Current Scholarship

Banking on Democracy

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The financial system is unequal and exclusionary even as it is supported, funded, and subsidized by public institutions. This is not just a flaw in the financial sector; it is a foundational problem for democracy. Across the financial industry, entrepreneurs, regulators, media, and scholars promote the goal of "financial inclusion" or "access to credit." Facebook's Libra, Bitcoin, and fintech providers like Square, PayPal, Venmo, and thousands of other new products or startup companies are launched with the stated aim of increasing financial inclusion. These private companies are joined by the Congress, non-profits, and financial regulators with programs and laws promoting financial inclusion. In fact, financial inclusion and access to credit are among the increasingly rare issues that unite the political left and right. Yet, despite consensus and years of effort, many individuals and communities continue to be excluded from the mainstream financial system, which forces them to resort to high cost payday lenders, check cashers, or other fee-based financial transaction products. The financially disenfranchised pay the most for services that the wealthy and the middle class receive at a subsidized rate. This Article proposes a new model of financial inclusion, which situates issues of access and inclusion as central to the legal design of the financial system. This Article argues that these remedies have failed because the current model of financial inclusion is rooted in a mistaken and incomplete theory of the financial market. "Normals" and "mainstream" credit markets are conceived of simply as "markets," governed by market rules and market dynamics. In contrast, strategies for inclusion or "access to credit" are viewed as ancillary products, gap-filling, or subsidized add-ons for those who are outside of the credit market. This Article argues that the mainstream market and inclusion strategies are both part of the same financial market, which is itself a product of public policy. Instead of financial inclusion, this Article proposes to reframe the problem as a matter of financial redesign. The design of credit markets is an a priori choice embedded in law and policy that determines the contours and scope of the credit markets, including who is included. Reconceptualizing financial inclusion must thus proceed through democratic means because inclusion and access are a byproduct of institutional design rather than private market decision making.

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