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Basel Committee on Banking Supervision

A Primer on Governance, History, and Legitimacy — Part I

Maziar Peihani

International Banking and Securities Law

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Basel Committee on Banking Supervision

A Primer on Governance, History, and Legitimacy—Part 1

By

Maziar Peihani

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Library of Congress Control Number: 2016942915

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISBN 978-90-04-32812-9 (paperback)
ISBN 978-90-04-32844-0 (e-book)

Originally published as Volume 1(1) 2016, in *International Banking and Securities Law*,
DOI 10.1163/24056936-12340001.

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Printed by Printforce, the Netherlands

Basel Committee on Banking Supervision

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Basel Committee on Banking Supervision

A Primer on Governance, History, and Legitimacy—Part 1

Maziar Peihani
Postdoctoral Fellow, Centre for Banking and Finance Law,
National University of Singapore

Abstract

The Basel Committee on Banking Supervision (BCBS) was established in 1974 as an informal group of central bankers and bank supervisors with the mandate to formulate supervisory standards and guidelines. Although the Committee does not have any formal supranational authority, it is the de facto global banking regulator and its recommendations have been widely implemented by member and non-member states. This project investigates the BCBS's governance, operation, and policy outcomes to determine the extent to which it is and has been legitimate. The project is comprised of two parts. This part overviews the literature on the BCBS, outlines its contribution, and provides a primer on the Committee's governance and functions. In addition, it engages with the current theories on legitimacy and discusses what legitimacy means for the global governance of banking and how it can be assessed.

Keywords

accountability – banking regulation – Basel Committee – Global Financial Crisis – legitimacy

Section 1. Introduction

Introduction

The global financial crisis (GFC) of 2008 was the most destructive economic event since the Great Depression. Many of us who lived through the crisis will easily remember the shocking events that took place: stock prices went down dramatically; investors lost their confidence in the market and pulled their money out; large and famous financial institutions failed or teetered on the brink of bankruptcy; the global credit markets ceased to function and liquidity vanished from the system; governments were scrambling to prevent the

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collapse of the whole system with massive taxpayer-funded bailouts.[1] According to the US Treasury, the crisis cost US households $19.2 trillion in wealth and 8.8 million jobs.[2] During the crisis, member states of the European Union (EU) committed to aid banks in the amount of approximately 30% of the EU GDP and paid out amounts equivalent to 13% of EU GDP.[3] The economic costs of the GFC in terms of output losses and increases in public debt was much larger than all crises occurring in the previous thirty years in advanced and emerging economies combined. The median output loss (computed as deviations of actual output from its trend) during the GFC (from 2007 to 2009) was 25% of GDP compared to a historical median of 20%, while the median increase in public debt is 24% of GDP compared to a historical median of 16%.[4]

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1 The turmoil originated with the credit contraction in the interbank markets beginning 9 August 2007. The interbank credit froze after BNP Paribas suspended payments on three investment funds. The German Sachsen Landesbank was sold to the Landesbank Baden-Wuerttenberg on 28 August 2007 and IKB lost $1 billion in subprime loans. Shares in Northern Rock, a British bank that had invested heavily in sub-prime mortgages, fell on 14 and 15 September 2007, following the announcement of its request for liquidity support from the Bank of England. In United States, the collapse of the housing bubble and the abrupt shutdown of subprime lending had led to substantial losses for many financial institutions. On 17 March 2008, the Federal Reserve, using its authority under s. 13(3) of the Federal Reserve Act, announced $29.97 billion to enable JP Morgan to purchase Bear Sterns for $2 per share. The crisis then reached a critical stage in September 2008 with the failure of Lehman Brothers and the near collapse of the American International Group (AIG). The lack of transparency of the balance sheets of the major financial institutions, which were "too big to fail", and had a high level of interconnections, caused the credit market to seize up. In the five days between Monday, 15 September and Friday, 19 September, the global financial system was teetering on collapse. Even after the US government announced a $700 billion bailout plan, namely the Troubled Asset Relief Program (TARP), the US markets slightly stabilized. In Europe the EU leaders could not agree on a collective response. This failure then forced the British government to take the lead in announcing a comprehensive rescue package totaling £ 500 billion of loans and guaranties. See George A Walker, "Credit contraction, Financial Collapse and Global Recession: pt 1", (2009) 1 JIBFL 5; A Cohen, "Global Financial Crisis—Timeline" (2009) 1 JIBFL 10.

2 US Department of Treasury, "The Financial Crisis Response In Charts" (2012) at 1, online: US Treasury. http://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf.

3 Herman V. Rompuy, "Reshaping Europe's Economy—The Role of the Financial Sector" (2011) at 3, online: EU http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/119231.pdf.

4 Luc Laeven & Fabian Valencia, "Resolution of Banking Crises: The Good, the Bad, and the Ugly" (IMF Working Paper, WP/10/146, June 2010) at 4.

There has been enormous debate about the causes of the GFC.[5] However, one common narrative is that the crisis was an *incident* that took everyone, particularly regulators, by surprise.[6] Under this narrative, the years preceding the crisis witnessed a major saving glut, which led to large flows of capital into several major economies. These flows in turn triggered lower interest rates, investors' turn to high-yield risky structured products, and explosion of credit.[7] Together, these factors brought about a crisis that Alan Greenspan has likened to a "hundred-year flood" unforeseen by all.[8] Inadequate legal authority, an incomplete toolkit to combat the financial market's fragility, and insurmountable regulatory gaps are among the themes commonly referred to by those who subscribe to the view that the GFC was a complex and severe crisis.[9]

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5 See, e.g., Howard Davis, *The Financial Crisis: Who is to Blame* (Cambridge: Polity Press, 2010); Marc Jarsulic, *Anatomy of a Financial Crisis: A Real Estate Bubble, Runaway Credit Markets, and Regulatory Failure* (New York: Palgrave, 2010); Robert Kolb, ed., *Lessons from the Financial Crisis: Causes, Consequences, and Our Economic Future* (New Jersey: Wiley, 2010); Joseph Stiglitz et al., *The Stiglitz Report: Reforming the International Monetary and Financial Systems In the Wake of the Global Crisis* (New York: The New Press, 2010); John B. Taylor, *Getting Off Track: How Government Actions and Interventions Caused, Prolonged, and Worsened the Financial Crisis* (California: Hoover Institution Press, 2009); Mathias Dewatripont et al., *Balancing the Banks: Global Lessons from the Financial Crisis* (Princeton: Princeton University Press, 2010); Hershey H. Friedman & Linda W. Friedman, "The Global Financial Crisis of 2008: What Went Wrong?" (March 9, 2009) online: Social Sciences and research Network: http://dx.doi.org/10.2139/ssrn.1356193; Sher Verick & Iyanatul Islam, "The Great Recession of 2008–2009: Causes, Consequences and Policy Responses", IZA Discussion Paper No. 4934 (2009) online: Social Sciences and research Network http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1631069; Douglas W Arner, "The Global Credit Crisis of 2008: Causes and Consequences", AIIFL Working Paper No. 3 (2009) online: Social Sciences and research Network http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1330744.

6 See, James R. Barth, Gerard Caprio Jr. & Ross Levine, *Guardians of Finance: Making Regulators Work for Us* (Cambridge, MA: MIT Press, 2012) at 1–4. The authors provide an eloquent explanation of the incident narrative.

7 Timothy F. Geithner, "Reducing Systemic Risk in a Dynamic Financial System" (Remarks at the Economic Club of New York, New York City, 9 June 2008) online: Federal Reserve Bank of New York http://www.newyorkfed.org/newsevents/speeches/2008/tfg080609.html.

8 Alan Greenspan, "The Crisis" in David Homer & Justin Wolfers, eds, *Brookings Papers on Economic Activity* (Brookings Instituion Press, 2010) 201 at 216.

9 On inadequate legal authority, see, e.g., Christopher Cox, Address (Speech delivered at the Security Traders 12th Annual Washington Conference, 7 May 2008) online: US Securities and Exchange Commission http://www.sec.gov/news/speech/2008/spch050708cc.htm; On incomplete toolkit to manage financial crises, see Timothy F. Geithner, (Written Testimony House Financial Services Committee Hearing, 24 march 2009), online: US Department of Treasury http://www.treasury.gov/press-center/press-releases/Pages/tg67.aspx;

As Timothy Geithner said after the AIG bailout, "If we could have done it differently, we would have done it differently. Instead, we had no other choice. That is the basic lesson of this great recession."[10]

There is some merit to the incident narrative. When the Crisis exploded, panics, runs, and massive failures appeared inevitable and policy makers needed to take immediate action to thwart financial contagion and assuage the impact of the Crisis. However, the incident narrative, is at the same time, a woefully incomplete account of the crisis. The housing boom, the surge of subprime mortgages, the massive leverage, and the proliferation of complex structured products were trends closely watched by regulators and policy makers.[11]

On regulatory gaps, see Timothy F. Geithner, Address (Remarks Remarks before the American Enterprise Institute on Financial Reform, 22 March 2010) online: US Department of Treasury http://www.treasury.gov/press-center/press-releases/Pages/tg600.aspx; Christopher Cox, "The State of the United States Economy and Financial Markets" (Testimony Before the U.S. Senate Committee on Banking, Housing and Urban Affairs, 14 February 2008) online: US Securities and Exchange Commission http://www.sec.gov/news/testimony/2008/ts021408cc.htm.

10 Timothy F. Geithner, Address (Secretary Written Testimony before the House Committee on Oversight and Government Reform, 27 January 2010) online: US Department of Treasury http://www.treasury.gov/press-center/press-releases/Pages/tg514.aspx.

11 From 1997 until the middle of 2006, house prices began to rise much more rapidly than building costs or general price levels in the US. While nominal house prices increased at annual rate of 9.3%, building costs only increased at an annual rate of 2.9% and consumer price index at an annual rate of 2.5%. Between 1953 and 1997 (a period of 45 years) housing prices remained basically unchanged. It was, therefore, a historical anomaly when housing prices increased 85% between 1997 and 2006. The Federal Reserve had knowledge of this irregularity and continued appreciation of housing prices. However, Alan Greenspan, its former Chairman, told audiences "that we were facing not a bubble but froth—lots of small local bubbles that never grew to a scale that could threaten the health of the overall economy." See, Alan Greenspan, *The Age of Turbulence: Adventures in a New World* (New York: Penguin Press, 2007) at 231; Jarsulic, *supra* note 5 at 12–13; Karl E. Case & Robert Shiller, "Is There a Bubble in the Housing Market?" (Brookings Paper on. Economic Activity, No. 2, 2003): Brookings Institution http://www.brookings.edu/~/media/Files/Programs/ES/BPEA/2003_2_bpea_papers/2003b_bpea_caseshiller.pdf.

From 2001 through 2003, the value of subprime loans almost doubled to $310 billion. The volume of subprime mortgages then increased from 8% of mortgage originations in 2003 to 20% in 2005. Regulators were aware of the dangers of the subprime market but chose not to curb its expansion. Greenspan considered it undesirable to rein in subprime lending. In his view, subprime products and practices were not necessarily improper. On the contrary, they could facilitate "the national policy of making homeownership more broadly available". His successor, Ben Bernanke, also believed that the impact of the subprime market turmoil on the financial markets and the broader

It is even more troubling to consider that the Crisis occurred despite the existence of a comprehensive body of international financial standards (IFS) that had been developed over the previous 35 years.[12] At the time of Crisis, the IFS covered 12 areas of financial activity including banking, securities, corporate

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economy "seem[ed] likely to be contained". The Office of Federal Housing Enterprise Oversight (OFHEO), which was in charge of overseeing the operations of Fannie Mae and Freddie Mac, knew about the purchase of subprime mortgages-backed securities by these firms. In its 2004 examination, however, it mentioned that such mortgages were not a "significant supervisory concern" and satisfactory credit risk management was in place. See, The Financial Crisis Inquiry Commission, "Final Report of the National Commission on the Causes of the Financial and economic Crisis in the United States" (January 2011) at 93–94, 123, online: FCIC http://cybercemetery.unt.edu/archive/FCIC/20110310173545/http://c0182732.cdn1.cloudfiles.rackspacecloud.com/FCIC_final_report_full.pdf; Ben Bernanke, "The Economic Outlook" (Testimony before the Joint Economic Committee, U.S. Congress, 28 March 2007) online: http://www.federalreserve.gov/newsevents/testimony/bernanke20070328a.htm.

From 2002 to 2007 financial markets observed a staggering growth in securitization. In the aggregate, securitization worldwide went from $767 billion at the end of 2001 to $1.4 trillion in 2004 and $2.7 trillion in December of 2006. Regulators, however, did not seem concerned with this development. The common belief was still that securitization transactions could help distribute the risk and make financial markets safer. In a speech delivered in June 2006, Ben Bernanke said:

"To an important degree, banks can be more active in their management of credit risks and other portfolio risks because of the increased availability of financial instruments and activities such as loan syndications, loan trading, credit derivatives, and securitization … Asset-backed securitization has also provided a vehicle for decreasing concentrations and credit risk in bank portfolios by permitting the sale of loans in the capital markets, particularly loans on homes and commercial real estate."

Similarly, the IMF's Global Financial Stability Report of April, 2006 stated: "The dispersion of credit risk by banks to a broader and more diverse set of investors, rather than warehousing such risk on their balance sheets, has helped make the banking and overall financial system more resilient". It noted that this dispersion would help to "mitigate and absorb shocks to the financial system". See, Viral V. Acharya & Matthew Richardson, "Causes of the Financial Crisis" (2009) at 7–8, online: SSRN http://ssrn.com/abstract=1514984; Arnold Kling, "Not What They Had in Mind: A History of Policies that Produced the Financial Crisis of 2008" (15 September 2009) at 27–28, online: SSRN http://ssrn.com/abstract=3D1474430; Ben Bernanke, "Modern Risk Management and Banking Supervision" (12 June 2006), online: Federal Reserve http://www.federalreserve.gov/newsevents/speech/Bernanke20060612a.htm; IMF, "Global Financial Stability Report—April 2006", at 51, online: IMF.http://www.imf.org/External/Pubs/FT/GFSR/2006/01/pdf/chp2.pdf.

12 FSB, "Compendium of Standards" (Accessed on 25 April 2016) http://www.financialstabilityboard.org/cos/index.htm.

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governance, and accounting.[13] In spite of their scope and sophistication, not only did the IFS not prevent the Crisis but also contributed to it in significant ways. The failure of the IFS is most evident in the context of international capital adequacy standards, commonly known as the Basel Accords.[14] Basel Accords encompass prudential standards. These standards depart from the premise that banks occupy a special position in the financial system given banks' central role in the payment and credit network and their vulnerability to loss of confidence.[15] A bank run is not only a threat to the bank itself but can pose risks to the entire financial system and broader economy. To rule out externalities arising from bank runs, authorities establish safety net mechanisms such as deposit insurance and lender of last resort.[16] These mechanisms, however, impose costs on taxpayers and, more importantly, could exacerbate moral hazard by encouraging banks to take excessive risk.[17] To address these problems regulators go beyond disclosure requirements and market discipline and subject banks to prudential regulation.[18]

However, Basel Accords failed to achieve their intended objectives, namely ensuring the stability and soundness of the banking system. The Accords proved to be inadequate, pro-cyclical, and excessively reliant on internal risk modeling and credit ratings. There were also no minimum standards that could protect the system against the liquidity risk. The failure of Basel Accords raises important questions about the body out of which they are conceived, namely the Basel Committee on banking Supervision (BCBS), which is the principal agent investigated in this research. Similar to many other international regimes, the BCBS is a problem-driven institution. The primary purpose for its establishment was to tackle risks arising from the operations of internationally active banks. The Committee's authority is therefore often justified based on the utilities delivered, namely a safer and sounder international banking system. However, such perception of *output legitimacy* is challenged by the failure

13 FSB, "Key Standards for Sound Financial Systems" (Accessed on 25 April 2016) online: FSB http://www.financialstabilityboard.org/cos/key_standards.htm.

14 BCBS, "The Basel Committee's Work" (Accessed on 25 April 2016) online: BIS http://www.bis.org/bcbs/bcbs_work.htm.

15 Charles E. Goodhart et al., *Financial Regulation: Why, How and Where Now* (London: Routledge, 1998) at 10–12; Peter Brierley, "The UK Special Resolution Regime for Failing Banks in an International Context" (2009) at 5, online: Bank of England http://www.bankofengland.co.uk/publications/fsr/fs_paper05.pdf.

16 Howard Davies & David Green, *Global Financial Regulation—The Essential Guide* (Cambridge: Polity, 2008) at 16–17.

17 *Ibid.*, at 18.

18 *Ibid.*, at 19–20.

of the most important policy outcome of the BCBS, namely, capital adequacy standards.

Although the GFC has been associated with systemic regulatory failures, the question of how to make regulators more accountable has been largely overlooked. A glance at recent initiatives in the areas of prudential regulation, corporate governance, derivatives and consumer protection indicates that the post-crisis reform agenda mainly seeks to promote responsible behaviour by market participants. Undoubtedly, the Crisis revealed significant market failures. In order to address these failures, regulators should incentivize market participants to act more responsibly and avoid the type of risk taking that can lead to externalities for all of society. However, when it is acknowledged that the role of regulatory failures in the Crisis was as important—if not more so—than that of market failures, the issue of regulator accountability gains equal significance.

Inadequate research of regulatory governance and accountability is apparent with respect to international institutions, particularly the BCBS, which has been central to the global governance regime of banking. The Committee is the oldest and best-known global regulatory forum, and the primary global prudential standard setter. The Committee's standards, guidelines and sound practices have been widely implemented and countries look to the Committee's leadership with respect to regulatory and supervisory issues. However, as the following literature review will demonstrate, the BCBS's governance and policy making has been subject to little research—a research gap that motivated this project. As this section explains, my primary project is that there are considerable steps that the BCBS must take in order to become a more accountable global standard setter.

Overview of the Literature on the BCBS

To date, the BCBS has been subject to three comprehensive studies. The first study was "The Basel Committee on Banking Supervision: A History of the Early Years, 1974–1997" by Charles Goodhart. An important feature of this book is that the author was the first to be given access to the BCBS's papers and archives, including the records of the 83 meetings that occurred in the period covered by the book.[19]

The book provides an in-depth and comprehensive narrative of the BCBS's history. Goodhart's main aim is to tell the story of the BCBS's evolution as the Committee itself saw it. In other words, the book chiefly seeks to produce a quasi-official public record of the BCBS, with a lot of "cut and paste" of original

19 Charles A. E. Goodhart, *The Basel Committee on Banking Supervision: A History of the Early Years, 1974–1997* (Cambridge, UK; New York: Cambridge University Press, 2011) at xi–xii.

documents which can be useful for future historians.[20] The bulk of the book is about the BCBS's work in the covered period, including Concordat, the First Capital Accord, and the Core Principles of Banking Supervision. It also provides short commentaries on issues such as the BCBS's legal position, and its international relations with its counterparts.[21]

Professor Goodhart's book is a significant contribution to the literature on the history of financial regulation in general and the BCBS in particular. My project particularly benefited from the book's research on how and why the BCBS was created and its evolution during its first two decades. However, it needs to kept in mind that the book's history ends with 1997, a year when the BCBS started to think about new stages of capital adequacy regulation. Consequently, the Basel II exercise, which became the focus of the BCBS in subsequent years, is excluded from the book. The reason that Goodhart offers for such exclusion is that the Basel II initiative is "too recent and for the time being too contentious to become subject of a historical study such as this."[22] Be that as it may, the book also does not provide an account of the current status of the BCBS and major changes it has undergone in more recent years.

The second important study is "International Banking Regulation: Law, Policy, and Practice" by George Walker.[23] The book's purpose is to consider the structure and content of regulation that apply to banks at the international level. Similar to Goodhart's book, this manuscript begins by explaining the circumstances surrounding the establishment the Basel Committee following the collapse of the Bretton Woods System of managed exchanged rates and the subsequent closures of Franklin National and Banhus Herstatt.[24] The book then turns to explain the structure and operation of the BCBS and assesses its contribution to international bank regulation and supervision. In addition to drawing upon publicly available sources of information, the book benefits from personal interviews with Central bankers and supervisors who were closely involved in the BCBS's agenda setting and policy making in its early years, such as Peter Cooke, the former BCBS Chairman.[25]

The book pays particular attention to cross-sector and cross-border regulatory issues that arise from the increasingly integrated activities of complex

20 *Ibid.*, at xii.

21 *Ibid.*, at 96–371, 542–571.

22 *Ibid.*, at 7.

23 George A. Walker, *International Banking Regulation: Law, Policy, and Practice* (London, UK, Kluwer, 2001).

24 *Ibid.*, at 17–34.

25 *Ibid.*, at xix.

banking and financial groups.[26] Walker considers the background context for the rise of financial conglomerates and provides a detailed assessment of the international response to their risks.[27] Another important contribution of the book is its careful consideration of the nature and content of capital adequacy standards at the time.

While the book was written at a point when the Committee's work on Basel II was at a very early stage, the book considers the BCBS's preliminary proposals and their impact on the banking regulatory regime.[28]

From the perspective of this project, an important contribution of this book is the explanation of the nature of modern regulatory requirements and the relationship between law and regulation. Walker notes that banking regulation does not fit with any of the traditional definitions or classifications of national or international law to the extent that it is not imposed in the form of primary or secondary legislation and is not backed by any formal court processes.[29] He acknowledges, however, that many, if not all, of the obligations imposed on banks operate within a large legal framework. Compliance with regulatory requirements is not secured through court adjudication and formal enforcement but through a range of formal and informal devices and controls. Thus, bank regulations have the equivalent significance of a legal obligation without falling within category of law as such.[30]

The third important study on the BCBS is "Governing Global Banking: the Basel Committee and the Politics of Financial Globalization". Adopting a largely historical approach, Duncan Wood traces the evolution of the Basel Committee from its origin in the 1970s to its early years in the 21st century. The author's hypoproject is that the evolution of the BCBS has been driven by the need for banking authorities in the major economies to respond to challenges in the changing market place. In other words, it was the serious risks posed by profit-seeking practices of financial institutions that necessitated increasing cooperation among the banking supervisors from the world's major financial institutions.

Wood argues that the BCBS has continued to respond effectively to new problems and crises in the post-Bretton Woods era. Although the Committee has not eliminated crises from national or international banking systems, its existence and work has greatly contributed to the stability and soundness of

26 *Ibid.*, Part II Financial Conglomerates.

27 *Ibid.*

28 *Ibid.*, Part V Postscript.

29 *Ibid.*, at xxii.

30 *Ibid.*

the international financial system. According to Wood, the BCBS's limited success can be explained by reference to three factors: the will of powerful states to create an agenda for cooperation; the influence of private actors in national policy processes; and the capacity of the Committee to avoid or overcome conflict between its members.[31] Power, leadership, the influence of private sectors, and the dynamic relationship between regulators and markets are among the key themes of the book. The book's contribution is thus best understood from a political economy perspective. Wood's inquiry builds upon earlier contributions of political economists such as Ethan Kapstein, Tony Porter and Beth Simmons who have highlighted the importance of elements of power and coercion in the area of international banking cooperation.[32]

The most important insight that this project takes away from Wood's analysis is that politics is essential and central to an adequate understanding of the BCBS. Though the Committee has been frequently idealized as purely technical—an epistemic community of specialists engaging in technocratic deliberations—Wood's novel contribution indicates that politics has marked every step of the BCBS's work and evolution.[33] The centrality of politics is conspicuous in the Basel II process, which was characterized by the emergence of ideological divisions between the Anglo-Saxon states on the one hand and the Continental European states on the other hand.[34] The book also provides important empirical evidence regarding the influence of the banking sector in the notice and comment process, which this project discusses in addressing the narrative of regulatory capture.

Contribution of Project

The existing books on the BCBS make important contributions to the understanding of BCBS's history, governance, and policies. However, they are written in reference to a state of affairs that appears quite out of date. There can

31 Duncan Wood, *Governing Global Banking: the Basel Committee and the Politics of Financial Globalization* (Aldershot, Hants, England; Ashgate, 2005) at 4–5.

32 See for instance, Ethan B. Kapstein, Resolving the Regulator's Dilemma: International Coordination of Banking Regulations", (2009) 53:2 *International Organization* 323; Ethan B. Kapstein, Supervising International Banks: Origins and Implications of the Basle Accord (Princeton, NJ: Princeton university, 1991); Ethan B. Kapstein, *Governing the Global Economy: International Finance and the State* (Cambridge, MA: Harvard University, 1994); Tony Porter, *States, Markets and Regimes In Global Finance* (New York: St. Martin's Press, 1993); Beth A. Simmons, "The International Politics of Harmonization: the Case of Capital Markets Regulation", (2001) 55:3 *International Organization* 589.

33 Wood, *supra* note 31 at 163–164.

34 *Ibid.*, at 123–148.

be little doubt, if any, that the recent Crisis has transformed the governance and regulation of international banking. For instance, the BCBS is no longer a standing Committee of G10 but a reporting Committee to G20, which has in recent years become the primary forum for global economic cooperation.[35] The Committee's membership has been expanded twice to include emerging markets and developing economies.[36] The basis for the BCBS's operations is no longer an informal press statement,[37] but a new *Charter* which sets out its structure, mandate and function in some detail.[38] The BCBS's operations have been subjected to oversight of a higher body, designated as the Group of Governors and Heads of Supervision.[39] Last but not the least, the Committee has adopted any array of new policies in response to the recent crisis. Basel III is the most important of such policies, the implementation of which is now monitored by the BCBS.[40]

The current literature on the BCBS does not engage with these new developments. Nor do they engage with questions of legitimacy and accountability, which warrant immediate attention in the face of massive regulatory failures. My research seeks to make a positive contribution towards filling these gaps. It investigates the BCBS's governance, operation, and policy outcomes to determine the extent to which it is and has been legitimate. The point of departure for my analysis is the literature on legitimacy in law, political science, and international relations. In particular, I draw upon Global Administrative Law (GAL) theory to examine the BCBS's legitimacy against three principles of reasoned decision making, transparency, and accountability. I argue that the BCBS has gradually become a more legitimate institution but that significant room still exists for improvement. Inadequate disclosure on the BCBS's deliberations, underrepresentation of constituencies without business interest or insufficient financial resources in BCBS consultations, and absence of

35 See, e.g., G20, "Monitoring Adoption of Basel III Standards and Reports to the G20" (Accessed on 25 April 2016) online: BIS http://www.bis.org/bcbs/implementation/bprl1.htm.

36 BCBS. "Basel Committee broadens its membership" (2009) online: BIS http://www.bis.org/press/p090610.htm; BCBS, "Expansion of Membership Announced by the Basel Committee" (2009) online: BIS http://www.bis.org/press/p090313.htm.

37 See, "Note on the BIS Governors' Activities vis-à-vis the Euro-currency Market" (12 February 1975), reprinted in Goodhart, *supra* note 19 at 50.

38 BCBS, "Basel Committee on Banking Supervision (BCBS) Charter" (January 2013) online: BIS http://www.bis.org/bcbs/charter.htm [*Charter*].

39 *Charter, ibid.*, s 6.

40 BCBS, "International Regulatory Framework for Banks (Basel III)" (Accessed on 25 April 2016) online: BIS http://www.bis.org/bcbs/basel3.htm.

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