

**Original citation:**

Rogers, Chris (Christopher James). (2016) Global finance and capital adequacy requirements : recreating capitalist social relations. Review of Radical Political Economics.

**Permanent WRAP URL:**

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# Global Finance and Capital Adequacy Regulation: Recreating Capitalist Social Relations

Chris Rogers  
Associate Professor of Political Economy & Public Policy  
Politics and International Studies  
University of Warwick  
[c.j.rogers@warwick.ac.uk](mailto:c.j.rogers@warwick.ac.uk)

Chris Rogers is Associate Professor of Political Economy & Public Policy in the Department of Politics and International Studies at the University of Warwick, UK. He was previously a Leverhulme Trust Early Career Fellow in the Department of Politics at the University of York, UK

Acknowledgements: I am grateful to the Leverhulme Trust who provided funding for the research for this paper (ECF-2011-003). I would like to thank Tony Heron, Lucia Quaglia, Mat Watson, participants in a panel discussion at the ISA annual convention in 2013, and the reviewers from *Review of Radical Political Economics* for helpful comments on earlier drafts of this paper.

## Abstract

The paper argues that capital adequacy regulation has served to recreate the neoliberal form of capitalist social relations. It identifies two dimensions to this process. First, the paper argues that financialization has become increasingly important for securing political legitimacy in several states, and that capital adequacy regulation in historical perspective can be understood to have incentivized, facilitated, and legitimated the kind of arbitrage that allow it to proceed. Second, it argues that in the contemporary context, revisions to capital adequacy requirements serve to discipline mutual and co-operative forms of finance by encouraging them to engage more explicitly in profit-seeking, introducing a homogenizing dynamic into the financial sector despite regulators' belief that systemic diversity is a key feature of promoting stability.

Key Words: Basel III; Finance; Co-Operative Bank; Regulation; Capital Adequacy

## Introduction:

The collapse of the international financial system in 2007 and 2008 understandably prompted debates about the way in which states regulate global financial markets in general, and capital

adequacy requirements for banks in particular. These requirements, as Howarth and Quaglia (2013, 313) have phrased it, 'have traditionally been regarded as one of the main instruments to ensure the stability of the banking sector and hence financial stability *tout court*'. More holistically, commentators have focused on the ideational shift towards macro-prudential regulation (Baker 2012; Baker 2014)—the regulation of the system as a whole—the degree to which regulation has been 'captured' by financial elites, and the way in which new regulations have been subjected to the demands of national governments and bank lobbies, resulting in differential implementation across states (Baker 2010; Howarth and Quaglia 2013; Buckley, Howarth and Quaglia 2012; Rethel 2014). However, the central contention of regulators in the aftermath of the crisis has been that more stringent capital adequacy requirements and a macro-prudential approach that focuses on the system as a whole rather than simply individual firms can produce stability.

This paper scrutinises and critiques this claim. The paper follows accounts of the expansion of finance's contribution to the economy and its role in everyday life—often referred to as a process of financialization—that argue this process has reflected attempts to revitalize accumulation on a legitimate basis (Harvey 2005; Kotz 2008). It argues that capital adequacy regulation and revisions to that framework recreate capitalist social relations in their neoliberal form, which is characterized by the expansion of markets and competition and has relied on financialization in order to provide it with legitimacy by increasingly replacing state provision with asset ownership and debt as the keystones of welfare provision (Crouch, 2009; Finlayson, 2009).

It identifies two dimensions to this process, examined in two sections. In the first section, it is argued that the historical development of capital adequacy regulation can be understood to have created the conditions for financialization to proceed by incentivizing, facilitating, and

legitimizing regulatory arbitrage—the processes through which ‘a bank takes the opportunity to be regulated by a more “accommodating” regulator and to exploit differences between regulatory regimes’ (Rethel, 2014, 72). It shows how, counter-intuitively, the capital adequacy framework can be understood to have incentivized and facilitated a specific form of regulatory arbitrage—regulatory capital arbitrage—where ‘cosmetic’ adjustments can be made to balance sheets in order to lower effective risk-based capital requirements through the process of securitization (Jones, 2000, 36). In the second section, the paper outlines more specifically ways in which capital adequacy regulation can be understood to recreate capitalist social relations by showing how recent revisions have served to discipline mutual and cooperative finance, which are member rather than share-holder owned and have not traditionally been geared primarily towards profit seeking. This discipline has placed institutions of this form under pressure to surrender their mutuality, either in principle or in practice. This disciplinary effect not only has the effect of recreating capitalist social relations by incentivizing profit-seeking behaviour, it is counter-intuitive because it contributes to the homogenization of the financial system despite regulators’ stated aims of encouraging systemic diversity.

### **Capital Adequacy and Capitalist Finance**

Harvey (2005, 19, original emphasis) has described the process of neoliberalization as ‘a *political* project to re-establish the conditions for capital accumulation and to restore the power of economic elites’, a key feature of which has been the increase in financial transactions undertaken in ‘speculative and predatory style’ (ibid., 161). For Kotz (2008, 16), this financialization has been marked by a gradual divorce of the financial from the non-financial economy rather than its dominance over it, and he suggests that ‘financial deregulation set the financial sector free, allowing the process of financialization to develop’,

particularly in the period 1980-82 (ibid., 8). This paper agrees with these analyses, but notes that it was not simply the deregulation of finance in the early 1980s that has contributed to the development of financialization as part of the political process of neoliberalization. It also shows how the continued re-regulation of finance has played an important part in this process. This section of the paper outlines the evolution of capital adequacy regulation and its relationship to other kinds of regulation like accounting standards, to show how it can be understood to have contributed to the development of capitalist social relations in the neoliberal form by incentivizing, facilitating, and legitimating regulatory arbitrage.

The Basel Committee on Banking Supervision's *International Convergence of Capital Measurement and Capital Standards* (BCBS 1988) was putatively designed in order to strengthen the global banking system by imposing capital adequacy requirements on banks. This operated by assigning assets a risk weighting which would determine the amount of capital banks would have to hold against those assets, a system which was revised to incorporate the marketization of risk management (and therefore capital adequacy requirements) and strengthen market-discipline (see BCBS 1999) following the Asian Financial Crisis of 1997. The collapse in sub-prime mortgage markets and the systemic contagion that followed from the running down of many financial institutions' highly leveraged positions then provided a strong rationale for further re-regulation. Substantively, the Basel III agreements made capital adequacy requirements more stringent by tightening the definition of core capital on the basis of the view that banks with sufficient levels of 'good quality' capital would be able to withstand future stresses. This means that 'the predominant form of Tier 1 capital must be common shares and retained earnings' (BCBS 2010, 2). Basel III also suggested that national regulators incorporate a leverage ratio in order to guard against pro-cyclical deleveraging during times of stress (ibid., 4) and proposed capital

conservation buffers to ensure 'banks build up capital buffers outside periods of stress which can be drawn down as losses are incurred' (ibid., 54).

The evolution of capital adequacy regulation reflects a dominant narrative: 'Good regulation was understood not to interfere with the functioning of the market' (Rethel and Sinclair 2012, 82-3). Most significantly, the intellectual foundations of capital adequacy regulation lie in the belief that holding more capital will reduce risk, and that risk is something that can be effectively measured and managed in order to prevent destabilizing periods of crisis. This dominant narrative was reflected in claims that the crisis stemmed from the abuse of the regulatory system by financial elites who were able to 'capture it', producing a situation where 'bureaucrats, regulators and politicians cease to serve some notion of a wider collective public interest and begin to systematically favour specific vested interests, usually the very interests they were supposed to regulate and restrain for the wider public interest' (Baker 2010, 648). This narrative is also reflected in the fact that 'Many observers have argued that the regulatory framework prior to the financial crisis was deficient because it was "microprudential" in nature', rather than trying 'to safeguard the system as a whole' (Hanson et al 2011, 3).

The response to this narrative of the crisis in policy-making circles has therefore emphasized the significance of macroprudential regulation geared at safeguarding the system as a whole, reflecting a view that the 'correct' regulation can create conditions for financial stability. Baker (2012, 2) is right to note that the acceptance of macroprudential regulatory paradigms by policy-makers represented 'a startlingly rapid ideational shift' in the reregulation of finance. However, a simple focus on the notion that the shortcomings of regulation were unintended consequences of the system's design rather than inherent features of it ignores the fact that opportunities for arbitrage that allowed for the expansion of finance served the

interest of domestic state managers in countries like the US and the UK, because allowing for the expansion of finance provided for both for the profitability of financial firms and the provision of social welfare through debt-financed consumption.

On this matter, Baker (2010, 655) suggests 'Anglo-American elites face serious disincentives in retreating from financialization, securitization and the access to credit and housing finance [...] because these processes have become integral elements of the social and welfare settlements in these societies.' As Schwartz (2008, 263) frankly noted, it was 'cheap mortgages [that were] financing the trenches defending against new demands for protection in the US and some other countries.' Moreover, the relationship between the expansion of credit and welfare was not just limited to housing, but encompassed a much broader range of fields as part of a system that Crouch (2009, 382) has described as 'Privatised Keynesianism'—'a system of markets alongside extensive housing and other debt among low- and medium-income people linked to unregulated derivatives markets'. In this system, revolving short-term debt functioned alongside mortgage debt as the basis for prosperity, replacing rising wages, the welfare state, and demand management, which had provided the conditions for prosperity in the immediate post-war period (ibid., 392). At the heart of this system has been the cultivation of an 'asset-owning society composed of responsible yet risk-taking, financially independent yet economically ambitious individuals' (Finlayson 2009, 400), with the effect that individual prosperity is linked not only to home-ownership, but to private pensions and other forms of financial investment. In a context where policies that 'have a strong impact on everyday life, such as property, credit, and tax' play a significant role in legitimating relationships between the state and civil society (Seabrooke, 2007, 2), it is possible to see that the expansion of financialization was not simply a project related to creating conditions for the accumulation of capital, but also a key way of legitimizing that project.

In the context of the tensions domestic state managers face between creating conditions for profitability while maintaining political legitimacy, there are clear incentives to allow regulatory arbitrage that facilitates the expansion of finance to occur. This is because it allows state managers to both seek and retain mobile capital in their search for competitiveness, and because the extension of finance to broader social groups can help negotiate political tensions that might otherwise stem from the welfare state retrenchment that has increasingly formed part of governments' response to competitive pressures. From such a perspective, it is possible to reject a technocratic focus on weaknesses in the form of regulation and argue that capital adequacy regulation has served to recreate capitalist social relations by incentivizing, facilitating, and legitimating regulatory arbitrage of the kind from which the crisis stemmed.

The first way in which capital adequacy regulation might be understood to have served to recreate capitalist social relations is by incentivizing risk-taking behaviour in the quest for profitability. Ostensibly, the notion that banks should hold higher levels of capital is to ensure that they have enough in reserve to draw down in the event of impairments, and therefore prevent insolvencies. The notion that this should *reduce* risk in the system appears intuitive. However, an alternative analysis can show that the notion that more capital equals less risk is a *non sequitur* because of the dynamic nature of banking. As Jürg Blum (1999, 755-6) explains,

'In a regime of binding capital requirements the amount that can be invested in the risky but profitable asset is restricted to a multiple of the value of equity. This implies that an additional unity of equity leads to an additional investment larger than one unit in the risky asset. Due to this 'leverage effect' equity is more valuable to a regulated bank. A bank facing binding capital rules therefore has a higher incentive to increase equity tomorrow. However, if a bank finds it prohibitively costly to raise additional

equity in the capital market or is completely unable to do so, the only way to increase the amount of equity tomorrow is to increase risk today.'

Effectively, capital adequacy regulations place a premium on equity as the core component of good quality loss-bearing capital with the effect that on the one hand, 'If future profits are lower, a bank has a smaller incentive to avoid default', and on the other, 'In order to raise the amount of equity tomorrow it may be optimal for a bank to increase risk today' (ibid., 755). This perspective suggests that capital adequacy regulation may introduce perverse incentives. In combination with other apparently perverse incentives, like the ability to generate fee income from 'originate to distribute' models of lending which allow for risk to be shifted, undermining prudent approaches to lending, and banks' much criticized bonus cultures (Crotty, 2009, 565), it is possible to see how capital adequacy regulation might be understood to complement a broad range of regulations that incentivize risk-taking rather than limiting risk.

The incentivization of risk-taking behavior would not, however, serve to legitimately recreate capitalist social relations in their neo-liberal form unless regulatory structures are constructed in a way that facilitates it by creating opportunities for regulatory arbitrage to occur. The fact that apparently strong capital adequacy positions have not historically translated into institutional resilience is one illustration of the fact that arbitrage of this kind has been widespread. As Alfon et al (2004, 5) have shown, the majority of UK banking institutions routinely held 'considerably more capital than that required by the regulatory authorities' in the early 2000s. They estimated that for banks the excess capital held above that required by the regulator was 50 per cent, and for building societies, 31 per cent (ibid., 9). Nonetheless, these institutions were not insulated from the crisis because regulations allowed for securitization, which meant liabilities could be held off-balance sheet in forms that allowed institutions to avoid holding capital against them.

Jones (2000, 1) has labeled the process through which financial institutions have been able to reduce their capital requirements through securitization as 'regulatory capital arbitrage', a process through which 'securitization and other financial innovations [create] opportunities for banks to reduce substantially their regulatory measures of risk, with little or no corresponding reduction in their overall economic risks'. In effect, securitization allowed financial institutions to repackage risks into assets with lower effective regulatory-based capital requirements than the underlying assets. As Crotty (2009, 568-70) noted, capital adequacy regulation encouraged banks to hold securities like Collateralized Debt Obligations (CDOs) that had lower requirements than trading assets, while insuring the income streams of CDOs against default through the purchase of Credit Default Swaps (CDSs) shifted risk outside of the core capital adequacy framework to institutions not covered by it and which were not required to set capital aside to cover potential losses. The extent to which regulatory capital arbitrage of this kind has been widespread is clearly indicated by the high levels of securitization, as shown by the increasing volume of asset backed securities issued in the United States in the run up to 2008, shown in Figure 1.

[Figure 1 about here]

The way in which regulation allowed for financial innovation to shift risk outside of the core capital adequacy framework was intrinsically dependent on the way in which capital adequacy regulation interacted with accounting standards. For instance, Lehman Brothers' use of Repo 105 transactions, in which temporary asset repurchases were classified as sales in order to reduce liabilities for the purposes of reporting, served to obfuscate the degree of leverage on financial institutions' balance sheets. The use of Value at Risk (VaR), which assesses the probability of loss exceeding the investment portfolio over a given time period,

also had an inherent tendency to suggest lower capital requirements, since the use of short-term time-horizons meant that assessment of risk was minimal during boom periods (ibid., 571). As Marieke de Goede (2004, 211) phrased it, VaR 'models are ultimately dependent on (sophisticated versions of) the normal distribution (or bell curve) in their prediction of future scenarios', which means 'they have difficulty considering the possibilities associated with the tail end of the curve', a problem compounded because of its reliance on the availability and accuracy of historical data (ibid., 211). These problems were exacerbated and underscored by the Basel II arrangements by its acceptance of an internal ratings based approach to assessing capital requirements for 'some sophisticated banks' (BCBS 1999, 13), which effectively allowed them to use their own models to assess their exposure to credit, operational and market risk.

The clear message is that capital adequacy regulation can only be effective if all banking activity is covered by it, and accounting standards dovetail with capital adequacy regulation to reflect the spirit as well as the letter of the regulation, to prevent their circumvention.

While Basel III has attempted to address some of these issues by proposing a leverage ratio that accounts for off-balance sheet exposures, as well as providing for greater supervision of off-balance sheet activity, its effectiveness will be entirely reliant on the application of these standards by domestic regulators and the evolution and interpretation of accounting standards, as well as the resistance of non-banking financial institutions to measures aimed to bring them under the capital adequacy rubric.

On the first matter, it is clear that significant national differences on the implementation of the Basel Accords exist (Rethel, 2014, 82), which are reflected in the conflicts between member states of the European Union over its legal form. On the second matter, problems remain because while the International Accounting Standards Board moved quickly to re-classify

Repo transactions as secured borrowings rather than as sales (IASB 2010), competition between accounting firms means that there is no reason to believe that differing interpretations of standards will not result in similar obfuscation in the future. Indeed, the increasing levels of fees paid by Lehman Brothers to its auditors in the years when it was using Repo 105, as well as the ‘revolving door’ between accounting firms and their clients in terms of staffing, have been cited as reasons why auditors were happy to agree that such transactions fell within their interpretation of accounting standards (Wall Street Journal 2010).

Problems for capital adequacy regulation stemming from divergence in international accounting standards are also manifested in differences between jurisdictions. For instance, the International Accounting Standards Board new standard on loss reporting—IFRS 9—which stipulates that banks must provide for expected losses rather than realized losses, does not apply to the United States (which fails under the Generally Accepted Accounting Principles) and raises the prospect that institutions based in different jurisdictions will report against different standards (Financial Times 2014). The potential for cross border arbitrage to continue here is clear. Difficulties in capturing financial activity within the capital adequacy framework have also already emerged, for instance in the form of Prudential Financial’s appeal against being labeled a systemically important financial institution by the United States government, along with AIG and GE Capital (Financial Times 2013).

Rethel and Sinclair (2012, 97) are therefore correct to note that the development of regulation reflects the ‘fallacious thinking that we can prevent future banking crisis by regulating against a repeat of the most recent crisis’. This is because regulating against past regulatory arbitrage or regulatory capture does nothing to address the competitive dynamics from which incentives for new forms of arbitrage arise, or to close the gaps between different

regulatory jurisdictions and standards that allow it to occur. Even if existing regulatory gaps are narrowed or closed, competition within the financial services industry is likely to lead to the opening of new gaps as firms attempt to innovate their ways to greater profitability. But more significantly, the neoliberal form of capitalist social relations' reliance on the extension of finance for their legitimation (Baker 2010; Crouch 2009; Finlayson 2009, Schwartz 2008; cf. p. 4-5) suggests that there are significant difficulties and disincentives to preventing these forms of arbitrage, and explains the ways in which the historical evolution of capital adequacy regulation has served to recreate capitalist social relations by incentivizing and facilitating arbitrage that has allowed financialization to proceed.

The political plausibility of the incentivization and facilitation of regulatory arbitrage discussed above is nonetheless contingent on the legitimation of the dominant forms of financial activity, which, in the face of repeated crises, it might be expected would come under threat. However, the extent to which the ideas underscoring the extension of finance have insulated it from this kind of threat have been much discussed, as 'technocratic' discourses of 'the economy' appear to place matters relating to finance beyond the realms of the political. As Crotty (2009, 565) phrased it, 'Support for lax regulation was reinforced by the central claim of neoclassical financial economics that capital markets price securities correctly with respect to expected risk and return', despite the fallacious nature of this claim. As Marieke de Goede (2004, 200) notes, the historical evolution of the concept of risk—as distinct from uncertainty—has 'provided the possibility of a demarcation line between gambling and finance' while serving to frame risk 'as natural on the one hand, but humanly calculable on the other'. As such, the way in which the concept of risk itself has been incorporated into the regulatory framework has served to legitimate the extension of risky practices, with a strong institutional structure incorporating its own perverse incentives underscoring it. This centers on the role of credit-ratings agencies, and in particular the conflicts of interest that stem from

the ‘issuer-pays’ business model (see Helleiner & Pagliari 2009, 279; Mullard 2012)—in which the issuer of a security pays ratings agencies for the rating—as part of a process through which ratings themselves have served to ‘normalize a fictitious bifurcation between the ‘economy’ and ‘politics’ in the constitution of what counts as authoritative knowledge in the market’ (Paudyn 2012, 3).

This section has discussed the ways in which capital adequacy requirements can be understood to have recreated neoliberal forms of capitalist social relations by incentivizing, facilitating, and legitimating regulatory arbitrage that has allowed for the development of financialization. In particular, it has shown how ideas about the relationship between capital adequacy and risk, between capital adequacy regulation and accounting standards, and conceptual and practical approaches to measuring ‘risk’ itself, have somewhat counter-intuitively mitigated *against* the creation of stable forms of finance. In the process, it has served to consolidate the ‘common sense’ of capitalist forms of finance geared towards the maximization of shareholder value *in spite of* its tendency towards instability.

### **Capital Adequacy and Mutual Finance**

The previous section showed how the capital adequacy framework can be understood to have recreated capitalist social relations by establishing a framework that incentivizes, facilitates, and legitimates regulatory arbitrage. This can be explained by virtue of the fact that states like the United States and the United Kingdom have become more dependent on the extension of finance for domestic political legitimation, and can therefore be understood to have been *dependent* on the kinds of opportunities for arbitrage the capital adequacy framework has provided. This section of the paper shows how revisions to the capital adequacy framework following the crisis—in particular the redefinition of Core Tier 1 capital—can be understood

to recreate capitalist social relations by disciplining the mutual sector. It begins by briefly addressing the issue of diversity and the extent to which regulators' have identified it as an important way of creating systemic stability. It then discusses the issue of discipline in relation to the European mutual sector in general, and the case of the UK Cooperative Bank in particular. It shows how new regulations can be understood to encourage such firms to surrender their mutuality either in principle or in practice. In combination, it argues that this demonstrates that revisions to the capital adequacy requirements can be understood to have a counter-intuitive impact in terms of regulators' aims to promote systemic diversity and encouraged the development of specifically capitalistic forms of financial activity focused on profit-seeking.

### *Mutuals and Systemic Diversity*

Discussions about the progressive nature of cooperative or mutual forms of ownership and control have a long history. Bruno Jossa (2012, 401-2) has shown how thinkers including Robert Owen, Charles Fourier, John Stuart Mill, Pierre-Joseph Proudhon, and even in certain passages of his work, Karl Marx, believed that cooperatives might contribute to the rise of a new mode of production. While such grand claims have not recently been made of financial cooperatives or mutuals, which are owned by their members and operated in their interest, following the crisis, regulators have nonetheless implied an important role for them because one of their key objectives has been to address macroprudential risk in the system by encouraging systemic diversity. This has been understood as a way of creating strength in the system because in the event one or more firms experience stress, the stress will not affect all firms simultaneously and result in the seizure of inter-bank lending and a credit-crunch on the grounds that different kinds of firms will be holding different classes of assets depending on their appetite for risk (see Michie 2011, 311).

As a report written on behalf of the UK Building Societies Association (BSA 2009, 1) has phrased it, there is an advantage to

‘having a mix of institutions with different portfolio structures [because this has] the potential to reduce overall systemic risk because institutions are not homogenous.

The more diversified a financial system is in terms of size of ownership and structure of business, the better it is able to weather the strain produced by the normal business cycle, in particular avoiding the bandwagon effect, and the better it is able to adjust to changes in consumer preferences.’

This kind of advocacy of diversity of corporate structures is not simply a reflection of the sectional interests of mutual firms. The desire to limit herd-behavior is also reflected in the views of high profile officials, like the Chief Economist of the Bank of England, Andrew Haldane. Alessandri and Haldane (2009, 9) have noted that before the crisis many financial institutions diversified their business lines and ‘For banks individually, this made sense. It helped reduce the idiosyncratic risk from individual business lines. Pre-crisis, this strategy seemed the epitome of sound banking.’

However, Alessandri and Haldane (*ibid.*, 10) go on to note that this kind of behavior, which makes sense at the level of individual institutions, produces undesirable consequences at the systemic level. They note,

‘for risk across the system as a whole, this strategy has systemically dangerous consequences. By increasing the similarity of banks’ asset portfolios, it increases the system’s sensitivity to aggregate fluctuations. Although diversification may purge idiosyncratic risk, it simultaneously reduces diversity and therefore increases systemic risk.’

This does not mean that complex financial institutions should not be required to hold higher amounts of loss-absorbing capital—they should be forced to do so because it ‘lowers the chances of them contracting disease, thus heading off its contagious consequences (Haldane and May 2011). In order to foster systemic stability then, it should follow that the regulatory framework should require large complex financial institutions to hold bigger capital reserves in order to reduce the likelihood of systemic contagion in the event of failure. It should also encourage the development of different corporate structures, which are likely to be involved in different kinds of financial transactions and hold different kinds of assets.

While achieving the objective of increasing capital reserve levels, the new capital adequacy requirements actively and counter-intuitively discourage the development of systemic diversity by disciplining financial firms, like mutuals and cooperatives, whose primary objective is not to maximize profit. The Basel III requirement that Core Tier 1 capital is constituted of common equity and retained earnings is particularly problematic because financial firms organized on a mutual or cooperative basis ‘do not issue normal shares’ (BPCE et al 2010, 1). In fact, many of the 14 criteria Basel III uses to define Tier 1 capital contradict the principles of cooperative ownership. For instance, they require shareholders to have a right to a liquidation surplus (criteria 2) that cooperatives do not offer because ‘the capital was invested for the purposes of financing the production tool, and not in order to generate a profit’ (ibid., 6). The requirements that the payment of dividends not be subject to caps (criteria 5) also means that the system ‘favours the dispersal of profits to the detriment of the establishment of reserves’ (ibid., 9), which not only undermines the ability of mutuals to generate and retain Tier 1 capital, but also seems to contradict Basel III’s intention to establish bigger capital buffers for systemically important firms. As the UK Building Societies Association (2010, 2) noted, ‘criteria 2 and 5 are repugnant to the international cooperative principles of disinterested distribution and limited interest on capital.’

The European Union's (EU) regulation on prudential standards for credit institutions, which establishes the legal framework for the implementation of the Basel III recommendations within the EU, goes some way to addressing these concerns by allowing mutuals to impose a cap on distributions and limiting claims on the residual assets of institutions under certain circumstances (see EU, 2013, L321/44-5). In doing so, the translation of Basel III recommendations into EU law stops short of institutionalizing a definition of Tier 1 capital that is anathema to cooperative principles contained in the Basel III recommendations. However, this concession still does not address the fact that mutuals cannot issue common shares and therefore face greater difficulties in acquiring loss-bearing capital as it is defined by regulation. The emphasis on Tier 1 Capital means these firms must increase retained earnings or create equity-like instruments that meet the definition of Tier 1 Capital. The former imposes a form of market-discipline on mutuals because it encourages them to engage in more explicitly profit-seeking behavior to generate sufficient retained earnings, while the latter imposes market discipline by forcing institutions to become more responsive to the demands of investors in equity-like instruments.

As HM Treasury (2010, 7) noted, the problem in relation to retained earnings is acute in the low interest rate environment that has prevailed since the crisis since it puts 'pressure on interest rate margins for organizations such as retail banks or building societies that earn income on the difference between the interest rate they borrow at from retail depositors and wholesale funding providers, and the interest rate they lend at for mortgages and other types of loan.' This problem was further amplified by the divorce of wholesale funding costs from bank-rate. In part, this might be because 'institutional investors have perceived building societies to be a higher risk and therefore expect a higher rate of return on their investments' (ibid., 8), however, it is equally plausible that the higher cost of capital incurred by mutual

financial institutions stems from market perceptions about their profitability than their risk profiles, which are generally considered to be more conservative than joint-stock banks (Hesse and Cihak 2007, 21).

The fact that the new capital adequacy framework requires all financial institutions to hold capital that is particularly expensive for mutual and cooperative firms therefore has the potential to make it increasingly difficult to compete in the marketplace, unless they are willing to increase their risk profiles in order to generate higher returns that will allow them to continue offering rates of interests that are competitive for depositors and borrowers. Given that the ethos of these institutions aims to prioritize both their ability to provide value for money for their members and to protect an intergenerational endowment, the competitive squeeze stemming from the need to generate increased retained earnings places them in a difficult position vis-à-vis their mutuality. Should such firms take the decision to try and increase their profitability by extending their range of activities, the system would have effectively encouraged them to become more like joint-stock banks pursuing a business model aimed at maximizing surplus. Ironically, not only would this represent a clear encroachment of a capitalist ethos on an alternative economic space, it would stand in stark contrast to regulators' stated aim of increasing systemic diversity.

The emphasis on retained earnings therefore seems to require mutuals to engage in more explicitly profit-seeking behavior, and given their primary focus on intermediation, potentially sharpens any possible maturity or interest rate mismatches between institutions' assets and liabilities. In this respect, the new capital adequacy requirements can be understood as a form of prudential regulatory discipline that has sharpened the existing market-discipline faced by financial mutuals, and in the process contributed to the recreation of capitalist space by encouraging more explicit profit seeking among them. If mutuals choose

not to engage in more explicitly profit orientated activity to bolster earnings that can be retained to meet capital requirements, they must consider alternative ways of meeting them, which might include issuing equity like instruments. In sum, then, revisions to the capital adequacy framework appear to require mutuals to either adopt more profit-orientated business models, or use instruments more typical of joint-stock banks.

While regulators in the United Kingdom have shown a keen awareness of this issue, it has not been framed as a problem. As the Bank of England (2013, 54) noted, ‘The overall impact on mutuals of the CRD IV proposals will not be substantially different from that of similar sized (non-mutual) institutions.’ This is because, although ‘Mutuals cannot issue equity’, they ‘will be able to issue common equity-like instruments to meet their core requirements (as allowed by Article 27 of the CRR)’ (ibid., 54). In the next breath, the Bank (ibid., 54) notes that the relatively less diverse business models of mutuals is likely to mean that any reduction in risk-weighted assets ‘may therefore affect profitability’, without acknowledgement that this also negatively impacts on the ability to generate retained earnings—their core source of Tier 1 capital. The Bank’s (ibid., 54) suggestion that ‘mutuals’ existing business strategies take this inertia in their ability to adjust their balance sheets into account by generally holding larger surpluses of capital resources over their total regulatory requirements than other types of firms and will help mitigate the cost of higher capital requirements’ effectively appears to suggest—self-referentially—that the impact of higher capital adequacy requirements on mutuals will be negligible because mutuals tend to hold more regulatory capital than required anyway.

This position is at once replete with contradiction and dismissive of the problem. This is because it suggested that mutuals can generate retained earnings and reduce risk-weighted assets, even though the reduction of risk-weighted assets is likely to have a negative impact

on their ability to generate retained earnings, and because it assumes that mutuals are in general already well capitalized. However, in the justification that mutuals can issue equity-like instruments to meet Tier 1 capital requirements there is a far more active way in which more explicitly capitalistic social relations are encouraged, because it suggests that mutuals can avoid capital adequacy difficulties by *becoming more like joint-stock firms*.

The British Treasury noted the emergence of three kinds of new capital instruments that mutual financial institutions could use to 'enhance their capital base [...] to ensure they can withstand stress' (HM Treasury 2010, 21). The first, Profit Participating Deferred Shares (PPDS) is an instrument that provides for a fixed percentage of profits to be offered as a dividend on a discretionary basis when the mutual makes a profit, but the value of which can be written down in the event it incurs losses. The instrument was used in order to assist with the recovery of the West Bromwich building society in 2009 and was characterized by British regulators as Tier 1 capital, although the Treasury has noted that the instrument has faced problems of marketability, which are understandable given the qualification on an investors' upside, but the real downside risk (ibid., 21).

The second, Contingent Convertible Notes, is essentially a debt instrument that converts into equity at a specific trigger point. As subordinated or senior debt at the point of issue 'with a fixed coupon and a fixed maturity date', Contingent Convertible Notes 'would not increase Core Tier 1 capital at the point they were issued' (ibid., 21). However, the convertibility of these debt instruments into equity at times of stress would provide contingent access to Tier 1 capital under these circumstances, and The Yorkshire Building Society issued notes of this kind as parts of its merger with the Chelsea Building Society. Finally, Rabobank Contingent Notes were issued in March 2012 and are 'subject to write down at a specified trigger, producing Core Tier 1 capital at the point of write down' (ibid., 21). In the case of Rabobank,

this meant that the Notes would ‘act in the same way as normal bonds until a specified threshold is breached. Once the threshold is breached [...] the principal value of the notes could be written down by 75 per cent, with the remaining 25 per cent being returned to the investors’ (ibid., 22). Rabobank would therefore be able to retain the 75 per cent write down as Core Tier 1 capital.

These various kinds of convertible and contingent bonds mean that mutuals have ways of raising capital that attempt to respect the fundamental aspects of their mutuality. However, in practice, the structure of these bonds means that mutuals must be more responsive to the demands of investors rather than members in order to market them. Mutuals are therefore encouraged to take on more characteristics of joint-stock firms in relation to profit-seeking activity, since return on investment is likely to be a strong motivating factor for the purchase of such assets. The dilution of the mutual ethos is likely to occur regardless of whether or not bond-holders are prevented from having a disproportionate direct influence on business strategies by imposing one-member-one-vote rules, since the need for mutuals to raise more capital means they must anticipate the demands of investors, or risk being unable raise required levels of regulatory capital.

### *The Case of The Co-Operative Bank*

Each of these instruments has some of the characteristics of debt and some of the characteristics of equity, and through the issuance of instruments that are more like equity, mutuals become more reliant on the preferences of equity investors, which have traditionally been profit maximizing. The new capital adequacy framework has therefore disciplined mutuals through its emphasis on Core Tier 1 capital. However, more significantly than the issue of equity-like instruments by several mutuals, new capital adequacy regulation has also

played a major role in creating the difficulties of the UK Co-Operative Group, which was forced to relinquish a 70 per cent stake of the Co-Operative Bank to private investors in order to fill a £1.5 billion<sup>1</sup> shortfall in its capital holdings in October 2013.

The full picture of the Co-Operative Bank's troubles is complicated. For instance, its merger with the Britannia Building Society in 2009 added a significant proportion of bad loans to its mortgage book (Guardian 2013a), and the bank incurred losses from compensation payments for the mis-sale of Payment Protection Insurance, as well as IT write offs (Guardian 2013b). More fundamentally, questions have been asked about management at the bank, and it has been argued that it 'was absurd that the Financial Services Authority did not insist that the Co-Op Bank have a chairman who knew something about banking' (ibid.). However, despite these clear problems, it is nonetheless the case that the capital shortfall emerged in the context of the more stringent capital adequacy requirements imposed by British regulators following the Basel recommendations.

On this matter, the Co-Operative Group's former Chairman, Peter Marks, informed the Treasury Select Committee's inquiry on the matter that the bank's auditors had assured him that it faced no going concern issues as late as February or March 2012 (UK Parliament 2013a). When asked whether 'this £1.6 billion hole appears from nowhere', Marks responded that the capital shortfall has two characteristics. First, that 'what we are seeing now is assumptions about the loan book based on judgment', accounting for capital impairments of £859 million (ibid.) and which the former Chief Executive of the Co-Operative Bank, David Anderson has noted, as 'Losses [that] as yet have not really arisen' (UK Parliament 2013b).

On the second characteristic, it is worth quoting Marks' evidence at length:

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<sup>1</sup> The figure £1.5 billion and the figure £1.6 billion have been reported in Treasury select committee hearings. This article repeats the figures as they have been provided to these committees

‘The other part of the £1.5 billion, bearing in mind that I had left by the time this came out was, I believe, the regulators saying that all banks need to keep more capital. We know, don’t we, that all the big banks have been raising capital to meet that requirement. The Co-Op was in a difficult position. It cannot raise equity capital. The bank board, myself included, believed that we had more time to build capital and that we would not be subject to what appears to be the acceleration of, first, the provisioning for risk in a loan book and secondly, building up [...] capital [...] I am not criticizing the regulator. I think he has shifted the goalposts because of what has happened over the last few years [...] What I am saying is that the goalposts have well and truly been shifted’ (UK Parliament 2013a).

While it is important, as Marks recognized, not to shift all the blame from the Co-Operative Bank, placing its troubles in context is essential, and reveals a far more nuanced picture than impressions of a £1.5 billion capital shortfall emerging from bad loans overseen by unqualified managers.

At least part of this nuanced picture is of a financial institution engaged with regulators who had ‘healthy scepticism’ about the merger with Britannia, before reaching the conclusion that ‘their capital position, combined with ours, put us in a better position than we were in on our own with all the other factors associated with merging’ (UK Parliament 2013b). Quoting the Economic Secretary’s remarks to Parliament, Andrews noted that the Treasury believed ‘The success of the merger resulted in a strongly capitalized mutual business with the scale to offer its customers and members a full range of financial services products that are ethical, mutual, and co-operative’ (ibid.). Another part of this nuanced picture is an institution judiciously provisioning for potential losses in its loan book, in the context of generalized losses across the banking sector, which in the case of The Co-Operative Bank, are comparable with other financial institutions—as figure 2 shows, its impairments as a percentage of its loan book in a

single year have never exceeded the level of impairments suffered by the Royal Bank of Scotland in 2009.

(FIGURE 2 ABOUT HERE)

What has made the case of the Co-Operative unique is the fact that it has structural constraints in its ability to raise capital that created increasing difficulties in the context of an increasing regulatory burden. That is not to say that the Co-Operative Bank's affairs were 100 per cent secure—all banks at all times suffer write downs of one kind or another—however it is the case that the new regulations created a much heavier burden for mutual finance that has come at the cost of The Co-Operative Bank's mutuality. In the process of creating another joint-stock bank, the disciplinary impact of the new capital adequacy framework and its counter-intuitive character are exposed. Not only is this a small step towards increasing homogeneity in the financial sector, it is a homogeneity that prioritizes profit-seeking and the maximization of shareholder value, and therefore the creation and recreation of specifically capitalistic social relations.

While the case of The Co-Operative Bank might seem relatively isolated, and is not simply a product of the Basel framework but also European and national pressures that have emerged out of the way national regulators have implemented it, the problem is not trivial. As data from the European Association of Co-Operative Banks (EACB 2013) shows, co-operative banks accounted for over 20 per cent market share of deposits and loans in several European countries at the end of 2013. This is problematic in the context of existing pressures on mutuals that have resulted in a number of mergers that has reduced the number of building societies in the United Kingdom by 10 in the period 2007-2010 (Birchall 2010, 115), reflecting a secular decline from 1723 societies in 1910 to 47 in 2012 (BSA 2014). As figure 3

demonstrates, concentration of the building societies sector in the UK has shown a consistent upward trend since 1995 in terms of the percentage assets held by the largest 5, largest 10, and largest 20 societies. As the sector itself becomes more concentrated, the potential for the new capital adequacy requirements to have a large impact on systemic homogeneity is significant since the demutualization of one of the larger institutions would significantly reduce the size of the sector overall.

(figure 3 about here)

This section has argued that despite regulators' desire to increase systemic diversity, the application of capital adequacy requirements to mutual firms is potentially homogenizing because these firms cannot raise equity, have increasingly sought to introduce equity-like instruments, and in the case of The Co-Operative Bank, relinquished its mutuality. In the context of competitive pressures that have led to increasing concentration among large mutuals in the United Kingdom, the potential for this disciplinary and homogenizing dynamic to have significant consequences is very real. In light of competitive pressures that have the potential to encourage profit-seeking behavior as mutuals try to strengthen their reserves, and the tendency to address capital adequacy requirements through the creation of equity-like instruments for mutuals, revisions to capital adequacy requirements have added regulatory discipline to existing market discipline in a way that encourages mutuals to surrender their mutuality either in principle or in practice. In this sense, capital adequacy regulation can be said to have served to re-create capitalist social relations by consolidating the profit motive and privileging the maximization of shareholder value as the primary motivation for financial activity.

## **Conclusions**

The paper has argued that capital adequacy regulation and revisions to that framework have contributed to the recreation of capitalist space. In the first section, it discussed the ways in which the capital adequacy framework can be understood to have incentivized, facilitated, and legitimated regulatory arbitrage. Moreover, it suggested that these tendencies can be understood as a function of the extent to which states—including the United Kingdom and the United States—have become increasingly reliant on the expansion of the financial sector to create the conditions for political legitimation through the process of financialization. The second section argued that revisions to the capital adequacy framework following the financial crisis have added a regulatory discipline to existing market discipline working on mutual financial institutions. It showed how the definition of Tier 1 capital has been responded to with a search for equity-like instruments for mutual firms, which counter-intuitively makes them more like joint-stock banks despite regulators' stated preference for increasing systemic diversity. The paper argued that this constitutes a recreation of capitalist social relations by entrenching incentives toward profit-seeking in firms whose primary objectives have historically not been focused on pecuniary gain. It showed how this disciplinary impact can be understood to have contributed to the surrender of The Co-Operative Bank's mutuality, and suggested that given the existing market-share and concentration of the mutual sector, if these disciplinary forces are not addressed, the financial sector will become more rather than less homogeneous. The clear implication is that regulators should not be placing an emphasis on mutuals' ability to adapt to the capital adequacy framework, but on their own ability to adapt regulation to accommodate this different form of financial activity. It is only by doing so that it could be argued regulators have acted to the full extent of their ability to encourage macroeconomic stability by creating conditions for systemic diversity.

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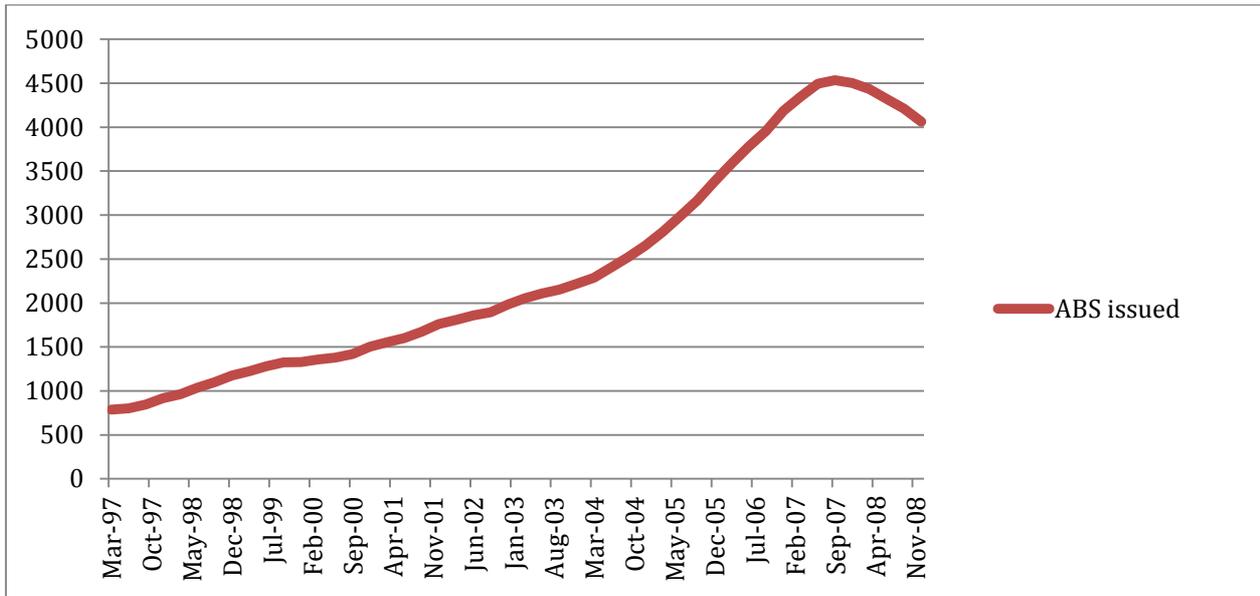
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Figure 1: Asset-Backed Securities issued in the United States (US\$ Billion)



Source: OECD (2010) *OECD Factbook 2010: Economic, Environmental and Social Statistics*

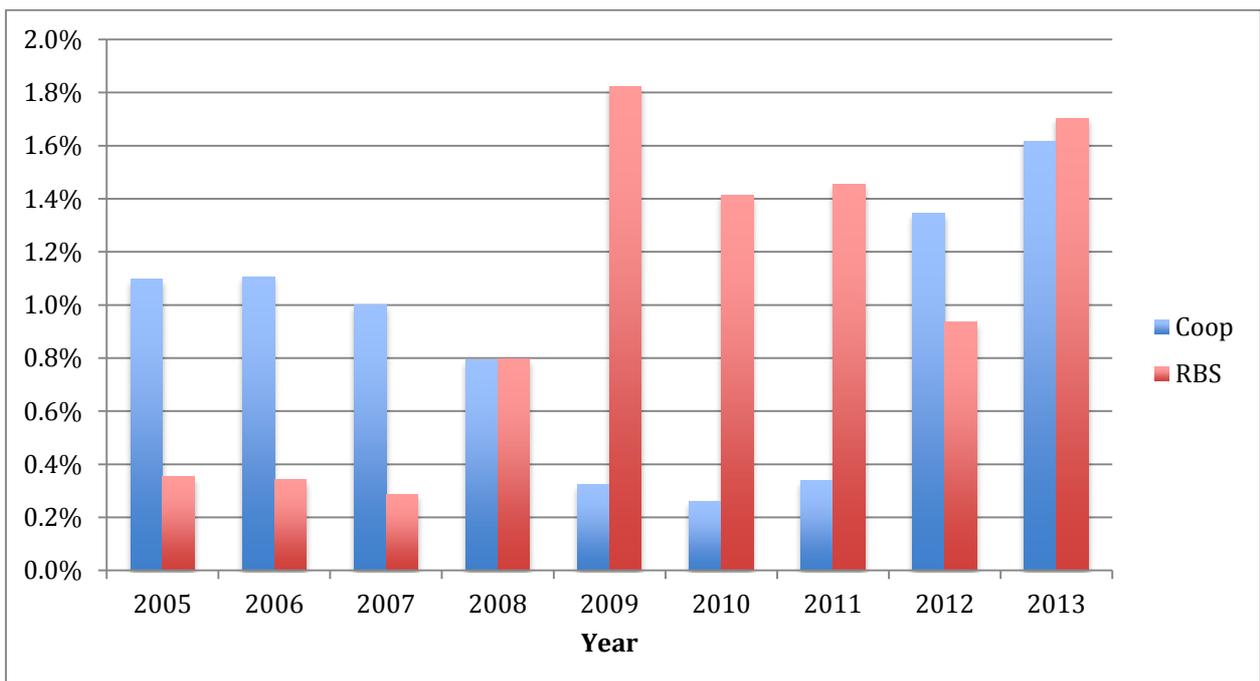
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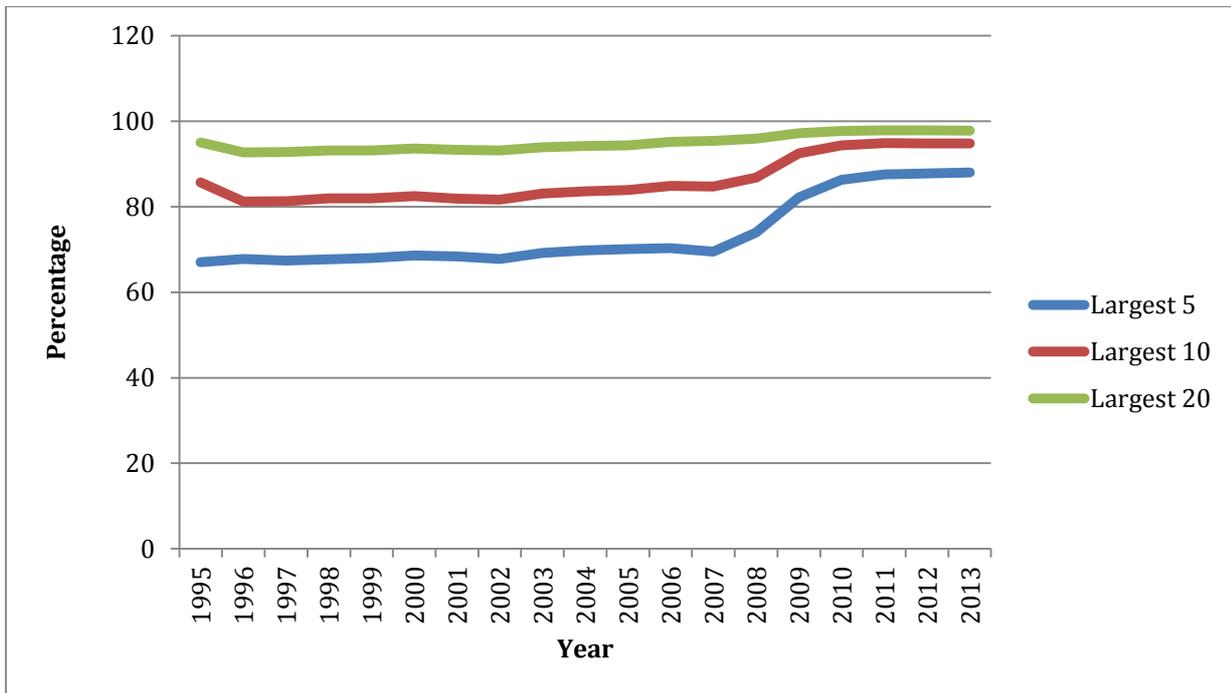
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Figure 2 RBS and Cooperative Bank Loss Impairments as % of Loan Book



Sources: Compiled from Annual Reports for RBS and The Co-Operative Bank

**Figure 3 Share of Total Assets of UK Building Societies**



Source: statistics available from BSA <https://www.bsa.org.uk/statistics/sector-info-performance/sector-information>