drafting groups were disbanded, official and market reports disappeared, and contract templates returned to lawyers' offices from whence they came. The degree of disinterest was such that even when we discovered some London-based issuances resurrecting unanimity, no one seemed to care. CACs were a thing of the past, which seemed to be the general sentiment of those who had worked on the last CAC initiative.

But then, in late 2009, the unthinkable happened. A sovereign debt crisis hit the Eurozone. It came to light that European governments had gone on a borrowing spree, and government-backed banks had lent into all manner of asset bubbles, taking advantage of low interest rates. Markets were also shocked to discover that European governments were not immune from fudging statistics. Spreads shot up on Greek, Irish, Portuguese, Spanish, and

7. KARL MARX, THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE 5 (Daniel D. Leon trans., 2d ed. 1907) (1897).

Italian debts, reflecting debt burdens that looked unsustainable in retrospect. With the Euro under attack, the specter of defaults and bailouts was back.

Throughout 2010, a series of co-financing arrangements between the IMF and the European Union made upwards of a trillion dollars available to distressed EU states, in exchange for fiscal austerity measures and structural reforms familiar from past crises in the developing world. This turn of events was particularly embarrassing to Europe for two reasons. First, as a global reserve currency, the Euro was supposed to be risk-free, which allowed member states to borrow worldwide in Euros and under domestic law. Second, the treaties establishing the Union had ostensibly outlawed bailouts, barring member states and EU institutions from assuming the debts of other member states. The first factor made default beyond contemplation. The second made a bailout illegal.

Faced with two conflicting imperatives, EU officials chose the former: default on Euro-denominated debt would not happen. As often happens, clever lawyers found a way around the apparently impermeable treaty barriers to bailouts. However, this choice triggered enormous political backlash against the European rescue facility. This was especially true in Germany, which would be footing much of the bill thanks to its combination of fiscal surplus and its banks' exposure to the peripheral member states.

As in the 1990s and early 2000s, the 2010 bailout decision was followed by calls for burden-sharing and reform. Statutory sovereign bankruptcy was mooted again with public support by the German leadership, and CACs figured prominently in a November statement by European leaders, who pledged to adopt standardized clauses "consistent with" the G-10 model going forward.[8]

Despite its resemblance to prior responses to sovereign distress, the return of this sequence in Europe was peculiar in the extreme. First, the foreign-law bonds issued by distressed EU member states already had CACs on the G-10 model. Many of these states had been at the forefront of advocating for CACs just years earlier, and pledged to include them in their own debt to help pave the way for the emerging markets. The crisis of 2010 was a golden opportunity to show European leadership by deploying CACs, but no one did. Second, to the extent the source of sovereign debt distress was domestic-law debt, it could be restructured by fiat, much as the Mexican *tesobonos* could have been restructured in the 1990s.[9] The restructuring government would have faced market opprobrium along with lawsuits in domestic and European courts, but most of these consequences were unavoidable with or without CACs.

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8. *Statement by the Eurogroup* (Nov. 28, 2010), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/118050.pdf.

9. *See generally* Stephen J. Choi, G. Mitu Gulati & Eric A. Posner, *Pricing Terms in Sovereign Debt Contracts: A Greek Case Study with Implications for the European Crisis Resolution Mechanism* (Univ. of Chicago Law & Econ., Working Paper No. 541, 2010), *available at* http://ssrn.com/abstract=1713914; Lee C. Buchheit & G. Mitu Gulati, *How to Restructure Greek Debt* (Working Paper, 2010), *available at* http://ssrn.com/abstract=1603304.

More puzzling still, none of the European politicians advocating CACs appeared to have any idea of what European debt contracts actually said about amendment. Unlike the 1990s, no studies and no drafting groups had been commissioned before November 2010. Furthermore, no one cited to collective action or any other contract or market problems that would be solved by CACs. Official statements about CACs referred to them as an unspecified path to contractual burden-sharing, to be achieved case-by-case in future crises.

The most plausible interpretation of such statements, if they were to make sense, would be as a promise to harmonize the domestic-law debt of EU member states to include restructuring-friendly terms. However, such an interpretation fits awkwardly with the specific reference to G-10 CACs, which were designed for the emerging-market foreign-bond template prevailing in New York and London. Domestic-law documentation is notoriously idiosyncratic, and often bears no resemblance to foreign-law conventions. Our casual review of the Greek government's domestic-law debt follows this trend. Grafting G-10 CACs onto domestic-law contracts—Greek sovereign bonds, Mexican *tesobonos*, or U.S. Treasury securities—would more likely produce a Frankenstein monster than a restructuring-friendly bond.

Why, then, did CACs return in 2010? One veteran of sovereign debt crises speculated privately to us that CACs slipped in because there were no lawyers in the room when the EU announcement was drafted. But this makes the invocation of contract terms more, not less, puzzling. Non-lawyers left to their own devices are not known for casual resort to legal technicality.

There remains the possibility that CACs had acquired a meaning and a function in the early 2000s that made them politically useful in 2010. They came to stand not only for the opposition to mandatory treaty-based bankruptcy, this time proposed by Germany, but also for opposition to bailouts, mollifying taxpayers in surplus states. CACs offered an unspecified and largely untested form of market-based and flexible burden-sharing as an alternative to unpopular public rescues of profligate bankers and governments. That the specific technical meaning of G-10 CACs had no place in the European context, which made their invocation uninformed or disingenuous, was beside the point. A farce visible only to lawyers is no farce, but history in the making. The modern history of CACs, going back to the *tesobono* crisis, illustrates the point.

VI

HISTORY MAKING: AN INTRODUCTION

The articles in this issue offer three distinct approaches to the legal history of sovereign debt. Some start with sovereign debt contracts as historical artifacts, attempting to glean from them insights into the economic conditions, political forces, and legal practices that have come to shape today's global capital markets. Others focus on economic and political leadership, and see contracts as by-products of sovereign agency and technical expertise. To yet others, contracts (and law more broadly) are a minor constraint on sovereign

power. We find all three approaches equally compelling, perhaps reflecting our editorial bias. But we are even more intrigued by the combined picture that emerges from such diverse contributions: despite the deeply flawed record of contracts as commitment devices *for or against* debt restructuring, debt contracts remain salient in policy imagination. Why?

Political scientists suggest one possibility: that politicians use CACs as a diversion to create the illusion of decisive action in response to devastating crises when no easy fix is at hand. In this story, politicians recognize either that there is no ready fix for the problems underlying the crisis, or that powerful interests will not permit a solution. However, because the public's attention is focused, a response is required. A response that solves a problem is preferable to one that does not. Hence, politicians have the incentive to frame a problem that is both understandable and solvable, which they can proceed to solve. The fact that the invented problem may bear little relationship to the real problem is beside the point.

The prominent framing of coordination problems in sovereign debt, followed by CACs as their supposed solution, appears to fit the foregoing story. CACs are both effective (as a political tool) and ineffective (as a legal constraint), important (as a symbol) and unimportant (as a stand-alone restructuring device). Sovereign agency is central to determining the content of debt contracts, but perhaps as much for its desire to mislead constituents, as for its commitment to or against restructuring. Legal and policy experts have a key role in this picture, but not necessarily for their capacity to produce a viable tool for future restructurings—rather for their part in creating a viable appearance of present crisis response.

We offer this somewhat cynical unifying "theory" tongue-in-cheek, and would not impute it to our distinguished contributors. Our explanation holds (if at all) in a very narrow context of one set of clauses observed over a very short period in the modern legal history of sovereign debt. Despite its occasional prominence, "CACology" is still a niche; generalizing from it requires caution. Full answers to the questions posed by the puzzling history of CACs are complex, and await further research. We are immensely grateful to the authors and history-makers represented in this issue for setting the stage for such research, for pushing us to reopen closed cases and revisit past assumptions, for shining new light on dusty old contracts, and for convincing us all over again that we can never understand today's debt crises without studying the past.