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BASAK KUS

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Dodd-Frank: From Economic Crisis to Regulatory Reform.

Basak Kus

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About the author

Basak Kus

Basak Kus (Ph.D., University of California-Berkeley) is an Assistant Professor of Sociology at Wesleyan University in Connecticut. Her research areas include comparative capitalisms, inequality and redistributive politics, neoliberal reforms, the politics of economic crises, finance and society, debt, regulatory politics and economic development.

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Introduction

The US system of financial regulation has come under increased criticism for its various shortcomings in the aftermath of the 2008 economic crisis. After much analysis, deliberation, and political manoeuvring, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into federal law on July 21, 2010.

Washington insiders call the process by which a bill gets made 'sausage making'. Here, I analyse how the sausage was made, and in particular, how the creation of a federal agency dedicated to consumer financial protection (CFPB) became one of its main ingredients.

It is a widely shared view that Dodd-Frank did not turn out to be a radical piece of legislation that would overhaul the existing financial architecture. Many would argue that it is not nearly as strong a bill as those enacted by the New Deal Congress after the Great Depression. Yet, the CFPB, whose creation was widely perceived as a radical proposal at the outset, became a key component of the bill. How does one explain this outcome?

My analysis shows that, although the existing regulatory architecture was criticised in a number of ways in the wake of the crisis, no consensus existed at the outset on the question of what direction change should take. This should not come as a surprise. To appropriate Heclo's phrase, policymakers 'puzzle before they power' (1974, p. 305). Times of crisis typically witness competition among different reform proposals to restructure institutional principles and practices. The course of change does not simply derive from the objective challenges and problems awaiting solutions. Policy reform remains a deeply political process whereby key actors interpret and negotiate what the so-called 'objective' challenges really mean, what their causes are, and what must be done about them (Kus, 2006). The institutional context within which this process unfolds matters a great deal – it sets the limits of executive action, determines the degree to which interest groups are able to influence the decision-making process and, more generally, renders some ideas and courses of action less applicable while facilitating others (Immergut, 1992; Steinmo, 1994, 1995; Prasad, 2006).

In what follows, I first discuss how policymakers, regulators, and interest groups differed in their depictions of the nature and causes of the crisis, and what needed to be done in response. Then, using an assembly of data sources that consist of congressional hearings, congressional research reports, and several journalistic and academic books, I examine how these different ideas and interests collided within the unique legislative structure of the US to give shape to Dodd-Frank (DF, from hereon). I conclude that two factors remained critical in producing the outcomes specified earlier: (1) the formal institutional structure of American policymaking, and (2) the division within the financial sector in terms of policy preferences and interests. While the former – the formal institutional structure of American policymaking – prevented the Congress from passing a more ambitious bill overall, the latter – the division within finance – rendered the opposition to CFPB ineffective and enabled the actors advocating for the agency to effectively push through.

Economic Crisis in the US: A Financialised Economy Run Amok

The American economy grew at a steady pace throughout the 1990s and early 2000s. During this period it also became heavily financialised (Fligstein, 2001; Krippner, 2005, 2011; Epstein, 2005; Palley, 2007; Orhangazi, 2008; Davis, 2009; Tomaskovic-Devey and Lin, 2011). While the financial services sector contributed about 5 per cent to the US GDP in the beginning of the 1980s, in about two decades, its contribution went up to over 8 per cent (Greenwood and Scharfstein, 2013). In fact, more than a quarter of the growth of the services sector as a whole was accounted by the growth of financial services in this period. At the same time, non-financial corporations became increasingly dependent on financial activities and institutions to generate income or to compensate for loss of profits generated through more traditional productive activities. Various non-financial corporations even set up and managed banking operations (Krippner, 2011). This changed the conception of the firm in the American economy. Firms began to be seen as a bundle of tradable assets that exist to return value to their shareholders. Major corporations led by finance-oriented managers made increasing the stock price their major objective. The linking of top management pay to stock options particularly enhanced this trend, shifting the focus of CEOs and boards away from productive investments towards quick financial gains. Financialisation penetrated the everyday lives, the consumption, investment, and saving habits of ordinary citizens as well. From stock market participation to credit use, Americans have become more embedded in financial markets (Fligstein and Goldstein, 2015; Martin, 2002).

In 2008, the financial sector was hit by a massive economic crisis, which soon affected the entire American economy. The crisis was compared to the 1930s' Great Depression in terms of its size and effects. A recent study by Dallas FED estimates that it cost the U.S. economy somewhere between $6 trillion and $14 trillion – a loss of between $50,000 and $120,000 per household (Atkinson *et al.*, 2013, Leicht and Fitzgerald, 2014, p. 247). The impact of the crisis on the labour market has remained a salient political issue with unemployment peaking at 10 per cent in the fall of 2009. Middle-income jobs lost during the recession have been mostly replaced by low-paying jobs.[1]

The crisis has opened a discussion about what went wrong and what could have been done differently to prevent a financial catastrophe of this size from happening. Different reform proposals representing different ideologies and interests emerged.

On June 17, 2009 Treasury Department issued 'A New Foundation: Rebuilding Financial Supervision and Regulation' – a white paper which laid out the Obama Administration's view on the crisis. Soon after the white paper was issued, Congress held three sets of hearings – with the representatives of the banking industry[2] (on July 15, 2009); consumer advocacy groups[3] (on July 16, 2009); and federal regulators[4] (on July 24) to collect their views on the white paper, and more generally on the underlying causes of the crisis and possible solutions to it. I analysed these documents to see how these different groups depicted the crisis – both the underlying causes and the policy changes that needed to be made. In addition, I analysed the hearing held by the State Banking Committee on the proposal to create a consumer financial protection agency (dated July 14, 2009).

What is the Crisis About? What to Do about it?

The view from the White House

The white paper the Obama Administration circulated early on in June 2009 touched upon a variety of issues concerning the financial crisis, but two issues were particularly central to the report: systemic risk and consumer protection. The regulators, according to the white paper, had not taken into account the harm that large, interconnected and highly leveraged institutions could inflict on the financial system and on the economy if they failed. Further, it claimed that the American consumer had not been protected sufficiently from the risks that the financial markets exposed them to.

The report identified two major regulatory weaknesses that led to those issues. The first was regulatory loopholes caused by the excessively fragmented nature of the financial regulatory architecture. According to the document, competition among different government agencies responsible for regulating similar financial firms had created a race to the bottom and allowed owners of banks and other insured depository institutions to shop for the regulator of their choice. The second major issue was the lax, and in some areas nonexistent, regulation of non-bank financial institutions, mortgage originators and hedge funds.

One of the key proposals the Administration put on the table was to bring the non-bank financial sector under regulatory oversight by registering all hedge funds and other private pools of capital with the SEC. Another key recommendation was the creation of two new agencies – a financial services oversight council and a consumer financial protection agency. The former, focused on systemic risk, would be chaired by the Treasury and include the heads of the principal federal financial regulators as members. The latter would be an independent entity dedicated to consumer protection in credit, savings and payments markets with the authority and accountability to make sure that consumer protection regulations are written fairly and enforced vigorously.

According to the Administration, the task of consumer protection had been divided among a set of regulatory bodies, none of which had made it a primary concern. Consumers had been left to their own fates. The proposed consumer protection agency bestowed with supervisory, examination and enforcement authority would give the public confidence that financial markets are fair and accountable. It would also help prevent regulatory arbitrage, since a federally supervised institution would no longer be able to choose its supervisor based on any real or perceived differences in agencies' approaches to consumer protection supervision and enforcement.

The view from Wall Street

The view from Wall Street looked quite different. First, virtually all of the witnesses from the banking sector whom Congress heard pointed to 'consumer ignorance' – that is, lack of financial literacy on part of the consumers – as a major cause in leading up to the crisis.

A second issue that was pointed to by nearly all representatives of the banking industry was ineffective regulation. However, the bankers' understanding of 'ineffective regulation' was quite different from that of the Administration, and a lot more specific too. For one, the bankers, in unison, argued that the traditional banking industry had been well regulated; it was the regulation of non-bank entities that had proved a failure. The American Bankers Association (ABA) noted, citing the white paper issued by the Treasury, that 94 per cent of high-cost mortgages had originated in non-depository institutions outside traditional banking. Bankers also argued that it was the regulation of large, complex, and/or cross-border financial firms that needed to be the focus of the regulatory reform. The Independent Community Bankers Association (ICBA) was very vocal about this point. It argued that this was a crisis driven not by community banks but by "a few unmanageable financial entities that nearly destroyed our equity markets, our real estate markets, our consumer loan markets and the global finance markets, and cost American consumers over $7 trillion in net worth", and recommended that Congress and the Administration take steps towards identifying those "specific institutions that may pose systemic risk and subjecting them to stronger supervision, capital, and liquidity requirements".[5]

As for the solutions to the crisis, bankers argued that establishing more regulatory agencies would complicate the system further. The banking industry at large resisted more regulation and, in particular, opposed the establishment of a new agency in the form of a consumer protection agency. It argued that the issue of consumer protection could be effectively tackled by focusing on systemic risk and by encouraging consumers to become financially literate.

ICBA's initial position was firmly against the creation of a consumer protection agency. As the following quotes show, it held the view that consumer protection would no longer be a concern once the government tackled the question of systemic risk effectively:

> Ending too-big-to-fail is one of the most critical issues facing our nation. The only way to truly protect consumers, our financial system, and the economy is by finding a solution to rein in too-big-to-fail institutions.[6]
>
> We can have all the product legislation in the world and do everything possible to protect the consumer, but the greatest damage to the consumer was the failure of a system because of concentrations and excesses across the board, of a Wall Street vehicle – the too-big-to-fail, systemic-risk, too-big-to-manage, too-big-to-regulate issue must be dealt with.[7]

The American Bankers Association similarly argued that there had to be a focus on the issue of systemic risk. It strongly supported the designation of the Federal Reserve Board as a systemic risk oversight authority on the condition that the Board would not be added as an additional super-regulator. The role of the systemic risk oversight regulator, it argued, should be one of identifying potential systemic problems and then putting forth solutions rather than attempting to regulate specific institutions. The ABA strictly opposed the establishment of a consumer financial protection agency, arguing that it would not adequately focus on the nonbank sector, where the subprime mortgage crisis really began to take freedom of choice from consumers. Ed Yingling, President of the ABA, argued:

> All current financial consumer protection laws, carefully crafted by Congress, are rendered largely moot – mere floors. The CFPA[8] can do almost anything it wants to go beyond those laws, as well as into new areas, to regulate the terms of products, the way in which they are offered, and even the compensation for offering them. It is one thing to identify holes in existing regulation and close them; it is another, in effect, to take out the entire body of laws, developed over decades, on which consumer finance is based and, in effect, replace it with a broad general regulatory authority – an authority that will create great uncertainty for years to come, reduce consumer choices, and undermine the availability of credit.[9]

The American Financial Services Association (AFSA) reiterated these points. It argued that the CFPA would burden financial instructions by raising costs, which would cause consumers to suffer, and instead offered better enforcement or efforts to improve financial literacy.

In short, the issue of consumer protection was framed as a trade-off with consumer choice and a corollary of other structural reforms aimed at reducing systemic risk. Disclosures and financial literacy were emphasised as vital elements of regulatory reform. The worry that the CFPA would put an unfair burden on smaller community banks that really were not at fault for the financial crisis was emphasised frequently. Bankers were also concerned with any legislation that might grant more regulatory power to the States. This concern was particularly evident in the discussions about the establishment of a consumer financial protection agency, which the banks feared would enforce compliance with the varying consumer laws of the States on top of federal regulations. Another major concern was that the consumer protection agency would limit the products on the market. By pushing plain vanilla products, they argued, the agency would be limiting product innovation.

Steven Zeisel from the Consumers Bankers Association noted:

> First, we are concerned that the proposal would subject retail banks to the consumer laws of 50 States. I ask you to consider the practical impact of such a policy. It could result in dozens, perhaps scores of differing requirements pertaining to minimum payments, fee limits, underwriting prescriptions and the like, making nationwide lending into a complex and costly undertaking. Not only will this limit the range of products available, but some banks may have to make the unwelcome decision not to do business in States they otherwise would, due to the complexity and cost associated with the compliance burdens. That could mean fewer and more expensive choices for consumers as a result of the decreasing competition.[10]

The view of consumer groups

The consumer advocacy groups, unsurprisingly, put the issue of consumer protection in the centre. They strongly backed the proposal for the establishment of an independent federal agency whose sole function would be to protect consumers.

The rationale was two-fold. First, they argued that the regulatory focus had been heavily placed on the safety and soundness of financial institutions, which did not achieve much in terms of consumer protection. Safety-and-soundness regulations focus on profitability as a measure of a financial institution's safeness and soundness. This creates conflict as it leaves it open the question of how abusive practices that are highly profitable would be handled.

Second, they criticised the dispersion of consumer protection among multiple agencies. None of the existing agencies, they argued, had taken up the issue as a priority or developed sufficient expertise.

One of the key demands of the consumer advocacy groups was to allow states, in addition to federal authority, to have a bigger role in regulation. This, they argued, would provide for more enforcers, more accountability, and fewer gaps. Edmund Mierzwinski argued that what was needed is a system where federal law serves as a floor, not as a ceiling:

> You must keep the Federal law as a floor of consumer protection and allow the States to go higher. The States are nimbler. Often, they respond more quickly, and they provide good ideas to the Congress.[11]

The Consumer Federation of America reiterated this point:

> The CFPA should be allowed to set minimum national credit standards, which states could then enforce. States would be allowed to exceed these standards if local conditions require them to do so.[12]

The regulators' view

The federal regulators that participated in the July 24, 2009 hearings[13] were largely concerned about how the authority of different regulatory bodies could be extended, consolidated or transferred.

The regulators seemed to be in agreement regarding the root causes of the crisis: large, under-regulated financial firms that were too big too fail, and regulatory gaps caused by a lack of rulemaking authority and interaction among different regulatory bodies. In this sense, regulators were largely on the same page as the Obama Administration in terms of their understandings of the crisis.

They also generally agreed that the reform process should focus on creating disincentives for excessive risk-taking and addressing too-big-to-fail. On the question of consumer financial protection, however, they were split. Some expressed fear that a consumer financial protection agency would be a 'monolithic' regulator with too much power, and suggested extending the powers of other regulatory bodies. There were also concerns about how much power States would retain over the regulatory process, and this was one of the issues that made regulators diverge on the issue of the consumer protection agency. The Office of Thrift Supervision (OTS) and the Office of Comptroller of Currency (OCC) held that States should not have the authority to make rules over and above federal laws, as it would compromise a uniform national standard. John Bowman of OTS argued:

> The proposed consumer protection legislation would effectively end the consistent, nationwide system of federal standards by requiring

> banks and thrifts to comply with potentially inconsistent consumer protection laws in all 50 states, as well as local governments. State attorneys could interpret and enforce CFPA rules differently. Federal institutions would have to comply with a patchwork of state regulatory regimes, which would subject them to significant compliance and legal costs, and the constant threat of litigation.[14]

Sheila Bair, the Chair of the Federal Deposit Insurance Corporation (FDIC), on the other hand, supported the proposal for the consumer financial protection agency and for States to have the power to make laws:

> The Administration's proposal would eliminate the potential for regulatory arbitrage that exists because of federal preemption of certain State laws. By creating a floor for consumer protection and by allowing more protective State consumer laws to apply to all providers of financial products and services operating within a State, the CFPA should significantly improve consumer protection.[15]

In short, there was quite a bit of variation across different parties – bankers, consumer groups and regulators in terms of the causes of the crisis and the parameters of the reform. Table 1 provides a summary of these positions circa July 2009.

The Act: Regulatory Reform and the Road to CFPB

There is a sizeable literature on the question of why countries respond to economic crises in the way they do. What this literature has shown is that the response to the crisis does not simply drive from the objective, economic fundamentals (Grossman and Woll, 2013). Time and again advanced countries have formulated drastically different policy responses in the face of similar challenges due to a variety of factors (Gourevitch, 1986; Hall, 1993; Hay, 2001; Blyth, 2002; Prasad, 2006; Kus, 2006; Hardiman, 2010, 2012; Grossman and Woll, 2013). It does not necessarily follow the policy tracks that have previously been laid either. After all, "even the most 'settled' paths are typically, if not inevitably, littered with flotsam and jetsam" (Schneiberg, 2007, p. 70).

Perhaps the best way to understand crises is as political constructs. Key policy actors attempt to diagnose and impose on others their notion of what the problems and failures that constitute them are actually about (Blyth, 2002: 9). The institutional context within which actors engage in this process matters a great deal (Immergut, 1992; Steinmo, 1994, 1995; Prasad, 2006).

The present study of the US's regulatory response to the recent economic crisis attempts to dissect how the key actors understood the crisis, and how they were constrained by the institutional context of American policymaking which houses competing ideas and interests.

The road to the enactment of Dodd-Frank was a politically bumpy one. Why did the US Congress fail to pass a bill that was more ambitious in its reach in the aftermath of the biggest financial calamity since the Great Depression? How is it that the creation of a whole new federal agency dedicated to consumer financial protection, which even many of the bill's sponsors' fellow party members saw as a rather radical move at the outset, became a key component of the bill?

Table 1: Policy positions circa July 2009

	What is the crisis about? What 'failed'?	What were the causes?	How to reform the system?	Views on the CFPB
Administration	Two major failures: Failure of risk management Failure of consumer protection	Ineffective regulation: • Regulatory architecture is fragmented/full of loopholes • Under regulation of non-bank financial institutions, mortgage originators, and hedge funds	• Bringing the non banking financial sector under regulatory oversight • Establishing a financial services oversight council to monitor and prevent systemic risk • Establishing an independent federal agency dedicated to consumer protection in credit, savings, and payments markets	Pro CFPB: • The task of CP has so far been divided among a set of regulatory bodies none of which assigned it any critical importance • A consumer protection agency would keep financial markets accountable and give public confidence
Bankers	• Failure of risk management	Failure of risk management resulted from a combination of: • Consumer ignorance/illiteracy • Ineffective regulation (understood specifically in relation to regulation of non-bank financial institutions): Non-bank entities (including non-depository mortgage originators, and hedge funds), and large, inter-connected financial institutions were not regulated effectively. Traditional banks are not the problem; they are the solution	• Bringing the non-banking financial sector under regulatory oversight • Establishing a financial services oversight council to monitor and prevent systemic risk	Against CFPB: • The best way to protect American consumers is by minimising systemic risk, by providing clear disclosures, and by enhancing financial literacy • A federal agency would raise costs and limit products available on the market, essentially restricting consumer choice • The existing proposal for CFPB grants too much power to states, which will make the existing regulatory architecture even more complicated
Consumers	• Failure of consumer protection	Ineffective regulation: • The regulatory framework narrowly focused on safety and soundness regulations, which aimed to ensure the stability and profitability of financial institutions, rather than the wellbeing of the American consumer. Existing regulations failed to prevent widespread abuse of American financial consumers	• Establishing an independent federal agency dedicated to consumer protection in credit, savings, and payments markets • Granting more power to the states to improve consumer protection	Pro CFPB: • The task of consumer financial protection has been divided among a set of agencies. These agencies did not have the expertise, motivation, or the authority to tackle it effectively. There is need for an agency that is devoted to protecting the American consumer • The existing proposal for CFPB would grant more power to the states, and this would benefit consumers
Regulators	• Failure of risk management	Ineffective regulation: • Division of regulatory authority/regulatory loopholes	• Establishing a financial services oversight council to monitor and prevent systemic risk • Some regulators supported the establishment of a new federal agency dedicated to consumer financial protection	Generally pro CFPB-although views split on the powers and structure of the agency

I argue that two major factors ultimately shaped these outcomes: (1) the formal institutional structure of American policymaking, and (2) the lack of unity within the financial sector in terms of policy preferences.

The formal institutional structure of American policymaking

The American policymaking environment remains well known for several of its features. Most importantly, political authority remains fragmented and decentralised. This is manifest in several ways. First, there exist a high number of veto points. As Immergut has noted, political decisions are not single decisions made at one point in time but are indeed composed of a series of decisions involving different actors whose institutional loci vary (1992, p. 63). A passage of a bill, thus, requires successive affirmative votes at all decision points – veto points, as Immergut calls them. It is the constitutional provisions – formal rules that establish the separation of executive and legislative powers or the division of the legislatures into separate chambers – that determine the number of veto points. The higher the number of the veto points, the more difficult it becomes to enact a law. The presence of a high number of veto points in the US impacts the process of enactment of bills – the time it takes to enact a bill, as well as the substantive content of the bill. The process of enacting a bill often unfolds slowly. Many bills get watered down as compromises are made at a series of veto points.

Second, individual members of the Congress retain a lot of power, making it exceptionally difficult, for those in leadership positions to push or pull them into policy positions Steinmo (1995, p. 308). As Steinmo (1994, p. 122) explains, "American political history is brimming with cases in which there was widespread majority agreement in Congress that a particular reform was desirable, but recalcitrant key members – who clearly did not represent the majority view – were able to radically slow the process down, reshape the proposals in important and meaningful ways, and even sometimes prevent reform from becoming law". The power of individuals remains inherently linked, to and in part results from, the weakness of political parties. As Prasad notes (2006), although for most of the twentieth century politicians acquired and used power through their parties, by the 1970s parties had lost their financial strength and left individual politicians to turn to other sources of support. The weakening of party structures while yielding a lot of power to individual members, on the one hand, makes those individual members, and the entire system, susceptible to interest group influence, on the other. "In the absence of strong political parties", as Steinmo argues (1994, p. 117), "elected officials must cater to local or highly particularistic constituency interests to an extent that is truly unique in the democratic world".

The combination of these features makes it difficult to pass bills that are ambitious. Policy change, when it happens, often takes a pragmatic and gradual form (Steinmo, 1994, 1995; Campbell, 2004; Schneiberg, 2007).

These features were on full display on the road to Dodd-Frank. The political battle over the enactment of the Act was fought in a fragmented policy environment, was infused with pressure from powerful interest groups, and was repeatedly driven to stalemate by individual members. Therefore, the sponsors of the bill often had to follow the paths of least resistance. The composition of the Senate with 57 Democrats, 2 Independents caucusing with the Democrats, and 41 Republicans made the process highly vulnerable to the threat of filibusters. The challenges posed by powerful individual members were not only from the other side of the aisle. Most of the critical challenges came from members of the Democratic Party who did not hesitate to deviate from the sponsors of the bill and party leadership if and when a particular clause conflicted with the interests of their constituents. The New Democratic Coalition in the House – the caucus of 68 moderate Democrats who remained close to the financial sector and to the banks in particular – wielded a great deal of power in this case. On one occasion, for instance, Melissa Bean of Chicago, the *de facto* leader of the caucus, and a member of the Financial Services Committee successfully challenged the preemption clause that would allow the States to preempt federal authority if the State laws were more rigorous than the federal statues, which would essentially require banks to deal with State-by-State regulation. It seemed that "the entire bill was in jeopardy because of Bean's demands. For a moment, the world was waiting on Melissa Bean" (Kaiser, p. 188).

The many compromises that had to be made explain why DF did not turn out to be the radical piece of legislation that would overhaul the financial regulatory architecture. Still, it needs to be explained how a federal agency that would protect consumers from abusive financial practices and products, which happened to be one of the most, if not the most, controversial of reform ideas, made it to the final version of the bill. I argue that the lack of unity within the financial sector mattered significantly at this juncture.

The lack of unity within the financial sector in terms of policy preferences

When the idea of an independent federal agency to oversee consumer protection became an item in the white paper the Obama Administration circulated (in June 17, 2009), neither the House nor the Senate was on board with it, and they kept their distance. Dodd recounts that early on in the process, in a meeting attended by several Democratic and Republican legislators, they looked at him like he was crazy, when he noted that "the basis of this bill ought to be restoring consumer confidence and consumer protection" (p. 75). It was only half way through the process towards Dodd-Frank that the creation of a federal agency became a real political possibility. To be sure, certain individuals such as Elizabeth Warren and Michael Barr played an important role in the establishment of the CFPB. They have brought their expertise to the negotiation table. Still, the mere presence of ideas in a domain undergoing change does not mean that those ideas will have traction with policymakers. A crucial factor that opened the door to CFPB was the division within the financial sector.

The degree to which the business community is united or divided in its preferences has long been understood as a key element in regulatory politics (Miliband 1969; Fuchs 2007; Seabrooke & Tsingou 2009; Spillman 2012; Woll 2015). While popular accounts often portray the business community as one monolithic interest group, the reality is far from it. Mizruchi (2013) and Waterhouse (2013) show that the corporate elite in the US has in fact become progressively more fragmented since the 1960s.

As Woll (2015) notes, finance has established itself as a central element in the politics of advanced industrial societies over the past few years. As a result, a vibrant field of scholarship has emerged to rethink and reexamine the ways in which finance has shaped political structures and policy outcomes in the past few decades.[16] In many accounts, the depiction of finance has been one of a united interest group. For instance, in their well-known work, Hacker and Pierson (2011) use the term "politics of organized combat" to refer to the undue political influence that finance has been able to exercise in the US. However, this is not exactly a nuanced view of the political power of finance. As Woll argues, "finance is composed of a multitude of sectors, institutions of very different sizes, and a myriad of stakeholders, often with opposed interests, and the likeliness that different parts of the financial industry will lobby on opposing sides of most policy issues is relatively high" (2015, p. 17).

As the political battle around the Dodd-Frank Act unfolded, financial institutions were united on some issues and divided on others. From the very beginning, bankers were insistent on highlighting the role of non-bank institutions in contributing to the crisis. Similarly, small, and independent community banks went to great lengths to distance themselves from large institutions and demanded that the Dodd-Frank Act not hurt them.

The tension between the ICBA and the ABA was obvious to the sponsors of the Act and they did not hesitate to exploit it. In a speech he gave to the National Press Club on July 27, 2009, Barney Frank noted:

> And to the community banks, yes they have been unfairly traduced because they weren't the problem. But, they have to be careful not to allow themselves to be used by some of their big, big brothers who would like to have them shelter them. We can set up a consumer protection agency that will respect all of the community banks. They were not the perpetrators of the abuses, they will not be the subjects of the corrections. And they need to work with us to help us do that. So, we are ready to go forward with a set of regulations that respond to these innovations that we believe will give us the benefit of the innovations and diminish the abuses. And our models are Theodore Roosevelt, Woodrow Wilson and Franklin Roosevelt.[17]

Once it was agreed that the CFPB's jurisdiction would extend only to banks whose assets exceeded $10 billion, small, independent banks distanced themselves from the big banks. They threw their support behind the bill and the weakening of the hand of the big banks. This lack of unity within the financial sector mattered a great deal in CFPB becoming a central piece of the reform.

This was a case where small banks had more clout than big banks. Barney Frank responded to the accusations from some of the more liberal members of his own party that big banks were the ones at the wheel, that "banks were not a monolith, and the big banks had lost most of their political influence as a result of the crash".[18] In response to a particular political attack from Dick Durbin[19] of Illinois who, after losing the battle to give bankruptcy judges the power to amend the terms of mortgages for people who filed for personal bankruptcy, asserted that big banks own Congress, Frank noted that Durbin lost it to the little guys in the industry – "community banks and credit unions. They are the ones with political clout. And they turned against him."

This should not come as a surprise to historians of American finance. On the road to the Glass Steagall Act, for example, small banks had scored important victories against big banks in the inclusion of certain provisions, such as the creation of the Federal Deposit Insurance Corporation (FDIC), which insures bank deposits with a pool of money collected from banks. This was very controversial at the time, and drew veto threats from President Roosevelt. Small rural banks and their representatives were the main proponents of deposit insurance. Opposition came from large banks that believed they would end up subsidising small banks. In the end, it was included in the bill thanks to successful lobbying on the part of the small banks.

Conclusion

There are several conclusions that one can draw from this analysis. First, the process by which an economic crisis leads to regulatory reform is an inherently political one. As Blyth argues, key policy actors argue over, diagnose, proselytise and try to impose on others their notion of what a crisis actually is (Blyth, 2002: 9). They do not do this in a vacuum. This battle among different ideas and interests takes place within structured institutional domains. The rules and procedures in place make certain outcomes more viable than others. In this case, members of Congress, the Administration, business groups, consumer groups and regulators all engaged in the process of defining the crisis as a certain type of crisis. As my analysis showed, there was quite a bit of variation in the way the relevant parties diagnosed the problems and challenges and prescribed solutions – particularly with respect to the question of consumer protection. The characteristics of the American policy-making environment – namely, the fragmented nature of the legislative process and the power individual members of the Congress have vis-à-vis their political parties – defined the limits of what could be done.

Second, the key actors in the process varied in their understandings of the crisis. The Administration diagnosed the issue as one of regulatory ineffectiveness with regards to the management of systemic risk and consumer protection. The banking industry also put the issue of excessive risk at the heart of the crisis, but deemed consumer ignorance and regulation of non-bank institutions responsible for it. As for consumer protection, while the Administration advocated a federal agency dedicated to it, the banking industry's initial position was opposed to the establishment of a consumer protection agency on the grounds that it would stifle innovation, limit consumer choice, increase costs and put unfair burdens on smaller community banks. Later in the process, the banking community was split on the issue of the consumer financial protection agency. While the big banks maintained their position, the small and independent banks withdrew their challenge. As for the consumer advocacy groups, they argued that a risk management strategy focused on the safety and soundness regulations had failed to ensure consumer protection. They argued strongly for the creation of a federal agency that would make it its sole objective to protect the consumers. Regulators, on the other hand, were mostly concerned with the division of authority – who had which powers. They argued, in unison for the most part, that the regulatory loopholes were to blame for the regulatory failure of managing risk. On the question of consumer protection agency, they were split. While there was a general agreement that the regulatory focus on consumer financial protection needed to be enhanced, there were divergent opinions as to the characteristics and powers of the agency.

Third, the process displayed both the extent and the limits of the power of finance as an interest group. Popular accounts often make it sound as if financial capitalists are a united front, and big banks are the most influential in the Capitol Hill. This is not always the case. As Woll (2015) argues, understanding the multitude of interests present in financial lobbying helps to explain why many initiatives defended by the industry actually fail, in spite of all of its resources. In this case, big banks and small banks stood divided, and this division of the sector within itself curtailed its influence.

Finally, the establishment of the CFBB opens important questions regarding the state's relationship to consumers. In the US policies concerning consumer protection have evolved since the early 20th century. From the 'Progressive Era', through the end of the 1970s, more and more policies were enacted with the objective of advancing consumer rights and protection. Starting from the early 1980s, however, the tide changed. As part of the neoliberal turn, the libertarian view that consumer interests were best met through the free operation of markets and that government interference in the marketplace did more harm than good to the consumer became popular. Consumer protection, which was previously seen as the responsibility of government, was now described as a matter of individual responsibility. Despite its various limitations, the Dodd-Frank Act and the establishment of the CFPB has put consumer protection issues once again on the state's policy agenda.

Notes

1. See the report of the National Law Employment Project, available at http://www.nelp.org/content/uploads/2015/03/LowWageRecovery2012.pdf
2. House of Representatives Committee on Financial Services Hearing on "Banking Industry Perspectives", July 15, 2009.
3. House of Representatives Committee on Financial Services Hearing on "Community and Consumer Advocates' Perspectives", July 16, 2009.
4. House of Representatives Committee on Financial Services Hearing on "Regulatory Perspectives on the Obama Administration's Financial Regulatory Reform Proposals", July 24, 2009.
5. Michael S. Menzies, Sr., President and Chief Executive Officer, Easton Bank and Trust Company, on behalf of the Independent Community Bankers Association, House of Representatives Committee on Financial Services Hearing on "Banking Industry Perspectives", July 15, 2009.
6. Ibid.
7. Ibid.
8. Consumer Financial Protection Agency. Earlier in the process CFPB and CFPA were used interchangeably.
9. Testimony of Edward Yingling, President and Chief Executive Officer, American Bankers Association on behalf of the ABA, House of Representatives Committee on Financial Services Hearing on "Banking Industry Perspectives", July 15, 2009.

10. Testimony of Steven Zeisel, Vice President and Senior Counsel, The Consumer Bankers Association, House of Representatives Committee on Financial Services Hearing on "Banking Industry Perspectives", July 15, 2009.

11. Testimony of Edmund Mierzwinski of the US Public Interest Research Group, House of Representatives Committee on Financial Services Hearing on "Community and Consumer Advocates' Perspectives", July 16, 2009.

12. Travis Plunkett testimony before the Senate Banking, Housing, and Urban Affairs Committee on behalf of the Americans for Fairness in Lending, Americans for Financial Reform, A New Way Forward, Association of Community Organizations for Reform Now (ACORN), Center for Responsible Lending, Community Reinvestment Association of North Carolina, Consumer Action, Consumer Federation of America, Consumers Union, Demos, Florida PIRG, The International Brotherhood of Teamsters, National Association of Consumer Advocates, National Community Reinvestment Coalition, National Consumer Law Center (on behalf of its low income clients), National Consumers League, National Fair Housing Alliance, Neighborhood Economic Development Advocacy Project, Public Citizen, Sargent Shriver National Center on Poverty Law, Service Employees International Union, USAction, US Public Interest Research Group, July 14, 2009.

13. Present were representatives of the U.S. Department of the Treasury, the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision and the North Carolina Commissioner of Banks on behalf of the Conference of State Bank Supervisors.

14. John Bowman testimony, House of Representatives Committee on Financial Services Hearing on "Regulatory Perspectives", July 24, 2009.

15. Sheila Bair testimony, House of Representatives Committee on Financial Services Hearing on "Regulatory Perspectives", July 24, 2009.

16. See Moran and Payne 2014 for a thorough discussion on how the power of finance, which had been neglected as a field of study in political science, has been rediscovered in the aftermath of the 2007-8 economic crisis.

17. Quoted in Kaiser (2014), page 140. For the press release of the full text of the speech, see https://www.press.org/sites/default/files/20090727_frank.pdf

18. Quoted in Kaiser (2014), page 110.

19. Richard Joseph "Dick" Durbin is the senior US Senator from Illinois. He remained vocal about the power of financial lobbyists and the role of big banks in creating the crisis of 2007-10.

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Sheffield Political Economy Research Institute
Interdisciplinary Centre of the Social Sciences
219 Portobello
Sheffield S1 4DP

T: +44 (0)114 222 8346
E: speri@sheffield.ac.uk