

## Legitimacy debates and academic critiques

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The legal informality of the Committee has prompted a long debate about its legitimacy. Critics argue that a group of unelected officials meeting behind closed doors in Basel sets rules that determine the cost of credit for households and companies throughout the world, without accountability to any parliament. For many years, non-member countries had to adopt standards that they had no voice in shaping. The expansion of 2009 and the introduction of public consultation on all major proposals have mitigated this objection without removing it entirely.<sup>1</sup>

Defenders point out that the legitimacy of the standards ultimately derives from the domestic procedures by which they are implemented, and that national legislators remain free to depart from them, as the divergent implementation of the 2017 package shows. The Committee itself has increased transparency since the crisis. It publishes consultative documents, the comments received, impact studies and RCAP reports. A question that remains open is whether the political process that transposes the standards can genuinely scrutinise texts that have already been negotiated among the world's supervisors as a package.<sup>2</sup>

A second line of critique concerns the substance of the standards. Anat Admati and Martin Hellwig argued in *The Bankers' New Clothes* that banks should be financed with far more equity than Basel III required, suggesting ratios of 20 to 30 per cent of total assets. They maintained that the claim that equity is expensive for banks rests largely on private costs created by tax advantages for debt and implicit government guarantees, which are not social costs.<sup>3</sup> Their critique influenced the debate about the leverage ratio and has gained renewed attention after the failures of 2023.

Others have criticised the complexity of the framework. In a speech delivered at the Jackson Hole symposium in 2012 under the title "The dog and the frisbee", Andrew Haldane of the Bank of England argued that complex regulation might be less robust than simple rules, because complex

models overfit past data and give a false sense of precision. Simple measures such as the leverage ratio, he suggested, predicted bank failures in the crisis at least as well as risk-weighted ratios.<sup>4</sup> The Committee's response in the 2017 package, which constrained the use of internal models through floors, can be read as a partial acceptance of that argument. Banks and some national authorities, for their part, argue that the cumulative effect of the reforms has reduced the availability of credit and shifted activities to less regulated non-bank financial intermediaries.

## 1 Notes

1. On the legitimacy of transnational regulatory networks, see Slaughter, *A New World Order* (Princeton University Press, 2004), and Barr and Miller, "Global Administrative Law: The View from Basel" (2006) 17 *European Journal of International Law* 15. To be verified. ↩
2. On consultation and transparency practices of the Committee, see the Basel Committee Charter (2018), section 12, and Barr and Miller (2006). To be verified. ↩
3. Admati and Hellwig, *The Bankers' New Clothes: What's Wrong with Banking and What to Do about It* (Princeton University Press, 2013; expanded edition 2024). To be verified. ↩
4. Haldane and Madouros, "The Dog and the Frisbee", speech at the Federal Reserve Bank of Kansas City's 36th Economic Policy Symposium, Jackson Hole, 31 August 2012. To be verified. ↩

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