

**The Politics of Justice:  
The Aftermath of the Financial Collapse in Iceland**

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**The Icelandic crisis was far more than a typical banking crisis. Historian Ingimundarson sees it also as a transitional justice case with features of truth-telling and demands for government accountability, leading to the indictment of the former Prime Minister for crimes associated with the global financial crisis.**

The collapse of the Icelandic banking system—in the midst of the global financial crisis in October 2008—signified a major societal rupture<sup>1</sup>. The popular protests, which followed it, turned an economic crisis into a political one. It led to the downfall of a coalition government made up of the conservative Independence Party and the Social Democratic Alliance in early 2009. The subsequent parliamentary elections produced a major shift towards the Left. Social Democrats and the Left Greens secured a parliamentary majority for the first time in Icelandic history. The Independence Party, which suffered a heavy electoral defeat and lost its long-standing rank as Iceland’s largest political party, was generally seen as having been punished for policies that were, to a large extent, responsible for the crash.<sup>2</sup>

In this article, I will explore the crash, which was experienced as a collective national shock, as a case of politics of justice and memory. Since 2008, Iceland has witnessed persistent political volatility and public anger. And while the economy has stabilized, public indebtedness is a major problem and capital controls are set to remain in place for years. When the economy crashed, special measures were adopted to respond to a state of exception.

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<sup>2</sup> See Valur Ingimundarson, “A ‘Crisis of Affluence’: The Politics of an Economic Breakdown in Iceland,” *Irish Studies in International Affairs*, vol. 21, 2010, pp. 57–63.

On the eve of the banking collapse, an emergency legislation was passed by parliament to ensure that deposit holders were given priority to the bond holders of the banks and to pave the way for all domestic assets along with deposits to be transferred to new banks. In the process, the banking system, which was ten times the size of Iceland's GDP, shrunk to two times. Hence, Iceland did not socialize the bulk of the losses of the banks—an impossible task anyway—and subsequently averted the threat of a sovereign debt default thanks to an IMF bailout and supplementary loans from the Nordic countries and Poland.

### **A Case of Transitional Justice?**

The generic term “transitional justice”—whether involving lustration, prosecution, trials, or truth commissions—has been used to describe efforts to deal with a violent past, condemnation and reconciliation between conflicting parties. The Icelandic way of responding to the crash has had many such features. To assign responsibility and culpability, the government and parliament created special mechanisms of restorative and retributive justice by appointing a Special Investigation Commission charged with producing a “Truth Report” and by establishing a Special Prosecutor’s office to prosecute potential economic crimes. When the Social Democratic-Left Green coalition was formed, it sought—in an act of lustration—the removal of the three heads of the Icelandic Central Bank. The move was particularly aimed at Davíð Oddsson, the Prime Minister of Iceland from 1991 to 2004, who after leaving the government in 2005 had become one of Iceland’s three Central Bank governors. He refused to give up his position until he was forced to do so in 2009, when parliament passed a bill on the reorganization of the Central Bank.

Based on the recommendation of the “Truth Report,” the Icelandic parliament subsequently filed impeachment charges against former Prime Minister Geir Haarde for dereliction of duties. The Special Prosecutor has, moreover, indicted leading bankers and businessmen for criminal wrongdoing in connection with the banking collapse, with many cases still pending. And to break with the past and to address popular demands for some sort of democratic renewal, the parliament also approved an act of a Constituent Assembly entrusted with the task of reviewing the constitution.

### **No Banking Crisis as Usual**

Despite such attempts to “come to terms with the past,” the process itself has been politically contested from the start. Moreover, the view has been put forward that the crisis in

Iceland has been exaggerated.<sup>3</sup> While the crash was considered a national disaster, it was not the result of a civil war or of violence perpetrated by a dictatorial regime. Iceland lost its financial system and had to be rescued by the IMF; with a 30% decline in purchasing power, the crash led to the skyrocketing of private and public debt and a jump in the unemployment rate from around 1.5% to 9%. Despite a very high debt burden, the economic recovery has been quicker than most expected. According to economic forecasts, the growth rate will be 2.8% this year and the unemployment rate was down to 5.6% in June 2012.<sup>4</sup> Thus, the argument has been made that the situation in Iceland should rather be compared to the banking crises in Scandinavia in the 1990s than to countries undergoing transitions after societal disasters.

On the surface, such a view has some merit. It is certainly overblown to put—with no proviso—the Icelandic situation on par with the systemic injustice characteristic of Apartheid South Africa or of repressive rule in Eastern Europe or Central America. The transition is, of course, not from a dictatorship to a democracy. Yet, the seriousness of the Icelandic case cannot be downplayed: it led to the most serious riots in Iceland since it joined NATO in 1949,<sup>5</sup> where the parliament was stoned and government ministers and parliamentarians threatened. The many demonstrations—and civic forum meetings—directed against the government in 2008–2009 played a decisive role in bringing it down. It was an act of popular extra-parliamentary pressure from below, which convinced the Social Democratic Alliance that it was impossible to stay in a coalition government with the Independence Party. What is more, the political system has been put under much strain, with the political elite thoroughly discredited. Thus, a transitional justice framework—with obvious qualifications regarding the nature of the previous regime and the crimes involved—is theoretically useful in the Icelandic case. It is about a societal reckoning, and the moralistic terms associated with transitional justice—such as responsibility, culpability, and victimhood—have been central in the Icelandic discourse.

A simple comparison with the Scandinavian economic crises in the 1990s is not convincing. Even if the Finnish banking crisis resulted in a deep recession and very high unemployment, it did not produce a political crisis. Similarly, despite a steep drop in

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<sup>3</sup> Jón Ólafsson, “An Experiment in Iceland: Crowdsourcing a Constitution” (unpublished manuscript).

<sup>4</sup> “Iceland’s central bank holds rates, predicts ongoing economic growth,” IceNews, 8 February 2012.

<sup>5</sup> See Valur Ingimundarson, *The Rebellious Ally: Iceland, the United States and the Politics of Empire*, St. Louis and Dordrecht, Republic of Letters Publishing, 2011, pp. 29–33.

Sweden's GDP and a radical increase in unemployment, Sweden did not need an IMF rescue or experience severe political disruptions, criminal prosecutions or a government downfall. The Icelandic crisis was far more serious than those in Scandinavia, representing, initially, a crisis of economic sustainability as well as of political legitimacy.

The response has also been characterized by transitional rituals and processes and by the idea of a watershed, with the division of political time into "before" and "after." The case against the Prime Minister can be seen as backward-looking and based on a law dating back all the way to the year 1905 after Iceland was granted home rule from Denmark. It is archaic because the law has never been used. But it is embedded in a common past—the constitution of 1944 and a 1963 law on ministerial responsibility—which is required to ensure historical continuity. As Ruti Teitel has argued within the context of transitional justice, the key question that remains to be answered is whether the ideological undoing of the "old regime," which is critical to political change, will succeed or not.<sup>6</sup> To simplify, one can describe the Icelandic politics of memory as a struggle between two metanarratives. On the one hand, the Left—having been brought to power by the banking collapse—blames the crash on the Right, its neoliberal policies and ideology, which over a period of 18 years had transformed Icelandic society with disastrous results. On the other hand, the Right points to the global financial crisis as an important factor in instigating the crash together with irresponsible Icelandic bankers; despite the flawed Icelandic privatization and deregulation drive, it is still committed to a free market ideology. Both sides—and the Icelandic population in general—agree on interpreting the economic collapse as an unmitigated national disaster, affecting Icelandic society as a whole. The question of how to respond to it is what is being currently fought and contested—and the outcome still hangs in the balance.

### **Restorative and Retributive Justice in Iceland**

Specific formal political and judicial mechanisms were, as noted, adopted to deal with the crash. The Office of the Special Prosecutor charged with the task of investigating what illegal activities were involved in bringing about financial collapse has focused on investigating the three of Iceland's major banks for fraud, market manipulation, and money laundering. The Special Prosecutor began issuing criminal charges against the heads of the banks in 2011 and has continued to do so in 2012. The former heads of two of the three major

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<sup>6</sup> See Ruti Teitel, *op. cit.*, p. 116.

banks—together with other influential bank employees—have now been indicted for fraud and market manipulation. In addition, the former highest ranking official of the Finance Ministry was sentenced to a two-year prison term for insider trading and the two heads of one of the smaller banks in Iceland received a four-year prison term for financial crimes.

The Special Investigation Commission published a 2000-page truth report, in 2010, which was highly critical of the owners of the Icelandic banks, government ministers, leading private businessmen, and government regulators. It concluded in deterministic terms that the collapse of the banking system was, in fact, already inevitable by the end of 2006, intimating that the banks had committed fraud by artificially inflating the value of their stocks. Three ministers, the former Prime Minister, Geir Haarde, the Minister of Finance, and the Minister of Commerce were seen as having violated the law on ministerial responsibilities. Five other former officials were accused of acting with negligence in failing to prevent Iceland's banking collapse in 2008: the three governors of the Central Bank, including former Prime Minister Davíð Oddsson, and the ex-director of the Financial Supervisory Authority. In addition, former Foreign Minister, Ingibjörg Sólrún Gísladóttir was singled out for responsibility as the leader of the Social Democratic Alliance, even if the 1963 law was not seen as being applicable in her case or those of the bank officials.

The report was not limited to an analysis of the collapse of the banking system. One part also dealt with broader societal and ethical responsibility for the crash. Its criticism of the political elite was not confined to the government; it specifically mentioned the role of the President of Iceland, Ólafur Ragnar Grímsson, in uncritically promoting the Icelandic business expansion abroad and the media and the academic community for complicity or silence. Indeed, as the report details, clichés about modern-day Viking territorial conquerors became household metaphors for the business expansion abroad preceding the collapse.

### **A Truth Report**

Given its sweeping scope, the report of the Special Investigation Commission served a broad truth-seeking function. And when the report was made public, it served a cathartic purpose. It managed to do what Brandon Hamber and Richard A. Wilson term as the main

rationale for truth commissions: to give a collective identity to a divided nation.<sup>7</sup> It was met with overwhelming approval across the political spectrum and by the public, and instantly became a foundational document: an accepted version of a new Icelandic national narrative on the crash. Despite the positive reaction, truth reports are usually based on the premise that a pursuit of unity is a coherent process. Predictably, different groups—in a deeply polarized society—interpreted the report differently. It satisfied the expectations of the Left by singling out culprits and by detailing the devastating consequences of a tainted privatization drive; to the Right, its account of the insider trading practices of a leading group of the banking and business elite was welcomed. Thus, the report was not about societal reconciliation, which are long-term processes beyond the capacity of any short-term commission. But it offered answers that were seen as being morally and politically viable.

Given the Truth Report's reified status, it did not come as a surprise that a cross-party Parliamentary Committee—appointed to consider and act on the findings of the Special Investigation Commission—only parroted its conclusions in its own report. The committee decided, if not unanimously, that legal action should be taken against the three ministers mentioned in the report as well as the former Minister of Foreign Affairs. Echoing the conclusion of the Special Investigations Commission, the heads of the Central Bank and the Financial Supervisory Authority were spared because the law did not apply to them. And the ministers who privatized the banks were also excluded because they could not be prosecuted three years after the alleged violations.

When the issue came to a vote in parliament in 2010, the majority of MPs decided only to refer the case of Prime Minister Haarde to a Special Court, *Landsdómur*, with 33 voting in favor and 30 against; proposals to indict the other three were defeated. The vote was controversial because some Social Democratic members of parliament decided to vote for Haarde's impeachment but to shield their own from indictment. A case put forward to provide justice and closure sparked instead a debate over whether one politician should be held accountable for the Icelandic collapse.

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<sup>7</sup> Brandon Hamber and Richard A. Wilson, "Symbolic Closure through Memory, Reparation and Revenge in post-Conflict Societies," in Ed Cairns and Micheál D. Roe (eds.), *The Role of Memory in Ethnic Conflict*, Palgrave, Houndsmille, Basingstoke and New York, 2003, p. 144.

### **The First Trial of a Western Leader for the Financial Crisis**

The indictment against Haarde claimed that he displayed “serious malfeasance of his duties as prime minister in the face of major danger looming over Icelandic financial institutions and the state treasury, a danger that he knew of or should have known of.”<sup>8</sup> It was the first time a Western leader was indicted for crimes associated with the global financial crisis. Haarde was indicted on several counts, such as seriously neglecting his ministerial duties; failing to initiate an assessment of the financial risks facing Iceland; refraining from initiating measures to reduce the size of the Icelandic banking system, and not ensuring that one of the Icelandic banks saving accounts in the United Kingdom and Netherlands were split off into subsidiary companies.

The Special Court is made up of five Supreme Court justices, a district court president, a constitutional law professor and eight people chosen by parliament every six years. In 2011, the it dropped the two first charges against Haarde, concerning gross negligence and failure to have the financial risks assessed, but to continue with the case based on three remaining charges. After some delay, the trial took place from 5 to 16 March 2012. In a strange case of Icelandic pragmatism, betraying a lack of awareness of political symbolism, the criminal proceedings were held at the Icelandic Center for Cultural Heritage—the Culture House. A celebratory, if elitist, site of memory, serving the purpose of collective belonging, was, thus, turned into a criminal court house. Over 40 witnesses were called, including the ministers, who escaped impeachment by parliament; the former head of the Central Bank, and the former heads of the failed Icelandic banks, several of whom have been charged with criminal conduct by the Special Prosecutor.

As a media event, the trial was something of a spectacle—with considerable foreign and all-consuming domestic interest. After all, this was the first time that all the major players in the banking collapse testified one after another in a court of law. As a contribution to retributive justice, the testimonies were noticeably meager. While former Prime Minister Geir Haarde acknowledged that he had limited faith in the idea—being pushed by politicians and bankers during the period leading up to the crash—to make Iceland an international financial center, he blamed the banks through irresponsible, high risk and unlawful conduct and the

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<sup>8</sup> “Tillaga til þingsályktunar um málshöfðun gegn ráðherrum” [Parliamentary proposal on an indictment against ministers], 11 September 2010, <http://www.althingi.is/altxt/138/s/1502.html>.

international financial crisis for the disaster.<sup>9</sup> Action was not an option because the crisis was beyond the control of the government. It was a narrative reminiscent of a Shakespearean tragedy—with the main protagonists unaware of an impending, if unavoidable disaster, where the fate of the banking system was already predestined and where there was no room or scope to act. To do anything would only have hastened the downfall of the banks by undermining their credibility in global markets. Wrong and misleading public statements and silence on the part of high government officials, such as the Prime Minister and Foreign Minister, over the real state of the banks were justified as an attempt to prevent something worse.

To respond to accusations that they reacted irresponsibly by not having formal government meetings on the economic situation, the former ministers stated that banking and financial matters were discussed, in general terms, in the months leading to the crash. In addition, the possibility of reducing the size of the banks was broached, even if nothing came out of it, for it would have been impossible to do so in 2008 because there were no willing buyers at that time. To paraphrase the testimony—with some exaggeration—inaction was the prudent and judicious move in a situation beyond human control; action would only have initiated a self-fulfilling prophecy of doom.

The central bankers blamed the banks for recklessness and indefensible risk-taking. Davíð Oddsson made the point that he had warned the government, in the strongest possible terms, that the Icelandic banks were facing serious difficulties re-capitalizing themselves as the European banks no longer believed in their stability. The head of the failed banks blamed the international financial crisis as well as the government and the Central Bank for the fall of the banks. It was a rehash of arguments repeated endlessly since the crash. Those who expected the first public staging of truth-telling to be a cathartic moment must have been disappointed. There were no public confessions, apologies or admission of responsibility or mistakes. The testimonies amounted to a collective self-defense of political and economic elites.

### **A Mixed Verdict**

The Special Court, it turned out, convicted Haarde of only one criminal charge—failing to hold government meetings over the precarious state of the banking system ahead of

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<sup>9</sup> See the testimonies at the trial at <http://www.landsdómur.is/adalmedferd/nr/9>.



its collapse—and cleared him on three others: of failing to act to reduce the size of the banking system, of not making sure that the so-called Iceasave internet accounts of an Icelandic bank in Britain and the Netherlands were transferred to a subsidiary, and of failing to produce better results from the government’s 2006 report on financial stability. Haarde himself castigated the court for meting out political justice, calling the verdict “ludicrously laughable.”<sup>10</sup> Earlier he had termed the affair a political trial and farce, bordering on persecution, and stated that he had “a clean slate”—using a language characteristic of transitional justice.<sup>11</sup> To him, his own actions had actually helped save Iceland from economic ruin and national bankruptcy by rushing through the emergency legislation. Others had argued that Haarde should be held accountable for doing nothing to avert an economic disaster.

The public pressure for holding Haarde accountable proved not to be as strong as it was at first because many saw it as being unfair to charge him alone. It also confirms a tendency—experienced in other countries undergoing transitions—that the call for retribution is stronger in the immediate aftermath of a major societal rupture and that sentences tend to get far more lenient as time elapses. The case against Haarde is an instance of political justice, to be sure. The majority of political representatives in the Icelandic Parliament issued the charges. The Public Prosecutor claimed that she was bound by law to prosecute the case on the premises spelled out by Parliament. And echoing the political nature of the process, eight out of fifteen members of the Special Court are, as noted, political appointees who do not require any legal background (even if some of them have legal training). Nonetheless, the political nature of the trial should not come as a surprise: it only underscores the point that transitional justice—both when it comes to restorative and judicial retributive mechanisms—is always a highly politicized process. The notion of political stabilization and reconstruction, whose definition is usually contested, is a key part of such proceedings.

## Conclusion

Iceland is currently not only grappling with the political consequences of an economic and political crisis but also with its causes and the events leading up to it. I have argued here that transitional justice mechanisms have influenced Iceland’s effort to confront the past. Consistent with the early stages of the “politics of memory,” there has been a tendency to

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<sup>10</sup> Eyjan, 24 April 2012.

<sup>11</sup> See “Former Iceland Prime Minister on Trial,” RTE News, 5 September 2011 (<http://www.rte.ie/news/2011/0905/iceland.html>); see also *Visir*, 28 September 2010, <http://www.visir.is/geir-segir-akaeruna-jadra-vid-politiskar-ofsoknir/article/201013381550>).

single out a few culprits in an effort to evade the question of wider societal responsibility.<sup>12</sup> Blame should not only be accorded to negligent politicians, incompetent regulators or wily bankers and businessmen. To a large extent, the media—especially the most influential privately-owned, which were controlled by the Icelandic tycoons associated with the crash—played a cheerleading role. The academia was either supportive of—or silent on—the excesses of this period. While still being almost a taboo in the public debate, a sizeable number of Icelanders took huge financial risks and participated willingly in reckless get-rich-quick schemes.

It has been estimated that between 30% and 40% of Icelandic households are now in the state of negative equity or “technically bankrupt,” even if many of them are still, able to find wage income to repay their high financial debts every month. And other—and potentially new—judicial battlegrounds have opened up after the Icelandic Supreme Court ruled that certain types of foreign currency loans were illegal. As part of the politics of justice in Iceland, this has led to calls for a universal debt relief, a move that the government has persistently refused to adopt because of the costs involved. It has opted instead for debt and payment relief for the most indebted households. Since the crash, banks have forgiven loans equivalent to 13 percent of gross domestic product, easing the debt burdens of more than a quarter of the population. Nonetheless, debt relief no doubt will be one of the main campaign issues in the next parliamentary elections. It has already led to the establishment of new splinter parties on the Left. And, it is highly likely that single-issue parties, focusing on public debt, will get into parliament in 2013. Therefore, the governing parties will be under tremendous pressure to do more in the area of compensation to avert a major electoral defeat.

This leads to the question of societal reconciliation; the pressure for accountability has not been followed by a South-African style calls for reconciliation as a form of public staging of truth-telling followed by an amnesty, except in the general form of debt relief. Ironically, if not suprisingly, two of the most visible perpetrators in the crash and rival businessmen and former bank owners in Iceland, Björgólfur Thor Björgólfsson and Jón Ásgeir Jóhannesson, have called for a truth and reconciliation commission. The problem with such a course of action is obvious: it can be seen as a self-serving vehicle on the part of the perpetrators for restorative truth-telling without legal accounting or retributive justice. Thus, the idea to opt

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<sup>12</sup> See, for example, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, Beacon Press, 1998, pp. 40–47.

exclusively for restorative justice mechanisms in the name of societal reconciliation would not only shield potential perpetrators from retributive justice; it would also provide the heavily compromised state with implicit power to “wipe out the slate clean.” For this reason, it is not surprising that this idea has not received any public support.

The measures taken so far in response to the collapse have, to a large extent, been directed at the policies and ideology of the “old regime,” but their success—as part of a transitional agenda—is far from being assured. For one thing, the current left-wing government is deeply split over most issues and has become truly unpopular. The government relies on only one-person parliamentary majority. Second, all the parties, except for the Left Greens and the small Civic Movement—which won seats in the 2009 elections—are, in one way or another, implicated in the crash. This makes the issue of culpability, as I have stressed, far more complicated and ambiguous.

The Social Democratic Alliance was part of the coalition government with the Independence Party, which was in power when the economy collapsed. The current Prime Minister and the Foreign Minister held portfolios in the previous government, even if they were not singled out as bearing special responsibility by the Special Investigation Commission. The Social Democrats were out of power from 1995 until 2007 when the banking sector was privatized and the economy deregulated under the auspices of the Independence Party. But they cannot evade responsibility for what happened in the two years leading to the disaster. Because of the unpopularity of the government, the Independence Party has reclaimed much of its former strength in opinion polls, even if it is still being blamed for the crash and is bound to be reminded of it forcefully in the next election campaign. Several of its parliamentary members, who were associated with shady banking deals, did not resign from their posts. Its current leader was also the chair of the board of a company, which went bankrupt. Such issues could come back to haunt the party.

Yet, as is often the case in other societies grappling with a tainted past, the “old regime”—in business or politics—is still to be reckoned with. While it is trivially obvious that past events cannot be reversed, it does not follow, as Nenad Dimitrijević has pointed out, that the dividing line between the past and the present is clear-cut. What happened under the old regime has not disappeared. It has rather undergone a transformation: having lost the capacity to act as officially sanctioned and hegemonic social and political narrative, the old patterns

nevertheless survive.<sup>13</sup> Thus, after being forced out of the Central Bank, former Prime Minister Davíð Oddsson was hired as the editor-in-chief of the second largest newspaper in Iceland, the conservative *Morgunblaðið*, which he uses to defend himself and to propagate his own version of the economic collapse. What's more, the media empire, which includes the largest newspaper, *Fréttablaðið* and a private TV station, Channel 2, is still controlled by the wife of one of Iceland's moguls, Jón Ásgeir Jóhannesson, whose bankrupt banks and companies were largely involved. In other words, the power struggle of the last decade—unleashed, to a large extent, by the privatization of the banks—between Oddsson and his political allies, on the one hand, and Jóhannesson and some of the new owners of the banks, on the other, is now being reenacted within a different political context and on another public stage. Dominant elements of the previous business and political elite are not only alive but also influencing the transition. Given the volatility of the current political situation, there is no way to predict future developments. The next elections will be of pivotal importance: if the Right regains its position as the largest political force in Iceland and forms the next government, it is likely that the measures undertaken to discredit the previous regime will be suppressed.

Transitional justice is always a highly politicized process. Its restorative and retributive elements have not only to do with the law but also with political stability and what may be termed democratic redemption. The scope and nature of the political changes in Iceland will be determined by the relative strengths of the forces vying for political control in Iceland. The question remains whether a transitional regime succeeds in displacing one interpretive account—or truth regime—by another, while preserving, in an historical sense, a common national narrative.<sup>14</sup> As things now stand, it is unlikely that one hegemonic version of the truth develops. But the political struggle discussed here is what the current politics of justice and memory in Iceland is about.

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<sup>13</sup> Nenad Dimitrijević, "Justice beyond Blame: Moral Justification of (the Idea) of a Truth Commission," p. 371.

<sup>14</sup> See Teitel, *op. cit.*, p. 115.

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