What blocks public participation in banking?

Abstract

This paper asks what blocks public participation in banking, be it in the regulatory process, in bank governance or in other ways that the public can influence the activities of banks. Uniquely it uses a core political economy theoretical understanding of banks to frame a review of political science, international political economy and mainstream economic literature relating to public participation in the affairs of banks, and in doing so creates fresh insights from this literature. It develops the key, and relative, categories of bank / non-bank and regulator and demonstrates first, the essentially diffuse nature of the non-bank category and second, how the necessity of convincing non-banks of bank credit worthiness creates obscurity for non-banks regarding banking activities. As the category of non-bank and bank and then regulator are further explored these two essential characteristics can be seen to echo throughout the more concrete manifestation of blockages to public participation in banking.

The paper forms a part of the broader project investigating public interest representation in banking. That project, including participatory research workshops with civil society organisations representing the public, found that a key ingredient of public interest representation was public participation in banks.

What blocks public participation in banking?

Introduction

Europe's economies are undergoing a process of financialisation with 'the increasing role of financial motives, financial markets, financial actors, and financial institutions in the operation of the domestic and international economies.' (Epstein, 2005:3)[1]. One clear feature of financialisation is that it is almost impossible for individuals and companies to avoid interaction with the banking sector. First, most money is bank credit money: around ninety-seven percent of the value of transactions occurs using bank credit money (e.g. Ryan Collins et al, 2012 for the UK). Bank credit money continues to further intrude into everyday transactions by various means, e.g. increased internet shopping & innovations such as contactless debit/credit cards. Indeed FESSUD have found that in effect many are forced to take bank accounts e.g. to receive salary or benefits (FESSUD forthcoming). Second, and as a result, we are all depositors. In the UK, for example, ninety-seven percent of adults have a current account (Competition and Market Authority, 2015). More generally statistics on financial exclusion confirm that there are very few adults in Europe who do not have a bank account (World Bank, 2014). Third, Europe's economy is debt dependent: while the very smallest firms may be self-funding or funded from private loans the majority of the economy is reliant on either bank loans or, for the very largest, securities markets made by banks providing liquidity and market infrastructure (Lapavitsas & Lindo, 2014a, 2014b, 2014c). Fourth, the banking crisis, which began in 2008, touches us all. As French (2014) powerfully argues, the problem for Europeans is no longer financial exclusion but financial precarity: a precarity in households and firms and, we can add, at a systemic level as the continued threat of further failures and instability shows.

Yet despite the fact that in Europe almost every member of the public is implicated in banking and that the banking crisis has cost the public dearly, participation in the governance and regulation of banks by groups other than the banks themselves is low (Mügge, 2010), and when we exclude other businesses is extremely low. Low participation is linked with poor representation of the public interest. As Scholte (2013:129-130) states: 'Nongovernmental organizations (NGOs), labour unions, faith-based organizations (FBOs), and other social movements continue to play a fairly marginal role in the politics of commercial finance, thereby largely surrendering the advocacy field to industry lobbies and establishment think tanks. As a result, civil society activism to steer financial markets in the common good remains mostly muted and ineffectual, and governance of finance generally eludes democratic accountability.''

Various authors have analysed the low participation rates of non-business groups in financial regulation. Pagliari & Young (2014) examine responses to public consultations and find non-business groups make up only around 10% of responses. Pagliari and Young (2015:4) find that financial regulation is dominated

[1] A corresponding academic literature has grown that debates financialisation's means, nature and importance. See for example Lapavitsas (2013) for a survey and theory and Michell and Toporowski (2014:69) for an argument against financialisation as an 'exogenous shift in a more fundamental element of the economy'.

by business, while non-business civil society's ''infrequent mobilization means that they seldom represent a significant share of mobilized dissent' and that 'organized opposition to the financial industry is relatively weak but also that it is relatively disjointed.'

Moreover the consultations that Pagliari & Young examine are probably the easiest way for the public to represent its interest in the formation of banking regulation, a process which involves many other steps. For example the formation of international capital standards impacts greatly on bank regulation but occurs in the secluded world of the Bank for International Settlements (BIS) and its Basel Committee on Banking Supervision (BCBS). Researchers have shown the strong influence of banks and banking association on this committee (e.g. Wood, 2005, Lall, 2012, Young, 2012) and, in sharp contrast, the lack of influence of other groups (Helleiner and Porter, 2010)

In short, the banking system penetrates ever more of our economic activities, binding us all to it, and in times of crisis costs us dear. If the exits from the banking system are closed for most then in Hirschman's (1970) famous formulation 'voice' is the only way that public interests can be represented. Yet research shows that public participation and interest representation in banking remains lamentable. Therefore this paper asks: what blocks public participation in banking, more specifically participation to influence the activities of banks, be through regulation, via governance mechanisms or via other means, be it directly or via the state?

To answer the question the paper first briefly surveys mainstream economic literature on bank regulation and finds it both unhelpful in addressing the research question and potentially itself a blockage to public participation. Turning instead to political economy it draws upon a political economy theory of banks and bank behaviour (drawing heavily on Lindo, 2013) and, uniquely, uses key elements of this theory to frame a review of literature which examines banking regulation and its problems (largely from the fields of political science and international political economy). Examining the literature in this way, i.e. in the light of a political economy theory of banks, provides fresh insights into what blocks public participation in influencing the activities of banks.

Before starting it is worth asking: why does participation matter? First, participation here does not mean having a bank account or taking a loan - this almost everyone in Europe is forced to do. Rather this article is concerned with participation in the affairs of the bank; in having a say in what banks can and can't, should and should not be doing. Why does such participation matter? Underhill and Yhang (2008:540) examine the legitimacy of bank governance and regulation and note that: 'A legitimate system of financial governance … requires representative input that balances a range of public and private interests. In the emergent financial order private agent preferences dominate the representation of interests in decision-making, with little representation of wider constituencies'

A lack of participation has also been linked to regulatory capture, moving regulation 'away from the public interest and towards the interests of the regulated industry' (Carpernter & Moss, 2013). Pagliari (2012) identifies four channels through which regulatory capture can occur: 'unbalanced participation'; 'institutional context'; 'intellectual and cultural capture' and; 'political context', noting that unbalanced participation attracts much attention in the literature.

How might increasing participation improve matters? The answer lies in the interaction of structure and practices. Scholte (2013) distinguishes between capacities /practices and structural situation of actors,

and he notes that the two interact. Beiling (2013:285-6) argues neo-Gramsian and Regulationist writers refer to three structural layers: at the most abstract 'historically particular structural conditions of capitalist development'; second, 'societal relations'' underpinning and reproducing the historical structural conditions and; third, and most concrete, political projects and initiatives. Regardless of exactly how the structure is theorised, participation matters because there is a two-way relation between structure and practices: structures often constrain practices but they are also social constructions that are continuously (re-)made from (established) practices.

The final question is: participation in what? If the bank's actions are ultimately what matters then participation involves anything that can affect those actions. While the political economy of regulation studies cited above concentrate on public participation in the regulatory process this paper takes a wider view of participation, e.g. including through bank governance structures.

The paper first examines mainstream economic literature on regulation and regulatory capture. It then highlights an alternative theoretical understanding of banks and uses this as a framework to examine barriers to public participation more concretely. It first does so by examining the core non-bank / bank relation, focusing on the specialist nature of banks relative to the diffuse nature of non-banks or the public; doing so highlights how bank governance and structure and the structure of the banking sector in Europe create blockages to public participation. Second, it probes a key contradiction in the bank/non-bank relation that provides the framework for an examination of complexity and bank regulators as further sites for blockages in public participation in banking.

Giving the Public Agency

Banking and regulation as imperfect markets

Mainstream economic approaches to regulation rest on an imperfect market approach, itself based on perfect markets theory. This theory states that perfect markets with many buyers and sellers, perfect information and so on result in an optimal allocation of resources for the economy / society (little difference is made between the two), an efficiency expressed mathematically in the work of Arrow & Debreu (e.g. 1954). In such a world regulation would not be required or beneficial. Faced with the non-existence of this world, economists focuses in a variety of ways on whether such imperfections do or do not justify regulatory intervention, and if so then what sort of intervention (Harnay & Scialom, 2015).

The crash, crisis and depression of 1929 and the 1930s triggered a New Deal in the US government's approach to the economy, for banking there was the famous 1933 Banking Act with its variety of controls on banking and financial activities, including controls on interest rates and bank structure. (e.g. Helleiner, ; Langley, 2002; Lapavitsas, 2011; Strange, 1990) This policy action was accompanied by academic theories of regulation that came to be known as public interest school of regulation in which 'regulation provides corrective measures against various market failures, including natural monopolies and increasing returns of scale, under-provision of collective goods and externalities.' (Harney & Scialom 2015:3) In this view regulators exist to improve overall efficiency allowing normal profits for banks and enterprises, but also seen to be beneficial for workers, consumers and so on. Regulators are considered benevolent with no self-interest in regulatory outcomes beyond efficiency, they need not concern themselves with redistribution as a result and are taken to have perfect information.

As the 1970s dawned liberalising forces were taking hold in the economy and in academic economics departments. Economists launched a two pronged attack on banking regulation. First, arguing that financial markets were more efficient than they were being given credit for (e.g. Fama, 1965 & 1970); and that regulation was doing more harm than good (e.g. McKinnon (1973) & Shaw (1973)). Second, researchers argued that regulators had agency of their own and might pursue private interests, contrary to the benevolent regulator of the public interest view. Mainstream economists extended their model of aggregating maximizing individuals subject to axiomatic constraints to regulators: 'A fundamental assumption of this approach is that regulatory authorities are no longer expected to maximise social welfare but are rather self-interested' (Harney & Scialom, 2015:7). Modelling regulators as individuals in this way admits the possibility of principle-agent problems and imperfect markets as although the social is excluded by the method (aggregating individuals) it is artificially and partially brought back in via axioms and constraints (Fine, 2013).

These models display various features. In one approach a benevolent (i.e. lacking agency other than pursuing market efficiency) political actor lacks knowledge / expertise of banks' activities i.e. an information asymmetry. They therefore appoint a regulator and a three tier model emerges of politicians — regulator – regulated. But the regulator is necessarily close to the banks it is supposed to regulate and a principle-agent problem arises in which '……regulation (in law or application) is … repeatedly directed away from the public interest and towards the interests of the regulated industry'[2] or where banks '*make* policy, rather than *take* policy at the expense of consumers and the general public' (Pagliari & Young, 2014:577 emphasis in original). In other words, regulatory capture. Early models invoked straight bribes of the regulator, more sophisticated mechanisms include the promise of future employment for individuals in the regulator (the famous revolving door between banks and regulators) and intellectual and cultural capture of regulators. In a second set of models the political agent is self-interested. Stigler (1971), widely credited with introducing the term 'regulatory capture', analysed the determinants of supply and demand for regulation: politicians determine the supply of regulation based on such factors as votes gained by lowering consumer's prices or campaign funds garnered by raising the regulated firm's profits; firms determine the demand for regulation depending on how they anticipate it to affect profits e.g. through competition effects. This so-called private interest school of regulation generally argued in favour of less state intervention and regulation and in favour of liberalised markets.

The next movement to emerge used much the same basic framework of market imperfections but made more arguments in favour of regulation. It attempted to provide micro-foundations to mainstream economics by providing theories to explain observed reality such as banks and regulators, phenomena that microeconomics was previously unable to explain. Typically these micro-foundations theorise imperfect markets. In finance and banking theories, information asymmetry in particular was invoked to explain, among other things, the basic debt contract, the workings of banks, the prospect of bank runs and, to limit the danger, the accompanying role of regulatory features such as deposit insurance and

[2] The fuller definition by Carpenter & Moss (2013), cited in Carpenter, Moss, & Stinnett (2012:74 fn9) runs: 'the result or process by which regulation (in law or application) is, at least partially, by intent and action of the industry regulated, consistently or repeatedly directed away from the public interest and towards the interests of the regulated industry'.

lenders of last resort (e.g. Diamond & Dybvig, 1983).[3] While much of this work call for regulators it also suggests a certain type of regulation: if regulators don't know as much as banks about banks' business this can lead to a more hands-off regulation such as is found in the Basel Accords and in particular reliance on banks' own risk models (Harney & Scialom, 2015). In addition it suggests allowing banks to expand their activities. Bank regulation, especially since the 1980s has undergone simultaneous de-regulation and re-regulation (Cerny, 1991). De-regulation allows more activities such as trading OTC derivatives, paying interest on deposit accounts, mixing investment and commercial banking and so on, while re-regulation has provided the rules that made these new activities possible.

All three of the approaches discussed above (public interest, private interest and micro-foundations) start with the theoretical perspective of a potentially perfect market which produces the first best allocation of resources for the economy. The discussion then centres on how market imperfections, primarily in the market for banking services but also in the "market" for regulation, interact to move equilibrium outcomes away from efficiency.

There are multiple reasons to criticize this general method (see e.g. Milonakis & Fine, 2009) but most importantly for this paper the public is rarely if ever given agency, rather its best interests are taken to coincide with economic efficiency. In the public interest literature these interest are represented by a benevolent politician striving for economic / market efficiency; in the private interest and micro-foundations literature this representation becomes more muddled as the public's representative becomes constrained, corrupt, conflicted etc. This literature offers little help with the research question concerning the public's participation in banking because the public remains entirely in the background with no personality, agency or voice of its own.

Moreover and importantly, the literature itself almost certainly acts as a blockage to public participation and representation. As the dominant literature on banking and banking regulation it is what bankers, regulators and politicians are most likely to learn and therefore it influences the unfolding reality of banking and its regulation and contributes to the intellectual and cultural capture of regulators and politicians. Policy makers, bankers, even representatives of civil society and non-governmental organisations are influenced by models of the world where public interest representation is missing because the market knows best and does the public's work for it - in short the models are likely to be performative in this respect.[4] This is likely to block public participation either because, simply, the market is taken to know best, or else, because participation is taken to be a technical, specialist and expert occupation.

A Political Economy framework

In contrast to mainstream economics a political economy of banking and banking regulation can provide an alternative and more useful starting point for understanding blockages to public participation in

[3] See Freixas and Rochet (1997) for a survey.

[4] Austin (1962:6) defines performativity as 'the issuance of the utterance is the performing of the action'. MacKenzie (2004:305) says a performative utterance 'brings into being that of which it speaks'

banking. Here we highlight two core features of a political economy theory of banks which provide a framework for addressing the research question.

First, banks emerge as the economy's specialist in assessing and enforcing credit, from the rest of the economy. Financial specialists in the form of money handlers, money-lenders and discounters emerge from capitalists in general and later develop into banks; instead of lending money as such, banks lend their own liabilities and establish practices that let these liabilities be used as (bank credit) money (Lapavitsas, 2003). The primary aim of these practices is to establish confidence in the banks' creditworthiness, allowing its liabilities to be seen as a reliable store of value. Contrary to mainstream economics, this approach establishes banks and non-banks, or the public, as the two fundamental categories and the relation between them as the highest level of abstraction. The two categories are two sides of the same coin (banks need the public and vice versa) and in the analysis define each other. Non-banks are defined in relation to the activities of the banks (and vice versa) and can be analysed as stakeholders in banks. Such an approach, thanks to its focus on the relation between banks and the public, rather than on banks alone, has public agency at its core.

Second, bank's specialisation involves a sharp contradiction: banks are the economy's specialists in assessing and enforcing credit but to become so they must convince others, who are correspondingly *not* experts at assessing and enforcing credit, of their credit-worthiness. Much of the form of banks results from the practices banks must establish to surmount this essential contradiction. One result is an asymmetry of specialism: non-banks are less informed about the practices and credit worthiness of banks than banks are about the credit worthiness of non-banks. Banks' practices to establish their liabilities as money therefore involve a certain amount of mystification and signalling which echoes throughout the public's dealing with banks and throughout the analysis of public participation in banking.

The rest of this paper uses these two key points to survey concrete manifestations of blockages to public participation. It starts with the core bank/non-bank relation and in particular the specialist nature of banks, taking non-banks as stakeholders *in* banks it examines bank governance, structure and banking sector structure. Building on this it delves further into the bank/non-bank relation to highlight its key contradiction, from which complexity and regulation are examined.

The relation banks / non-banks

Having established the nature of the problem and the broad theoretical framework, attention can turn to the discussion of blockages to public participation discussed in various literature.

The diffuse public and the importance of coalitions

One fundamental barrier to participation in banking is the public's essentially diffuse nature. Banks face the whole economy as the specialists in credit and money and thereby enjoy a certain cohesion, which can be increased by being target of the same regulation (Stigler, 1971). Non-banks however are by construction a diverse group.

The non-bank category could be divided along a wide range of possible dimensions depending on the purpose of the enquiry, for example capital and labour, or firms and households, rich and poor and so

on. Yet another division might be between the state and civil society (on which more below). In line with the theoretical relation of non-banks / banks outlined above this paper investigates bank governance by considering non-banks in relation to bank categories such as depositors, lenders, shareholders, employees and management.

The first thing to note about the diffuse nature of non-banks that springs from these divisions is that it contains many different and potentially conflicting interests. Thus different groups among the public may not have the same interests to pursue in relation to the activities of banks - this itself might act as a blockage to participation in banks' affairs. For example, and perhaps simply put, savers might have different interests than borrowers, employees than customers, small local firms than managers of giant pension funds.

Even if they have the same or similar interests public participation may also be further blocked for non-bank categories by collective action problems. Despite its many weaknesses mainstream economics illustrates the nature of these problems when discussing depositors and bank runs. Micro-foundations theories of the bank generally explain banks as institutions that arise in response to imperfect markets, Diamond & Dybvig (1983) develop a model of bank runs where depositors withdraw because they cannot coordinate. As Macey & O'Hara (2003:97) explain:

> 'Bank runs are essentially a collective-action problem among depositors. If, for any reason, large, unanticipated withdrawals do begin at a bank, depositors as individuals may rationally conclude that they must do the same to avoid being left with nothing. Thus, in a classic prisoner's dilemma, depositors may collectively be better off if they refrain from withdrawing their money, but their inability to coordinate their response to the problem can lead to a seemingly irrational response'

Non-banks face a similar problem of coordination when it comes to representation in banking regulation and governance. Civil society organisations (CSOs) exist in part to try and overcome such co-ordination problems, e.g. Scholte (2013: 134) defines them 'to be a political space where associations of citizens seek, from outside political parties, to shape societal rules'. Never-the-less such groups themselves suffer from diffusion and coordination problems (e.g. Kastner, 2014 regarding consumer groups). To date CSOs approach banking governance and regulation from their particular perspectives such as poor-country debt, food speculation, ecology, inequality, excessive corporate power, transparency and so on, while very few have concentrated on banking and finance *per se* and to date co-operation between such groups remains limited (Scholte, 2013). Such groups face a double challenge when tackling finance: first to theorise the link between their issue and finance and, second to transcend their particular interest to coordinate with other interest groups.

Even when CSOs manage to coordinate the public there is evidence that the form necessary to enable such co-ordination and as a result less effective than arguments from banking and financial sector bodies. For example in the literature Krawiec (2013) and Krawiec & Liu (2015) show how standard letters responding to public consultations have less impact than submissions by banks. More generally, and not limited to regulation, much of the problem lies in the need to translate between language and actions required to communicate with and mobilise the public (required for co-ordination) and that required for interaction with complex and technical banks and regulators – as is explored in more depth when examining complexity below.

Pagliari & Young (2014, 2015) also stress the disjointed nature of opposition to financial groups in regulation and the need for coalitions. They note the 'interest ecology' of financial regulation lobbying is more plural and complex than it is often given credit for and that coalitions of interest are often critical to outcomes. Notably coalitions allow financial groups 'to "leverage" their influence over the policymaking process by working alongside non-target groups that often share their preferences.' (2014:600). The possibility that the public could 'leverage their influence' exists but requires coalition building, with non-financial business interests likely to be a key recruit. Kastner (2014:1316) argues that after the crisis advocates for consumer concerns were able to take advantage of increased salience because they formed transnational networks amongst themselves and then formed alliances with 'publicly elected officials … despite their collective action disadvantage.'

Blockages to non-bank coalition building are therefore likely to be blockages to participation and to public interest representation and the essentially diffuse nature of the non-bank group is the key factor weighing against coalition-formation. Diffuse non-bank interests tend to exhibit highly variable responses to different regulatory proposals and '[t]hese "differentiated reaction norms" of interest groups highlight not only that organized opposition to the financial industry is relatively weak but also that it is relatively disjointed.' (Pagliari & Young, 2015:4).

Cost

The significant amounts of money and resources that banks are able to spend relative to the meagre budgets of oppositional groups is also often cited as limiting public sector participation and representation. This is perhaps most obvious when considering the advertising budget of banks relative to those of, say, civil society groups but the point holds across the wide variety of activities that the public might undertake to participate in banking. Given the total resources available to the public in general this spending mismatch can be seen as a further facet of the co-ordination problem of the general public relative to the particular interest of banks: the resources to counter banks spending on lobbying exist in the rest of the economy, the problem is to mobilise them.

In the academic literature, the reports of CSOs and the financial press much attention is given to the spending mismatch concerned with lobbying and regulation. Academics (e.g. Hacker and Pierson, 2010; Johnson and Kwak, 2010, Igan, Mishra and Tressel, 2009) have noted the ''significant lobbying war chests' (Pagliari & Young, 2015: 1) of finance industry groups. CSOs also highlight the power of lobby groups including in banking: Corporate Europe Observatory''s (2014) conservatively estimates 'the financial industry spends more than €120 million per year on lobbying in Brussels and employs more than 1700 lobbyists.' The financial press has also noted the amount spent on lobbying by Europe's banks, in particular following disclosure law changes. The FT reports official disclosures by banks show that Deutsche Bank spent €4m on lobbying in the EU in 2014, UBS €€1.7m and Goldman Sachs €7-800,000 in 2014, figures that almost certainly underestimate the real lobbying expenses (Robinson & Braithwaite, 2015). In comparison the typical budgets of CSOs are negligible e.g. 'Finance Watch, the only dedicated public interest advocacy group working on European financial regulation, operates on a budget of less than €2m.' (Finance Watch, 2016:12).

We should note that it is not just the public outside the ambit of the state that struggles to mobilise society's resources compared to banks. Regulators themselves also must compete for funding and often work on much smaller budgets than the banks they seek to regulate and supervise. For example

Bloomberg (Hamilton, 2016) recently reported that the CFTC struggles to attract enough funds to properly policy high frequency trading. Froud et al (2012) report a 'constant pressure' on the resources of regulatory agencies in the US.

Bank Governance

As noted above analysis starts when two categories, banks (specialists) and non-bank (non-specialists) are abstracted. The categories are relative, in that they define each other and the category non-banks can be further detailed based on its interaction with banks (and vice versa). Put another way further elaboration of the two basic categories must occur in tandem. Examining the governance of banks leads to more detailed, parallel categories of bank / non-bank. The analysis below argues that amongst these sub-categories senior bank management dominate and can act to block public participation.

As most of Europe's banks are so-called shareholder banks a first category of stakeholders to examine is shareholders. The literature for corporate control highlights the ways in which shareholders and management of a firm can have different interests, and the ways in which shareholders might incentivise management (e.g. Jensen & Meckling, 1976; Stiglitz, 1985). Despite these incentive devices it is clear that senior bank management have the capacity to block shareholder participation, for example senior management regularly meet bank regulators providing the opportunity for them to promote their own interest and block those of shareholders.

In early 21st century Europe a majority of bank shareholders are financial firms and to a great extent are non-bank financial firms or institutional investors such as pension and insurance funds. These in turn are for the most part investing the money of the wider public, a very large share of whom have health and other insurance and pensions. Senior bank management's domination of their (ultimate) shareholders therefore occurs through their domination of bank governance but also through the structure of the financial sector: members of the public have little say in the management of their funds, which are managed by professional fund managers motivated more by trading for price change than for exercising governance rights (Lindo, 2013).

Although Froud et al (2012: 42) describe pre-crisis banking as a joint venture between shareholders and senior management they also state: 'the U.K. and U.S. investment bankers who profited from financial innovation were standing next to a huge, open till and, predictably, wanted everybody else to get out of their way as they shoveled the money.' As well as shareholders that includes other stakeholders in banks.

Holders of other liabilities, notably deposits and other bank debt[5] are extremely important to banks (more so than other capitalist firms thanks to the possibility of a bank run), yet the holders of other liabilities rarely have a chance to participate in the affairs of banks. In the shareholder banks, which dominate Europe's banking sector, no formal governance rights are given to debt holders (although in the event of bank crisis and failure they may be invited to participate).

[5] Debt holders are uniquely important to banks as their very essence is in the management of promises to pay, both accepting them and critically, issuing them

Furthermore other liability holders may themselves have diffuse interests. The European crisis has shown how the interests of different bank liability holders can conflict: e.g. in Cyprus the powerful voice of other debt-holders (I.e. not depositors) led to incredible pressure to write-down both deposits and shares while repaying as much as possible to other debt (Lindo, 2014). Deposit holders were able to resist this plan to some extent, mainly through the national parliament rejecting a European plan to write down deposits. In the event of bail-in it the interests of depositors might again be in conflict with those of senior bond holders (typically banks and other financial instruments), here again it is likely that the relatively concentrated nature of bond holders will allow them to co-ordinate and participate in restructuring with greater ease than the wider, more diffuse group of deposit holders.

Other banking governance models exist, have existed, or can be imagined which give debt holders a say in the running of the bank and thereby increase public participation, the most prominent example being co-operative banks. Other forms of stakeholder banks could exist, for example the New Economics Foundation (nef) identified four types of stakeholder banks, which they argue would better serve the UK economy (Greenham & Prieg, 2013). Similarly Bone (2016) argues a diversity of bank governance models would better serve Scotland. In a co-operative-like governance structure, where deposit holders have a high ranking in the governance of the bank, it seems likely that participation of the public as depositors would be easier and that as a result depositors' interests would be less likely to be subordinated to those of other debt holders or other groups[6].

A further example comes with the representation of bank employees. Bank employees (invariably also bank customers) may have interests at odds with management (or other stakeholders). Employees can participate in several ways, externally to the bank they often participate via unions e.g. through union representation directly into the regulatory process such as that carried out by Uni Finance (Uni Finance, 2015). Alternatively bank governance structures can also include channel for employee representation, for example through employee councils (Wever, 1994), a framework sometimes referred to as industrial democracy (Petersen, 1968).

The problem for public participation in banking however is that in Europe alternative banking models, e.g. those allowing formal depositor or employee representation, have generally been in decline, thereby reducing the channels for public participation in banking. For example the number of co-operative banks has fallen dramatically both before (e.g. UK), during and after (e.g. Italy, Spain and Greece) the financial crisis of 2008.

Finally, whether through the creation of bank credit money or the provision of credit to the economy, banking is a special sector of the economy that touches all others. Europe's economy in the early 21st century is debt dependent with banks critical to debt provision. This means that borrowers from the bank are a category of interests who are directly affected by the actions of banks – as can be seen clearly and most clearly by Europe's ongoing credit crunch. Recent evidence from BIS (Borio et al 2016) and Bank of England (Franklin et al, 2016) researchers show just how damaging a credit boom followed

[6] The largest depositors in Cypriot banks had some of their deposits transformed into, at the time, worthless equity. Ironically this gave these very same interests majority shareholdings in these banks and in some cases a much greater degree of control, some even becoming president of the banks in question. (Reference)

by credit bust and contraction can be to economies and especially to productivity. Public participation in the setting of Environmental, Social and Governance (ESG) criteria for credit allocation has the capacity to have a great impact on the economy and society but is perhaps the hardest point of entry for public participation.

Bank sector structure reinforces problems of governance

The ways in which public participation are blocked by bank governance models are enhanced by the structure of Europe's banking sector and in particular the dominance of a small number of extremely large banks. European banking is dominated by 15-20 international, extremely large, universal banks, using more of their balance sheet for trading activities than other banks and often drawing on the deposits of an accompanying domestic retail bank (Lindo & Przewoska, 2015). Both the structure of these banks and their dominant position is blocking public participation and reinforcing the ways governance models block public participation. In part they do so by repressing other interest groups such as small and medium sized banks, cooperative banks or employee-run banks which might be more conducive to public participation and interest representation.

First, within the banking sector different sorts of banks have different interests. Perhaps most clearly small, local, commercial banks have different interests to very large, international, trading banks. The differing activities of these two types of bank dictate that they have very different regulatory interests. Most importantly thousands of medium sized banks in Europe account for 24% of total assets but only 7% of derivative and trading book assets, while less than 20 very large banks account for 76% of assets and 93% of trading book & derivative assets (Lindo & Przewoska, 2015). Thus the largest banks will be concerned with regulation affecting their ability to conduct international business and securities and derivative trading, smaller banks will have more concerns for the basics of local commercial banking.

Second, complex, costly to implement regulation confers advantages on larger banks who can afford to invest in the staff & systems to achieve detailed regulatory compliance and enjoy economies of scale by doing so relative to smaller banks. The problem is compounded by regulations which actively reward complexity in regulatory compliance. The prime example of this is the Basel Accords, which from the 1996 Market Risk Amendment onwards reward the use of the more complex 'internal models approach' over the easier to implement standard approach with lower capital requirements for the same positions. The largest banks, blessed with the loudest lobby voice, are the best (often the only) banks able to take advantage of the benefits of the advanced or internal models approach, further rewarding large & complex positions (Underhill & Zhang, 2008: 546). Pagliari (2012:6, citing Matli & Woods, 2009) notes that such behaviours are a form of regulatory capture 'that allow market leaders to eliminate present and future competition.'

Problems of collective action are once again evident here. Nineteen mega-banks with average total assets of €886billion not only have a larger lobby budget per bank but, sharing similar interests, face less obstacles to coordination than many thousands of small and medium sized banks (average size €0.056bn & €13bn respectively (Lindo & Przewoska, 2015)). In addition, given the largest banks are international by nature, cross-border coordination for supra-national and international co-ordination is simpler than for small and medium banks with fewer international ties. Furthermore, even established groupings of banks, such as national banking associations or other groupings such as the European Association of Co-operative Banks, usually contain at least one mega bank able to dominate the discourse of the banking

association. In this way such associations very often act as an echo-chamber for the largest banks and not as a channel for smaller banks to effectively participate and represent their interests (Corporate Europe Observatory, 2014).

As was seen when discussing bank governance above, the interests of senior bank management differ from that of the constituent stakeholders, it seems likely that this is even more so the case for the largest mega-banks. The largest banks today, such as the Global Systemically Important Banks (G-SIBs), typically (but not exclusively) combine large international, trading businesses with commercial banks which have a large domestic presence but not an international one (e.g. ECB bank aggregate balance sheet data shows little lending and deposits to "other" Eurozone nations). Given the importance of trading revenues to these banks, most especially in the 15 or so years before 2008, is seems likely that the interest of the commercial banking parts are subsumed to the interests of the trading businesses. If this is the case then a coalition is prevented between commercial banks contained within mega banks on the one hand and other small and medium sized banks on the other (small and medium banks are overwhelmingly commercial banks). This is another way in which the largest banks are able to stifle the voice of small and medium sized banks.

Finally bank sector structure also has a geographical element. In Poland for example 59% of consolidated total assets of the banking sector were attributed to foreign controlled subsidiaries and branches; in Germany the equivalent figure is just 4% (ECB Consolidated Banking data). Many Polish banks are in fact German owned, meaning decisions about them are often made in Frankfurt and not in Warsaw, presenting yet another blockage to public participation for countries such as Poland with large foreign shares of the banking sector.

Structural power

The largest banks also exercise structural power vis-à-vis governments and other bodies. Culpepper and Reinke (2014) differentiate between the instrumental power of banks, characterised by lobbying, and their structural power (they also add a dimension of strategic vs. automatic application of these powers). One of the clearest ways in which banks currently exert structural power is through being "too-big-to-fail". This term, first used in the US in the 1980s encompasses more than the size of banks, it refers to banks that if they were to fail would bring disproportionately large negative effects on the economy and society.[1] This can occur through several channels in addition to size such as complexity and connections to the rest of the financial system and / or economy

Culpepper and Reinke show how in the financial crisis after 2008 UK banks extracted a better deal in their rescue packages than US banks. This was due in large part to the structural power of HSBC. US banks rely on the domestic US market for a large share of their revenues, the US regulator therefore has the possibility to impose future costs on their business, reducing their structural power in negotiations with the regulator. HSBC on the other hand has only a small share of its business in the UK, its threat to walk away is more credible and resulted in a better deal for UK banks all around. HSBC continues to exercise this structural power, for example throughout 2015 and into 2016, extracting concessions from

[1] '[I]n September 1984 the Comptroller of the Currency testified before Congress that some banks were simply 'too big to fail' and that for those banks total deposit insurance would be provided (O'Hara and Shaw, 1990: 1587).

the UK government which benefited all the large UK banks such as changes to the Bank Levy (Berry, Ryan-Collins, Lindo, 2016).

More generally it can be seen how very large international banks are likely to have greater structural power than small local / domestic banks in addition to their greater instrumental power e.g. large lobby budgets. They are more likely to be able to make strategic threats, for example through potential failure or shifting businesses elsewhere. Public participation is limited by this structural power, even when that participation occurs via the state.

Summary

In short, examination of banks' governance and structure as well as the structure of the industry and the structural power of the largest banks has shown how a key stakeholder in banks, namely senior bank management, can act to block the participation of the public by dominating other stakeholders which make up the public more broadly. This effect is strengthened because Europe's banking sector is domainted by less than 20 banks that are qualitatively larger than the rest of the banking sector, the senior management of these banks have similar interests and are able to block public participation not only through bank governance but also via the state and the regulator.

Contradiction, Complexity and Regulation

Broadly speaking analysis so far has focused on one element of the relation between banks and the rest of society, namely the specialist nature of banks set against the diffuse and general nature of rest of society. By focussing on the bank/non-bank relation in this way little attention has been paid to the regulator and the ways in which the public can participate in bank's affairs via the regulator. This section turns to bank regulation, again framing it in the nature of the relation between banks and the rest of society.

At the heart of banks' relation with the rest of society is a sharp contradiction which drives much of their practices and institutional form. Banks are the economy's specialist in the assessment, provision and enforcement of credit. By implication therefore non-banks are non-experts in credit, they correspondingly reduce their abilities in this area as banks become more important. The contradiction arises because banks require non-banks to assess and approve banks' creditworthiness, despite being non-experts in judging creditworthiness. Simply, if the rest of society don't judge a bank credit-worthy, then a bank run ensures. Therefore despite the asymmetry in skills banks must find a way to convince non-banks of their creditworthiness. To do so they adopt a wide range of practices and signals such as sensible bank-managers in sombre suits, a flash of gold in the vaults, 'rocket scientists' (Stix, 1998) on the trading floor, reserves at the central banks, deposit guarantee schemes and so on.

This central contradiction introduces regulators in two ways. First regulation can be seen as one of the practices which becomes established as a way for banks to signal their credit worthiness (Lindo, 2013:Ch6). In this view the core purpose of banking regulation is to allow banks as a group to signal to the rest of the economy that they are behaving responsibly. This immediately bathes banks' relation to regulation in a certain light, e.g. banks as a group may aim for regulation that signals strict control to the public but that actually allows them to take more risk and increase profit; meanwhile individual banks

have an incentive to cheat or innovate ways to take risk within the letter of the law. Second, as will be seen below, complexity is often cited as a blockage to public participation in banking; theoretically this opacity of banks' affairs stems directly from this core contradiction.

Self-Regulation and co-construction.

Bank regulation appears to many as if it should offer a way for the public to participate in banking - and yet participation via this channel remains frustrated. The theoretical framework for bank regulation proposed here provides the basis for explanation of this frustration. If bank regulation is fundamentally (although not only) a way for banks to signal their credit worthiness to non-banks, then self-regulation is a quite logical situation. Bank regulation in the EU undoubtedly has considerable elements of self-regulation, sometimes explicitly so, and sometimes, as discussed in this section, self-regulation hides behind the mask of an apparently independent regulator[7].

A review of the historical emergence of banking regulation in the UK, a leading capitalist and banking nation, shows how bank regulation emerges as, and has remained, self-regulation.[8] Over more than a hundred years, changes in the form of regulation betray a continuing trend of banks eluding democratic control: over time the bank / bank regulator relationship became increasingly formal and it does so in such a way as to keep outside and democratic influence to a minimum (Dorn, 2015). Moves towards a more formal regulatory regime were in fact 'institutionalization and codification of private regulation behind a public facade: public regulation in name only', labelled light-touch regulation it was 'not so much light touch regulation as self-touch.' (Dorn, 2015:19) Indeed formalising bank regulation created the very technical, specialist requirements, which serve to keep the public and democratic influences at a distance.

In the early days of capitalism government was less involved in the management of the economy than now, instead there was 'a longer and wider history of self-regulation of economic life through guilds and the professions.' (Dorn, 2015, p. 7) At this time 'the industrial bourgeoisie was not alone in placing reliance upon a self-regulatory, privatized state. It was, if anything, even more marked in the City. …. The City policed itself … The corporation and the guild companies … remained largely beyond government control. … [The Stock Exchange] was a law unto itself. Similarly, the Bank of England was not a direct arm

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[7] Note that notions of regulatory capture, like that of se;f-regulation, as a way for banks to influence or control regulators make sense in the proposed framework, even if the metaphor of capture of a previously independent regulator is deceptive and tells us more about the theoretical framework of neoclassical economics than any actually observed historical reality (the regulator was never "free" to begin with).

Similarly, some see close interaction between regulators and regulated as them combining to 'co-construct' the framework within which decisions made and discourse exists (Sennholz-Weinhardt 2014:1249). For Sennholz-Weinhardt hedge funds and regulators co-construct the trade-offs involved in threats to move hedge funds out of London – which could presumably be extended to HSBC's use of the same tactic in 2015-16. For Dorn (2015) the now entrenched need for bail-out stemming from too-connected-to-fail banks is a situation co-created by banks and their regulators / political elites.

[8] Dorn (2015) argues that the UK case is also vital because its model of regulation was exported to much of the rest of the world and to the global banking regulation regime.

of the government but a private company which had a large degree of autonomy.' (Daunton, 1989:154) The central bank was first a bank of banks (Lapavitsas, 2003): it acted in the collective interests of the leading banks, even if 'that conflicted with the short-term interests of particular merchant banks'; banks accepted this because of a certain 'social and moral cohesion' and because it served their longer term / collective interests (Dorn, 2015:9). In summary, left largely alone by the ruling political parties, the City was able to exercise power by non-decision – parliament simply wasn't asked. (Johal et al, 2014).

In 1918 the UK franchise was expanded so that nearly all men could vote, Labour came to power and the City needed to adapt. Developing from existing practices a more pronounced distinction was drawn between banks and their regulators but outside influences remained strictly limited and self-regulation was the rule (Dorn, 2015). 'Markets were organised into a series of cartels policed by trade associations' – membership to the cartel was granted in exchange for good behaviour (reference). A more distinct division between regulated and regulator led to a narrative which 'pictured financial regulation as a skill only available to those with tacit, practical knowledge of the markets – thus excluding actors from the new democratic politic' - a narrative that was critical in the City's exercise of power (Johal et al 2014: 406). As Mandell (1969:14) observed more generally 'To the extent that universal suffrage appears and a certain democratisation, albeit completely formal, of certain representative institutions develops, it can be shown that real power slips from these institutions that are more and more removed from the influence of government.'

After the Second World War things changed again for the city: as with the change after 1918 regulation became more formal and professional but the content remained firmly self-regulatory. Banking certificates were introduced which only more firmly delimited the boundaries of the existing self-regulatory cartel system. Most symbolically the Bank of England was nationalised in 1946; in principle this gave it the ability to discipline banks but 'in practice however, informal guidance or "moral suasion" of the Bank sufficed.' (Lutz, 2004, p. 173) If anything the City used the professionalization of Bank of England to strengthen its narrative of the need for expert regulation and 'the capacity of markets, especially financial markets, to operate as automatic self-maintaining entities.' (Engelen, et al., 2012, p. 406) The new international Eurodollar markets also emerged in London during this period, originally when American banks evaded UK and US regulation by being foreign banks and on foreign soil respectively. (Helleiner, 1994)

In 1986 the City was turned upside down by Thatcher's big bang – but the emergence of expressly public regulatory institutions (the SIB and then FSA) continued the trend of more formalised and institutionalised self-regulation distanced from democratic influence: 'the universal franchise of 1918 had at no time resulted in *public* politicisation of bank regulation. On the contrary, banking retained its capacity to bring its private governance into government.' (Dorn, 2015, p. 18).

This trend of formalisation, the technocratic mask, increasing the distance between parliament and regulator took a qualitative step forward during the years of financialisation with widespread independence of central banks (e.g. the Bank of England in 1997) and the rise in importance of private and semi-private bodies in bank regulation, perhaps most notably the rating agencies and the BIS. In this period 'regulatory functions have increasingly been delegated to public bodies or agencies with a status semi-autonomous from central government' (Picciotto, 2011: 89). These bodies tend to be less democratic, public or hybrid private/public bodies, which are perceived as technical specialists (e.g.

Perret, 2015). They come accompanied by a narrative of self-regulation as effective because market participants are the best assessors and managers of the risks they face (and pose to society) (Johal et al, 2014) (and because technical bodies are argued to be less prone to capture than politicians who are likely to “bribe” voters with “populistic” measures!)

Finally the vast expansion of financial activities of recent years has also involved more individuals becoming increasingly implicated in financial activities (more extensively and more intensively), for example through private pensions, health insurance and mortgages. Individual members of the public therefore are increasingly directly materially affected by events in financial markets and, it is theorised, adopt the logic of the markets or ‘internalise codes of behaviour transmitted by markets’ (Johal et al, 2014:402). Implicated in markets in this way, it is argued that, individuals pose less of a threat to the financial order - or in other words the public block themselves from participating in the affairs of banks.

In short then despite apparent gains for democracy and the increasing formalisation of bank regulation, self-regulation remains the rule and the public has been blocked from participating in banking, indeed it is the very formalisation of regulation that has, in large part, created the blockage. Increasing rules and regulations have resulted in an increasing need for technical experts, the resulting complexity forming a blockage, part real, part perceived, to public participation in the affairs of banks. The historical story told here is particular to the UK but its relevance is general. Despite the variegated histories of different banking systems technocratic self-regulation in a financialising world has become the standard situation for banks across Europe and further afield, indeed Dorn shows how the UK model was exported to the rest of the world.

The period of financialisation has been particularly marked by rapidly increasing complexity of financial instruments and regulation and merits further discussion. The period is associated to a period of banking de-regulation in which banks have been allowed to expand their activities (e.g. Calomiris, 2000), including offering new instruments to clients but also expanding geographically, escaping government imposed price controls and so on. Yet this increased freedom has been accompanied by more and more written regulations in a simultaneous process of de-regulation and re-regulation (Cerny, 1991). 'Far from being a lawless new frontier, financial markets are riddled with regulation at every level…' (Picciotto and Haines, 1999: 368). This should only be a surprise to those that think markets are a natural state of the world. More realistically: 'Markets do not and cannot exist independently of rules — they are created and shaped by rules' (ibid.).

The combination of banks' incentives to take risk and make profit together with the re-regulation / de-regulation dynamic have contributed to ever increasing complexity of bank activity and of bank regulation. As banks were granted more freedom to act they had incentives to 'innovate' in such a way that they respected the letter of existing regulation but found new activities and instruments. Regulators responded by increasing the quantity and complexity of rules to both encompass these activities (in the process legitimising them) and to enable them. Banks' responded with yet more innovation and so the cycle continues. Engelen et al (2012:366), note how regulation becomes an input into innovation, citing the role of the Basel I & II Capital Adequacy Accords in development of CDO instruments. A metric of the increasing complexity is in the increased length of regulatory documents, for example Basel I was around 30 pages long but Basel III was over 600 pages long (Haldane, 2012)

Increasing complexity is widely regarded as a barrier to participation. Barth et al (2012:10, cited in Thielman & Birk, 2015:2) state that: 'the opaqueness and complexity of finance prevented – and prevents – the public and its elected officials from obtaining informed, expert, and independent assessments of financial regulation". Barth et al (2012:10) ask: 'How can the public and its elected representatives govern the regulatory authorities when the regulatory authorities have a monopoly on both the information and the expertise necessary for assessing their own performance?' Complexity also acts as a barrier to participation by distracting from the more political question of the purpose of banking. By limiting attention to complex and technical questions broader issues are left un-tackled.

Underhill & Zhang take the next step and ask if banks are too complex even for regulators. They argue that Basel 2's increased reliance on internal control mechanisms reflects regulators' and supervisors' inability to cope with the complexity of banking activities. They go on to find that: "Private sector control of crucial specialized knowledge ... has increased the dependence of regulators on particularistic interests" (Underhill & Zhang 2008: 552). Haldane's (2012) call for simple regulation to combat complexity is an admission of this vicious spiral of complexity between regulation and bank activities and the impossibility of regulators keeping up with banks.

Complexity can also work in tandem with problems of cultural and intellectual capture. Complexity means regulators are forced to discuss at length with banks, lessening the distance between them, increasing the cultural distance to non-experts. Complexity also demands that regulators have a similar educational background as bankers to understand the instruments, the way bankers think and to be able to communicate with them. Thus the combined culture grows from business school onwards.

Furthermore social hierarchies also penetrate Civil Society groups. Those at the bottom of the social hierarchy are less represented in the staff of CSOs (Scholte, 2013). Those that tackle financial sector issues within CSOs are likely to have material interests in the financial sector such as private pensions, bank accounts, mortgages and so on (Scholte, 2013); furthermore they are likely to share cultural and intellectual values with bankers. Expert staff at CSOs therefore also face (often unacknowledged) pressures to perpetuate complexity and to protect their position.[2]

Complex regulatory process

Finally, attention turns to the regulatory process itself, a long and complex process echoing the complexity of banking instruments and regulation and resulting in a further blockage to public participation. These blockages stem from the regulatory process but are also an expression of the fundamental nature of banking and the blockages discussed throughout the paper, in particular the essentially self-regulating nature of banks and the technocratic mask that wards off political scrutiny and the diffuse, uncoordinated, underfunded nature of the public relative to banks, whose management and structure are better able than the public to negotiate such regulatory processes

[2] Finance Watch, whose 'staff of 13 includes experienced investment bankers and former finance industry workers', is conscious of this as it moves between expert and layman, public and politician. (www.finance-watch.org/about-us)

An expression of the ways in which bank regulation is self-regulating can be found in the length and complexity of the regulatory process and the limited opportunities it provides for the public to intervene. The regulatory process has many stages, from pre-agenda and standard setting through legislation to supervision, enforcement and judicial processes, moreover these occur across a variety of geographies (e.g. national, supra-national and international) with multiple agencies often with overlapping and / or contradictory mandates.[9] This complexity blocks public participation in banking in various ways.

Economics literature, as surveyed in the first section above, introduces three tired models of regulation featuring a political agent, a technical regulator and a regulated entity (e.g Tirole, 1986). In Laffont & Tirole (1993:Ch.11), for example, the regulator exists to overcome problems of information / knowledge that the political principle faces when dealing with the firm. As is often the case with neoclassical economics, while this captures something of the appearance of the regulatory system it's lack of historical perspective means it fails to see beyond these appearances.

The process is considerably longer than the 3-tier models suggests - and this is important for 2 reasons. First, contrary to the set-up of 3-tiered models regulation does not begin with legislation by politicians to be merely implemented by technical regulators; rather regulation begins and ends with the technocrats (who are at best close to banks, but more realistically an expression of self-regulation) and the banks themselves (via innovation).

Second, there are many nodes in the process where the public has no possibility, or very little, to intervene in the process, again contrary to the suggestion of a 3 tier model (in which it might be argued the public intervenes as politicians). As noted above, political economy of regulation studies such as Pagliari & Young (2014, 2015) are forced to examine public consultation phases of regulation as one of the few places where clear explicit public participation is possible - little evidence can be gathered regarding public participation elsewhere in the process because little participation is possible.

The literature has acknowledged this complexity and while '[m]ost attention has been paid to the rule making phase ... the concept of capture has also been used as an analytical lens to explain failures in other phases of the regulatory policymaking process' (Pagliari, 2012:6). Baxter (2011) has examined failures in supervisions, Sheng (2012) failures in enforcement and Walter (2008) implementation.

In addition key early stages in the process such as pre-agenda setting and international standard setting and so on are rarely open to the public and/or their directly elected representatives. The Basel Capital accords are a clear example. The BCBS is made up of central bankers and bank regulators, while presumably agenda-setting for the BCBS occurs in an even more secluded setting than the committee's official work. By the time capital adequacy issues come to the attention of elected representatives, e.g.

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[9] In the US for example the Federal Reserve (itself made up of many entities), the SEC, the CFTC, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Agency (FDIC), amongst others, all share some responsibility for regulating banks (Baxter, 2012). Further different agencies often have different mandates, some explicitly supporting the sector, others indirectly / implicitly through financial stability and so on. Baxter (2012:57) notes that this arrangement is argued by some to be chaotic, by others to be 'important for generating a sound result through partisan competition'.

the European Parliament (via even more technocrats at the European Commission), or later in national parliaments, the range of possible changes that can be made is very limited. Krawiez (2013:84) notes of the US: 'the proposal phase is a battleground for agenda setting and that battle ground is dominated by regulated industry.' In short, as Johal et al, (2014) argue, the financial industry influences outcomes in diffuse ways, setting the frame through pre-agenda setting which prevents many questions from even coming to the negotiation stage in the first place.

Finally it might be noted that the historical / logical character of banking regulation is largely immune to crisis: the typical response to a banking crisis is to re-arrange the regulatory bodies, shifting responsibilities from one agency to another, closing some and opening others e.g. the move of bank supervision away from the Bank of England in the 1990s and back again after 2008. *Plus ça change, plus c'est la même chose.*

The design of the regulatory process also provides blockages which express the problems of cohesion discussed above. On those occasions when the public can actually participate in the regulatory process attention must focus on the effectiveness of participation by looking at how 'stakeholder input is processed into regulatory policies' (Pagliari, 2012:28). It has been observed that even when the public is consulted, all too often it seems the voice of banks carries more weight than others (Baxter, 2012). General public comment during the rulemaking process is one important vehicle but, as scholars have demonstrated, business comment appears to have much more influence than private input (e.g. Yackee & Yackee, 2006). Once again the diffuse nature of the public / non-banks seems to be an important factor.

First, the process is long and it is costly to participate in multiple nodes in multiple geographies. Banks are better able to muster the resources to do so, both financial and intellectual. Complexity plays a part here too. We are increasingly seeing political decisions delegated to technical bodies because of the barrier of complexity itself, and because of the difficulty of agreeing political decisions across the EU parliament / council and commission (e.g. because of different interests among the various states of the EU).

Second, even when participation can be co-ordinated it seems the necessary form of this participation means greatly reduced impact. Krawiec (2013) and Krawiec & Liu (2015) investigated a public consultation phase of the Dodd-Frank Act. Participation of the public was high: less than 10% of responses were from banks. Never-the-less 91% of all responses were almost identical standard letters originating from public interest groups, reflecting the difficulty of coordinating and mobilising a diffuse public. Those responses that were not standard were often heart-felt but lacking technical engagement with the issues to be addressed in the proposed law and were afforded less weight by regulators. Overall the complexity of the subject and the resources of the banks led to more effective participation overall despite fewer responses.[10] Importantly, in the next phase of regulation banks followed up with 93% of all contacts (e.g. meetings) with federal agencies on the subject, with just 7% for public interest

[10] Benjamin & Rai (2008) also question the worth of public comments during regulatory consultation, they note high duplication with few new arguments brought through the comments process.

groups and similar, as banks took advantage of their much higher available resources and potentially close relations with regulators.

Increased effectiveness of participation seems likely to increase participation itself as more stakeholders consider it worth spending time and resources to make inputs; and similarly increased participations can lead to more effective participation if a larger constituency feels their voices are not being heeded and takes action to change it. Underhill & Zhang (2008:539) note that 'there emerges a circular relationship among these three phases of legitimacy [input, accountability, output], where problems or shifts in one phase may lead to sustained pressure for change in one or both of the others'. This circle may however be either vicious or virtuous: if participants don't feel that their voices are heeded they are less likely to participate in turn reducing the likelihood of a fair and accountable process. In light of this barriers to participation, such as complexity, take on extra weight as their effects are multiplied. One reason to pay close attention to the entire process of banking regulation is therefore because 'ultimately, accountability processes should function so as to facilitate the inclusion of new and wider constituencies as participants in the input phase.'(Underhill & Yhang 2008:539)

Much academic literature demonstrates a certain resigned acceptance of these structural problems in the regulatory process, Carpenter & Moss (2012, cited in Baxter, 2012) note: 'there is far too much fatalism – some of it strategic, no doubt – about the possibility of ameliorating capture or even preventing it'. A typical response is to propose more checks and balances, Levine (2012), for example, suggests a 'Sentinel' to increase information flow to the public and politicians and to increase accountability. Proposing more guards to guard the guards however risks complicating matters and exacerbating the blockages to effective public participation. Rarely is it suggested that the public be directly involved in the process – perhaps harking back to the basic belief stemming from mainstream economics that the market, if it works well enough, will represent the public.

In further examples Omara (2012) proposes a designated public interest representative as an equal third party in the regulatory process, this Public Interest Council which would have a formal place in the regulatory process as the designated public interest representative. Baxter (2012) argues transparency is key although he concedes that bankers would be against it as they need to protect client secrecy and reduce sensitivity to bank runs – essentially the core theoretical problem of banks outlined in the introduction. Furthermore he suggests judges could provide checks but 'highly dependent on the specific nature of disputes' (Baxter, 2012: 65).

Such proposals are based on an analysis of the regulatory process that rightly identifies the advantages to banks inherent in the regulatory process and are clearly well intentioned. Never-the-less they attempt to tackle the problem of complexity with yet more regulatory agencies, most likely only increasing complexity and as such are unlikely to fundamentally resolve the problem. In addition they give only marginal increases in agency to the public themselves, opting instead for benevolent regulators acting in the public interest and hopefully immune from capture, an approach based, as we saw at the very start of this paper, on a neo-classical economic view of the world.

Conclusion

This paper asks what blocks public participation in banking, be it in the regulatory process, in bank governance or in other domains. It uses a core theoretical understanding of how banks operate to examine literature relating to public interest participation and representation. It develops key categories of bank / non-bank and regulator and demonstrates first, the essentially diffuse nature of the non-bank category and second, how the central contradiction of banks, that of convincing non-banks of banks' credit worthiness creates necessary obscurity about the banks' affairs for non-banks. As the category of non-bank and bank and then regulator are further explored these two essential characteristics can be seen to echo throughout the more concrete manifestation of blockages to public participation in banking.

How can we turn this understanding of public participation in banking into policy proposals? Although not the subject of this paper several avenues for future research are clear. Turning first to the nature of non-banks and the public points to the overwhelming importance of forming coalitions as which can transcend the interests of individual groups as the way in which the public can participate Looking at the nature of banks and then of the regulator moves more into the realm of the content of participation – what should the public try to change. Two key (partially interrelated) themes emerge: first, campaigning against the features of banking governance, structure and regulation which block solidarity and coalitions among the pubic and; second, campaigning against the complexity (and unsuitability) of banking activities, regulation and of regulatory process which blocks in multiple ways the participation of the public in shaping banking activities.

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