

HOW DO REGULATORY PRACTICES SPREAD? THE CASE OF BANKING ETHICS

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Presentation for JFR Annual Conference

Hong Kong, June 23, 2016

GLOBAL BANKING SUPERVISION: SOURCES

- Comparative law: transplants, etc.
 - Facilitated by regular interactions by banking supervisors
- International governance:
 - Process: Agencification across borders (Zaring 2016)
 - Substantive: Commitment to six principles (Zaring 2012)
 - 1) a national treatment principle
 - 2) a most favored nation principle
 - 3) a preference for rulemaking over adjudication
 - 4) a subsidiarity principle of enforcement
 - 5) a peer review model of enforcement
 - 6) a network model of institutionalization.



WHY ARE SUPERVISORS CALLING FOR ETHICAL BANKING?

“Virtue cannot be regulated ... Even the strongest supervision cannot guarantee good conduct. Essential will be the rediscovery of core values, and ultimately this is a question of personal responsibility. More than mastering options pricing, company valuation, or accounting, living the right values will be the most important challenge” – Mark Carney, Head of the FSB and Bank of England



WHAT IS ETHICAL BANKING?

- Increasingly characterized as a necessary complement to capital standards
- But supervisors have never defined what is required by ethical banking with precision. Instead:
 - Christine Lagarde, the French head of the International Monetary Fund (IMF): banks “mired in scandals that violate the most-basic ethical norms.”
 - The Chief Executive of the Hong Kong Monetary Authority: banking industry must “seek to regain the moral and ethical high ground once enjoyed.”



SPREAD BY COPYING? THE DUTCH BANKERS' OATH



THE DUTCH BANKERS' OATH

I swear within the boundaries of the position that I hold in the banking sector

that I will perform my duties with integrity and care;

that I will carefully balance all the interests involved in the enterprise, namely those of customers, shareholders, employees and the society in which the bank operates;

that in this balancing, I will put the interests of the customer first;

that I will behave in accordance with the laws, regulations and codes of conduct that apply to me;

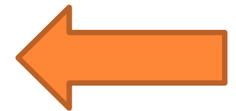
that I will keep the secrets entrusted to me;

that I will make no misuse of my banking knowledge;

that I will be open and transparent, and am aware of my responsibility to society;

that I will endeavor to maintain and promote confidence in the banking system.

So truly help me God.



SPREAD THROUGH MULTINATIONAL EFFORTS

- The G-7 has tasked the FSB with developing a set of international standards for banking ethics.
 - “Currently a certain number of disparate codes exist in different jurisdictions, and they were often ignored We need to pull all this together, so that we have a code that is coherent and applicable everywhere.”
Banque de France Governor Christian Noyer
 - When completed, the FSB’s multinational ethics code “should be a voluntary self-commitment made by the financial industry, as international initiative,”
German Bundesbank President Jens Weidmann.



ETHICAL BANKING AS COSMOPOLITANISM

- A commitment to cosmopolitanism
 - Contra (Berman 2014), (Goldsmith 2003)
 - Ethical banking reforms announced across the world's wealthy countries, even as these countries have very different cultures and banking sectors.
 - Compare:
 - We don't think every culture should have the same approach to "dignity"
 - We do think they should be able to agree on "safety"
 - In some ways, ethics looks more like dignity than safety, but yet banking regulators seem to think ethical standards could make sense across borders
 - Is the global banking sector may indeed be remarkably cosmopolitan, and therefore susceptible to this sort of regulation?



ETHICAL NORMS AS INTERNATIONAL STANDARDS

- From rules to standards
- Most of the hard and specific rules of banking regulation involve activity restrictions, capital charges, resolution and the planning for it, and compensation rules. These are the traditional provinces of financial supervision, and, accordingly, they have been the focus of international cooperation in the past.
 - Note that one of international financial regulation's achievements is in achieving rules through soft law, and ensuring that those rules are observed.
- The vague standards, when spelled out at all, looks similar to the sorts of “principles of supervision” that animated the very first efforts to use regulatory cooperation to handle the problems created when banks crossed borders.
- Banking's national treatment equivalent?



BANKING AS AN EPISTEMIC COMMUNITY

- Epistemic communities
 - devised for EU integrationist elites (Haas 1992)
- They:
 - share normative beliefs
 - agree on certain causal relationships
 - have a shared notion of validity
 - manage a common set of policy actions and practices
- Bankers – and bank regulators – as such a community.



CONCLUSIONS

- By pursuing set of rules requiring ethical compliance, international financial regulators appear to believe that their cross-border architecture has the capability of being robust, but only if it is paired with an industry populated by people inclined towards compliance.
- Creating ethical bankers across the globe is therefore the softest sort of softball regulation, but it illustrates the critical role of, at least as regulators see it, constructing attitudes towards compliance as a real component for semi-legal obligation.
- Perhaps this represents a doubling down on the perceived value of international financial regulation, and a recognition that it does not just need primary rules, but interstitial compliance norms.
- Perhaps ethics are alternatives to courts or other enforcement mechanisms?
- Example of the comparative and transnational forms of global financial regulation



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