

FINANCIAL CRISIS: PREDICTIONS FOR THE FUTURE OF FINANCIAL LAW AND LAWYERS

April 2009

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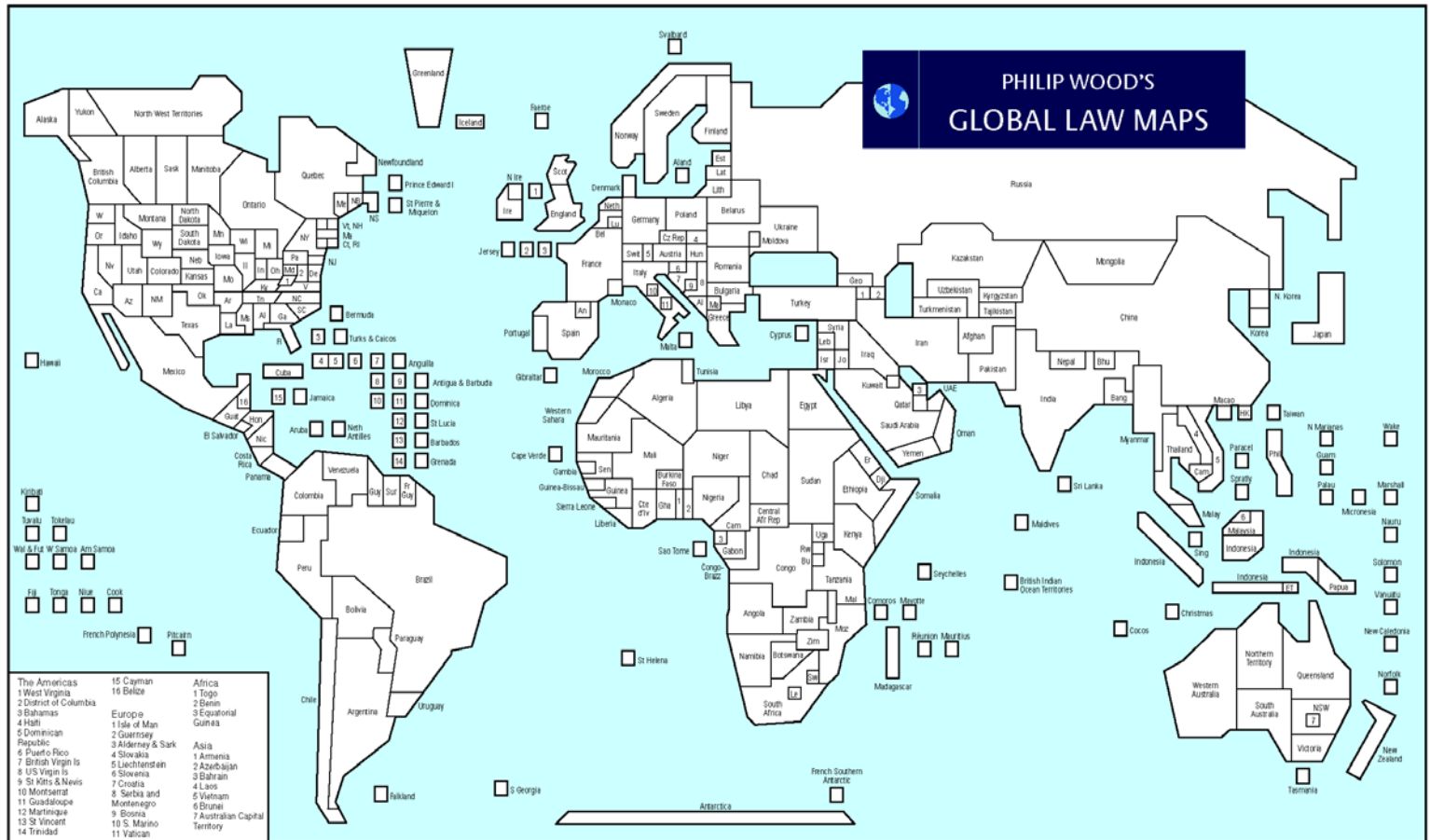
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Visiting Professor, Queen Mary College, University of London

Visiting Professor, London School of Economics & Political Science



1. Map: Key map of jurisdictions



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Long term changes

- Huge amounts
- Derivatives
- Securitisations

Short term causes

- The nature of bubbles
- Easy credit (Robin Hood)
- Homes bubble
- Shares bubble
- Who was to blame?

Phases of the crisis

1. Two summers: Bubble hisses and vents
2. Seismic September: Bubble bursts
3. Debris in the sky

Drivers of law explosion

- Demography
- GDP growth
- Globalisation
- The Great Divide and its future
- Banks, capital markets, companies
- Triple polarisation of law and its future

Turning-point: 1830

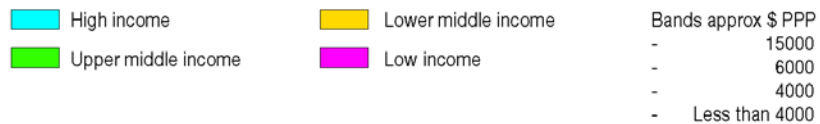
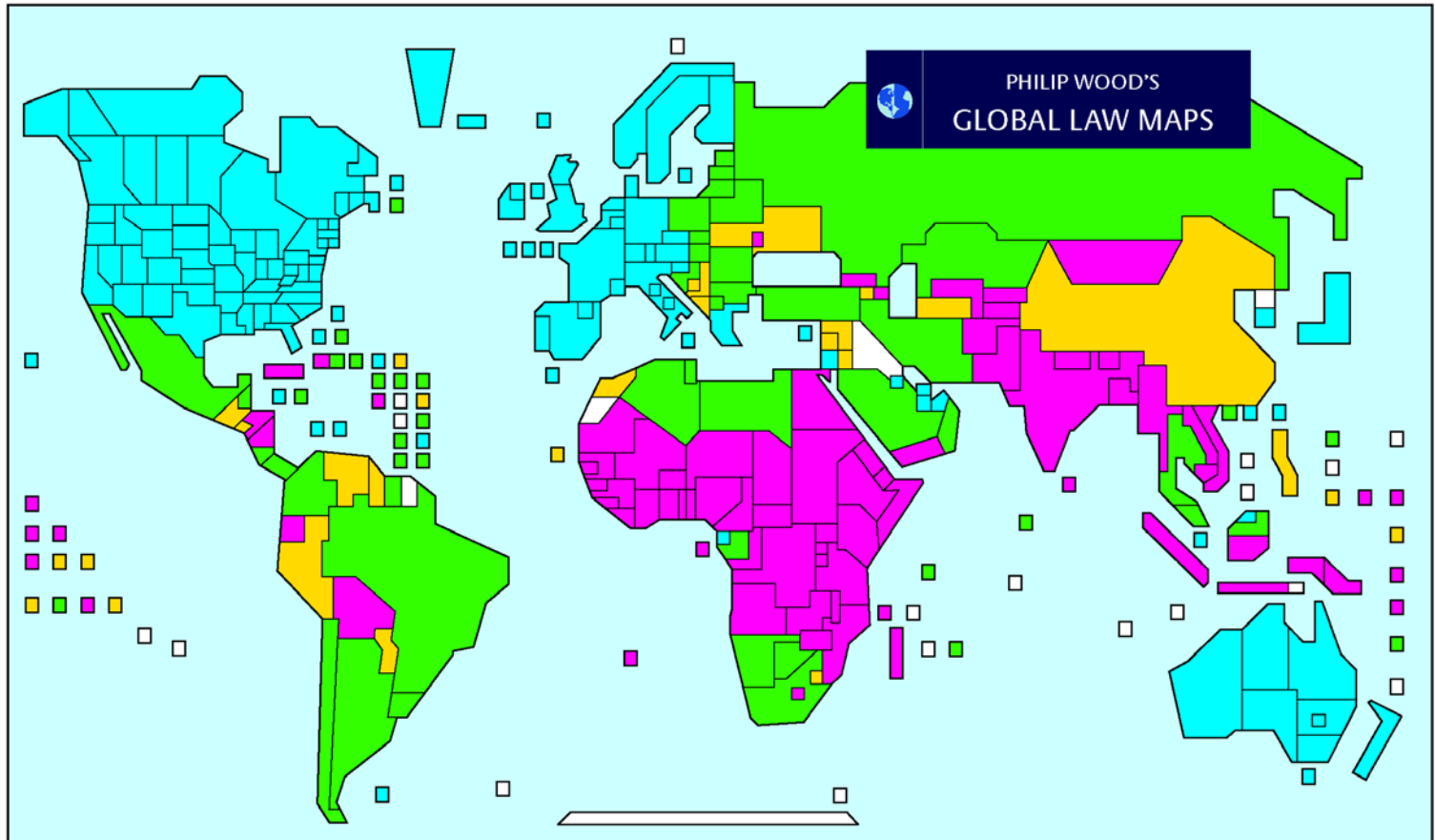
Demography

- 1830 – 1 billion
- 1930 – 2 billion (100 years)
- 1960 – 3 billion (30 years)
- 1977 – 4 billion (17 years)
- 1990 – 5 billion (13 years)
- 2000 – 6 billion (10 years)
- 2030 – 8 billion

GDP growth

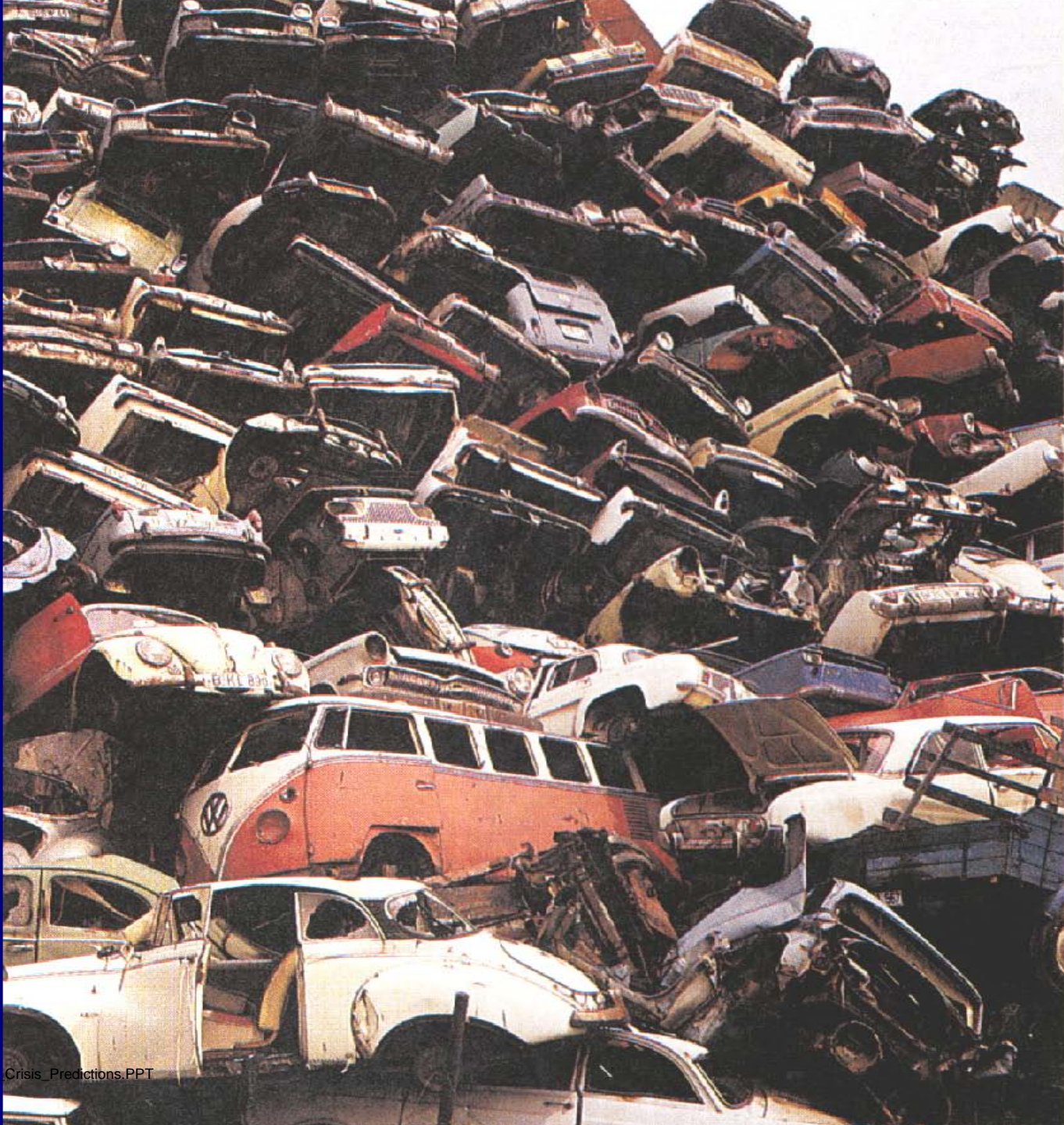
- 1830 – 700 billion (Australia and South Korea)
- 1977 – 16,000 billion
- 2000 – 37,000 billion
- 2030 – 97,000 billion

17. Map: GDP per capita



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3 FOOTBALL FIELDS



10 FOOTBALL FIELDS

China 23	China	China
Japan and Asia 19	Japan and Asia	
US 17	US	
Europe & offshoots 15	Europe & offshoots	
India 10	Latin America 6	Former USSR 3
		Africa 3

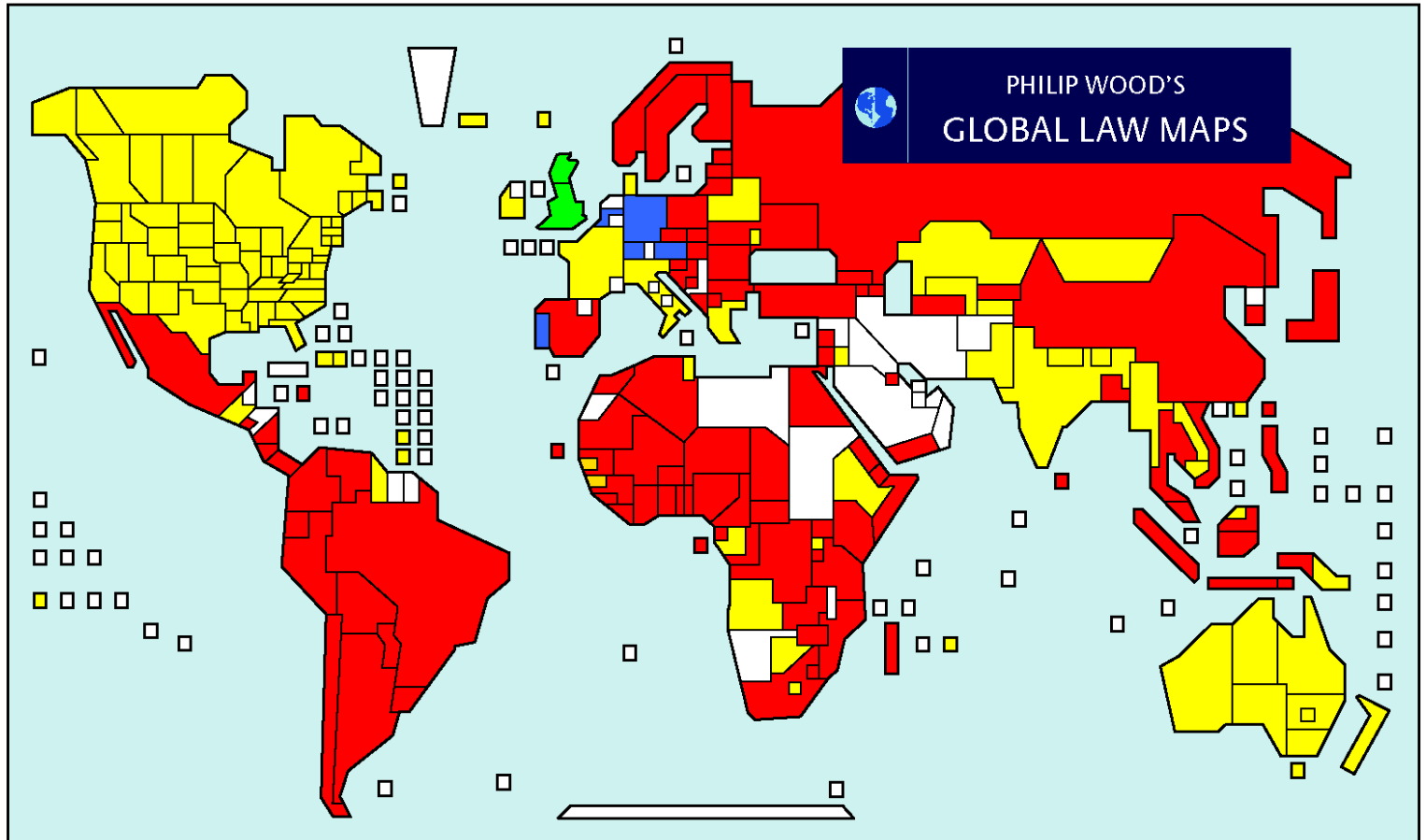
Million: 1,000,000

Billion: 1,000,000,000

Trillion: 1,000,000,000,000

- Payment systems: 30 x world GDP
- FX: 25 x world GDP
- Market cap: World GDP
- DTC/Euroclear: 25/12 trillion
- Derivatives: 300 trillion

56. Map: Bank insolvencies 1980-2002

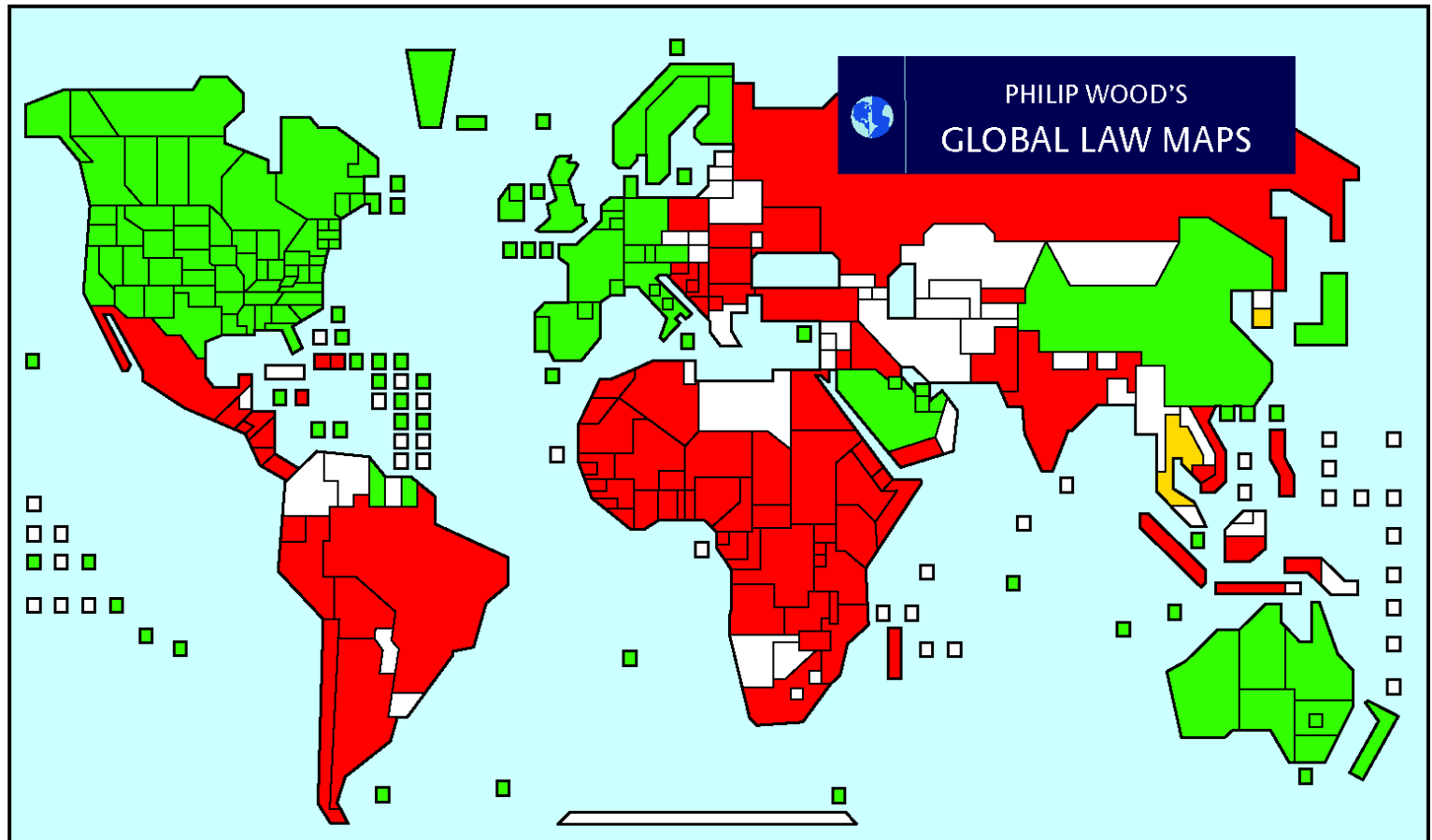


- Systemic crisis
- Some bank problems
- Unallocated
- Significant
- No crisis

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53. Map: State insolvency 1980-2005



- Red: Unable to pay due foreign currency loans at some time in this period
- Green: Solvent throughout this period
- Yellow: Crisis
- White: Unallocated


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10. Superchart – World Financial Law (1)

Five key indicators

TOPIC	Napoleonic	Roman-Germanic	Common Law
Set-off	No	Yes	Yes
Debt Transfers	No	Yes	Yes
Security	No	No	Yes
Trust	No	No	Yes
Tracing	No	No	Yes

Set-off	Is set-off available generally on the insolvency of a debtor-creditor?
Debt Transfers	Is the assignment of debts free of a need to give notice to the debtor, if it is to be effective on the insolvency of the assignor?
Security	Is security wide and protected on insolvency?
Trust	Is the trust (divided ownership) freely available for all assets and effective on the insolvency of the trustee?
Tracing	Is the tracing of wrongfully-taken assets freely available on the insolvency of the ultimate holder, including tracing into mixed money?

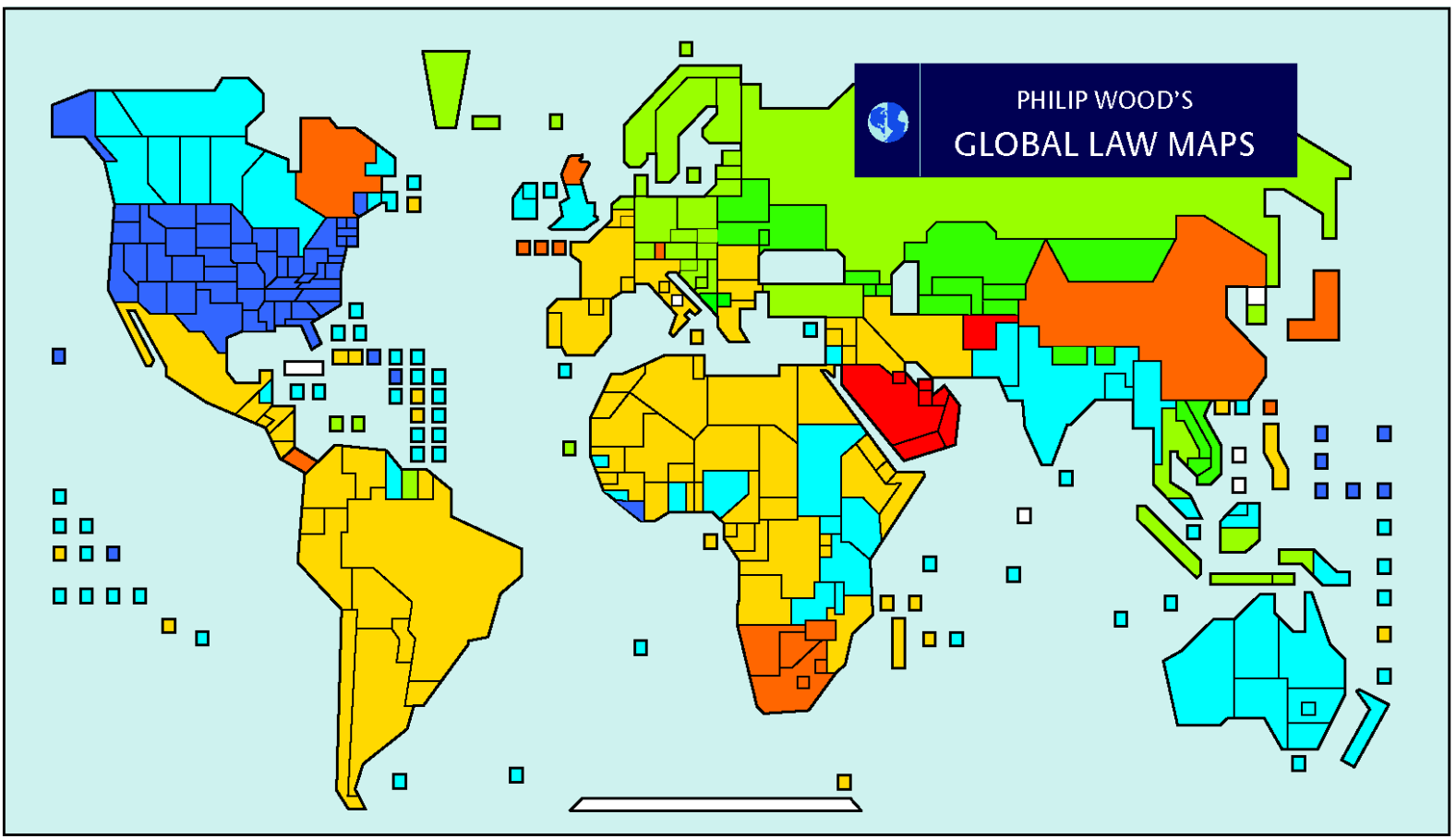
 No  Yes



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2. SuperMap: Global jurisdictions

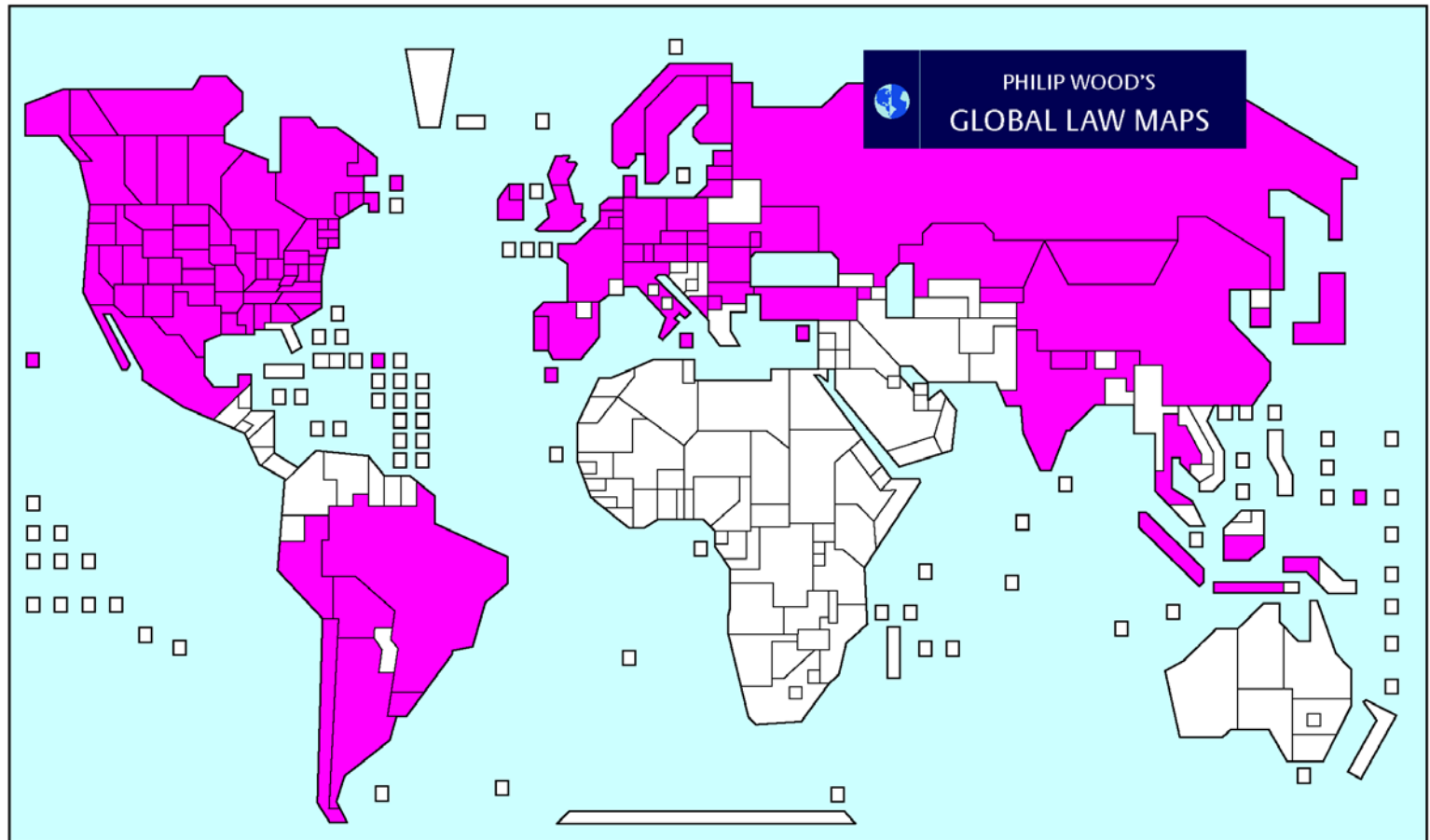


- American common law
- English common law
- mixed civil/Common law
- Islamic
- Napoleonic
- Roman - Germanic
- New
- Unallocated jurisdictions

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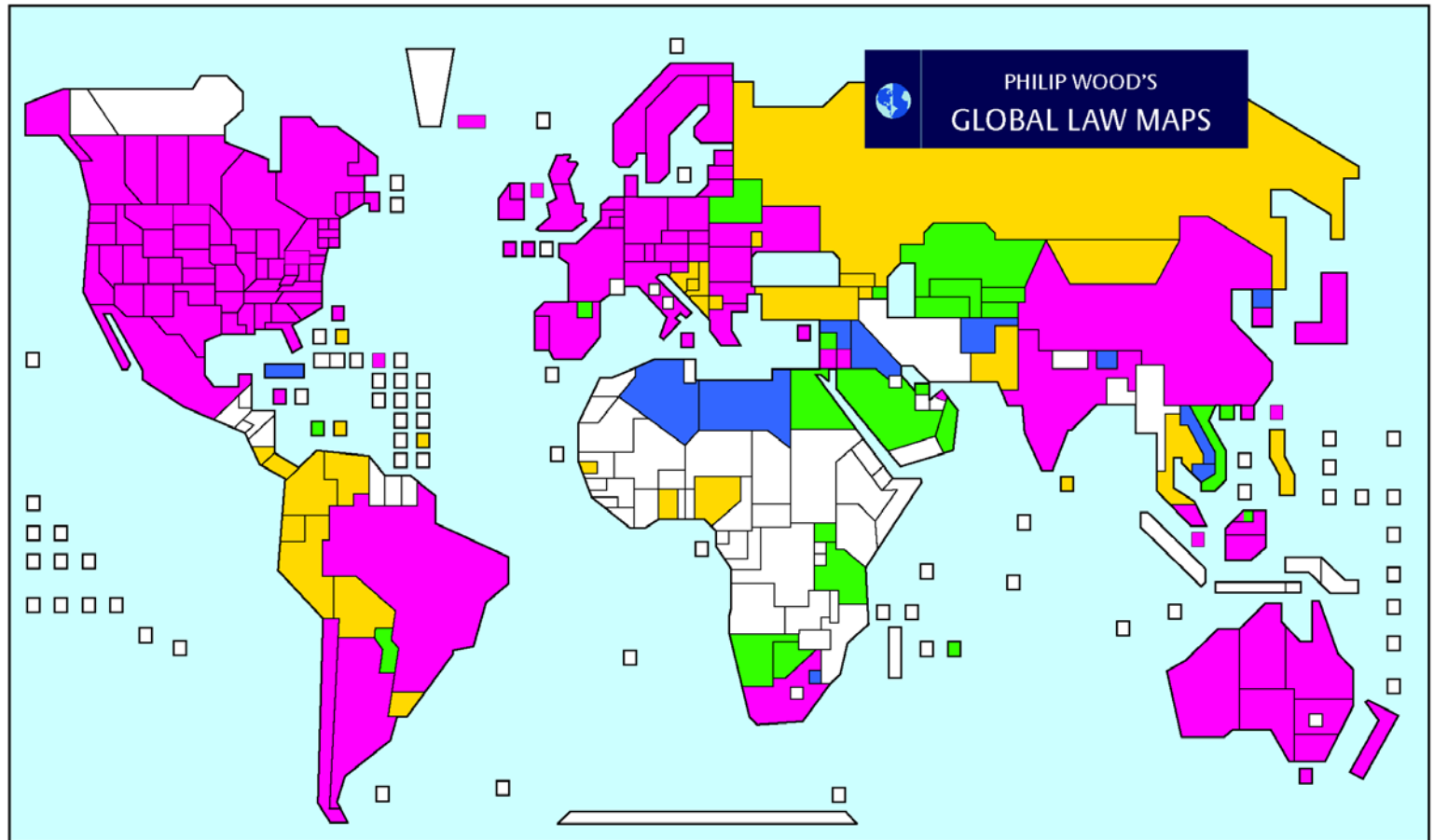
42. Map: Major changes to insolvency legislation 1997-2007



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54. Map: Financial regulatory regimes

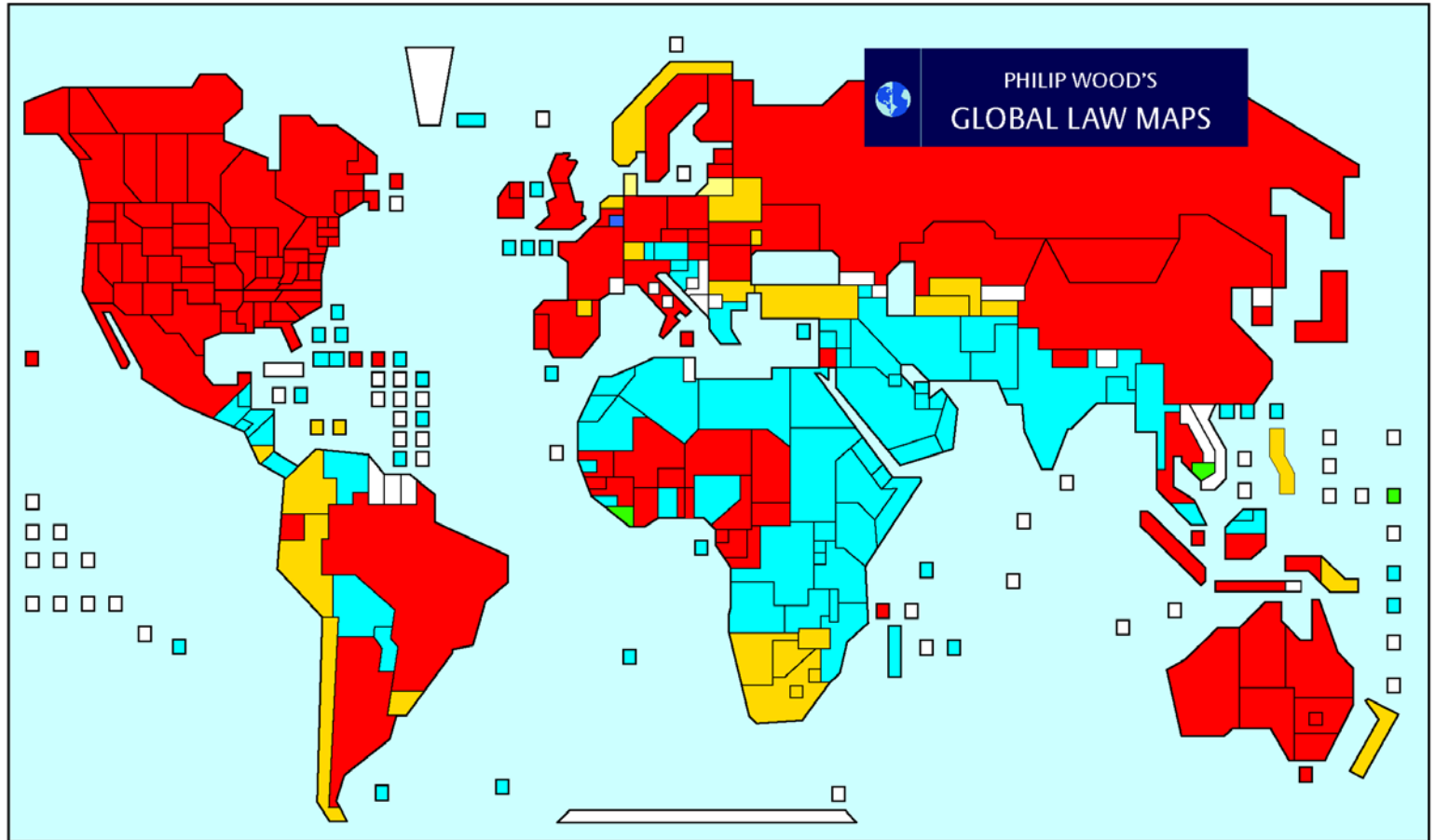


- Detailed regulatory regime
- Regulatory regime (detailed or medium)
- Partial regulatory regime
- Minimal or no regulatory regime
- Unallocated

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44. Map: Corporate insolvency rescue statutes



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43. Chart: Corporate insolvency rescue statutes

	Impact on security	Freeze on set-off	Freeze on contract cancellation	Creditor control	Director liability
(1) Singapore	Usually OK	Usually OK	Usually OK	Usually OK	Points to watch
Australia	Usually OK	Usually OK	Usually OK	Usually OK	Points to watch
England	Points to watch	Usually OK	Usually OK	Usually OK	Points to watch
Canada	Can be problems	Points to watch	Can be problems	Usually OK	Usually OK
United States	Can be problems	Points to watch	Can be problems	Can be problems	Usually OK
(2) Netherlands	Points to watch	Usually OK	Usually OK	Usually OK	Usually OK
Japan	Points to watch	Usually OK	Usually OK	Usually OK	Usually OK
Germany	Points to watch	Usually OK	Usually OK	Usually OK	Points to watch
Poland	Usually OK	Usually OK	Can be problems	Can be problems	Usually OK
(3) Italy	Can be problems	Usually OK	Major impact	Points to watch	Major impact
Spain	Can be problems	Can be problems	Major impact	Can be problems	Can be problems
Belgium	Major impact	Can be problems	Points to watch	Can be problems	Major impact
France	Major impact	Can be problems	Major impact	Major impact	Major impact

■ Major impact
■ Can be problems

■ Points to watch
■ Usually OK

(1) Common law
 (2) Roman-Germanic
 (3) Napoleonic

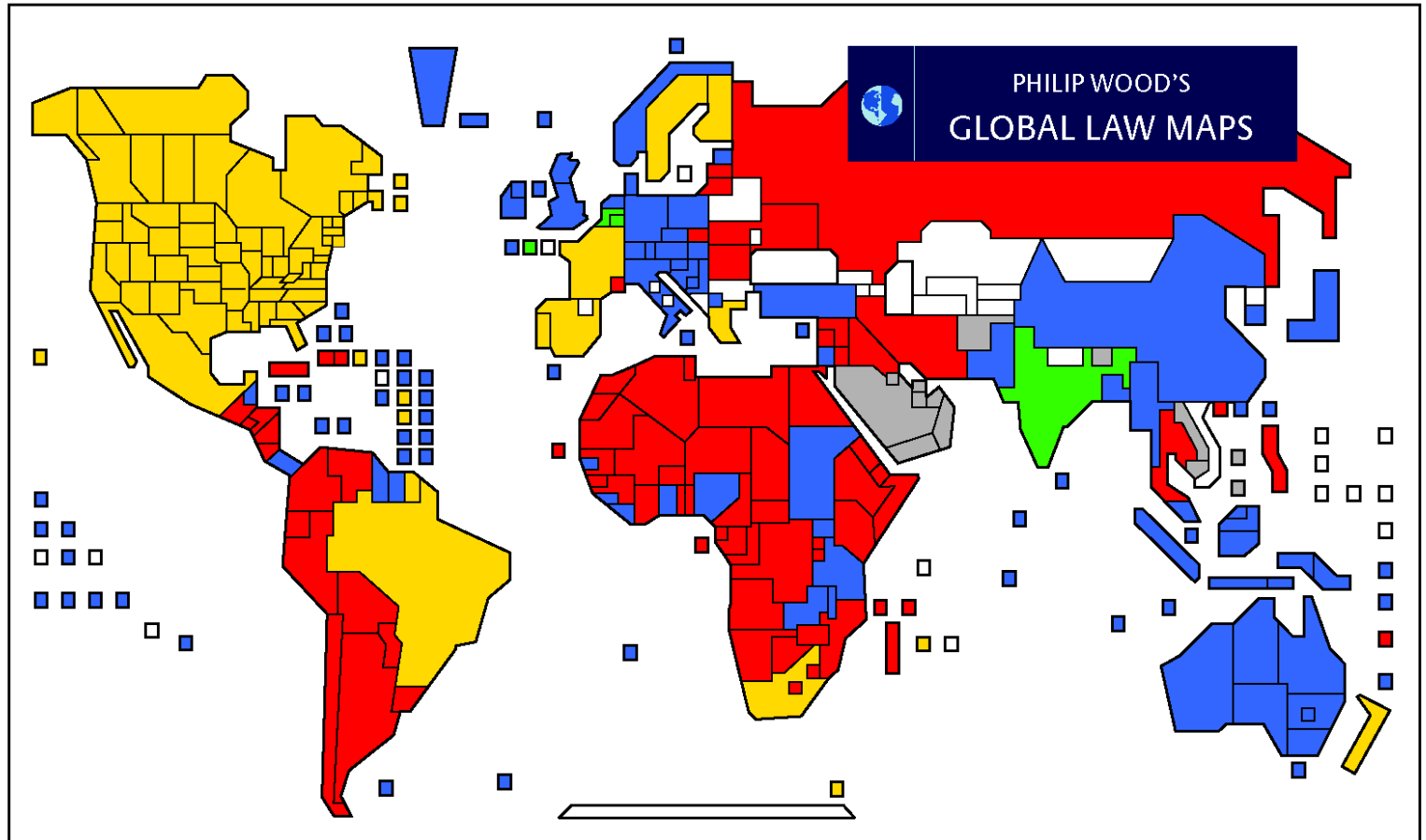
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Risk mitigants

- Insolvency set-off and netting
 - Trusts
 - Security interests

20. Map: Close-out netting on insolvency



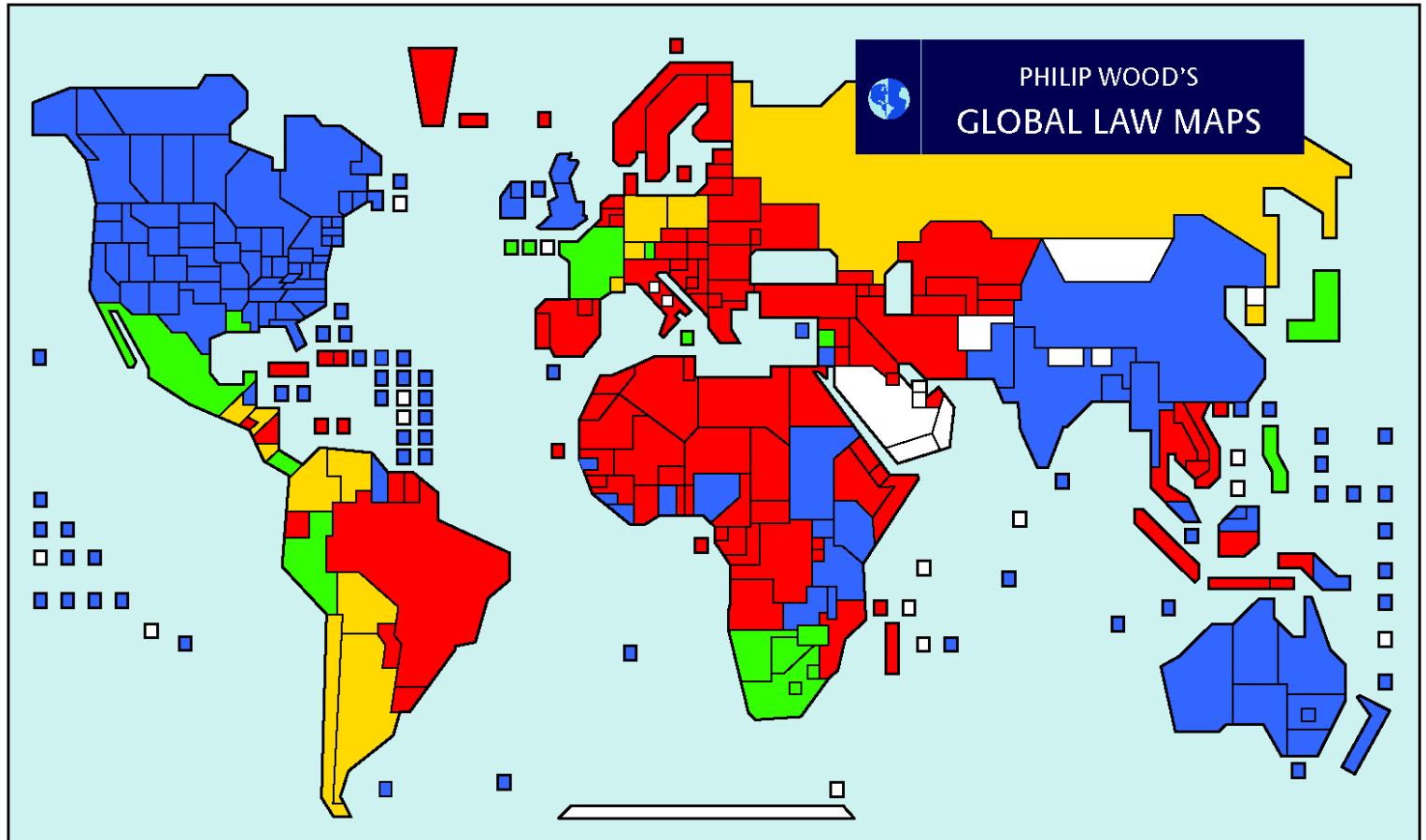
- Strong netting
- Weak netting, but special statute
- Law uncertain
- Quite strong netting*
- Weak or no netting
- Unallocated

* In India, assuming abolition of "Sick Companies" legislation

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39. Supermap: The trust

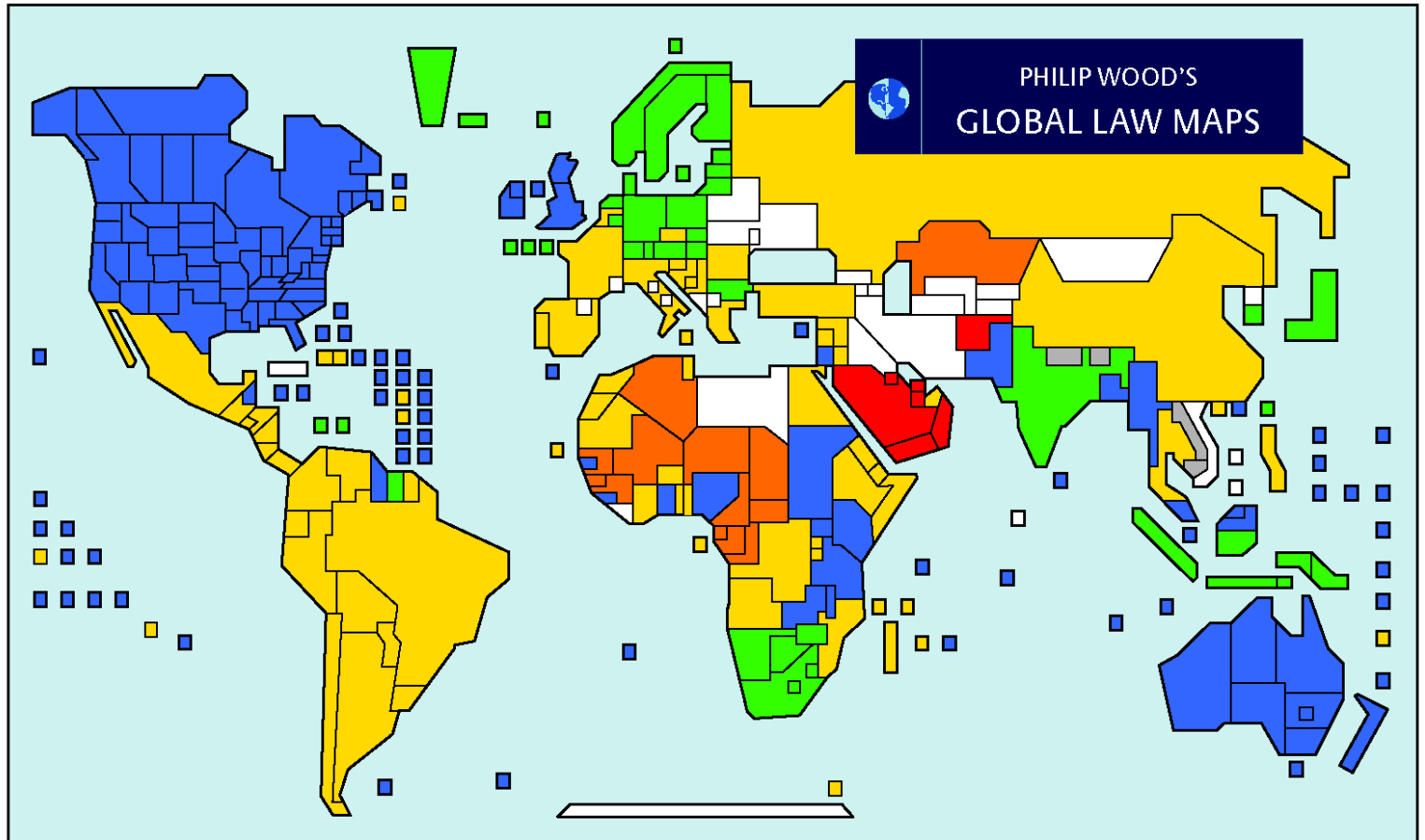


Blue Wide trust Yellow Quite narrow trust White Unallocated
Green Quite wide trust Red Narrow trust

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28. Supermap: Global security interests



- Favours security
- Limits on security
- Does not favour security
- Unallocated
- Quite favourable to security
- Quite unfavourable to security
- Law uncertain

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Other issues

- Debtors or creditors?
 - Protections for individuals
- Regulatory and legal micromanagement
- Is there anything wrong with financial law?

2 models of legal systems

Dark

Light

Therefore: conflicts ...

Delaware factor

- Delaware corporations
- English law
- ISDA master agreement
- UCP 600
- Swift
- DTC

Future role of financial lawyers

Law firms/in-house departments

Emerging jurisdictions

Conclusions

1. ?
2. ?
3. ?
4. Final prediction



Questions?

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