Central Banks as Market Regulators: Plastic Payment Systems Policy in the United States and Australia

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Abstract

Central banks do more than set monetary policy. They also make and enforce regulations that correct real or perceived market failures. Like macroeconomic policies, these microeconomic policies also often have important distributive consequences. Central bank performance in regulating financial services is highly variable, however, with poor performance often causing finance-led inequality. This article illustrates these points through a case study on the comparative regulation of plastic payment methods in the United States and Australia. Plastic card transaction fees cost six times as much in the US as they do in Australia, in large part because of the relative stringency of Australian plastic card regulation. In both nations, central banks are the regulators responsible for controlling these financial transaction costs. Building upon Jacobs and King's framework, I consider the role of institutions, culture, and interest group coalitions in explaining differences between the central bank policy regimes. While these all emerge as important factors, I argue that the most critical difference between the two countries is the *laissez-faire* approach to stakeholder engagement through rulemaking found in the US, and the far more intentional, quasi-corporatist approach adopted by the Reserve Bank of Australia. The analysis identifies procedures and practices for assimilating public preferences as critical institutions for the regulatory policymaking of central banks, and also challenges the deck-stacking hypothesis popularized by the structure-and-process school.

In the social science literature, central banks are usually described as exercising a few key functions: providing basic financial services for the government, serving as lender of last resort, and executing monetary policy (e.g., Goodman 1991). To the extent that social scientists consider the role politics plays in how a central bank carries out its responsibilities, they have most typically done so by focusing on how such institutions manage the fraught distributive issues around interest rates and the money supply (Rogoff 1985; Christopher Adolph 2013; Binder and Spindel 2018; Adolph 2018). And yet, much of the harshest criticism that the Federal Reserve and other central banks faced in the wake of the 2008 financial crisis focused not so much on

their *monetary policies*, but rather their disastrously lax approach to *supervising* financial institutions (e.g. Jacobs and King 2016; Jacobs and King 2018). Regulation, supervision, and enforcement are core functions that the Federal Reserve and many other central banks do perform, and that others have done in the past or could again in the future. Certain conceptual models of what central banks are or what they might do seem to have little room for regulation ensuring the safety and soundness of banks, protecting consumers, and advancing broader distributive and economic goals. To be sure, not all central banks stray so far as the Federal Reserve does from the supposed "macroeconomic core" of central bank activity (Wymeersch 2007). Indeed, some countries (notably the United Kingdom) that may have given the central bank important prudential or consumer regulatory functions in the past have been refocused more purely on macroeconomics and steered them away from the messy details of financial regulation (Freytag and Masciandaro 2005). Yet others have doubled-down on central banks as financial regulators, including the United States and also others (Jackson 2009). It would be a mistake, therefore, to think that the teleological endpoint of central banks as the exclusively monetary policy focused organizational actor as described in classic models of Kydland and Prescott (1977) or Barro and Gordon (1983). Indeed, as Jacobs and King argue in this volume, the ways that countries organize financial governance are highly path-dependent, with attempts to move off-path facing resistance due to cultural expectations and interest group demands. The role of central banks as financial regulatory authorities is therefore sticky and hardly an (American) aberration. As we consider how to build a social scientific literature around the politics of central banks, we must give a central place to the crucial regulatory role that these kinds of institutions can and do play in financial markets.

A key challenge facing financial regulatory politics, however, is that many such policies land closer to Wall Street than to Main Street. Most financial regulatory policies directly influence the patterns and practices of financial institutions. Only much more indirectly do they tend to affect small businesses, consumers or financial market "civilians." The esoteric subject-matter of finance creates difficulties for developing compelling and digestible research on the topic, despite its importance. Audiences rarely have trouble accepting the notion that *someone* should pay attention to what is happening with financial regulation. Some may, however, find themselves wondering whether and why it might not be *someone else* that does so. Finding topics that hit close to home, such as Chloe Thurston's work on housing or Malorie SoRelle's work on consumer finance, and also work that demystifies and concretizes the work of financial governance, such as Alice Pearson's chapter in this volume, are exactly the sort of contributions necessary to entice audiences to grapple with the highly consequential and highly political quality of these institutions' decision-making.

In addition to these and other excellently chosen cases in this volume, Jacobs and King have richly demonstrated across a number of books and articles that cross-national comparisons can illuminate the stakes and the

politics behind systems that have a depressing tendency to be naturalized and regarded as inevitable (e.g. Jacobs and King 2016; Jacobs and King 2018, n.d.). While Jacobs and King's model building is certainly very necessary and much appreciated by those tilling in the same orchards, their focus on national financial systems leaves room for considering how the broader explanations rooted in political economy play out with respect to the particular policies those national systems adopt. In turn, consideration of specific policy cases can be expected to challenge or nuance their broader perspective on national financial system governance. Indeed, in order to crystallize the differences between financial governance models, it is crucial to have examples of how countries with differing models of financial governance reach different outcomes for nearly identical problems arising at roughly the same time. Such examples would also do much to highlight the necessity for thinking about the politics of financial regulation as an important part of comparative political economy, and also convey what the larger model of financial regulatory governance might be missing.

Given such considerations, plastic payment card regulation represents an ideal case, with Australia and the United States offering a particularly strong contrast. Let me first introduce the topic of plastic payment cards and motivate the topic of its regulation, before turning to explain the work of this chapter. In regard to plastic payment cards, the first thing to know is that there are two major varieties: credit cards and debit cards. When a consumer pays for a product via debit, their bank account is decreased by the cost of the transaction. The bank account of the merchant is increased by the same amount, less a transaction fee or "discount." With payment via credit, the transaction is similar, except the consumer's bank increases a revolving loan balance instead of debiting their account. Because credit card purchases are essentially loans, they involve more risk to the bank, and so the merchant discount rate is typically higher than with debit transactions in order to compensate the consumer's bank for taking the risk. The companies that facilitate the transaction between the merchant bank and the consumer bank are called "payment networks."

Payment networks are a "platform" businesses in much the same way that Uber, Amazon, or Meta are platform business (Thelen 2018; Culpepper and Thelen 2020). The "market failure" that regulation might aim to correct is very much an outcome that these firms design (Rilinger 2024), and from which they profit. The two largest payment platforms in most countries are Visa and Mastercard. Both Visa and Mastercard are members of the S&P 100, a rare club for the most well-established and valuable public companies in the world. They each earn over 10 billion dollars a year while processing approximately 10 trillion dollars worth of transactions. In plastic card schemes, the payment networks set the discount rate that determine the size of the "tax" or "toll" on transactions passing over their network. To compete with one another, these networks kick back part of the transaction tax to consumer-facing banks. In turn, these banks entice customers to sign up for their card offerings with valuable inducements such as cash bonuses, airline miles, lounge access, and

even more eclectic club goods such as "Sculpted Yoga™ at the Guggenheim… an exclusive evening of yoga, mindfulness, and art at the Guggenheim Museum, hosted by Equinox."[1] The fees that card-issuing banks earn off their cards, and which pay for these customer benefits, are known as "interchange fees." Interchange fee offerings differ by network and by card, with the high-rewards card favored by high-income earners often leading to higher interchange fees. Merchants accept these higher fees because they want to appeal to high-income consumers, and in general they accept interchange fees because customers want to use these technologies to make a sale. Merchants are able to offset the costs of receiving payment by raising prices, but network rules often require merchants to give all consumers the same price regardless of payment method. In this way, plastic payment networks facilitate the upward redistribution of wealth from lower income to higher income consumers, from those who cannot afford "premium" cards to those who can.

If this complex web of kickbacks, upward wealth redistribution, and taxes on retail transaction seems to be an activity crying out for government intervention, it will come as little surprise that plastic card markets are often regulated. Indeed, because of their tight connection with and expertise in the intricacies of payment systems, *central banks* are frequently the ones entrusted with the task of addressing the gravitational tendency of plastic payment systems toward market failure. Central banks in the United States, Australia, Brazil, China, and numerous other countries today regulate plastic payment cards, the dominant non-cash payment mechanism for retail transactions.[2] Moreover, the effectiveness of these regulatory regimes is highly varied. While data on pricing of card services is scarce (and intentionally kept so by the card companies), one commonly used measure of the network's extractive capacity is the size of its interchange fees. The interchange fee, it bears repeating, is the kickback accruing to banks that issue plastic cards from the network, the "transfer" in the tax-and-transfer scheme. Depending on the particular network or even the *particular card* involved in the retail transaction, one may see deeper or more superficial "haircuts" for merchants off their sales, greater or lower interchange fee revenue to banks, more generous or less generous incentives for card holders, and more or less extensive upward wealth redistribution associated with this Rube Goldberg machine. Figure 1 shows the cost of a typical transaction using credit and debit in five countries according to data from the Reserve Bank of Australia. In the United States, the interchange fee on a $50 credit card purchase would be roughly 90 cents (or 2%). In Australia, the interchange fee on the same transaction would be less than $0.11 (or 0.2%). Debit cards have lower transaction costs in both contexts, but still the US debit card transaction costs six times as much as it would in Australia. A "risky" credit transaction in Australia has

[1] https://perma.cc/8YGC-AFST

[2] The Kansas City Fed tracks public authority involvement in plastic card markets worldwide, and as of August 2023 finds that forty-seven countries have sought to regulate these markets. Twenty of these involve central bank regulation, usually in the form of price-ceilings. Other public authorities most typically implicated include competition authorities and courts (Hayashi et al. 2023).

almost a third the interchange fee of a “safe” debit transaction in the United States.

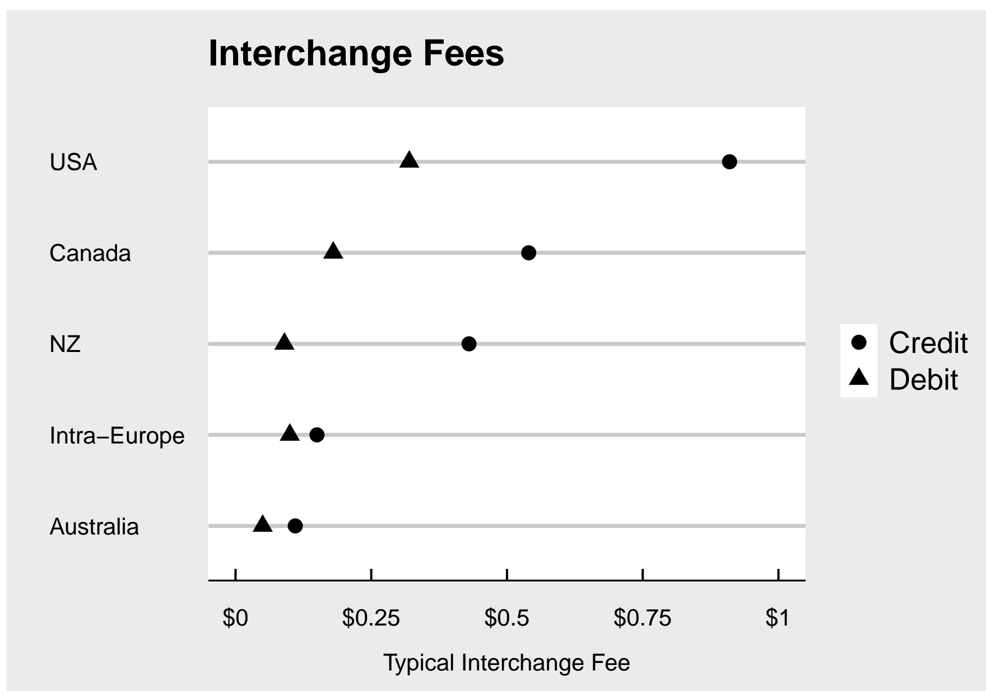

Figure 1: Typical costs of a $50 transaction across four-party schemes in five countries. Source: Reserve Bank of Australia, Review of Retail Payments Regulation, October 2021.

What explains the exorbitantly higher costs of these financial services in the United States than in other jurisdictions? I argue that such questions should be regarded as being at the very heart of the politics of central banking, as central banks so often are the ones called upon to regulate these markets. National comparative analysis has a unique ability to reveal paths not taken and available alternatives not considered. Following their lead, this chapter will explore the strongly contrasting regulatory paths that two countries have taken, and also evaluate some potential explanations for why they have done so. In particular, it turns out that the regulatory regime for plastic cards developed by the US Federal Reserve is very weak as compared with the regime developed by the Reserve Bank of Australia. In part, the US regulatory regime is weak by Congressional design. Yet it has emerged far frailer than what its Congressional authors had hoped or might have reasonably expected, or even what the Federal Reserve initially proposed to do. By contrast, the Reserve Bank of Australia is notable for having developed a very robust set of payment system regulations. Indeed, the regime that Australia developed within the first few years of regulating these products was already much more robust than the US regime only started thanks to the Dodd-Frank Act enacted almost a decade later. The United States was later and frailer to the plastic payment regulation game than Australia, despite the fact that these technologies originated in the US.

Momentarily taking for granted that the regulatory regimes are as described, I wish to press toward the

essay's deeper focus on causes. Jacobs and King's theoretical framework in this volume represents a strong starting point for answering this question. They describe national financial governance regimes as falling into either neoliberal or social rights equilibria.[3] Although I do not read Jacobs and King to be asserting that neoliberalism is an endpoint of no return, their framework presents these regimes as "sticky" for several reasons. In particular, their account explains the stickiness of financial governance equilibria through three factors: interest coalitions, cultural expectations or "toolkits" (Swidler 1986), and institutional arrangements. These explanations are distinguishable, but hard to fully separate. Institutional structures such as the Federal Reserve with its Federal Open Market Committee or the Australian Reserve Bank with its Payment Systems Board are consequences of coalitional arrangements and cultural expectations. That said, they also profoundly shape interest group strategies and the reception of possible policy ideas or actions. To the extent that cultural expectations, interest group coalitions, and institutions explain broad *system-level* equilibria, we should also look for them to explain the resolution of particular policies such as the plastic card regime.

As I will elaborate, this account resonates strongly with the comparative experience of plastic card regulation. That said, in order for it to fit the story I observe, the notion of *institutional structures* requires some conceptual stretching (Sartori 1970). In particular, as I read them, the sort of institutional structures that Jacobs and King most emphasize are the set of policymaking organizations, their internal configuration, and the relationships of these entities with one another. Without denying the causal importance of institutional structures so conceived, one may still trace the process by which the US regulator "watered down" its debit card regulations and conclude that the Federal Reserve could have produced a better outcome for the public. To explain why the US central bank failed to regulate as effectively as it might have in this case, one needs something more. Indeed, I argue that the institutional mechanisms for engaging stakeholders were a pivotal explanation for why the resulting financial regulation was so weak in the US. If the structures for engaging stakeholders were altered, it might (or even likely would) have resulted in different outcomes. Put differently, despite the admittedly balkanized structure of financial regulatory policymaking in the US, the Federal Reserve might have developed a far stronger regulatory regime, but a stronger regime was not considered as strongly as it might have been due to the lopsided pattern of interest group participation in the rule development process. In short, the Federal Reserve's *laissez faire* approach to stakeholder governance, in many ways typical of US regulators, produced a considerably more finance-friendly regulatory regime than the far more intentional approach the Australian regulator has used. Institutions for channeling or diverting information from financial system stakeholder are a key aspect of the politics of central banking, and very

[3]Jacobs and King use the term "model," which for most purposes is certainly appropriate. To distinguish more clearly between the outcomes and explanations for politics, however, I will use the term *equilibrium* to describe a prevailing state of affairs and *model* to describe a set of causal processes that create this outcome. Doing so will help avoid the redundancy inherent in discussing explanatory models for national models of financial governance.

much an important explanation for why systems develop strong regulatory frameworks or ones that allow the finance sector to win at the expense of other groups.

Plastic Card Markets: Competitive Solutions and Regulatory Perimeters

A core premise of this chapter is that the Australian and US cases have dramatically different regulatory regimes for these financial products. Before reaching this point, however, I wish to address a more naive question about whether regulation is desirable at all and if the market failure paradigm makes any sense. Can an efficient, high-performance plastic card regime exist with dramatically lower profitability for card companies? Figure 1 certainly suggests so, but such charts may hide important qualitative differences. Consideration of the question offers an opportunity to cover the market mechanism and sharpen the policy questions at stake in regulation. I will argue that indeed a dramatically lower cost solution is not only theoretically possible, but it actually exists. Not in an obviously very different national economic and policy context, but in Canada. Surprisingly, service costs in this third market are not subject to specific economic regulation as they are in the US or Australia. Indeed, despite the lack of regulation, the pricing of debit card transactions in the Canadian marketplace are roughly half what they are than the US. The fact that prices in Canada for this financial product was so much lower was undoubtedly an important causal factor in the development of US regulation. Many retailers that pushed for regulating these products did business on both sides of the border and so were quite aware that the fees had to be priced far above, and argued this point before the regulator as a key fact supporting the notion of market failure in the US.[4]

The major explanation for why debit card prices are so much lower in Canada is the market power of a home-grown debit card network, Interac. Interac was founded in 1984 by a collection of Canadian banks. Their goal was to allow customers to use ATMs across institutions. Eventually, they grew the network into a point of sale system that spread widely to retailers and businesses across the Canadian provinces. Although in the 1980s there was competition between Interac and other similar domestic networks, as well as between Interac and its fast-growing American competitors, all the major Canadian banks eventually unified to support the domestic payment system. Given the concentration of the Canadian banking sector, the support of the largest banks in Canada was enough to ensure they covered the vast majority of consumers. Importantly, a key feature of the Interac collaboration that differed from Mastercard and Visa was its financing and pricing strategy. As a 1996 consent decree with the Canadian competition authorities makes clear,[5] Interac was a non-profit venture that financed capital investments primarily through membership dues from participating banks. It charged member banks its cost of providing service. This bears repeating: in Canada's debit card

[4]Meeting Between Federal Reserve Staff and Merchant Payments Coalition, Nov 2, 2010.
[5]https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/464896/index.do

market, the fees that Interac charged initially, and indeed still charges, are *zero*. Interac does not need to induce banks to join its platform, because they all own the platform already. Interac carries a very large volume of transactions, although it is not the only network that provides debit cards in Canada. Even so, the pricing structure it uses has implied that other entrants into the marketplace, such as Visa and Mastercard, have needed to price their services "dramatically lower than [their pricing] in any other market in the world,"[6] as the CEO of the Interac network testified before the Canadian Parliament.

That Visa and Mastercard would mark up the same service by 200% depending on which side of the border they happen to be on is startling, in some ways even more startling than the now familiar differences in the cost of medical care and prescription drugs between the US and Canada. The profits accruing to pharmaceutical companies are part of the bargain to getting these valuable medicines developed. As far as other differences in the cost of medical care, these are complicated by differences in quality that are hard to measure. By contrast, it is not immediately obvious what "quality" of debit card payment might mean. Academics affiliated with the International Center for Law and Economics have published widely on the benefits of payment platforms and the downsides of regulation. In one typical article, the authors claim that debit cards are less useful internationally and on the internet than US-equivalent cards (Lee et al. 2013). They also claim that Canadians pay more for basic banking services, with free checking accounts relatively more rare, for example, because there is a smaller subsidy via debit card interchange for the creation of accounts. Of course, it could also be argued that these are relatively triffling inconveniences or even advantages. Indeed, some would say it is *a good thing* that the Canadian system makes the cost of banking services visible, as consumers will move their business to lower cost providers and encourage market efficiency. The largely hidden implicit costs of banking services to US consumers arguably make inefficiency (and profits) rampant. The most persuasive argument that Lee et al. (2013) offer is that the limited profitability of the debit card system in Canada has encouraged the expansion of alternative plastic payment systems with potentially more worrisome features for consumers, for example credit cards. Indeed, Figure 1 does reveal that Canadian interchange fees on credit cards are high by international standards, although not as high as the costs of plastic cards in the US. While low-cost debit card services probably do something to constrain the cost of a substitute good, i.e. credit card payments, it appears that Canada has not fully escaped the issues in the plastic payment marketplace because its "competitive" solution is not comprehensive. The risk of regulatory arbitrage and flight to other market segments or payment technologies is ubiquitous in finance but especially here.

As a way of provoking consideration of the possible directions of regulatory arbitrage, Figure 2 distinguishes three possible models of plastic card payment. In addition to debit and credit, which have already been

[6]https://www.ourcommons.ca/documentviewer/en/40-2/INDU/meeting-28/evidence

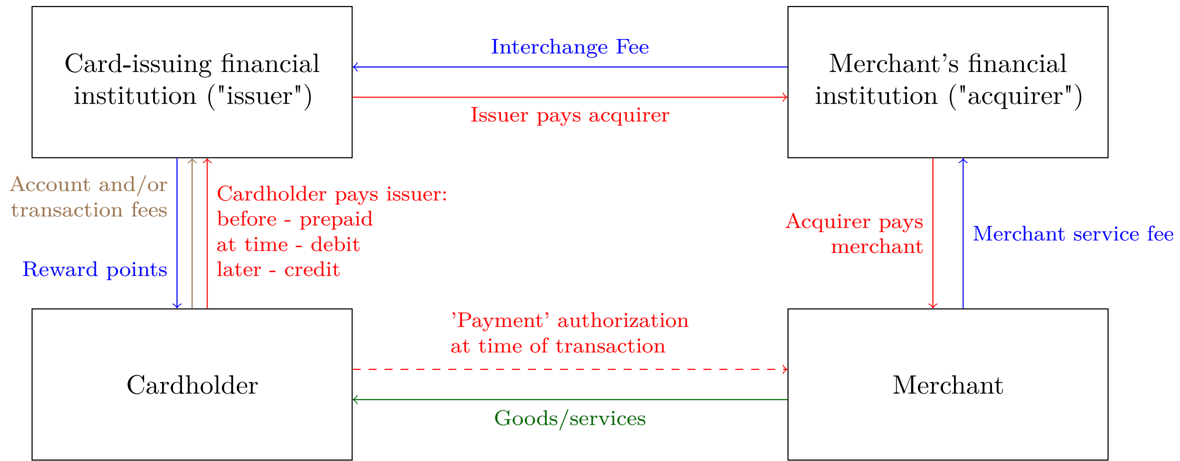

Figure 2: Stylized flows in a plastic card transactions."

described, it adds a third: prepaid plastic cards. In a prepaid card scheme, which are increasingly commonly used for welfare and other governmental benefits, an account tied to the card is loaded with value and the card otherwise typically processes much like a debit transaction. Prepaid cards raise concerns about know-your-customer laws, organized crime, and other unsavory issues that are much less worrisome when cash is tied to accounts held in banks. While I am unaware of "premium prepaid" cards which offer high interchange fees and generous kickbacks to consumers, one could imagine that incautious regulation might encourage their development.

Another and perhaps even likelier direction of regulatory arbitrage is less on the dimension of payment timing, and more on the level of network structure. Figure 2 presents a "four party" payment system, which is the one used by the dominant networks Visa and Mastercard as well as other smaller providers such as Interac. The four party model assumes that the network, the issuer, and the acquirer are all different entities. But not all networks are structured with such separation. Particular merchants often conspire with their banks to issue cards to their customers directly, capitalizing on their direct relationships with consumers and cutting out consumer bank middlemen to reduce costs. In such a "closed loop" system, the merchant's bank plays a role akin to the issuer and network, but for a limited set of transactions, although one can imagine a number of retailers gathering together on a shared closed loop. Fintechs such as Paypal or Venmo are attempting an analogous and opposite strategy, and claiming an increasingly large share of payment transactions through

their so-called “three party” architecture. In a three party system, the network internalizes the role of issuer and acquirer, so that the customer and the merchant have direct banking relationships with the network. By integrating the role of other banks in the transaction, the three party network is often able to realize efficiencies, but also potentially more pricing power. Some of the first payment plastic systems, notably Diner’s Club and American Express, both continue to operate three party payment models. The challenge for such networks is acquiring customers so that merchants will want to take payment using the system. An open network can go to a bank and, if it convinces the bank to adopt the system, acquire a large number of customers quickly. Historically, the three party network does not have this luxury.

Having said that, payment practices in China have evolved in interesting ways over the last decade and they may give an indication of where things are headed. In China, Alibaba and WeChat exploited their relationship with consumers as internet stores and messaging apps, respectively, in rolling out three party payment networks that now each have over a billion users. Instead of paying with a plastic card, it is possible to scan a QR code with a phone. Flight from plastic cards to similar-functioning, but different enough platform payment mechanisms is also a possibility from overly stringent regulation. If the Chinese experience is any indication, then large platform tech companies such as Apple, Facebook, and Amazon are reasonably likely successors for payment processing if plastic card networks were regulated to extinction. Such a turn of events would not obviously be better for consumers, merchants, or anyone outside of these large technology platforms, and policymakers who consider regulating such markets are reasonably wary about provoking a transformation in the marketplace toward that kind of “integrated” payment platform.

(a) A card imprinter.

(b) A payment terminal.

(c) QR codes .

Figure 3: The evolution of retail payment mechanisms.

Regulatory Regimes Compared: The US and Australia

Plastic card regulation is multi-faceted, however its primary mechanisms in both the Australian and US case are the reduction of interchange fees via direct price (fee) limits and other measures that more indirectly seek to stoke competition. Table 1 compares some salient aspects of the Australian and United States plastic payment regulation regimes. Of particular interest are the fee limits and their application. Australia has a 10 cent interchange limit if pricing of debit card transactions works off a fixed fee, or 0.2% of transaction value if priced depending on size of transaction (Standard No 2 of 2016, Paragraph 4.1). If a transaction costs less than $500, and the vast majority of such transactions are relatively small, then the 10 cent limit is the binding constraint. By contrast, the United States limits debit card interchange transactions to 21 cents plus 0.05% of the value of the transaction, which is more then double.[7] Australia has a 0.8% of transaction cost limit on credit transactions (Standard No 1 of 2016, Paragraph 4.1). The US does not comprehensively regulate plastic cards and, in particular, does not regulate credit card interchange fees or related network rules.[8]

Besides hard price-caps, the Australian regime encourages price reductions through market mechanisms by ensuring that the transaction costs associated with plastic payment are visible to consumers and retailers. These efforts have no equivalent in US regulation. In Australia, merchants have a right to offer different prices to customers presenting different cards, including the right to decline some cards offered by one network but not others. Australia requires cards have clearly distinguishable markings that allow merchants to develop nuanced pricing strategies for the kinds of cards presented. By contrast, the US only protects the right of merchants to offer discounts for cash. Networks are free to prevent merchants from surcharging. Visa, Mastercard, and other networks in the US insist on honor-all-cards rules that require merchants to accept all co-branded cards on their network if they want to be on the network at all. In particular, the honor-all-cards rule forces merchants to accept the premium cards that exacerbate upward redistribution, even if they have no particular interest in accommodating high-end consumers, who may have more than one alternative card on hand that simply does not offer equal kickbacks. The honor-all-cards rule can also serve to protect less efficient banking providers, for example because it does not allow the merchant to discriminate against those banks who must insist on a higher interchange fee to provide the service at all. The aspect of the rule enabling discrimination against banks would prove important in the US case as many of the least efficient consumer banks are that way because they are smaller and lack economies of scale, so the honor-all-cards rule is a rule that protects the least profitable banks from discrimination by savvy merchants.

[7] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20110629a.htm

[8] There is a long-running antitrust case about network rules in the United States, however the competition laws implicated are not specific to plastic cards and are therefore beyond the scope of this essay.

	Australia		United States	
Regime Coverage	Comprehensive		Debit Only	
Regime Features	Interchange Fee Limits		Interchange Fee Limits	
	Credit	0.8%	Credit	None
	Debit	10 cents for fixed price; 0.2% for variable price	Debit	21 cents + 0.05% transaction value
	Merchant Surcharging	Merchant's choice	Merchant Surcharging	Network's choice
	Cash Discounts	Merchant's choice	Cash Discounts	Merchant's choice
	Honor-all-cards	Merchant's choice	Honor-all-cards	Network's choice
	Clearly Distinguishable Cards	Required	Clearly Distinguishable Cards	Not required
	Network exclusivity	No, but subject to preclearance	Network exclusivity	Two networks minimum
	Routing restrictions	Prohibited	Routing restrictions.	Prohibited
Regulations	Interchange Fee Limits All Networks	2003	Interchange Fee and Rules Prohibitions	2011
	Update and Prohibitions on Rules	2006	Fraud-Prevention Limit Adjustments	2012
	Update and Prohibitions on Rules	2007	Network Exclusivity Update	2022
	EFTOPs Interchange Fee Limits Revised	2010	NPRM: Interchange Fee Limit Reduction	2023
	Interchange Fee Limits Reduced	2016		
	Interchange Fee Limits Reduced and Sub-benchmarks	2021		

Table 1: Comparing key features of the two regulatory regimes in Australia and the United States

The one and only way that the US regime offers questionably stronger protection to merchants is through its prohibition on network exclusivity. This rule requires that chips on debit cards provide at least two network routes for a transaction, and no restrictions on merchant's choice of how to route a debit transaction. This is a valuable benefit, to be sure. It provides some modicum of competition over the "rails" that connect the consumer and merchant bank. In fact, one major issue with debit card regulation in Australia has been bank issuers defaulting their cards to use the more expensive "international" debit network rather than the less profitable local debit network. The Australian regime does not force cards to be capable of passing the transaction over two or more sets of rails, so in this sense is weaker, however it does subject new cards that are only able to go over a single set of rails to preclearance, meaning that they need specific regulatory approval. Moreover, the vast majority of debit cards carry at least two networks, and the merchants in Australia also have the right to choose their transaction's network route just as they do in the US. By contrast, testimony from US consumer groups suggests rampant evasion of the prohibition on network exclusivity (Mierzwinski Testimony, Senate Judiciary Hearing May 4, 2022). Not only is the regulatory regime of Australia more robust in every distinguishable dimension, it is also much more dynamic. As the table shows, Australian card regulation has been comprehensively reviewed every five years or so since the early 2000s. The Federal Reserve has only recently proposed its second interchange fee limit reduction some twelve years after its first set of regulations. The Federal Reserve's 2023 updated debit regulation proposal has not received finalization at present writing more than nine months after its initial promulgation. One may reasonably doubt that it will be finalized.

Contrasting Legislative Paths to Delegation

The differing qualities of the regulatory regime are partially attributable to differences in their legislative antecedents. At least superficially, the circumstances that caused legislative action in both cases were fairly similar. Considering first the Australian case, it is worth noting that the early 1990s were a difficult time for Australia economically. The country had in those years experienced its worst recession since the Great Depression. Challenging economic conditions led to the collapse of several notable financial institutions, including two government-controlled savings banks. The Labor government became increasingly unpopular as the economy continued to flail, leading eventually to its ouster in March of 1996 by John Howard's center-right coalition. Several months after assuming office, the Liberal-National Treasury Secretary Peter Costello established the Financial System Inquiry, better known as the Wallis Inquiry after its chairman, who also happened to be the President of the Business Council of Australia, a trade association representing the nation's largest corporations. In contrast with the 1981 Campbell Inquiry, undertaken by the prior

Liberal-National Coalition government with an explicitly deregulatory focus, the Wallis Inquiry asked to "stocktake" about the deregulatory efforts. It was also asked to make recommendations about regulatory responsive that would balance economic efficiency and growth with concerns about stability and fairness (Wallis 1997, vii).

While the Inquiry made numerous recommendations, important to our purposes is its viewpoint on payment systems, which parliament would soon adopt via the Payment Systems Regulation Bill of 1998. In particular, the Inquiry recommended the creation of a separate "Payments System Board" within Australia's central bank, which would be headed by the Governor of the Reserve Bank of Australia but have a more diverse membership, with an outright majority of members appointed by the Treasurer for five-year terms. The PSB would be the primary regulator of payment systems, and the Wallis Inquiry adopted a clear view that access to payment systems needed to be open "and not controlled by industry organizations" as for example Bankcard was at the time. The Inquiry also recommended the establishment of performance benchmarks (p. 54), the disbanding of the ASPC, and explicitly granted PSB a role in assessing whether pricing of interchange was "appropriate." The Payment Systems Regulation Bill empowered the PSB to achieve these ends with broad powers

> (1) The Reserve Bank is given the power to designate payment systems...
>
> (2) the Reserve Bank has the following power to designate payment systems: (a) it may impose an access regime on the participants in the payment sysetm ... (b) it may make standards to be complied with by participants in the payment system... (c) and it may arbitrate disputes relating to the payment system ... (d) it may give directions to participants in the payment system (PSR Bill of 1998, Part 3)

These powers are later elaborated as implying that the Reserve Bank can designate whatever it wants as a payment system, can setup an access regime that identifies who are participants in that system (and thereby also regulate them), setup whatever standards they desire to promote the public interest as they see it, and also serve as a judge in disputes between participants. It is worth noting that the Reserve Bank's administrative power is quite breathtaking from the US standpoint, although constrained to some degree by the "public interest" standard to which the Bank is held:

> In determining, for the purposes of this Act, if particular action is or would be in, or contrary to, the public interest, the Reserve Bank is to have regard to the desirability of payment systems:(a) being (in its [the Reserve Bank's] opinion) (i) financially safe for use by participants; and (ii) efficient; and (iii) competitive; and (b) not (in its opinion) materially causing or contributing to

increased risk to the financial system.

These powers were soon put to use. Beginning in 2002, the PSB began to impose a new and comprehensive regulatory regime on plastic payment systems. In particular, it began by applying new disclosure rules on all three major networks simultaneously, and then in 2003 began applying network-level interchange fee caps. Initially, these were based on somewhat complex formulas to account for the differing costs that each network bore, but in 2005 a common limit of 0.5% per transaction was imposed on the two major networks (Bullock, 2010). On credit cards, this same limit continues to be in force, although the PSB in its most recent review reiterated that it continues to believe "there is no strong justification for significant interchange fee payments in mature card systems." We shall return to dwell on the significance of such statements in considering the organizational culture of the regulators. The PSB's primary reason for holding off on further reductions was concern about advantaging three-party systems, only one of which (American Express) is regulated, and associated concerns of regulatory flight we have previously addressed. Debit and prepaid card interchange fees have followed a similar trajectory, in 2010 they were capped at 12 cents per transaction and are currently at 10 cents, with a prevailing average of 8 cents per transaction.

While US plastic payment card regulation also emerged from a financial crisis, it did not develop from a comprehensive reform effort led by general business interests. Instead, it emerged as more of a pet project for a key senator and accutely impacted non-finance business groups. The earliest inklings of similar plastic card regulation in the United States to have been a 2006 Senate Judiciary Committee Hearing (CREDIT CARD INTERCHANGE FEES: ANTITRUST CONCERNS? Serial No. J–109–100, July 19, 2006). It is worth noting that these efforts were held held some eight years after Australia's Parliament decided to extensively regulate this market. "I was the most junior member of the Judiciary Committee when I first learned about interchange fees,"[9] Senator Durbin would later remark about that hearing, although his comments at the time already find him presenting pretty well-formed opinions. Indeed, he explicitly characterized interchange fees as "a 2 percent tax on grocery purchases and a lot of other purchases." He expressed dismay in that hearing at the power the credit card companies, recently demonstrated through the success of the 2005 Bankruptcy Abuse Prevention Act. The 2006 interchange fee hearing did not bear any immediate fruit in terms of concrete bills or proposals. Indeed, there appears to have been more interest in laws protecting consumers from abusive billing practices, which ultimately culminated in the CARD Act, enacted May 22, 2009.[10] The CARD Act did not address swipe fees, although Durbin would later reveal that he had wantd to

[9] https://www.congress.gov/congressional-record/volume-170/issue-50/senate-section/article/S2484-1?q=%7B%22search%22%3A%22CARDS+Act+durbin%22%7D&s=3&r=3

[10] Around the same time of the hearing there were a number of precursor bills floating around, including Senator Dodd's Credit Card Act of 2005, Senator Menendez's Credit Card Reform Act of 2006, and then Representative Sander's Consumer Credit Card Protection Act of 2005

propose regulating credit card swipe fees as part of that reform, but he was stymied (by who he does not say) (Congressional Record, May 12, 2010, S3589). Other reporting suggests that the finance lobby actively and successfully headed off this possible course of action (Mattingly and Schmidt 2011).

In July of 2009, with the ink still wet on the CARD Act, the Retail Industry Leaders Association – a trade group for large big box retailers such as Walmart, Target, and Home Depot – is reported to have met in Washington and decided then to focus on pursuing a proposal that "eventually became the Durbin amendment" (Mattingly and Schmidt 2011). As Mattingly and Schmidt (2011) report, the retailers pursued a sophisticated and multi-pronged strategy of mobilizing grass roots support of 20 million small-business owners, subsidizing meetings between some owners and their representatives, and the deployment of an all-Republican lobbying firm Fierce, Isakowitz, and Blalock. By contrast, the finance industry was "preoccupied with other threats" in the Dodd-Frank Act. On May 12, 2010, Senator Durbin introduced what would eventually become Section 1075 of the Dodd-Frank Act, and the amendment passed 64 to 33 seemingly without debate the very next day.

While some would later argue the lack of debate on the amendment reflects its status as a sort of ill-conceived or one-man after thought, contemporary reporting and my own interview-based work confirm that the provision was among the most hotly contested pieces of the Dodd Frank Act. Senator Durbin contemporaneously explained the reason for the silence about the hotly contested provisions as being that "[i]t is not an easy amendment. . . because we have some competition among friends." What exactly Durbin meant by that remark is not exactly clear. The *New York Times* report about the amendment's passage (printed on page one of that day's issue) described how one Republican Georgia Senator had the uncomfortable task of informing SunTrust, the largest bank in his state, "that this time he planned to vote against the bank and with Coca-Cola and Home Depot, two other Georgia companies that had lobbied him fiercely" (NY Times, May 15, 2010).

While it is possible that Durbin may have had in mind conflict between major lobbying powerhouses, my own view is that foremost in his mind was probably the conflict between interests that a US politician would have substantial reservations about opposing in public. In particular, credit unions and smaller local banks, on the one hand, and small retail businesses on the other. Indeed, Durbin's remarks dwelt much more squarely on the fact that small-business was so very much in favor of the bill, for obvious reasons, and undermining the *bona fides* of lobbyists for these smaller financial entities. Indeed, Senator Durbin's floor remarks provide an unusually candid view of the coalitions in play and the rationale for the legislative compromise. In particular, Durbin noted that "you would think there would be general support of this across the board, except from the credit card companies and the biggest banks. But it turns out there is opposition to this from the so-called independent community banks and credit unions." To mollify this group, Durbin had initially proposed to exempt banks with less than $1 billion in assets under management, but when that proved insufficient he

expanded the exemption to $10 billion. "99 percent of banks would be exempt," Durbin argued, "All but the very largest banks in America... All but three credit unions in the United States have less than $10 billion." Durbin went on to call out the trade associations for smaller financial entities as lacking "clean hands in the debate" and lobbying in bad faith. "Why do they still oppose it?" Durbin wondered allowed on the Senate floor, "I have learned why. The Independent Community Bank Association is a major issuer of credit and debit cards. They are one of the top 25 credit card issuers in the United States and are the 23rd largest debit card issuers. They make a lot of money off interchange fees... They are not arguing on behalf of small banks. Sadly, they are arguing on behalf of their own trade association credit cards and the fact they receive these generous interchange fees." He described the Congress as simply asking for the Federal Reserve to act as "arbiter" in determining whether interchange fees are reasonable and proportional. Indeed, Durbin repeated several times during the debate "We do not establish a rate. That is left entirely to the Federal Reserve to review."

And review they did. Section 1075 of the Dodd-Frank Act gave the Federal Reserve nine months from enactment to promulgate rules that standards about what fee was reasonable and proportional. On December 12, 2010, the agency issued a proposed rule that described two potential regulatory approaches. Under the simpler alternative, an interchange fee limit of $0.12 was proposed. Under the more complex alternative, a limit of $0.07 was proposed but the issuer could earn up to $0.12 if they could establish that their variable costs were at least that high. The proposed rule clarifies that these fee limits were arrived at through a survey of covered debit-card issuers (75 FR 81725), and in particular that $0.07 was the median variable cost for card issuers and $0.12 was the 80th percentile of costs for such issuers. Such fee levels appear to present as a classic exercise in what Posner (2014) calls "norming," a style of financial regulation designed to impose costs only on a minority of weaker firms. Posner criticizes norming as a strategy for avoiding political conflict at the expense of substance, although it is notable that at least in this case the proposed fee levels would have been relatively low in international comparison, at least as low as current Australian regulatory levels and considerably lower than Australian fee limits at the time.

The proposed rules clearly did not create substantial room for profit off debit interchange fees, and more surprisingly created substantial pushback from small and medium-sized financial entities. Although not directly implicated by the regulation, these firms feared that Visa and Mastercard would evolve pricing norms in such a way as to set rates closer to these level. Although I am not aware of their having specifically threatened to set fees against small entities in this way, one cannot discount the possibility that Visa and Mastercard may have done so. The costs associated with debit cards for smaller firms were likely relatively higher, although the survey instrument did not reach them so it is hard to know. Whatever the case, the

agency received a torrent of criticism on its proposal, over 1,500 unique comment letters, and extensive questioning on Capital Hill. On March 29, 2011, Fed Chairman Bernanke informed Congress the rule would not be finalized by its statutory deadline, indeed the agency would miss their deadline by roughly 80 days. As described above, the Federal Reserve's final fee limit was more than three times larger than it might have been. Indeed Senator Durbin would later chide the Federal Reserve that "the intent of the Durbin Amendment was not to allow covered issuers to maintain a sizable profit margin; yet, the Board's final rule did just that." (Durbin Letter to Fed, May 10, 2024). He would also note in the same 2024 letter that the NPRM's proposal to update the regulation every two years had been left far by the wayside, and that their proposal to lower the base fee from 21 cents to 14.4 cents did not close the distance required under his own amendment.

The key question that the comparison of the two cases draws out is why the United States initially appeared on track to develop a price cap that was half of Australia's, at least against the large financial entities covered by the law, but pulled its punches and wound up with one that was more than twice as high. The consequences of this decision was profound. Equity analysts estimated at the time of Durbin's ratificaiton that debit interchange fees represent about 14% of Mastercard's total revenue and 30% of Visa's revenue (Shutler and Frazer 2011). With annual revenues for each of these firms measured in the tens of billions annually, the Federal Reserve's decision to set a higher fee limit *for the next decade* was an event of huge policy significance, with a net cost to the public likely measuring in the hundreds of billions of dollars.

Institutional Differences

With the initial puzzle of Figure 1 now sharpened into one of how central banks have allocated their discretion around fee limits especially, I turn to the question of differences between central bank institutions. The first panel of Table 2 highlight the key differences.

By far the most obvious difference between the institutions is the fact that the Australian financial reform created a special board within the Reserve Bank of Australia to handle this particular policymaking task, while the Federal Reserve had no such special policymaking body for payment systems. It is notable that the idea of special purpose boards within the central bank is not novel to the Australian case. Indeed, in the US monetary policy is not set by the Federal Reserve Board but rather by the Federal Open Market Committee (FOMC). The FOMC has all the seven members of the Federal Reserve Board, but also the Presidents of five reserve banks. The Federal Reserve Board of Governors, appointed for 14 year terms, approves the agency's regulatory policies such as those involving payment systems. By contrast, in Australia the Reserve Bank Board of Australia makes monetary policy while the Payment Systems Board makes policies related to the

	Australia	United States
Enabling Legislation	Payment Systems Regulation Bill (1998)	Durbin Amendment to Dodd Frank Act (2010)
Primary Regulator	Payment Systems Board	Federal Reserve Board
Board Membership	RBA Governor	Seven Governors
	RBA Appointtee	
	ARPA Member	
	(Up to) Five Treasury Appointtees	
Term Length	5 years for appointtees	14 years
	No limits for agency designates	

Table 2: Institutional arrangements compared

agency's major supervisory responsibility over payment systems.

The Payment Systems Board is headed by the Reserve Bank's governor (their CEO, equivalent to the role of Chair). It includes an additional representative of the Reserve Bank, a representative from the Australian Prudential Regulation Authority and most notably five additional appointments by the Treasurer. The Treasurer, who is a political figure in Australia chosen by the parliamentary majority, appoints their people for relatively short terms (five years). The structure of the committee is such that the Treasurer's direct appointees have an outright majority on the Board. It is worth noting that the RBA Governor serves for a seven year term and is also appointed by the Treasurer, while the leadership of the Australian Prudential Regulatory Authority are on five year terms and also appointed by the Treasurer. Clearly, much of the ultimate appointment authority goes to the Treasurer. Although not statutorily required, it is also notable that one of the Treasurer's appointees has been for the last decade the chair of the Australian Competition and Consumer Commission (ACCC). This softer membership norm likely helps to embed a focus on these important dimensions of the plastic payment policy in the central banks decision making, and also collaboration with competition authorities. It is notable, however, that the earliest and likely most consequential for the agency were made prior to the appointment of the ACCC chair.

While the statutory sketch appears to give a relatively great influence of the Treasurer and thereby the parliamentary majority, and also creates opportunity to empower the users of payment systems on the board without tipping central bank monetary policy, in practice the appointments do not appear to have worked out that way. The overwhelming number of Board members for the PSB have received their appointment from Liberal Treasurers, for example. In part, this development has occurred because until recently (May 2022), the Labor government has only had control of Treasury for an almost five year period between December 2007 and September 2013, which was generally insufficient to promote turnover given the typical five-year appointments. Compounding matters, some Liberal appointees were reappointed by the Labor government. From the standpoint of biography, the differences between Labor and Liberal appointees hardly appear

obvious. The first appointee by the Labor Treasurer, Brian Wilson, was the Managing Director of investment bank Lazard, for example, while the first three appointees by the Liberal Treasurer were also professionals from the banking industry. Over a dozen of the twenty-seven board members this body have been bankers or from the finance industry. One even spent over twenty years at Visa. A brief skim of their biographies reveal that besides banking and finance, the most common professional backgrounds for board members is (a) banking or finance law and (b) internal hires from the Reserve Bank.

To the extent that one identifies the stringency of Australian regulation with a defined bloc or background of board members, one must presume it comes from the viewpoint of these internal promotions. The current governor of the Reserve Bank of Australia, for example, Michelle Bullock, was the chief manager of the bank's Payments Policy Department from 1998-2007 and then head of the department until 2010. She was appointed by the RBA as its own designate in 2016. After reappointment and promotion to the Governorship, Bullock is expected to serve until 2030, making her undoubtedly one of the most important single individuals for Australian Payments Polciy. Judging from her comments in various public fora, she presents as a reluctant, but nevertheless insistent regulator. She hardly presents as a Naderite warrior for consumers. Indeed, rather than having any obvious commitment to one set of stakeholders over another, what immediately becomes obvious is her passion and knowledge of the subject matter. In 2023, the then recently installed Chair of the Reserve Bank of Australia began her remarks at the Summit of the Australian Payment Networks, a trade association event funded by large banks and payment networks, by declaring, "Payments – I love payments. And I'm in a room full of like minded people, so I'm ecstatic to be here."[11] To the extent that one would have anticipated an institution setup to deliver for broad, politically powerful retail, consumer, and union interests, the composition of the board has decidedly not worked out that way.

By contrast, somewhat ironically given its longer statutory terms (14 years) and smaller size (only 7 members), the Federal Reserve Board has since the enactment of plastic card regulation had much more partisan balance. In large part, this diversity is due to the norm of Governors not completing their entire terms. Despite the greater partisan balance of the Board members of the Federal Reserve, their professional backgrounds are more monolithic. In particular, the overwhelmingly most common background is as an economics PhD (e.g. Bernanke, Yellen), with a smattering of lawyers turned financiers (e.g. Powell, Warsh) and government-lawyers turned law professors (e.g. Barr, Raskin, and Tarullo). While none of these backgrounds betrays a particularly strong viewpoint against plastic card regulation, the legal professoriate appears as a defined faction in favor of more stringent financial regulation. That said, none of these individuals appears to have well-formed prior viewpoint on the topic of plastic payments, with the possible exception of Michael Barr (a

[11] https://youtu.be/Ue50HSlZnjM?si=BPwBiE_EAGQsR3ro&t=79

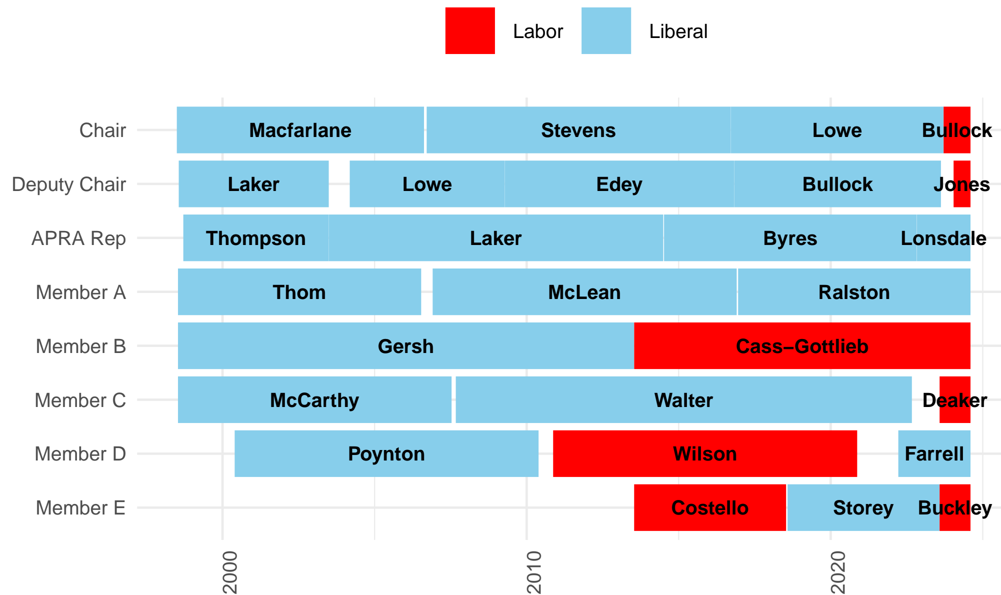

Figure 4: Members of the Payments Systems Board by party of appointing Treasurer.

Biden appointtee) who helped craft the 2009 CARD Act.

The lack of any particular interest in the regulatory subject matter of payments regulation among the Board came through strongly at the first meeting where the Board decided to propose the rule, which has thankfully been recorded for posterity (PSB meetings are not public). After receiving a fifteen minute presentation by the staff of their proposed policy, Chairman Bernanke asked two questions: first, he asked them to explain "the economics" justifying government intervention in plastic cards utilities and, second, indicated that he knew other countries did regulate these costs but wanted to know how the proposal compared. For better or worse, none of the Board members at the Federal Reserve was constituted like Bullock to self-describe as a payments geek. Indeed, even the clearly pro-regulation Tarullo, while seeming to advance the viewpoint that the Durbin amendment would be best read as requiring something closer to a 4 cent cap and no allowance for bank profits, remarked "I think we need to be particularly open-minded here to comments. I mean, sometimes when we put out a proposed rule we are pretty convinced that we've got it basically right... [that said] the difficulties in implementing the legislation, the subtleties the staff has already had to deploy in coming up with a proposal both suggest to me that we should be more than, perhaps usually open to a variety of comments."[12] Tarullo's remarks come pretty close to an outright admission that they were not experts in the topic. Besides illustrating the potentiality for the Board to be pushed one way or another depending on

[12] https://www.youtube.com/watch?v=IaJqZMfqXNY

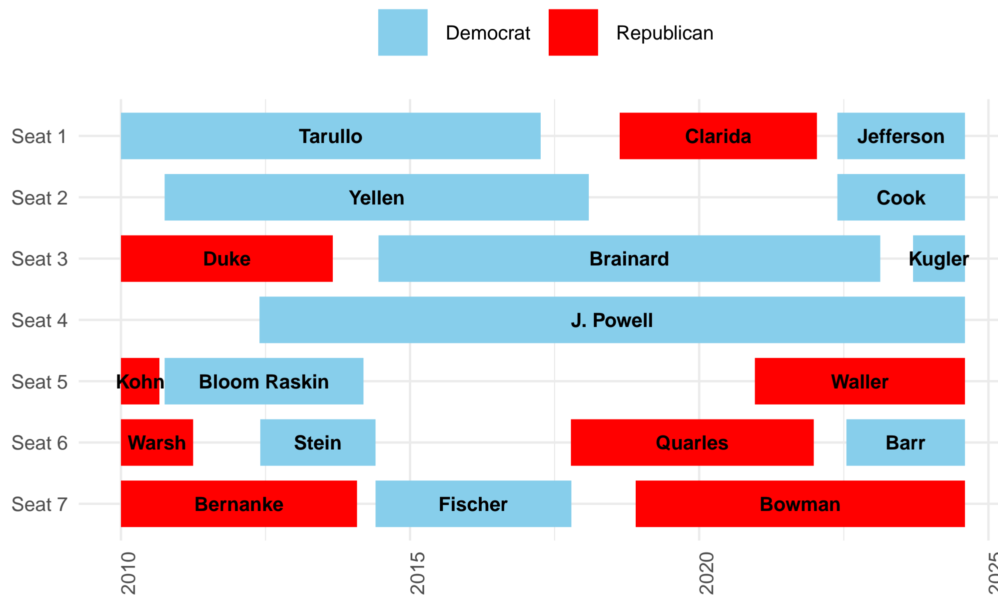

Figure 5: Members of the Federal Reserve Board by party of appointing President.

how the process of stakeholder engagement turned out (and indeed already had turned out), none of the comments are remotely consistent with a policymaker with a well-formed viewpoint on its subject matter.

Thus far, I have focused on my account of institutional explanations on themes of organizational analysis, in particular about the consequences of bureaucratic structure and the identity background of the deciders at the top. The primary takeaway is that what the Payment Systems Board did organizationally, if anything, to produce stronger regulation seems to have been the selection of individuals with particular interest in the topic of how to regulate plastic payment systems, and often a high degree of specialized expertise. While the statutory design appears to encourage the appointment of broad interests, in practice the body has been dominated by bankers, albeit not often bankers with a vested interest in plastic payments (with one possible exception in the retired vice-president at Visa). By contrast, despite the Federal Reserve's structural independence, in practice it has represented a more diverse array of partisan interests over the almost fifteen years of plastic card policymaking. That said, the professional backgrounds of the FRB were not conducive to the cultivation of expertise or concern about payment systems in particular, especially given the relatively monolithic background of board members in academic economics.

Cultural Expectations

If the previous section has made the case that the most important difference institutionally was that the PSB was setup to care about the issue in a way that the Federal Reserve was not, then the purpose of this section is to consider how that sense of mission or purpose filtered down through the central bank to the staff. Indeed, the record of deliberation at the Federal Reserve Board convey the clear sense that the staff had presented the Board with a take-it-or-leave-it offer: a policy that was getting approved late for proposal and headed for a missed deadline is not one that the Board can easily reject. There is less decision-making transparency about the PSB's process than the Federal Reserves, unfortunately, so it is harder to assess the extent to which staff versus the Board drove the policymaking process in that agency. That said, the PSB meets once per quarter in Sydney for three-and-a-half hours "and usually conclude with a light lunch."[13] The control mechanisms appear to be such that the staff of the PSB also had plenty of room to move into the driver's seat.

Defining the role of culture in predicting organizational behaviors is difficult, particularly in a rational choice framework (Gibbons and Prusak 2020; Kreps 1990; Acemoglu and Robinson 2024). Much of what organizations do is a result of practice, and as Hannan and Freeman (1984) argue what organizations are primarily good at is doing tomorrow what they did today. The role of cultural expectations is often most visible at periods of rupture or crisis, when the actor has to do something *different* than what it has before, and in this sense the early years are a particularly revealing time to look at an organization to understand its cultural assumptions. At a conference in 2010, then Head of the Payments Policy Department and later governor Michelle Bullock was asked a question about the incentives that industry has to self-regulate and the credibility of the "RBA threat" to impose regulation on the industry:

> "I think things have changed dramatically since the payment system board was formed in 1998. At that point in time, there was very much a point of view that the regulator should be very hands off. The payments industry can look after itself. It became quite clear early on that the Payment System Board and the RBA meant business. And the result of that has been that the industry, whether or not they agree, they know that they do have to do something about it.[14]

The cultural shift in the industry that the PSB engineered required an extraordinary commitment to follow through on its regulation, and we have seen that right from the gate the PSB was issuing very strong regulations that forced the industry to heel. A strong viewpoint or agenda on payments come from the earliest available staff documents. In September of 1999, the Payments System Board and Australia's Competition

[13] https://www.rba.gov.au/about-rba/boards/psb-board.html

[14] Bullock, "Address to Cards and Payments Australasia 2010" (March 15, 2010) https://www.rba.gov.au/speeches/list.html#bullock.

and Consumer Commission launched a systematic study into debit and credit cards, with the final report appearing in October of 2000 ("Debit and Credit Card Schemes in Australia: A Study of Interchange Fees and Access" 2000). As governmental reports go, it was remarkably damning. It noted that concerns about consumers and merchants receiving no benefits due to technological improvements *could already at that time* be found in other governmental reports going back nearly a decade. Page (ii) of the executive summary of the report describes plastic payment cards as an unambiguous case of market failure: "in contrast to most other markets, end-users of card services do not have any direct influence on the price-setting process. This reduction in the normal market discipline has potential implications for efficiency and equity." The report did accept the basic premise that payment networks have substantial value and that interchange fees might prove necessary to ensuring their existence, however it did not find any economic principles for determining how high these fees should be nor in which way these should flow (i.e. perhaps customers or merchants should receive a discount for taking payment in plastic, because such payment is potentially more efficient for the card issuing bank than alternatives such as cash or check). The report concludes by articulating two broad principles for interchange fees to function efficiently. First, these fees should "not overcompensate financial institutions for the costs they incur," and second the fees should "be subject to regular review as costs and other conditions" change, in particular with the presumption that costs should generally decline with technological improvements. Neither condition was met in Australia at the time, and in the staff's view that implied the need for regulation.

While Bullock's remarks to the Australian Payment industry suggest some possibility of cooption or mission-malaise, in fact even recent documents and reports from Reserve Bank staff reaffirm many of the basic principles of regulation that we shall see are quite at odds with the tenor of comparable discussions in the US context. The 2021 "Conclusions Paper" from their most recent regulatory review asserts, "The Board's long-held view is that interchange fees should generally be as low as possible, especially in mature payments systems." It went on to cite a number of possible benefits associated with lowering fees further, including lower payment costs, less costs for goods and services, and more competition in the market for payment products. In justifying some degree of inaction in lowering fees, the PSB staff argued that the costs in Australia were already low by international standards, that the standards had been changed only four years prior, and customers were pivoting to debit cards away from credit cards, which the regulator considered a positive development for multiple reasons. It is worth recalling the theoretical concerns about regulatory flight that were raised earlier. The wait-and-see approach the PSB describes in 2021 is not necessarily consistent with cooption, although some degree of that is a possible concern.

By contrast, the staff of the Federal Reserve Board appear to have had far less commitment to the basic

premises of regulation. In May of 2009, even before the Durbin amendment was enacted, several economists who would later be involved with the rulemaking published a discussion paper on the topic (Prager et al. 2009). The report highlights many of the policy issues inherent in card regulation discussed above, for example the potential for higher prices and cross-subsidies from lower to higher-income individuals (p. 9). The authors canvas the theoretical literature and conclude that "profit maximization does not, in general, lead the network to set the interchange fee at the level that maximizes social welfare" (p. 21) and moreover "competition between card systems is not a sufficient condition to yield an efficient interchange fee" (p. 23). In looking at the comparative evidence, they note that Australia had generated dramatic reductions in prices of payments (p. 39). At the same time, they also noted with some concern that "the average value of cardholder rewards had declined and average annual cardholder fees have risen."

While one might think that these remarks were building toward an endorsement of Australian-style regulation in the US, in fact they were headed toward ambivalence and discomfort with the entire regulatory project.

> Some common concerns arise in connection with all of the policy options discussed in this section. First, the possible effects of any intervention are highly uncertain. Although economic models can provide some insights regarding the qualitative effects of a policy intervention, they typically have little to say about the quantitative magnitudes of these effects. Furthermore, the theoretical models tend to be highly stylized, and therefore may fail to capture important real-world features that influence the effect of an intervention... A second concern common to all of the interventions considered here is the possible redistribution of surplus (i.e., the difference between benefits and costs) across parties.... A lower interchange fee, for example, might involve lower surplus for card users and issuing banks and higher surplus for noncard users and merchants. Such concerns do not relate to economic efficiency, but rather involve judgments about equity in the distribution of surplus among different groups in the economy....Finally, much of the debate surrounding the payment card industry has focused on interchange fees in four-party credit card systems. However, issues regarding the structure of fees in a transaction also apply to debit and three-party card systems... a narrow intervention that targets interchange fees for credit cards (or even interchange fees for both credit and debit cards) could have effects on competition and pricing throughout the entire retail payments market.

The overall takeaway was "policymakers should proceed with caution, carefully assessing the potential effects of any contemplated intervention upon the payments system as a whole." One wonders how the Federal Reserve could possibly make monetary policy if it held itself to this evidentiary standard, where there are also weak and stylized models with poor predictive power, rampant and complex issues of economic distribution,

and unpredictable side-effects with possible downside risks. Indeed, the overall recommendation of the report appears to be policy "F. Do Nothing," which the authors assert "has a number of advantages" in light of the fact that there was "no rigorous empirical evidence" to support the existence of interchange pricing inefficiencies generally predicted by the economic theory they themselves discuss.

The Federal Reserve staff's palpable discomfort with the notion of redistribution is remarkable, especially considering what other actions the agency as a whole was taking at the same time, and surfaced repeatedly in their discussions and decision-making. During the finalization of the rule, Bernanke asked the staff about how the rule would affect consumers, which he described as "the ultimate beneficiary–we hope." The staff member who answered, also one of the authors on the 2009 report, gave her proposal the hard sell: "it's very hard to predict how any individual consumer will be affected. . . and we can't really say in advance how those are going to play out."[15] The lingering sense of unease and discomfort among Federal Reserve policymakers continued to reveal itself throughout the Board's final vote approving the measure. "Whether we ultimately disagree on whether the manifestations of this malfunction merits Congressional intervention," Governor Raskin argud, "it appears to me that we have no choice in this matter but to adhere to Congress's directive." One can count a half-dozen instances of policymakers at the Federal Reserve expressing grave doubts about the project, and the argument that pro-regulation faction members such as Raskin appeared to have landed upon was that the statute requires action, advisable or not. It is worth noting that this same logic did not, ultimately, always carry the day in the Federal Reserve's Dodd-Frank related policymaking. Mandatory regulations relating to executive pay practices, for example, still remain unimplemented at present writing and the last notable action on the topic was a public proposal from the OCC that no other agency signed onto and was not formally published in the Federal Register.

Despite apparently continuing ambivalence in the trajectory of US plastic payment policy, the staff of the Federal Reserve appears as the primary drivers of the recent push toward stronger plastic card regulation. A staff memo from April 30, 2021, three months after the inauguration of President Biden, asks the Board to approve proposed revisions to the network exclusivity rules to include a variety of transactions (for example online transactions) that were not included in the original rulemaking.[16] The memo asserts repeatedly the staff's perspective that the Board's regulations were no longer in compliance with the statute. Even more assertive, in their October 25, 2023 proposal, the staff noted the failure of the Board to regularly update the rules and argued for a proposed rule that would allow them to update, without notice-and-comment (or a Board vote), the interchange fee limits to 3.7 multiplied by the average transaction cost (at the time 3.9 cents), hence a 14.4 cent limit. Indeed, some of the same staff that had proven unable or unwilling to

[15] http://www.federalreserve.gov/mediacenter/files/OpenBoardMeeting20110629.pdf

[16] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210507a.htm

muster a defense of their own proposal in 2010, were arguing before the Board in 2023 in defense of a revised proposal that the anticipated downsides of regulation had not materialized. Meanwhile, new staff economists were much more forceful in the public deliberations about the 2023 proposed rule: "The data that we've collected since 2011 gives us a good idea of what the effect of the proposed revisions would be on various participants in the market." In response to the questioning of Trump-appointtee Governor Bowman, who also happened to be an heiress to a Kansas community bank and also staunch opponent of plastic card regulation, the staff remarked "retailing is a very competitive industry. And thus economic theory will predict that merchants should have – the competition should ensure that merchants have low profit margins and thus pass on costs and savings onto consumers." This economic rationale, so important for the Austrlian PSB in the early 2000s, was also clearly available to the staff of the Federal Reserve in 2010, they simply did not present it as fact or as theory worth acting upon. While acknowledging the empirical circumstances made evaluation "challenging," the economist defending the proposed revision in 2023 cited one study with a compelling methodology that found "clear evidence that merchants pass on the cost of accepting card payments onto consumers." Experience with market regulation, changes in the orientation of academic economists, and new data appear to have brought the staff of the US central bank closer to their Australian equivalents. Still, the difference in initial comfort of the staff with their messily "political" role of assessing risk and reward in allocating costs and benefits in a complex economic ecosystem has a substantial explanatory role in why such different overall outcomes in plastic card regulation prevailed.

Interest Group Coalitions

In discussing the legislative origins of US plastic card regulation, the important tension between retail and consumer interests on the one hand, and various categories of financial interests has been developed. These are the key stakeholders that plastic payments implicate and they are largely the same interests involved in Australian regulation as well. Yet the differences between the two political economies result in a very different balances of forces, with very different implications for card regulation.

A key launching point for this discussion is the contrast between the Australian regime that draws all financial entities in and the US regime that excludes smaller banks and financial institutions. Indeed, we have already seen that Durbin determined an exemption for banks with $1 billion in assets under management was insufficient for passage, while a rule that applied only to banks with $10 billion in assets achieved a super-majority in the Senate. Call Reports from 2010 reveal that there were 7,094 banks in the United States at the time, of which 90 were subject to the higher threshold, 6,531 of whom were exempt even from the lower threshold, and 473 banks that fell in between and would have been subject to fee caps under the Durbin

Amendment as originally proposed but not as it was ultimately passed. Every state in the United States has at least one such intermediate bank, while the median state has six. There were 7,556 credit unions in the United States at that time. Three were subject to the higher threshold, with 165 credit unions in 37 states that escaped the interchange regulation when the coverage threshold was changed. The key to legislative success in the US Congress was splitting the finance coalition, or at least ensuring that regulation only fell upon the shoulders of the ninety largest banks that are heavily concentrated in a single state, New York. The change in coverage had a dramatic effect in narrowing the number of senators whose constituents had a particular stake in this fight.

While organizations that provide banking services are highly numerous and highly dispersed in the United States, the Australian banking sector has a paltry number of institutions that are highly geographically concentrated. There are only 135 depository institutions in Australia according to the Australian Prudential Regulatory Authority, and only 77 of these are domestic entities.[17] There are four big players in Australian banking that dwarf the rest, two of which are based in Melbourne and two of which are based in Sydney. The geographic reach of finance in the United States, particularly small and medium sized banks, makes it very politically powerful in an electoral system with plurality voting in compact geographic districts. The Australian legislature is bicameral, with the lower chamber elected via instant-runoff voting from single-member districts, while the upper chamber uses proportional elections, with each state sending a total of twelve members. The geographic concentration of finance in Australia puts the finance coalition at a relative disadvantage in obtaining representation in its House of Representatives, while the proportional representation in the Senate may also undermine the ability of finance to find natural allies in that body. Therefore, the interaction of financial sector organization and legislative organization was such that the geographic basis for an anti-regulatory legislative coalition was much more limited in Australia than in the United States. Moreover, the larger financial institutions in Australia were at least in the late 1990s still attempting to develop their own functioning alternative to Visa and Mastercard a la the Canadian Interac. Called the Bankcard, this Australian card scheme had very significant market penetration. As the large Australian banks had such significant market share already, and viewed the major threat as losing market share to foreign entrants, they did not have the curious dependency on interchange fees that led many smaller financial institutions to panic about the possible downstream effects of plastic payment regulation.

The relatively sleepy politics of PSB appointments helps illustrate the fact that the interest group politics that enabled or at least did not block plastic payment regulation in Australia have not changed enormously since its creation. By contrast, the difficult coalition politics that characterized passage of the Durbin Amendment

[17] https://www.apra.gov.au/register-of-authorised-deposit-taking-institutions

also continued to stymie the rulemaking process in the United States. In a letter dated December 9, three days prior to the publication of the proposed plastic card regulation, thirteen Senators (two of whom had even voted for the Durbin amendemnt) wrote the Federal Reserve a letter complaining that “having the government fix prices in almost any venue is a bad idea.”[18] They encouraged the Federal Reserve to “take sufficient time to gather and analyze all of the relevant facts before issuing a proposed rule.” These Senators expressed concerns about harm to consumers through checking account fees, the limited evidence of merchants passing through lower prices, and in particular the possibility that the networks would force smaller and less efficient banks to make do with interchange fees below their transaction costs. On December 15, Rep. Berney Frank, Chairman of the House Financial Services Committee and cosponsor of the Dodd-Frank Act, piled on, complaining about the possible downstream effects on community banks. While Durbin had succesfully split the finance coalition, the Federal Reserve was unable to maintain that divide for even a few months.

The agency would go onto receive 11,000 comment letters, many from smaller banks and credit unions that the law had intended to exempt from the amendment’s consequences. Indeed, the Federal Reserve did very little to placate these groups. At an appearance before Congress in February of 2011, Bernanke laid out the case for how and why it was unable to guarantee that the regulation would not result in significant damage to these smaller entities. Senator Tester asked FDIC director Sheila Bair what she thought about the likely effect of the Federal Reserve’s regulation. She said in no uncertain terms it needs to be delayed and rethought – Bernanke did not reply to this criticism of his agency’s regulatory performance. The finance sector as a whole spent wildly on a lobbying campaign that included subway advertisements, astroturfing efforts, and more conventional administrative and legislative lobbying (Carpenter and Libgober 2023). Although much of this activity escaped measurement (Libgober and Carpenter 2024), Governor Raskin estimated that all told “millions of lobbying dollars have been spent, and hundreds of meetings have occurred.”[19] Indeed, the culmnination of these efforts was a failed bid by Senators Tester and Corker to delay the implementation of the Durbin amendment pending further study by the Federal Reserve and several other banking regulators of the potential effect on consumers, smaller financial institutions, and credit unions (Carpenter and Libgober 2023). Although Tester-Corker’s bill failed on June 9, 2011, it did receive 54 votes, a remarkable 21 vote improvement relative to the 33 votes opposition the Durbin amendment had received just over a year before. The Federal Reserve Board did proceed to implement its regulation just weeks after the limiting vote failed, although in a substantially watered-down form relative to its initial plan.

In considering the interest group politics of the US case, the passivity of consumer interest in particular is remarkable. As Bernanke described, consumers were supposed to be the major beneficiary of the law, but

[18] https://www.federalreserve.gov/newsevents/rr-commpublic/senate_debit_interchange_letter_20101209.pdf
[19] Open Board Meeting Transcript, June 29, 2011

as Durbin alluded to earlier the organizational representation of consumer interests was highly conflicted because of the fact that credit unions were an important constituency, and set of financial backers, for many of the most outspoken consumer groups (Carpenter and Libgober 2023). Other general interest groups such as AARP and the NAACP did participate in rulemaking, but against the regulation and on behalf of the financial services industry. According to my interview-based work, consumer advocates who did strongly support the regulation viewed this participation as a result of these non-profits being "bought off" by large financial interests who simply opposed plastic card regulation as a threat to their profit margins. An intriguing study by economists entitled "The Hall of Mirrors" finds that non-profits receiving grants from corporate philanthropies have a higher propensity to submit comments on regulations that the corporation comments upon, and these comments tends to be more similar to the comments of the donor corporation than other comments (Bertrand et al. 2021).

Administrative Process and Institutions Supporting Stakeholder Engagement

As we have already seen, the fact that plastic card regulation emerged in any form in the United States is somewhat miraculous, and likely would not have happened but for the insistence of a few policy entrepreneurs like Durbin and regulation-oriented Governors such as Raskin and Tarullo. Despite the organizational and cultural configurations that put the relevant regulator on an inferior footing in the US as compared with Australia, the Federal Reserve still actively contemplated a fee-cap regime that was far more "draconian" than Australia's, and governors with an inordinate responsibility for regulation such as Tarullo up until the time of the first proposed rule thought they had struck a relatively moderate position. They seemed willing to go further to the point of interpreting the statute to disallow compensation for profits entirely. The discussion of the prior section certainly suggests that shifting winds on Capital Hill and the collapse of the enacting coalition had a significant responsibility for these developments. Yet the collapse of the enacting coalition was an event whose seeds were sown in the rule development process, in particular through the approach to stakeholder governance that failed to surface the tensions inherent in the consumer-retail coalition and preserve the key division between big and small financial institutions.

As Carpenter and Libgober (2023) describe, the first meeting between financial institutions and the Federal Reserve happened a mere two days after the Dodd-Frank Act was signed into law, and the pattern of stakeholder engagement that followed was remarkably imbalanced in favor of directly regulated entities, in stark contrast with predictions of the structure-and-process whereby administrative procedures are supposed to stack-the-deck in favor of the enacting coalition, in this case clearly including a dominant role for large-scale retailers and manufacturers of consumer goods (Mathew D. McCubbins, Noll, and Weingast 1987; Matthew

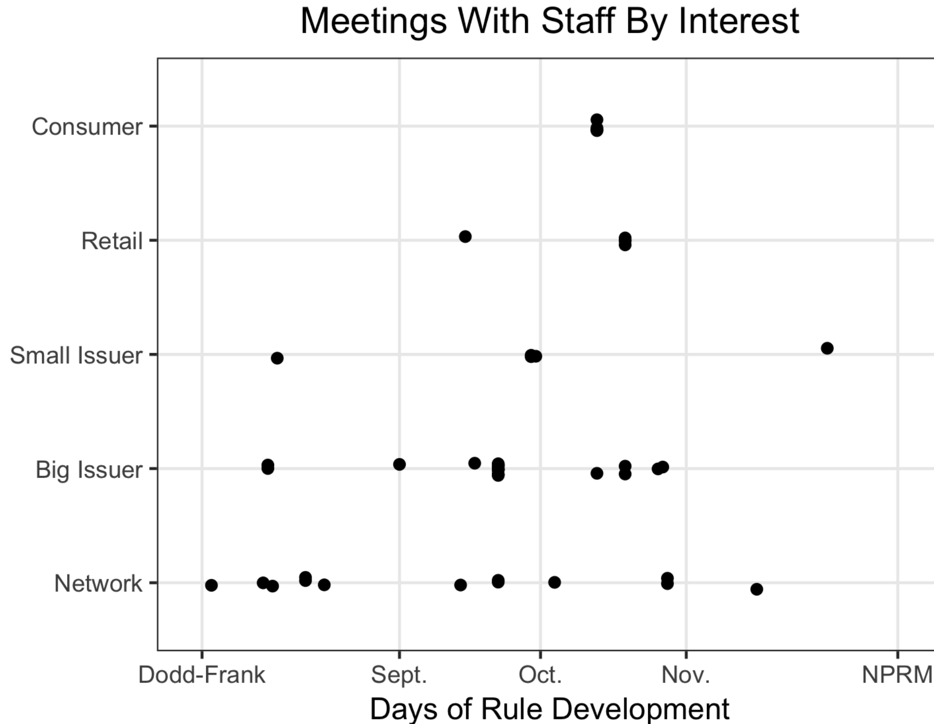

Figure 6: Meetings by category of stakeholder over time. Each dot is a meeting listed on the Federal Reserve's website.

D. McCubbins, Noll, and Weingast 1989). Figure 6 shows the pattern of meetings between the rulewriting team and categories of interest groups. It is worth noting that due to gaps in US lobbying disclosure laws, none of these meetings would appear in conventional lobbying databases and social scientists focused on the role of money in politics in the United States have almost totally ignored this form of lobbying (Libgober and Carpenter 2024), despite evidence that these contacts produce significant shifts in the market valuations of firms that obtain such under-the-radar access (Libgober 2020a). The inattention to the enacting coalition of merchants and cosnumer groups is particularly startling, although smaller banks also clearly had very little opportunity to engage policymakers. As Carpenter and Libgober (2023) argue based on a careful analysis of the rulemaking records, a key turning point in the rule development process happened after September 13, 2010, which coincided with the fielding of a survey instrument to estimate issuer's costs. However imbalanced the rule development was overall, the Figure reveals it was practically a monolith before.

Carpenter and Libgober (2023) attribute substantial significance to the design of the survey instrument for the overall course of rulemaking. One reason that the design of the survey instrument was so crucial is because all subsequent decisions about rates were based on data from that instrument: whether a reasonable and proportional fee was at the 50th or the 80th percentile of relevant costs for all issuers was an *ad hoc* judgment

call, but the survey instrument itself decided how such malleable measures of “fairness” mapped into hard dollars and cents. Perhaps even more crucially, all *justifications* for what the agency knew about the costs it was regulating depended on that instrument, as the data is what lent the agency legitimacy and the lack of data revealed the agency to be out over its skis. The agency’s decision in particular to focus data collection entirely on covered entities, rather than all financial entities potentially impacted by the regulation, left the agency unable to give any accounting of how its regulation would impact these groups, or to understand the severity of the problem. Indeed, the only way to make sense of the blow back that followed is to understand that smaller institutions who did not have the same economies of scale would have lost a very significant source of revenue, in turn leading elite public opinion (for example the FDIC chairwoman) to sour on the proposal. Thus, it is easy to trace the links between (a) failures to collect data about the consequences of the proposed policy, (b) the intense reaction of smaller financial institutions, a politically very powerful block in Congress, and also credit unions that straddled the consumer-finance coalition, (c) a majority vote in the Senate for a law to delay perhaps indefinitely the policy, and (d) the raising of interchange fee limits to a level that hardly constrained the market for the next fifteen years (and perhaps beyond).

Harder to understand is why the Federal Reserve Board got to the point where it made such a mistake about the likely perception of its proposal. The pattern of stakeholder engagement revealed in Figure 6 is itself a likely and powerful explanation. The rulemaking logs reveal the deputy counsel for the Credit Union National Association had a long call with the head of the Division of Reserve Bank Operations and Payment Systems a mere two weeks after the enactment of Dodd-Frank to explain her concerns that the networks would simply impose the same interchange rate on large and small financial institutions, thereby sweeping these smaller entities into the regulatory regime that was supposed to exclude them (Carpenter and Libgober 2023). No further meetings with smaller financial institutions were held until October, after the survey instrument was already in the field. The Federal Reserve staff leaned heavily on Visa and Mastercard in determining how to measure costs, as these networks had experience fielding similar sureveys to what the Federal Reserve planned to do. Later in the commenting process it would be revealed that Consumer Federation of America also had experience surveying their credit union members about the costs for providing debit services, but this expertise was not considered “relevant” because the Federal Reserve did not learn about it until it was far too late. The process of engaging stakeholders in rule development not only failed to reveal the intensity of preferences or the cleavages in the supporting political coalition, it also deprived the agency of relevant expertise. Further meetings with potentially affected interests would have likely slowed the rulemaking, however, and it is plausible that the staff which did not particularly have an investment in the regulatory task was more concerned about meeting its nine-month statutory deadline (which it did not do because of

the ensuing political conflagration).

American institutionalists have made much of the role of administrative procedures in shaping how public opinion is channeled to agencies (Mathew D. McCubbins and Schwartz 1984; Mathew D. McCubbins, Noll, and Weingast 1987). The irony is that the consensus among administrative law scholars (e.g. Elliott 1992), supported as well by recent quantitative evidence from political science (Libgober 2020a), holds that the commenting process is far less policy determinative than the rule development phase that happens earlier. Despite its heavily face-to-face character, the process of *ex parte* meetings and even more informal conference and interstitial-space interactions is almost entirely unregulated in the United States (Sferra-Bonistalli 2014). Outside a few exceptional agencies (such as the Federal Reserve), the *ex parte* meeting process also has no transparency – there are no public records available to produce figures similar to Figure 6 for most agencies, and in the majority of cases there are no *private* records potentially subject to FOIA either. While the commenting process itself is relatively transparent, at least on the input side (Dooling and Potter 2022), it is also remarkably loosely structured in the United States. It relies on interest groups to self-organize to submit feedback if they have sufficient concern. As SoRelle (2020) vividly illustrates, such self-organization does not just happen, and particularly in highly fractured regulatory policymaking like finance the administrative burdens associated with organizing to provide feedback on regulation present an enormous barrier to public input on regulation. As I have argued here and elsewhere, the *laissez faire* approach to stakeholder governance is an important explanation for why many agencies, but especially financial agencies, consistently fail to deliver on their statutory mandates and for the broader public. Attempts for more structured processes have a long history in the United States (Schuck 1979), yet thus far these have largely failed to yield much fruit (Langbein and Kerwin 2000).

The administrative process in Australia is in many respects similar to that of the United States, with their rulemakings involving the initial production of a "consultation paper," upon which the regulator receives comments, followed by the issuance of a "standard," which is akin to what the US would call a final rule. Like most regulatory agencies in the United, the Payment Systems Board does not publish systematic records about who it meets with and what they discuss during proposal development,[20] therefore our visibility into what actually happens during rule-development is far more limited in the Australian than the US case. Yet from analysis of annual and other reports, it is possible to glean much about what takes place there. Additionally, public comments are available, which allows for a much more objective view as to what stakeholder engagement is like.

Figure 7 shows the patterns of interest group commenting across four Australian plastic payment rulemakings.

[20] Electronic Communication from Ellis Connolly, Head of Payments Policy, Reserve Bank of Australia, July 31, 2024.

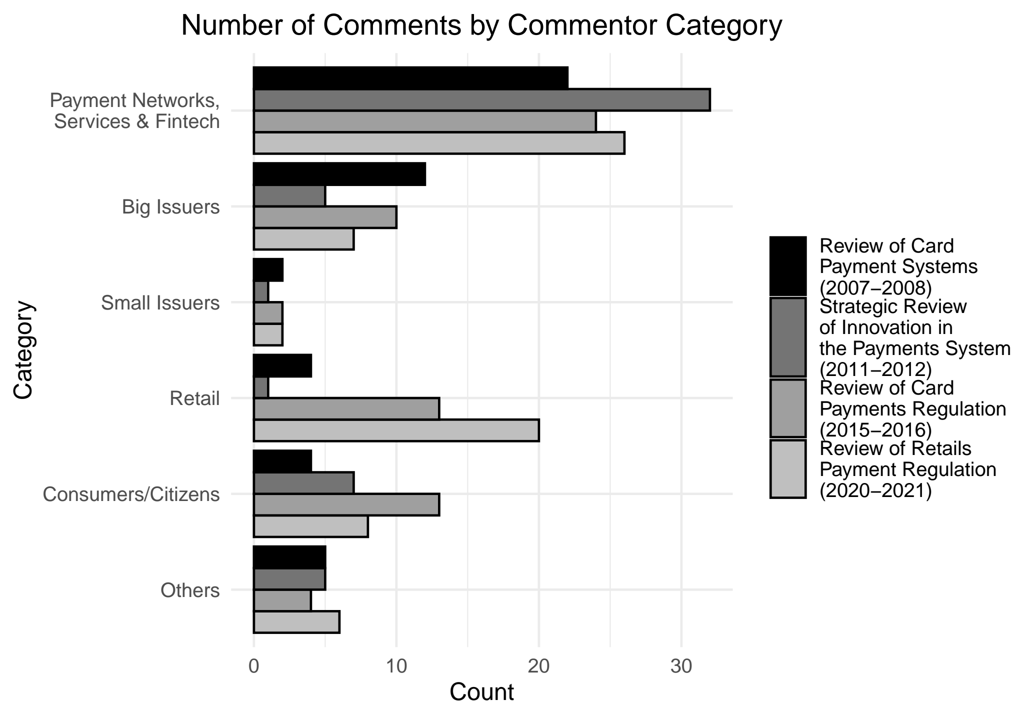

Figure 7: Comments by category of stakeholder in four Australian regulatory reviews.

Several points are worth mentioning. First, the notice-and-comment process is much quieter than the raucous 11,000 comment event that was the Durbin rulemaking in the US. The 2007-2008 and 2011-2012 regulatory reviews received around 50 comments, while the other two reviews received 66 and 69 comments. The level of commentary that these rules received would not have been out of place in the US, indeed it would be a pretty typical of commentary for the minority of rules that receive any public feedback whatsoever (Libgober 2020b). Second, to the extent one expected more extensive participation by broader groups, that is also decidedly not the case. Finance, especially the payment networks and fintechs, dominate rulemaking participation at the comment stage, followed in most years by the large issuing banks (although in recent years retail has become more active). The high propensity of directly regulated entities to participate is neither atypical for rulemaking, not is it obviously an indicator of regulatory capture (Libgober 2020b). Still, to the extent one had hope that differences in the notice-and-comment process between the two countries explained the highly variable policy outcomes, even a very brief glance at the evidence suggests that is unlikely.

Far more interesting, it turns out, are the differences in stakeholder engagement during proposal development. While readily available resources for the early years of the PSB are limited, the agency's 2007 annual report describes both formal and informal consultations with a wide range of participants, including the usual suspects in finance, but also merchants and academics. The 2008 annual report describes the agency undertaking "bilateral" consultations with "industry participants, associations, and consumer groups," as

well as a 90-person conference in November at an Australian University, six months after which appeared the publication of a preliminary conclusions paper about their 2007 review of regulation. While it is hard to know for sure given the limited transparency, one gleans that consultation with stakeholders in the first decade of Australian payments regulation was deeper and broader than what was witnessed at the Federal Reserve, even if public voice in the United States – at least in the comment process – was louder.

As important as these differences were, the second decade of Australian plastic card regulation has witnessed moves toward corporatism and the constitution of stakeholder groups by the regulator that previously did not exist – or did not exist in a way that was most useful to the regulator. In 2014, the Board was instrumental in creating the Australian Payments Council, a strategic coordination body comprised of senior executives from across the payments industry, including card schemes, financial institutions, retail banks, and crucially the Bank itself. Simultaneously, the Board also created the Payments Consultation Group. In the words of Eric Connolly, the current Head of Payments Policy at the Reserve Bank, "the purpose of this group was to provide a structured mechanism for users of the payments system to express their views on payments system issues as an input to our payments policy work." While the membership list of this body is not published, it includes a range of consumer and business groups, as well as large businesses and other governmental agencies – it *does not* include banks or other payment service providers. It appears as no coincidence that the regulatory reviews that followed the constitution of these groups, and especially the latter Consultation groups, witnessed a dramatic increase in retail and consumer participation in the regulatory process. "In instances where we were seeking feedback from stakeholders on a regulatory change," the Head of Payments Policy explained, "we would encourage interested members of the Payments Consultation Group to make a submission as part of our the standard consultation process." Clearly, the Australian regulator's efforts to stimulate public commentary by constituting its own advisory bodies and quasi-interest groups has born substantial fruit.

Australia and the United States are both common law systems whose administrative processes share great similarities. The formal legal requirements are similar in both cases, with a highly transparent end-stage of public commentary in which a small number of highly engaged stakeholders tend to dominate, particularly directly regulated interests. Both systems also make a black box out of the process of *ex parte* consultation that sets the agenda for that public end-stage. There are two major justification for that questionabl arrangement. The first is to encourage participant transparency. If all meetings between the Federal Reserve and US consumer groups were video-taped, for example, it is unlikely that many would have been willing to meet for fear of what their credit union constituents and donors would say. The second consideration, which is probably more important as an explanation for why the procedures take the form they do, is that

non-transparency allows bureaucrats freedom to go where they need to go to get the evidence to support their decisions. Put differently, the distribution of meetings by interest in Figure 6 is a bad look, and the fear is that agencies will be distracted from the task of information-acquisition if they are concerned about appearances.

While the Reserve Bank and the Federal Reserve both operate in a world of high discretion about who they meet with and when, the two agencies have approached the use of that discretion in very different ways. Moreover, the Australian regulator has taken a hugely more proactive approach to constituting the very interests implicated by their policies, in so doing creating venues, administrative processes, and governance institutions that are missing in the United States and which do not fit easily in the four corners of the Administrative Procedures Act. Nonetheless, they are highly consequential. Moreover, the fact that the public authority in Australia runs a major deliberative forum where various regulated entities discuss payments policy puts the agency at a dramatic informational advantage relative to the typical world of bilateral negotiations or notice-and-comment. In particular, the opportunities to detect fissures in the industry, which often has a great capacity to present a united front, strengthens the informational hand of the regulator considerably.

Discussion and Conclusion

This chapter has discussed an important distributive policy problem, plastic card swipe fees. I have emphasized that the performance of national financial systems in addressing this particular problem is highly varied, and in many cases that variation is due to differing performance of central banks in their supervisory and regulatory tasks. Using Jacobs and King framework, I have explored the differences in two extreme cases, the United States and Australia, and considered the role of institutional organization, cultural toolkits, and interest group coalitions in explaining the differing outcomes. These factors appear important in explaining variation in national financial governance equalibria, and the comparative case analysis also have a good deal of explanatory power with respect to particular policies. Indeed, the creation of a separate policymaking committee within the central bank was surely an important driver of stronger supervision in Australia, which in turn led to a more committed regulatory culture. No less critical, and perhaps a worthy topic for additional and deeper reflection in future work, was the very differing interest group ecology of finance and consumer groups in the two cases. The far-flung, highly-varied, and highly numerous financial sector in the United States creates opportunities for consumer groups that often struggle for resources. That very opportunity may hobble them when it comes time to challenge finance-led inequality.

A key claim of this chapter, however, is that even despite the important and cross-cutting factors of culture, interests, and organization, stronger regulation in the US than Australia was not only possible, it was actively

considered. This fact implies that the Jacobs and King factors were on their own important, but not on their own sufficient, to explain the differing paths financial regulation took. Administrative processes for channeling public preferences and sussing out information, or not, were also decisive in explaining why swipe fee regulation went off the rails in the United States, and also plausibly explain why Australia has done so much more to combat finance-led inequality. For too long, political science scholarship has reduced administrative processes such as notice-and-comment, ex parte meetings, rules about judicial review, and so forth, to mere tools for ensuring that legislative principles get what they want out of administrative processes. Indeed, institutional American politics research has largely regarded these as substitutable instruments for ensuring the bureaucratic agent stays faithful. The politics of central banking, whether it concerns monetary or regulatory policy, represents a sharp context for challenging the principal-agent approach to bureaucratic politics. It is both notable and somewhat unsurprising that so many works in this volume target administrative processes that these central banks use. These include the more standard fare of administrative law like notice and comment, which Sorelle's chapter and this chapter address, but also the more unusual but no less important processes and institutions like the listening tours that Alice Pearson studies. How the central bank acquires information about public wants and needs is at the core of what the politics of central banking should be about.

Inevitably in such a chapter, a few topics have been left by the wayside for future work. I highlight three. First, this chapter has presented the particular case of swipe fee regulations in a way that is highly independent of other financial governance choices, although they are clearly not. The Canadian case all-to-briefly discussed shows that domestic banks were in some cases capable of preventing the encroachment of a highly extractive payment system run by foreign finance conglomerates. The political causes of this ability to resist, and why these banks did not try to compete, is an interesting puzzle no doubt connected to the constellation of interests, institutions, and culture that Jacobs and King describe, but deserving of greater study. Second, the international trade and competition aspects of both US and Australian policymaking have received relatively little attention in this chapter. In part, this fact is because the raw materials do not emphasize it. Even so, the fact that policymakers seem to mention these aspects little is not conclusive, as it would be hard for any of the policymakers to note that Visa and Mastercard are foreign companies in Australia and domestic companies in the United States. While there have been occasional objections in the US to the notion that the US is subsidizing foreign transactions and payment infrastructure, it could equally be argued that the profits in the US financial marketplace allow these networks to provide services abroad at lower cost than a domestic supplier would be able to, thereby deterring entry and solidifying the position of US companies as a global financial doupoly. The domestic consequences of this arrangement in the United States require

deeper analysis. More work on the international political economy roots of financial regulation is clearly warranted (Broz 2009; Zaring 2019), and swipe fees would no doubt be an interesting case in that context as well. Finally, the chpater has not reckoned as deeply as it might with the notion that Visa and Mastercard are platform companies and that what explains variation in the two cases is differences in the extent of their platform power. The sympathetic mobilization of smaller financial institutions against plastic payment system regulation was not possible in Australia for several reasons, most importantly that there were few such entities and they were not so dependent on the platforms to make their businesses operate. By contrast, the threat that Visa and Mastercard would apply the regulatory caps to non-regulated entities provoked a huge sympathetic reaction on the part of smaller financial institutions, many nominally non-profit credit unions in the consumer finance coalition, that was very consequential for the shape that rulemaking ultimately took. The structural power of finance as a causal factor merits further reflection in general, but it likely also has an important role in explaining the differing course of swipe fees in the US and Australia.

Works Cited

Acemoglu, Daron, and James A Robinson. 2024. "Culture, Institutions and Social Equilibria: A Framework." Working Paper. National Bureau of Economic Research.

Adolph, Christopher. 2018. "The Missing Politics of Central Banks." *PS: Political Science & Politics* 51 (4): 737–42. https://doi.org/10.1017/S1049096518000847.

Barro, Robert J, and David B. Gordon. 1983. "A Positive Theory of Monetary Policy in a Natural Rate Model." *Journal of Political Economy* 91 (4): 589–610.

Bertrand, Marianne, Matilde Bombardini, Raymond Fisman, Brad Hackinen, and Francesco Trebbi. 2021. "Hall of Mirrors: Corporate Philanthropy and Strategic Advocacy." *Quarterly Journal of Economics* 136 (4): 2413–65. https://doi.org/https://doi.org/10.1093/qje/qjab023.

Binder, Sarah, and Mark Spindel. 2018. "Why Study Monetary Politics?" *PS: Political Science & Politics* 51 (4): 732–36. https://doi.org/10.1017/S1049096518000835.

Broz, J. Lawrence. 2009. *The International Origins of the Federal Reserve System*. 1. print., Cornell paperb. Ithaca, NY: Cornell Univ. Press.

Carpenter, Daniel P., and Brian Libgober. 2023. "Administrative Politics with Clear Stakes and Venues: Strategic Commenting Upon Federal Reserve Debit Card Regulations." In *Accountability Reconsidered: Voters, Interests, and Information in US Policymaking*. Cambridge University Press.

Christopher Adolph. 2013. "Bankers, Bureaucrats, and Central Bank Politics." *Research Papers in Economics*, January. https://econpapers.repec.org/RePEc:cup:cbooks:9781107032613.

Culpepper, Pepper D., and Kathleen Thelen. 2020. "Are We All Amazon Primed? Consumers and the Politics of Platform Power." *Comparative Political Studies* 53 (2): 288–318. https://doi.org/10.1177/0010414019852687.

"Debit and Credit Card Schemes in Australia: A Study of Interchange Fees and Access." 2000. Sydney: Reserve Bank of Australia. https://www.accc.gov.au/about-us/publications/debit-and-credit-card-schemes-in-australia.

Dooling, Bridget C.E., and Rachel Augustine Potter. 2022. "Regulatory Body Shops." *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4186402.

Elliott, E. Donald. 1992. "Re-Inventing Rulemaking." *Duke Law Journal* 41: 1490.

Freytag, Andreas, and Donato Masciandaro. 2005. "Financial Supervision Fragmentation and Central Bank Independence: The Two Sides of the Same Coin?" *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.837124.

Gibbons, Robert, and Laurence Prusak. 2020. "Knowledge, Stories, and Culture in Organizations." *AEA Papers and Proceedings* 110 (May): 187–92. https://doi.org/10.1257/pandp.20201091.

Goodman, John B. 1991. "The Politics of Central Bank Independence." *Comparative Politics* 23 (3): 329–49.

Hannan, Michael T., and John Freeman. 1984. "Structural Inertia and Organizational Change." *American Sociological Review* 49 (2): 149–64. https://www.jstor.org/stable/2095567.

Hayashi, Prepared Fumiko, Aditi Routh, Sam Baird, and Jalen Nichols. 2023. "Public Authority Involvement in Payment Card Markets: Various Countries August 2023 Update," August.

Jackson, Howell E. 2009. "Learning from Eddy: A Meditation Upon Organizational Reform of Financial Supervision in Europe." In *Perspectives in Company Law and Financial Regulation*, edited by Michel Tison, Hans De Wulf, Christoph Van Der Elst, and Reinhard Steennot, 1st ed., 523–39. Cambridge University Press. https://doi.org/10.1017/CBO9780511770456.029.

Jacobs, Lawrence R., and King. 2016. *Fed Power: How Finance Wins*. New York, NY: Oxford University Press. https://www.amazon.com/Fed-Power-How-Finance-Wins-ebook/dp/B01BLYGOT4.

Jacobs, Lawrence R., and Desmond King. 2018. "The Fed's Political Economy." *PS: Political Science & Politics* 51 (4): 727–31. https://doi.org/10.1017/S1049096518000884.

———. n.d. "Social Rights and the Politics of Financial Governenace." In.

Kreps, David M. 1990. "Corporate Culture and Economic Theory." In *Perspectives on Positive Political Economy*, edited by James E. Alt and Kenneth A. Shepsle, 1st ed., 90–143. Cambridge University Press. https://doi.org/10.1017/CBO9780511571657.006.

Kydland, Finn E, and Edward C. Prescott. 1977. "Rules Rather Than Discretion: The Inconsistency of Optimal Plans." *Journal of Political Economy* 85 (3): 473–92.

Langbein, Laura I., and Cornelius M. Kerwin. 2000. "Regulatory Negotiation Versus Conventional Rulemaking: Claims, Counterclaims, and Empirical Evidence." *Journal of Public Administration Research and Theory* 10 (3): 599–632.

Lee, Ian, Geoffrey A Manne, Julian Morris, and Todd J Zywicki. 2013. "How Payment Cards Benefit Canadian Merchants and Consumers, and How Regulation Can Harm Them." George Mason University Law and Economics Research Paper Series 13-58. Macdonald-Laurier Institute.

Libgober, Brian. 2020a. "Meetings, Comments, and the Distributive Politics of Rulemaking." *Quarterly Journal of Political Science* 15 (4): 449–81. https://doi.org/10.1561/100.00018135.

———. 2020b. "Strategic Proposals, Endogenous Comments, and Bias in Rulemaking." *The Journal of Politics* 82 (2): 642–56. https://doi.org/10.1086/706891.

Libgober, Brian, and Daniel Carpenter. 2024. "Lawyers as Lobbyists: Regulatory Advocacy in American Finance." *Perspectives on Politics*, January, 1–20. https://doi.org/10.1017/S1537592723002943.

Mattingly, Phil, and Robert Schmidt. 2011. "How Wal-Mart Swiped JPMorgan in $ 16 Billion." *Bloomberg Technology*, June 28, 2011. https://www.bloomberg.com/news/articles/2011-06-28/how-wal-mart-swiped-jpmorgan-in-16-billion-debit-card-battle.

McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization* 3 (2): 243–77. https://doi.org/10.2307/764829.

McCubbins, Mathew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms." *Political Science* 28 (1): 165–79.

McCubbins, Matthew D., Roger G. Noll, and Barry R. Weingast. 1989. "Structure and Process, Politics and Policy: Administrative Arrangements and Political Control of Agencies." *Virgina Law Review* 75: 431.

Posner, Eric A. 2014. "How Do Bank Regulators Determine Capital Adequacy Requirements?" *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2493968.

Prager, Robin A, Mark D Manuszak, Elizabeth K Kiser, and Ron Borzekowski. 2009. "Interchange Fees and Payment Card Networks: Economics, Industry Developments, and Policy Issues." Finance and Economics Discussion Series 2009-23. Federal Reserve Board.

Rilinger, Georg. 2024. *Failure by Design*. Chicago, IL: University of Chicago Press.

Rogoff, Kenneth. 1985. "The Optimal Degree of Commitment to an Intermediate Monetary Target." *The Quarterly Journal of Economics* 100 (4): 1169. https://doi.org/10.2307/1885679.

Sartori, Giovanni. 1970. "Concept Misformation in Comparative Politics." *American Political Science Review* 64 (4): 1033–53. https://doi.org/10.2307/1958356.

Schuck, Peter H. 1979. "Litigation, Bargaining, and Regulation." *Regulation*, 1979. https://www.aei.org/pu

blication/litigation-bargaining-and-regulation/.

Sferra-Bonistalli, Esa L. 2014. "Ex Parte Communications in Informal Rulemaking Proceedings." Washington, DC: Administrative Conference of the United States.

Shutler, Christopher, and Jeremy Frazer. 2011. "Durbin and Mobile in Focus; Assuming Coverage with Outperform Ratings." Equity Research. William Blair & Company.

SoRelle, Mallory E. 2020. *Democracy Declined: The Failed Politics of Consumer Financial Protection.* University of Chicago Press.

Swidler, Ann. 1986. "Culture in Action: Symbols and Strategies." *American Sociological Review* 51 (2): 273. https://doi.org/10.2307/2095521.

Thelen, Kathleen. 2018. "Regulating Uber: The Politics of the Platform Economy in Europe and the United States." *Perspectives on Politics* 16 (4): 938–53. https://doi.org/10.1017/S1537592718001081.

Wallis, Stanley. 1997. *Financial System Inquiry Final Report.* Canberra: Australian Govt. Pub. Service.

Wymeersch, Eddy O. 2007. "The Structure of Financial Supervision in Europe: About Single Financial Supervisors, Twin Peaks and Multiple Financial Supervisors." *European Business Organization Law Review* 8: 237–306. https://doi.org/10.1017/S1566752907002376.

Zaring, David. 2019. *The Globalized Governance of Finance.* 1st ed. Cambridge University Press. https://doi.org/10.1017/9781108594295.