www.crimejusticejournal.com IJCJ&SD 2015 **4**(4): 91-105 ISSN 2202–8005

Social Harm and the Vagaries of Financial Regulation in the UK[1]

Vincenzo Ruggiero
Middlesex University, UK

Abstract

The premise of this article is that financial crises, whether they occur as a result of legitimate of illegitimate conduct, cause social harm and victimisation. The 2008 bank crisis is a clear indication of this, as some of the financial operations determining it possessed a criminal nature while some did not. This article is concerned with both typologies, namely with illicit and licit harmful behaviour adopted by financial actors. After some general introductory notes, the first section of the paper focuses on the measures proposed or adopted in response to the 2008 crisis in the UK. This is followed by the presentation of a number of recent cases proving that, despite recent regulatory efforts, large loopholes are still present which allow forms of financial crime to thrive. Some final observations on the difficulties encountered by regulatory attempts complete the paper.

Keywords

Social harm; financial crime; grey banking; regulation.

Introduction

The contemporary financial system extends globally and penetrates all social and natural spheres (Gallino 2011). It has been described as a mega-machine developed over the last decades that accumulates and maximises, in the form of capital and therefore of power, 'the values that can be extracted from the highest possible number of human beings and echo-systems' (Gallino 2011: 5). It enjoys the power to decide what has to be produced, in what quantity, how, where and when. The mega-machine constituting industrial capitalism had as its engine the manufacture of goods, while the financial system relies on the production of money. It is controversial whether the predominance of the financial over the productive sector follows a linear or a cyclical process, namely whether it characterises the evolution of market economies in general or successive phases thereof (Arrighi 2009). What seems to be constantly accompanying such predominance are periodical crises and bubbles (Bilginsoy 2015; Scheinkman 2014).

The first component of the financial system consists of bank holding companies, which simultaneously control banks and insurance firms, offer loans, and sell a variety of stocks, derivatives and other products. The second component is formed of institutional investors, who mainly manage pension funds and hedge funds. Both components can trade securities, which include equities, bonds, certificates of deposit, investment trusts and credit default swaps. The third component is constituted by private banks, that assist 'high net worth individuals' (HNWIs) and provide an array of services and products, including investment management, insurance and consultancy in cross-border operations. 'Having made a pile of money, most HNWIs spend most of their time worrying about how not to lose it. Private banks are geared towards helping them to hang on to it and grow it' (Platt 2015: 47). This component is also known as grey or shadow banking, is impervious to regulation and public scrutiny, its dimension is unknown and its balance sheets are far from transparent. The grey sector offers:

> … a mountain of derivatives which, for some reason, are not budgeted, is formed of thousands of companies devoid of a proper organisational structure, are often set up by banks solely for the purpose of moving revenues out of the official accounts (for this reason they are also known as vehicles). (Gallino 2011: 10)

Many commentators agree that the major factors determining the 2008 financial crisis were financial engineering and rosy assumptions concerning housing prices (Scheinkman 2014), with banks lending money to borrowers and then selling the right to receive repayment to third parties in the form of credit default swaps (CDSs). Banks lent recklessly to borrowers who had little ability to repay (referred to as 'subprime'). Meanwhile, investors were lured into buying collateralised debt obligations (CDOs), which are akin to insurance policies, guaranteeing a return in the event of a default on the part of the original mortgage borrower. 'Speculators (including banks) with no interest in the underlying loans began to buy CDSs as a means of betting on whether those loans would be repaid' (Platt 2015: 4).

A frenzy of regulatory proposals followed the 2008 crisis, while the basic question persistently loomed: can financial markets be controlled? A related question is: will markets always be one step ahead of regulators, shifting their operations from one sector of the system to another and from one country to the next? (Davies 2015). The following outline of the measures proposed and/or introduced in response to the 2008 financial crisis sets the scene for a tentative answer to such questions.

Preventing future crises?

As mentioned at the beginning, not all financial activities can be labelled as criminal, although they may be socially harmful. Responses to the crisis, one would assume, should be capable of tackling both criminal and non-criminal harmful activities carried out in the financial sphere. Let us see, in the broad summary below, how the authorities formulated their responses.

The Basel Committee

The primary international forum for the co-ordination of financial regulation is the Basel Committee on Banking Supervision, based at the Bank for International Settlements – the so-called central bankers' bank (Martin 2013). In Basel, regulatory weapons to mitigate financial hazard have been designed in the past, such as rules requiring banks to keep a specified quantity of cash or highly liquid securities in their portfolios. This requirement has the function of a tax, in the sense that it imposes a cost on banks that decide to act in an adventurous manner. It is like the tax some would like to impose on polluting industries. However, in the financial sphere all rules are extremely difficult to enforce, because they are normally non-binding rules. Moreover, some commentators would endorse the argument that all regulatory measures, particularly those making banking operations more costly, have a perverse effect. If banks are required to raise capital as a form of guarantee to avoid future crashes, the argument goes, the cost they incur will make the crush even worse. This will mean scarcity of liquidity, therefore a restriction in the ability of banks to give loans. And of course, loans and other forms of credit given to entrepreneurs are essential for the economic recovery. So, the paradox of regulatory measures in response to the crisis is that they exacerbate the crisis (Martin 2013).

In December 2009, the Basel Committee reiterated that banks had entered the crisis with too little capital and poor efficiency. Harmonising the capital reserves, monitoring standards of bank liquidity and establishing a 'leverage ratio'[2] were among the suggestions made. The issue of assessing and predicting risk in financial operations was also raised.

The document released by the Basel Committee made some commentators observe that it is not enough to 'tighten a screw here and put in a new nail there': the entire ship of banking regulation needs a thorough overhaul (Hellwig 2010). Moreover, the regulatory community was accused of sticking to a tradition of discussing among bureaucratic cognoscenti, without even trying to explain to the public at large the effects that the new measures were expected to produce.

As for the proposed measures oriented toward prediction of risk, these were deemed ineffective, because risk cannot be reliably measured.

Managers Directive

In July 2011, the European Parliament and the Council of Europe issued an 'Alternative Investment Fund Managers Directive'. The Directive regulates EU managers who deal with hedge funds and private equity funds; it establishes general operating conditions and limits to leverage, while calling for transparency and stricter supervision. It also fixes a ceiling for remunerations and bonuses for bankers and brokers, while requiring the appointment of independent risk managers and evaluators. Although EU countries were expected to turn the provisions of the Directive into national legislation, as of April 2014, 16 member states had failed to do so. Asset managers employed in the UK regard the Directive as an obstacle to competition and, in their opinion, will reduce the number of overseas agents operating in the EU.

Regulatory bodies

Discussions following the immediate aftermath of the crisis indicated that reform had to focus on the relationship between governments and independent regulatory bodies. Design faults in the administrative and regulatory machinery were detected. As a remedy, suggestions were put forward to set up committees formed of politicians and professional economists, with a view to exercising overall control over business conduct, on the one hand, and over systemic issues, on the other (Goodhart 2008). One such committee set up in 2012 in the UK was the Financial Services Authority (Wilson 2014), which does not tackle shadow banking, with the latter therefore attracting an increasing number of traders who feel that the restraints prevents them from operating.

Cross-border consequences

Due to short-sightedness, the crisis was initially regarded as affecting individual countries, while its cross-border consequences were almost totally neglected. Bailing out banks was perceived as a domestic issue and it remained unknown how the loss burden arising from transnational institutions might be handled. Only later were international changes invoked, through a 'Memorandum of Understanding' on cooperation for cross-border financial stability, prompting the joint action of supervisory authorities, central banks and finance ministries of the European Union countries (Praet and Nguyen 2008). The Financial Stability Forum took the lead in the process, recommending stricter monitoring of liquidity and risk and the enhancement of transparency. However, such recommendations were accompanied by an underlying belief in the disciplinary role of markets, thus displaying an implicit scepticism towards the very measures suggested. Authorities were asked to investigate whether adding new requirements to adaptive market practices would be advisable or might end up being redundant. Market practices, in brief, were and are still deemed 'adaptive' and self-disciplined, irrespective of the damage caused.

The type of transparency advocated was linked to the capacity of public authorities to gather information, assess liquidity and appraise performance. Transparency, therefore, did not entail stricter institutional control but rather the possibility of quantifying losses and covering them with public funds. This appears to be the only acceptable state intervention tolerated by financial institutions. The network established by the Financial Stability Forum was therefore required to gather data around financial practices, 'encourage mutual exchange of information that are necessary for the proper execution of the mandate of each institution' (Praet and Nguyen 2008: 371). The rescue operations made it clear what the mandate of governments had to be. Due to the global dimension of the crisis, authorities in all the countries involved were asked to cooperate to resolve the crisis situation.

Internationalisation of finance meant that all national bond markets were affected, and in countries such as Ireland and Spain domestic taxpayers found themselves footing the bill for bank recapitalisation that benefited foreign bond- holders. In sum, responses to the crisis, at least in Europe, took the form of austerity packages producing further increases in unemployment and growing public unrest (Calhoun and Derluguian 2011; Turner 2013).

> When, on 31 January 2011, Anglo-Irish Bank – which had been recapitalised to the tune of 25.3 billion euros by Irish taxpayers – repaid in full and on schedule a 750 million euro bond to its investors, the distribution of risk under the new regime of sovereign credit support for banks was on stark display. The total cuts to welfare spending in that year's Irish budget amounted to a little over the same amount. (Martin 2013: 238)

In the past, it was acceptable that ordinary citizens helped bond-holders, because almost everybody, through pension and mutual funds, was a bond-holder. But with the growing polarisation of wealth, an elite has taken shape which detains large quantities of assets and then, when in trouble, expects to be bailed out by those who detain little.

In brief, the need for and the form of public intervention were and still are taken as an undisputable given. The principles enunciated by the Forum reaffirmed 'the primacy of private sector solutions', but 'when a strictly private-sector solution cannot be found, public funds have to be mobilised' (Praet and Nguyen 2008: 372). Authorities, by intervening, do not have to rescue those harmed by the financial crisis, but simply attempt to strengthen market players' confidence. Finally, it was felt that public intervention could not be restrained through ex-ante rules, but had to remain 'open' to contingent necessities emerging by future crises. With this, state intervention in support of financial markets was not only definitively ratified, but all qualitative and quantitative limits to that intervention were lifted.

Regulating Europe

'A crisis is a terrible thing to waste', goes the motto, meaning of course that errors committed in the past can bring to more efficient arrangements. Not so in the UK, where 'light touch' regulation is still preferred, and where reform finds an impervious terrain, showing how the conflicting interests of EU member states are significant (Begg 2009). Regulating financial operations is problematic for the EU because of the clashes between national sensitivities. Disagreements are hard to avoid when discussing how best to reach a coherent approach to cross-border risks and burden-sharing. 'The UK has sought to avoid a dominant role for EU bodies in supervision which could pose a competitive threat to the City of London' (Begg 2009: 1121). The new European System of Financial Supervisors outflanks the problem by granting an enhanced role to national supervisors. No changes in this specific area can therefore be recorded.

Changing the rules amounts to interfering with both domestic and European legislation. A further problem arises from the fact that the euro area and the EU have different forms and intensity of membership, so that the interplay between monetary policy and financial regulation is complicated and 'raises questions about which institution should take the lead at EU level' (Begg 2009: 1114).

A further issue affecting European integration is that, as we have seen, ultimately taxpayers bear the risk of financial market failures. Because taxpayers are national, not European subjects, it is at the national level that austerity measures are designed as a result. Yet, financial operations involve a number of countries simultaneously, hence the unfair situation in which those nations burdened with cuts and penalties find themselves. For instance, the collapse of a British bank may lead to calls on taxpayers from other member states to foot the bill, but the negative reaction on the part of non-British nationals can be easily predicted. For this reason, authorities designing new regulations hesitate and fail to take action, thus exacerbating risk for future failings.

The Volker rule

In early 2009, President Obama appointed an Economic Recovery Advisory Board, chaired by Paul Volcker, a former Chairman of the Federal Reserve. The Board was tasked with making proposals for the reform of the financial sector.

In the UK, the newly-formed coalition government, in June 2010, created an Independent Commission on Banking under the leadership of the eminent Oxford economist Sir John Vickers. The Volcker and the Vickers groups had slightly differing views but ended up recommending similar policies, specifically the separation of banking activities into distinct sectors. It has to be noted that in the US such separation was ratified by the *Glass-Steagall Act 1933*, passed into law in response to a crisis affecting many commercial banks. The Act was partially repealed in 1999 by the *Financial Services Modernization Act*, with the result that the distinction between commercial and investment banks was eliminated, 'turning the financial markets into a free-for-all and establishing a criminogenic environment' (Barak 2012: 12).

The Volker and the Vickers groups drew a line between client-oriented and proprietary banking, retail and wholesale markets. The Volcker rule is understood as a ban on proprietary trading by commercial banks. Volcker argued that banks engaged in high-risk speculation were damaging the entire system and that the growing use of derivatives had to be halted. As of February 2013, the rule had not yet been implemented and, in the US as well as in the UK, a reduction rather than a prohibition of hedge fund ownership by banks was introduced (Goldstein 2014). European Union countries have also discussed the rule, reaching the conclusion that limitations rather than a total ban on hedge funds dealing by banks are acceptable. In both Europe and the US, however, the very discussion of the Volcker rule has caused an exodus of traders from large banks to small hedge fund dealers, thus reproducing the grey financial area that contributed to the crisis in the first place.

In the UK, the distinction between investment banks and retail banks has not marked the decline of 'packages', 'which are still available while regulators are impotent. They are underfunded and have little experience. At times they ignore what exactly they have to check or regulate. It is bankers themselves who advise clumsy regulators as to what they should look into (Dermine 2013; Prins 2014).

The Haldane doctrine

The Executive Director for Financial Stability at the Bank of England, Andrew Haldane, admitted that the financial crash made 'the riches be privatised and the rags socialised'. But it was nobody's fault: 'For the most part the financial crisis was not the result of individual wickedness or folly. It was not a story of pantomime villains and village idiots. Instead, the crisis reflected a failure of the entire system of financial sector governance' (Haldane 2013: 21). Putting events in historical perspective, he also explained that in the first half of the nineteenth century the business of banking was simple: the owners-managers backed the bank's losses with their own personal finances. Shareholder funds (so-called equity capital) protected clients from loss and bank directors excluded investors who were financially weak in facing risk. Things changed with the emergence of giants embracing the 'too big to fail' doctrine.

> At the start of the 20th century, the assets of the UK's three largest banks accounted for less than 10 per cent of GDP. By 2007, that figure had risen above 200 per cent of GDP. When these institutions hit problems, a bad situation can become catastrophic. In this crisis, as in past ones, catastrophe insurance was supplied not by private creditors but by taxpayers. Only they had pockets deep enough to refloat banks with such huge assets. This story has been repeated for the better part of a century and a half; in evolutionary terms, we have had survival not of the fittest but the fattest. I call this phenomenon *doom loop* [emphasis in original]. (Haldane 2013: 22)

In Haldane's view, ownership and control of banks have been left in the hands of a myriad of agents and brokers taking high risk and receiving large incentives. In this situation, while the losers are easy to identify, the beneficiaries should be found among small-term investors lured into quick-profit operations. His proposals for reform hinge on reshaping risk-taking incentives on a durable basis and increasing the equity capital of banks. Such measures would increase the banks' capacity to absorb loss and reduce the risk they can take. The proposals of the Basel Committee mentioned above constitute, in his opinion, a significant piece of reform in this respect.

Bank governance and control, in Haldane's argument, should be improved through increasing expertise and granting more power to risk committees. Voting rights within banks should be extended to wider groups of stakeholders, thus establishing genuine principles of democratic governance. Of course, pluralism in boards of governors comes at a cost: consensual decisions are slow to reach and action can become ineffective. But this is balanced by the benefits pluralism produces in avoiding catastrophic errors.

In his evolutionary analysis, Haldane highlighted the increasing role played by 'economic formality', with mathematics underpinning models, and predictions and concepts being formalised to the point of shaping a theological doctrine. Businesses, in the past, would have on their boards experts in the area in which they operated. Now, he noted, all businesses, irrespective of the area, employ experts in economics and financial matters. On the contrary, it should be acknowledged that even experts have imperfect information and are surrounded by uncertainty, and economists in general should have a narrower view of themselves (Davies and Haldane 2012). Ultimately, a good leap forward was achieved in splitting up banks and diversifying their activities, with the distinction between retail and propriety institutions. As for the 2008 crisis, Haldane concluded, mistakes were made, although they were 'honest', not fraudulent mistakes, and anyone would have made them given how uncertain the world is.

Critics of the Haldane doctrine note that the amount of public funds spent to rescue financial firms overweighs the annual expenditure for social security and education and is almost equal the expenditure for health (MacKenzie 2013). The Basel Committee has never been effective in enforcing rules and has been too generous to banks in establishing the amount of liquidity these were prompted to possess (Pinto 2014). Challenging Haldane's view that individuals and boards of governors were not to be deemed responsible for the crisis:

> The bonus culture requires radical change, much more than the response Haldane suggest. Senior bank executives and board members should be liable to charges of negligence and reckless lending in the event of bank failure and subject to suspension. Unless we get rid of the chancers and rogues, the most determined regulation will have no effect whatsoever. (Pinto 2014: 231)

The Financial Services Act 2013

Why financial misconduct should attract criminal liability is contentious. The perception that financial crime is 'less criminal' than other conventional criminal activity makes even the *Financial Services Act* introduced in the UK in 2013 of dubious validity. Optimist commentators may argue that the Act continues the British long-standing tradition in tackling large-scale illegality in the world of finance (Wilson 2014). However, critics suggest that most available legislation is unable to deal with the variety and scale of financial malpractice, whose nature and multifaceted characteristics are not sufficiently understood (Mirowski 2014). Moreover, prosecuting managers who opt for high-risk practices proves ineffective because financial operations, by definition, involve risk-taking. All recent legislation, in sum, may do little to reduce the difference between enforcement responses to white-collar and responses to conventional criminality: we still witness a situation in which attention paid to crime is inversely proportional with the amount of social harm produced (Will et al. 2012). Finally, the *Financial Services Act 2013*, as would be expected, totally ignores the grey financial area which in the UK still constitutes a large sector of the financial sphere as a whole (see the case of the Channel Islands below).

Business as usual?

Authors remarking the lack of major prosecutions of companies or individuals after the crisis point out the influence of large financial institutions on law-making and regulation, as well as the high status of potential defendants (Pontell, Black and Geis 2014; Rakoff 2014). Examinations of recent transnational responses highlight how the complexity of cross-border financial linkages makes rules difficult to implement. This is due, among other things, to the persistent tensions between transnational measures and national policies. The on-going power of private actors (grey banking), moreover, is said to have made regulatory responses fall short of what would be needed (Porter 2014). However, among the concerns of agencies and individual senior operators supporting new bank regulations are 'cyber risks' which may have systemic implications, the survival of the 'too big to fail' credo, the future low levels of interest rates caused by excessive regulation, and the growth of non-bank institutions (grey banking) taking on the role of financing the economy. On this last point, we have seen the fast move of intermediaries and operators towards alternative financial firms as a response to the Volcker rule. On the prospect of declining rates of interests for investors, commentators fail to predict how this will encourage new forms of financial criminality as a way of making up for the interests lost. On 'cyber risks' we are uncertain whether this refers to new forms of criminality spreading in the domain of financial fraud. In brief, the concerns expressed encompass white collar as well as organised forms of conventional criminality that may be undeterred by the array of new regulations discussed and/or implemented. The following section lists a series of recent episodes proving the apparent inefficacy (or the efficacy?) of regulations.

Zombie funds

The City regulator called in lawyers to scrutinise the announcement of an investigation into 30 million pension and investment policies. The news sent shares in leading British insurers tumbling (Collinson and Osborne 2014). The policies scrutinised were sold in the 1980s and

1990s and savers were trapped by penalty charges of 10-12 per cent and in some cases more than 20 per cent if they wanted to move their money. The first two years of contribution by savers covered commissions earned by salespersons and annual charges were around 4 per cent per year. These policies are still in use and the regulator assured financial firms that no compensation for customers would be imposed. Loss by savers is called 'market value adjuster'. Customers, in brief, are trapped in funds where the annual bonuses have often fallen to zero and where they do not have access to their savings until retirement age. Regulators, on the other hand, cannot review the millions of policies individually; they cannot remove exit penalties without an ad hoc piece of legislation; they are impotent when it comes to introducing change in sales practices, and cannot apply current standard retrospectively, let alone calling for compensation of savers.

This case prompts two observations. First, investigations such as this determine a plunge in share values; therefore they are feared by firms as well as customers, with the former pointing out the damaging effects that any attempt at regulation may produce. The status quo, in this view, is less harmful than any sort of external intervention. Second, disappointment and fear by savers may lead competing firms to offer their own services, persuading people to move money out of their pensions to their own schemes. Such unsolicited offers of help may hide yet more speculative or even fraudulent purposes.

Libor interest rates

The 'London interbank offered rate' (Libor) was involved in criminal activity (illegally establishing currency exchange rates) affecting more than a dozen institutions on three continents. Investors were outraged when the scale of the offence was revealed, with Barclays Bank being asked to pay a hefty penalty for moving the exchange benchmarks and thus gaining illicit profits (Ruggiero 2013). An enquiry led to three employees being charged by the Serious Fraud Office (SFO) for conspiracy to fix Libor interest rates. According to the SFO the offences took place between August 2006 and September 2010, therefore before but also well after the effects of the 2008 crisis came to light (Bowers 2014). City trader Tom Hayes was sentenced in 2015 to fourteen years in jail, becoming the first person to be convicted by a jury for rigging the Libor interest rate (Hickey and Grierson 2015).

Co-op Bank

This bank had a £1.5bn deficit in 2013 and was bailed out by hedge-fund investors and the wider Co-operative Group. In 2014, the Bank admitted that it needed a further £400m to balance its accounts (Armitage and Goodway 2014). Mis-selling of pension schemes and interest-rate-hedging products were certified, as well as breaches of the *Consumer Credit Act 2006*. Shareholders, largely consisting of hedge funds and institutions, will be required to foot the bill.

The Co-op Group was itself in turmoil after the resignation of its chief executive. The situation further alienated the ethical investors traditionally attracted to the Co-op Bank's previous collective ownership structure. Some charities began looking for alternative places to bank after the hedge funds became the majority of shareholders. The Co-op Bank confirmed that it will cut 1,000 jobs from its 10,000-strong workforce and close 30 of its branches.

Cases such as this may become more frequent in the future due to the changing features and compositions of the National Audit Office (NAO). The NAO warned that a brain drain from Britain's City watchdogs has led to their employing thousands of inexperienced staff. A report published by NAO expressed grave concerns that a third of staff at the Financial Conduct Authority have less than two years' experience while a quarter of leavers from the Bank of England's Prudential Regulation Authority are rated top performers. On the contrary, it would be vital for both watchdogs to attract and retain the right staff to cope with the challenges arising from the financial crisis. The report stressed the importance of effective oversight of an industry that is valued at more than £234bn. Regulated firms paid £664m in the 2013-2014 financial year to keep their regulators running, 24 per cent more than in the previous year. The increase is said to result from expensive and time-consuming investigations. Therefore, firms can claim that regulation is wasteful. Problems are compounded by the realisation by some regional directors of the astronomical level of remuneration enjoyed by top managers before and even after the crisis. But, as some commentators sarcastically remark: 'The rich deserve to be rich' (Krugman 2014).

Lloyds Banking Group

One of Britain's biggest banks has cost victims of the payment protection insurance (PPI) scandal tens of millions of pounds by wrongly cutting their compensation awards. Lloyds Banking Group, which is 33 per cent owned by the taxpayer, has been cutting pay-outs to victims who were mis-sold the notorious insurance policies intended to cover loan payments if borrowers found themselves unable to work (mentioned above as CDOs). Loans were mainly linked to property mortgages. In many cases, the fine print meant that customers could never make a claim. This is a case of a taxpayer-sponsored bank depriving taxpayers of their rightful compensation by using a loophole (Harper 2014).

This case shows that the banking system itself is the root cause of severe instability. More than three quarters of bank loans are linked to property and this creates a self-fuelling boom-and-bust cycle. The availability of credit pushes up property prices and, as prices rise, further speculative borrowing and buying are encouraged, thus pushing prices up even more and well beyond what is sustainable in the long term. When the bust comes, the spiral goes into reverse and the deleveraging causes huge pain throughout the economy. The role of banks in economic textbooks is to provide capital to entrepreneurs to build businesses. That happens very little. We can suggest that today, the role of banks is to finance speculation in second-hand property.

Channel Islands

The Channel Islands, particularly Jersey, Guernsey, Sark and the Isle of Man, continue to play their role. Described as 'the worst tax dodgers', they are inaccessible to foreign authorities engaged in investigations on tax evasion and financial fraud. In the Isle of Man there are thousands of completely unsupervised companies whose owners are hidden. In Guernsey and Sark it is common for local residents to act as bogus 'nominee' directors for tax-dodging companies. 'The Channel Islands make so much money that islanders enjoy a standard of living twice higher than that on mainland Britain. A vast service industry has sprung up, involving lawyers, solicitors, accountants and banks' (Christensen 2011: 177). Money to the Channel Islands also arrives in the form of payments to supposed suppliers servicing entrepreneurs based on mainland UK or in other countries. In general, tax havens are regarded as prominent features of the globalised capital market and their very existence continues to create a 'criminogenic environment in which illicit financial flows are easily disguised and hidden amongst legitimate commercial transactions' (Christensen 2011: 177).

In the British territories there are still three million companies whose owners are unknown. It is also unknown who actually lies behind trusts and foundations, due to ownership secrecy remaining inviolable.

Office of Tony Blair

Evidence of how the borders between legitimate and illegitimate practices are uncertain was provided by controversial news relating to the companies owned by former UK Prime Minister Tony Blair. Income channelled through a complex network of firms and partnerships controlled by Blair rose more than 40 per cent in 2011 to more than £12m. Of this, almost £10m was paid for 'management services'. The money was transferred via a network of firms and financial vehicles. Accountancy experts questioned the arcane nature of the network's finances, which makes it difficult to trace where its money is coming from or where it is being spent. Windrush Ventures is the name of the pool of companies linked to the 'Office of Tony Blair', but exactly what sort of 'management services' are provided, and how the companies generate their income, are impossible to determine. Blair has provided advice and consultancy to charitable foundations for poverty relief projects in Sierra Leone and Rwanda, creating his own Africa Governance Initiative. He has also advised heads of states and global corporations, which led to criticism for the way his private and philanthropic activities tend to merge. He has lucrative consultancy contracts with luxury goods firms and insurance companies in Switzerland, has undertaken work for the royal family of Kuwait, an investment firm in Abu Dhabi and an oil company in South Korea. Blair is taking advantage of laws allowing him to limit what his companies and partnerships are required to disclose with the result that his accounts are far from transparent (Doward 2012).

Glencore International

International aid is supposed to benefit small businesses and vulnerable peoples, like for example the aid provided through the World Food Programme, which is aimed at feeding the starving and committed to buying food from very poor farmers and whose finances consist of donations. However, during the 2011-12 period, more than £500m ended up in the hands of a London-listed commodities trader, Glencore International. This conglomerate, which buys up supplies from farmers and sells them on at a profit, was in that period the biggest single supplier of wheat to the WFP. 'In the latest half-year financial results, Glencore, which previously attracted controversy for environmental breaches and accusations of dealing with rogue states, reported that revenue from agricultural products doubled to $8.8m' (Neate 2012). Betting on rising wheat price, lobbying for bans on exportations from some countries, taking advantage from droughts and investing in agricultural 'products futures' allow giant food wholesalers to capitalise on 'inert' donation finances and turn them into profit. As a technique of rationalisation, wholesalers might well mobilise the argument that they are less corrupt and more ethical than arms producers, because they at least provide food, not weapons.

Flash brokers

'Flash brokers' manage to beat regulators through high frequency trading, which is not just regarded as risky. 'It is a form of legalised theft, designed to allow traders to skim profits from other investors' (Surowiecki 2014: 37). Put simply, an investor intending to buy shares, fractions of second before hitting the enter button, may find the price of those shares higher. Orders to buy, in other words, are captured by other traders who buy the wanted shares and resell them at higher prices (Lewis 2014).

Tesco

Giant supermarket chain Tesco was involved in an accounting scandal, having released false data on profits in order to reassure shareholders and attract new investors. Huge losses were suffered by pension funds, traders, small investors and staff holding shares. At the basis of the irregular accounts was the practice to demand financial contributions from suppliers and to record these payments in a creative fashion, thus pretending a healthy financial situation while sales declined. Companies such as Tesco are not required to disclose supplier contributions in their trading statements. About £700m were wiped off the stock market value of the company, and while shareholders were defrauded, annual salaries amounting to around £1m were still given to senior managers after the investigation was launched (Wood 2014).

Barclays Bank

This large bank institution was accused by a campaign group of encouraging international fraudsters through its loose security procedures. The bank allowed individuals holding unchecked international passports to open accounts and set up fraudulent businesses. One example was a multi-million pound fraud against holidaymakers who booked villas and homes in exotic resorts and transferred money through the bank, only to find that those villas or homes did not exist or were not for rent. Campaigners posing as potential investors found that Barclays staff were extremely lax when examining applications, at times only requiring a foreign driving licence as ID. Fraudsters from around the world are attracted to the bank and, after opening their accounts, they can comfortably operate from anywhere they choose (Brignall 2014).

The balloon effect

The European Securities and Markets Authority (ESMA 2014) has recently expressed its optimism, documenting improving market conditions, bolstered by a combination of macroeconomic prospects and liquidity support measures from central banks. Risks, we are told, are now below those observed in the more acute phases of the crisis. In this paper, by contrast, it has been argued that many of the measures proposed to prevent future crises have been contested, amended or scrapped. When applied, their potential effect has been neutralised through the creation or expansion of areas impervious to regulation. The phenomenon possesses some similitude with illegal drugs markets, where enforcement targeting one substance or distributing route directs business towards other substances and routes, like a balloon 'bulging' here or there according to where it is squeezed.

The suggestion that banks should hold significant quantities of cash or highly liquid securities in their portfolios has been countered with the argument that higher resources would expose banks to higher loss in case of further financial crises. Despite reforms introduced in the banking sector aimed at safeguarding customers and small businesses and the separation of retail and property banks (GOV.UK 2014), debts were and remain saleable commodities, and the 'maturity gap' which contributed to the collapse is stationary or widening. The proposed limits for remuneration and bonuses for bankers and brokers has been met with the objection that such limits hamper competition and reduce the number of capable managers prepared to work in the financial sector.

Orthodoxy has spawned a series of shared assumptions regarding feasible and desirable forms of regulation (Tombs 2015), while the appointment of growing numbers of regulators has been criticised for the lack of skills and professionalism the new appointees display. Even the *Financial Services Act 2013*, as we have seen, may prove relatively effective when faced with some extreme forms of misconduct occurring in the official banking system, but totally inadequate to come to grips with the grey sector of the financial world as a whole.

The notion that international financial markets need international regulatory tools was rejected because rules can only be established nationally and can never be totally harmonised. Where new rules were implemented, financial markets witnessed an exodus of traders from large banks to small hedge fund dealers, namely to the grey areas that contributed to the 2008 financial crisis. Finally, disappointment and fear on the part of savers is leading to emerging private firms (yet more grey banking) to offer unsolicited help, often hiding yet more speculative or fraudulent purposes.

The lack or ineffectiveness of new regulations may also be the result of the lack of substantial organised and ideological opposition to market philosophies, whereby policies continue to be tailored around the needs of bankers rather than citizens. The global economy, in brief, is no longer subject to political control: on the contrary, it is politics that has placed itself at its service. Echoing a religious creed, the prevailing motto is: there is no salvation outside the market (Todorov 2014). Against this ideological backdrop, licit or illicit financial operations, both causing social harm, may be destined to continue undeterred as long as those conducting them can claim that such operations benefit not themselves but markets, namely society at large. In this way, as Touraine (2014: 74) has remarked, financiers can step outside the framework of legality and enter the world inhabited by 'drug cartels, arms dealers or cigarette smugglers', while their acts become 'part of the powerful surge in an expanding illegal economy'.

Whistleblowers such as Hervè Falciani, the employee of a Swiss bank who passed clients' details to tax investigators and personally to Christine Lagarde, head of the International Monetary Fund, are still in danger of prosecution (Associated Press 2013). In the UK, large corporations continue to pay derisory amounts of tax despite their gigantic profits, tax incentives are still being offered to foreign companies with a view to attracting foreign investment, and this tax competition is triggering a race to the bottom which contributes to making the boundaries between white collar and organised crime increasingly blurred. This is the result of increased corporate tax competition among states (Farnsworth and Fooks 2015), whereby large companies continue to be the biggest 'welfare queens', and tax breaks, grants, loans and subsidies constitute what can be termed 'corporate welfare'. Corporate theft and fraud continue undeterred, while pensions providers prove impervious to government threats (Sikka 2013; Tombs 2013). With risk operations still prevailing, and with the self-assurance of operators denying such risks, it is not just 'waste' being produced but a dynamic leading to the infection of the whole financial system (Skidelsky and Skidelshy 2012).

Conclusion

There is no contemporary Solon in view: that is to say there is no novel democratic arrangement supervising the financial world and making sure its operation are fair. Regulation in one area of the financial system encourages deregulation in another, as we have seen, and the growth of hidden networks of business may well be the result of recent legislative efforts in the UK. This growth may in fact offer organised criminals novel opportunities. The claim that markets are adaptive and self-regulating accompanies a perverse process whereby regulation pushes deregulation, thus expanding the areas in which all actors, legitimate or otherwise, will be regaled with unexpected chances to engage in crime. The following example is indicative of the bleak future ahead: HSBC, Britain's biggest bank, agreed to pay a record £1.2bn to settle allegations that it allowed terrorist organisations and drugs traffickers to move billions of dollars around the financial system (Rushe and Treanor 2012).

The financial sector is not only the leading mega-machine that accumulates and maximises in the form of capital the values that can be extracted from the highest possible number of human beings and echo-systems. It is also the locus where the elite forges connections and networks and where the constant movement from one occupational group to the other is promoted. The financial world displays the sedimentation of partnerships, alliances, solidarity and complicity among representatives of formally different spheres. It is constituted by a social space hosting lawyers, legislators, politicians, entrepreneurs and other elitist professionals who amalgamate their values and forge their ethical allegiances (Ruggiero 2015). Whoever tries to get in the way of this mega-machine is reminded, as did Tony Blair (2005), that all regulatory measures are 'hugely inhibiting of efficient business by perfectly respectable companies that have never defrauded anyone'.

Correspondence: Professor Vincenzo Ruggiero, Department of Criminology and Sociology, School of Law, Middlesex University, Hendon Campus, The Burroughs, London NW4 4BT, United Kingdom. Email: v.ruggiero@mdx.ac.uk

[1] This article draws on research funded by, and a report produced for, the European Commission. The project title was 'Tackling Illegal Economies'.

[2] In finance, leverage is a general term for any technique to multiply gains. Most often this involves buying more of an asset by using borrowed funds. The belief is that the income from the asset will exceed the cost of borrowing. As the 2008 crisis demonstrates, this involves the risk that borrowing will be larger than the income from the asset, causing loss or even collapse.

Please cite this article as:
Ruggiero V (2015) Social harm and the vagaries of financial regulation in the UK. *International Journal for Crime, Justice and Social Democracy* 4(4): 91-105. DOI: 10.5204/ijcjsd.v3i2.232.

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