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Financialization and Sustainable Credit: Lessons from Non-Intermediated Transactions?

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Abstract

Does increasing access to finance promote human flourishing? And if so, are there pathways to sustainable credit and finance in the face of the perceived excesses of financialization? Can we reform or regulate the financial sector to promote sustainable credit and avoid over-indebtedness? These and similar questions have attracted considerable scholarly and public debate in the aftermath of the 2007 global financial crisis, with a growing focus on institutional alternatives to market exchange in finance and beyond. In this article, we study the persistence of non-intermediated credit, whereby lenders and borrowers engage in transactions directly and without financial intermediaries. Peer lending was a mainstay source of credit prior to the emergence of financial intermediaries and our benchmark case study outlines common features of credit relationships before modern banking in Europe. The other two case studies come from jurisdictions where non-intermediated credit persists on a broad scale, despite parties having formal access to modern finance. The aim of our contribution is threefold. First, we identify features of non-intermediated transactions that are consistent with a notion of sustainable credit, in the sense that they are not destabilising for the transacting parties (or the broader community). Secondly, we highlight the normative mechanisms that support non-intermediated credit across different settings to identify the scope conditions and limits for such transactions. Third, we evaluate such credit transactions along a set of normative benchmarks to draw out lessons for contemporary finance and financial regulation. We argue that even if non-intermediated credit cannot provide an alternative to modern finance, such transactions can help financial institutions tailor products to the needs of specific consumers or outsource credit assessment and repayment, while also allowing policymakers and regulators to identify and resolve concrete credit access problems for disadvantaged communities.

Keywords Consumer credit · Peer-to-peer credit · Over-indebtedness · Transactional trust · Social norms

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Is broadening access to credit and finance an appropriate tool for promoting human flourishing? And if so, what are the pathways to sustainable credit and finance? Such questions have attracted considerable scholarly and public debate in the aftermath of the global financial crises starting in the US in 2007. Their economic and social costs reverberated far beyond the financial sector to include evictions, decimated savings, business shutdowns and unemployment across the world, triggering criticisms of the pathologies of financialization and presenting a clarion call for the renewal of finance and financial regulation. Such debates induced a broader turn in policy and scholarly thinking towards questions of sustainability and the moral economy, the moral contestation of markets and a search for alternative institutional forms for facilitating transactions and organising production and exchange (e.g., Balsiger & Schiller-Merkens, 2019; Gibson-Graham & Dombroski, 2020).

The observation of consumer financial strife across different jurisdictions illustrates a familiar dilemma: broadening access to credit, including consumer credit, can be a route for emancipation and economic growth. But since modern finance relies on impersonal transactions and formal mechanisms for extending credit, such instruments can also increase the risks of over-indebtedness (Domurath, 2016; Micklitz & Domurath, 2015).

By contrast, we present case studies of non-intermediated credit relationships, whereby lenders and borrowers engage in transactions directly and without the intermediation of a financial institution or agent that seeks to arrange appropriate finance. Peer lending was the mainstay source of credit prior to the emergence of institutional finance extending banking services to broader segments of customers (to include non-commercial and lower income borrowers). As such, our benchmark study draws on archival research on peer credit before modern banking in Europe to identify the key features and normative mechanisms supporting non-intermediated transactions. In fact, such credit transactions persist on a relatively broad scale even today and in jurisdictions where parties can access a modern financial sector. Our contemporary case studies focus on South African stokvels and "book-up" credit in Australia. The aim in studying and comparing these quite different cases is threefold. First, we identify features of non-intermediated transactions that are consistent with a notion of sustainable credit, whereby credit obligations are not destabilising for the transacting parties themselves (and, as such, also for the broader community). Secondly, we identify the common normative mechanisms that support these transactions, similar across time and space, to highlight the scope conditions and limits for non-intermediated credit. Finally, this allows us to evaluate such credit transactions along a set of normative benchmarks, as well as to highlight lessons for contemporary finance and regulation.

Ultimately, we do not argue that these transacting formats provide a wholesale alternative to modern finance. Yet, we argue that they provide useful lessons for broadening access to credit through a beneficial interaction between the financial sector and alternative transactional forms. Attention to the normative mechanisms of non-intermediated credit can also help policymakers and regulators avoid inappropriate commercial and regulatory transplants when seeking to extend and regulate credit access, particularly to underprivileged or otherwise excluded communities.

Financialization: Formalization and Intermediation

The literature on the excesses of financialization highlights the increasing size and sophistication of financial intermediation, and the accompanying concern that—with increasing levels of intermediation—activities within the financial sector become disembedded from

the real economy, posing risks for both individual livelihoods and economic stability (FSA, 2009, p. 18; Sassen, 2017). Using financial instruments to fulfil different customer needs relies on greater formalization of financial transactions and third-party enforcement in the case of default (Renner & Leidinger, 2016). Growing reliance on finance for essential activities is said to result in the "financialisation of the citizen," whereby access to the financial sector becomes essential to participation in economic and social life, and consequently to the full enjoyment of political rights (Comparato, 2018, p. 27). For example, the European Union Directive 2014/92/EU recognizes that access to a bank account is essential to modern life and grants anyone legally residing in the EU the right to a basic payment account.

At the same time, broader access to financial products across the population is not an unqualified good. On the investment side, financial products aiming for investment return carry different levels of risk, which some consumers may not always understand or properly evaluate. While financial products can be tailored to different customer needs and risk profiles, such financial innovation results in more complex instruments that are ever more difficult for customers to understand and compare in making investment choices (see, e.g., Allen, 2014; FSA, 2009).

On the borrowing side, extending credit, particularly for lower socio-economic groups, can be a form of emancipation raising current living standards, economic opportunity and participation. Such consumers benefit from credit to cover daily necessities and unforeseen life events, as well as more significant purchases of household goods or renovations. They can also benefit—even disproportionately—where access to credit allows for supplementing incomes through business activity. Moreover, the retrenchment of welfare state support through income protection, social insurance and pensions, makes the systematic exclusion from credit for certain groups even more problematic (Comparato, 2018, p. 31).

Whatever its potential benefits, broadening access to credit for lower socio-economic groups has presented both commercial and policy challenges. Extending credit to lower socio-economic groups is typically costly and unprofitable for lenders and it can lead to servicing problems and over-indebtedness for borrowers with low and irregular incomes (e.g., Micklitz & Domurath, 2015). The literature points to several obstacles to broad-based consumer credit access, including high costs of assessing applications and administering repayments (relative to the value of the loans), lack of documentation about borrower income and assets, together with a substantial variability of income for lower socio-economic and historically disadvantaged groups (Trumbull, 2014, p. 18, 23, 32, 55). Such borrowers lack assets or connections as forms of guarantee, which means that formal default proceedings—apart from being relatively slow and costly—may yield nothing of value for the lender. One outcome is segmented credit markets, whereby low-income and disadvantaged groups are limited to exploitative loan sharks who charge high interest rates and use sharp transacting and collection practices (p. 24).

Trumbull (2014) has documented commercial strategies for extending consumer credit by enhancing the attractiveness of borrowers to financial intermediaries through transactional innovations that reduce cost and increase profitability. These have included:

- charging higher interest rates for lower socio-economic borrowers, while concealing the true cost of borrowing (pp. 34–38)
- reliance on credit histories and scoring, as well as agents and intermediaries, to assess ability to repay and to collect payment (p. 26, 90)
- reliance on secured credit (p. 45, 86) or government insurance as an alternative (p. 28)
- combining credit with payment instruments to increase earnings on a larger volume of transactions (p. 42).

The above strategies have been further augmented by loan securitization as a way of spreading risk across more sophisticated investor buyers (Comparato, 2018, p. 48; Comparato, 2015). They have also been supported by legal reforms that ease public registration of different assets (De Soto, 2001) and speed up recovery procedures in case of default (Djankov, et al., 2008; Nasr, 2008).

Importantly, such "financialization" strategies have not resolved the tension between extending credit profitably and sustainably. For one, they may still leave borrowers without any, let alone positive, credit history, who have irregular incomes and few documented assets outside the profitable segment of the market. Furthermore, reliance on formal instruments and greater levels of intermediation increases both the risk and consequences of over-indebtedness. Intermediation also results in agency problems, whereby intermediaries pursue their own interests and do not have a stake in the success of the underlying transaction and the borrower's ability to repay (Allen, 2014). When combined with reliance on enforceable contractual instruments, the result is that repayment problems may trigger inflexible adjustments. Formalization and intermediation limit the ability of lender and borrower to adjust the terms of the relationship in the face of repayment difficulties or social force majeure, with disastrous consequences for smaller borrowers (Pistor, 2013) who are not provided bailouts as are systemically important banks (Stout, 2016).

Notwithstanding the flurry of legislation and regulation adopted in different jurisdictions to address problems of over-indebtedness (Huntington, 2010), we would argue that many of the responses on the regulatory menu cannot adequately address the tensions between credit access and sustainability, particularly for lower socio-economic and historically disadvantaged groups. First, market-enhancing measures of increasing transacting disclosures (Wilhelmsson, 2004) cannot broaden access to credit if the cost of credit is high and in absence of different competitive alternatives for borrowers. As the behavioural science literature illustrates, disclosures can be used to confound as much as to inform customers (Ben-Shahar & Schneider, 2014). Both disclosure and business conduct rules (such as know your customer procedures or the recording of financial advice) also increase the cost of lending, tending to exclude the least profitable segments of the market (Bar-Gill & Ben-Shahar, 2013) . Interventions designed to curb conflicts of interest and perverse remuneration incentives limit the resort to intermediaries (Burke & Hung, 2015; Inderst & Ottaviani, 2012), including the advisers and brokers that have been used by financial institutions to access new market segments.

More interventionist regulation also limits access to credit, without necessarily curbing lending excesses (Comparato, 2018, p. 55). Directly regulating the price and terms of credit, in the usury tradition, risks leaving some borrowers completely excluded from reputable credit providers and limited to loan sharks operating at the limits of legality. Prescriptive regulation targeting sharp lending may address egregious practices, such as falsifying credit documentation. But as Allen (2014, p. 875) has pointed out, financial decisions rely on accounting methodologies and the attribution of risk and are "inherently subjective" involving "the combined judgments" of different actors. As such, it is not possible to clearly delimit harmful practices in the way that punitive intervention requires, while ensuring credit access on fair terms. This reflects the more general problem that relying on bright line interventions (such as banning products generally or to identified classes of customers) requires regulators to be ahead of the game and anticipate the effects of financial innovation, which is a tall order (Allen, 2014; Ford, 2017). In sum, neither minimalist nor more interventionist regulation addresses the structural problems that exclude certain groups from access to sustainable credit (cf. Mak, 2015, 2019).

While our synthesis of the self-limiting nature of financialization strategies can be contested, it is supported by developments both within and outside traditional finance. Within traditional finance, Allen (2014, p. 861, 863) has argued that legal constraints may be insufficient to prevent destabilising behaviour unless participants "view themselves as stewards of financial stability who are willing to make some sacrifices for the greater good." This is because financial instability results "from everyday activities performed by large swathes of the financial industry in an attempt to maximise short term profits." It is exacerbated by borrowers being over-optimistic or even deceitful about their repayment abilities when seeking to obtain finance. Rather than focusing on legal regulatory solutions, on her view, it is necessary to reform financial industry culture by engendering "other-regarding norms" in intermediation (Allen, 2014, p. 864). Similarly, financial regulators have also emphasized the need to go beyond existing regulatory paradigms towards a "[f]undamental change … to institutional culture" and markets (Carney, 2014, p. 13) with the aim of rebuilding trust between society and financial service providers through a "responsibility of treating customers fairly" (Kockelkoren, 2013) and "changing the norms that characterise financial industry culture."

Outside traditional finance, we can also observe the rapid growth of alternative credit channels, including peer-to-peer (P2P) lending (Patwardhan, 2018). Patwardhan attributes their growth to diminished trust in the banking system combined with the scaling back of lending by banks to the "too small to care." Namely, lower appetites for risk and increased regulatory costs have led banks to abandon low-end and unprofitable segments of the market (Patwardhan, 2018, p. 392). As a result, "fintechs" aim to "leverage advanced technologies and data analytics" to offer alternative formats of peer lending and instant credit. Patwardhan cautions, however, that these so-called "P2P" formats follow different business models, which sometimes reproduce the problems of traditional finance and do not guarantee financial inclusion through sustainable institutions (p. 394, 399).

Trust and Accommodation in Non-intermediated Credit

The foregoing discussion aimed to highlight the tension between financial inclusion and sustainable credit through financial intermediation. It also demonstrates that, in search of sustainable credit, it may not be helpful to distinguish "innovative" finance by harking back to "traditional banking" (Sassen, 2017, p. 4). After all, innovations in intermediation have been implemented to reach new market segments, thereby also increasing complexity and risk (Comparato, 2018, p. 55). By contrast, both the interest in engendering other-regarding norms within traditional finance and the growth of peer lending models outside it, motivate our focus on non-intermediated credit transactions.

Historically, before the emergence and growth of modern finance, peer lending was the principal source of credit for both daily subsistence and investment for individuals of average to modest means, such as farmers. While such transactions are sometimes referred to as informal, peer lending was also formalized in notarized contracts (Dermineur & Svetiev, 2015). Generally, in both formal and informal transactions, default events were rare and legal institutions played a limited role in debt enforcement.

In the first case study, we extend the analysis of the transacting and collection practices for non-intermediated credit before modern banking to other settings in Europe to provide a benchmark for sustainable credit transactions. By sustainable credit we mean that both the fulfilment of the debtor's repayment obligation and the accommodation

by the creditor (in case of inability to pay) are not destabilising or disastrous for either of the parties (or for third parties, although systemic stability is not our key concern). Such an idea of sustainable credit goes beyond the focus on responsible lending practices *ex ante* (Cherednychenko & Meindertsma, 2019; Mak, 2015) and recognizes the inevitability of accommodation *ex post*. In a contemporary setting, an idea of sustainable credit supported by mutual accommodation is captured in the cooperation duty in the model DCFR Art. III.–1: 104, obliging both debtor and creditor "to co-operate with each other when and to the extent that this can reasonably be expected for the performance of the debtor's obligation."

Our other two case studies illustrate that non-intermediated credit persists, particularly for historically disadvantaged groups, even where such groups have been formally emancipated with access to a modern financial sector. Therefore, we present bottom-up cases of non-intermediated credit across different temporal, community and cultural contexts. The case studies allow us to highlight the common features and differences in the institutions and norms that support credit transactions, as well as to identify criteria for their evaluation. One key aim is to highlight the normative mechanisms that facilitate transactional trust, repayment and accommodation. Identifying the norms that attenuate the temptation to make short-term gains from counterparties may provide generalisable insights and lessons about sustainable credit for businesses or policymakers seeking to broaden and regulate credit access.

To pinpoint the normative mechanisms that support trust, repayment and accommodation in credit relationships, we use Elster's systematization of the norms that sustain cooperation between parties as legal, incentive-based, social and moral. Legal norms are externally enforced by third party institutions, like courts and regulators. But cooperation can also be "self-enforced" in cases where (i) parties incentives favour action consistent with the norms; (ii) there exist social norms with which the parties comply because of fear of condemnation and ostracism from their social group and (iii) parties follow certain ("moral") norms for intrinsic reasons consistent with their own preferences, even when such conduct is against their interests and is not subject to social monitoring and condemnation (Elster, 2009).

On the one hand, modern financial transactions are constructed through formal instruments that create legally enforceable obligations. As scholars of relational contracting have pointed out, however, in the face of emergent problems, contractual parties have the choice of relying on their legal rights or engaging in cooperative accommodation (Gordon, 1985). Instead, the use of formal instruments combined with multiple chains of intermediation in finance can trigger inflexible adjustment in the face of borrowers' inability to pay, becoming the source of individual hardship for borrowers and, if sufficiently widespread, wider economic and financial instability (Pistor, 2013).

On the other hand, the notion of the moral economy (Rogan, 2017; Fontaine, 2014), as elaborated by historians, posits the existence of moral or social norms, collectively understood and subject to change, that circumscribe economic exchange in ways that defy purely economic rationality so that it is fair and mutually beneficial in a community of advantage (cf. Bowles, 2016). But such accounts often rely on a version of spontaneous solidarity, which had been downplayed by relational contracts scholars in commercial relations (Gordon, 1985, p. 574) and which certainly would not exist in most contemporary settings.

In an attempt to put these diverse literatures into dialogue, we argue that there is a (surprising) similarity in the normative mechanisms that support trust, repayment and accommodation as pre-conditions for sustainable credit relationships across the three cases.

Acknowledging that our interpretation of the empirical evidence may be contested, we highlight our overall findings, which we further elaborate in the discussion:

- While it is true that many of the non-intermediated transactions are informal compared to contemporary financial transactions, they can also be solemnized in formal contractual instruments or ledgers.
- Irrespective of whether credit transactions create legal obligations, parties rely on mutual trust and relational norms of reciprocity in the conclusion and performance of transactions, and lenders are typically accommodating to the borrower's ability to pay in ways that avoid harsh adjustments.
- The norms that support transacting and adjustment are not purely moral, based on intrinsic preferences for altruistic other-regarding behaviour. As in the commercial settings studied by relational contracts scholars, relationship-preserving conduct between peers is supported by the interaction of social norms (based on observability of conduct to community members) and material incentives (given that ongoing cooperation is beneficial to both sides over time). Such mechanisms can be extended to more distant actors based on repeated interactions.
- Innovation and technology may facilitate non-intermediated credit transactions and the normative mechanisms that support them, but can also undermine them by putting parties more easily within the reach of predatory outsiders.

European Credit Markets Before Modern Banking

In pre-industrial Europe, before the advent of banks, credit was based on peer-to-peer transactions (Muldrew, 1998 for Britain; Hoffman, et al., 2012 for France; Dermineur, 2021 and Lindgren, 2002 for Finland and Sweden). Peer-to-peer lending was used either to support investments or to alleviate temporary resource shortages. A chronic shortage of cash as a medium of exchange, with coins making barely 20% of the money supply in eighteenth-century France, made credit critical for daily transactions (Spang, 2015, p. 13).

Given that direct credit was widespread as a medium of exchange and a source of borrowing, historians point to peer transactions being sustained by norms of collaboration, fairness and solidarity within inner circles. These rudimentary financial exchanges remained chiefly local, hermetic and embedded in social systems. Transactions took place without institutional intermediation and were largely autonomous from the State. In parts of Europe with a long commercial tradition, state institutions did facilitate contracting (through notaries in France, Spain and Italy for instance), but not in others (Sweden and Finland). In the former, the State also provided enforcement mechanisms for contracts (such as courts), but regulation was otherwise largely absent. Even in the presence of regulation (such as usury laws), authorities did not have institutional enforcement mechanisms. Being closed and narrow, peer credit transactions were neither transparent nor subject to competitive forces (Perlinge, 2019). The parties to credit contracts were generally members of the same community, and typically, there was not much disparity in bargaining power or knowledge. Since they were embedded in a tightly knit social context, credit transactions were subject to a social discipline and self-regulation—separate from legal and market discipline.

In the case of direct peer credit, many transactions have eluded historians because they were not archived or because they were verbal agreements (Pfister, 1994, p. 1342).

Such informal arrangements may be tracked in archival probate inventories. The amounts exchanged were typically small and did not require official validation. Creditor and borrower often knew each other and were bound either by family ties or by geographical or social proximity, if not all three, and usually avoided the burden of registering their transaction altogether (Cook & Levi, 2005; Dermineur, 2015; Elster, 2009, p. 197). Directness and informality allowed for greater negotiating flexibility regarding contractual terms, including interest rates.

> In 1853, Maria Finne and her husband from the village of Dagsmark in Western Finland owed 3 markka 'utan revers', i.e. without contract, to Johan Finne, a relative from the same village.[1] In 1850, the farmer Anders Stormartonen from the village of Bötom, also in Western Finland, had extended cash to 11 fellow farmers, all 'utan revers', for small amounts. His 11 loans all together amounted to 20 markka.

Many such loans were deferred payments in a rural economy where cash was scarce. This strategy was common for most households and especially for the most disadvantaged ones. For shopkeepers or sellers, it was largely a matter of having the forbearance to await payment for everything one has sold (Claustre, 2013, p. 580). Given the ties between the parties, a written contract was not only superfluous, but possibly even offensive.

> When Marcel Cuenin, a tailor living in the small French town of Delle died in 1783, his probate inventory mentioned several liabilities, all without contract. He owed 5 livres for grains to a certain Beuné, 49 livres for flour to the local miller, 12 livres for wine purchased to a certain Erard, one livre to the innkeeper of a nearby village, nine livres to the town butcher, and the list goes on.[2] Most of what Cuenin consumed was purchased on credit.

For similar reasons, while guarantees could be included in such transactions, this appears to have been rare. In most cases, there was no security for credit extended, especially if the good or item bought could lose value quickly or could be consumed. Shopkeepers and artisans offered lines of credit to clients, recognising that such debts might never be repaid or that they may be repaid in other ways (such as in kind). The absence of guarantees was another reason that flexibility prevailed.

> Deyle Bourquard ran a bakery in the town of Delle together with his wife Claudine Rassinier. She died prematurely at 39 years old in 1790. Upon her death, officials found a *livre journal* listing clients who owed the couple money for their bread. Claudine Rassinier had listed 25 clients liable to the bakers for a total of 175 livres tournois, almost worth a year of income for an unskilled worker. She had written that some of these debts might very well never be repaid at all. The inventory does not mention at what point the bakers' forbearance broke down and when they stopped delivering bread to non-paying customers. One of her indebted clients did "*un travail a la maison pour cette somme*" – some work at home for this amount – showing clearly that barter existed alongside monetized transactions.

Small daily credit transactions were ubiquitous and critical to the life of the community. While it is difficult to assess the volume of exchange, one estimation suggests that

[1] Revers means promissory note. Korsholman eteläisen tuomiokunnan arkisto (VMA), Lapväärtin käräjäkunnan perukirjat, E2a:7a, 3.

[2] Archives Départementales du Territoire de Belfort 2E4/288.

the volume of such loans in early modern France may have equalled the notarized market (Dermineur, 2019).

In pre-industrial France, we also observe formal peer credit transactions. The notary recorded deeds and contracts such as sales, wills, and donations, alongside credit transactions. The notary's privileged position has led many to posit that the notary acted as a broker, whose capacity to reduce asymmetric information allowed complete strangers to safely contract, precluding the role of banks until the nineteenth century (Hoffman et al., 2019). Notaries are said to have matched parties efficiently. Yet, this picture is not entirely satisfactory given the complex reality of pre-industrial credit. This view disregards the embeddedness of notarized credit in social networks. While the notary could guide individuals and help them to choose from among several credit instruments, the notary's input should not be overestimated, especially in rural areas. Individuals resorted to the notary mostly to have their deed "engrossed" for legal validity, to fill a trust deficit gap and to insure the seniority of debt (cf. Briggs, 2014 for England). The large variety of conditions and terms of agreement observed in notarial deeds indicates that parties negotiated their contractual terms on their own before arriving at the notary's office, even if notaries did standardize contracts through practice. In larger cities, notaries sometimes acted as brokers, but, in smaller communities with tight-knit social structures, credit was more of a personal and moral matter (Hoffman, et al., 2019).

Notarial credit contracts usually stipulated the maximum legal interest rate of 5%. In practice, however, parties could negotiate an additional price on the side. Rural Jewish moneylenders in the South of Alsace, for example, required additional compensation in goods (in the form of grains). Higher interest could also be hidden in the capital or arranged on the side (Fontaine, 2014, pp. 175–178; Rosenthal, 1993; Shaw, 2018). As all other credit terms, interest was understood to be negotiable.

> In the early 1780s, Marguerite Dermineur, a widow living in the French village of Suarce lent 400 livres to Jean Pierre Fleury, one of her neighbours. He promised to reimburse the widow within two years at a 5% interest rate. But the contract also stipulated that he would allow her the usufruct of the land he pledged as collateral as a form of interest over the duration of the contract.

In the case of disputes in solemnized transactions, the local judge summoned the parties to appear at court, assessed the validity of the contract and requested its terms to be enforced. If the debtor fell short and could not meet the repayment, the judge could order foreclosure and an auction of the debtor's assets. In practice, this process could be quite long and costly. The judge could nominate an external mediator to help the parties reach a consensus and avoid foreclosure. In fact, many lawsuits stopped after the first hearing at court and parties would resume talks and negotiations privately. Arguably, a summons to court for the first hearing was a means to publicly shame a defaulting debtor. It acted as a tool to expose a defaulter's "wrong" within the community, in the absence of other monitoring devices (Smail, 2003).

While many deeds specified a short-term repayment deadline, in practice it took (much) longer for borrowers to repay. In other words, the contractual repayment term mattered very little. Loans could be renewed informally and formally. Loans were often not renewed before the notary due to the additional cost (Waddilove, 2014), indicating that the initial trust gap may have been filled. Most were simply "rolled over," so long as interest was paid. Such loans could roll over to several generations, resulting in considerable ongoing indebtedness.

Guarantees were a common term in notarial contracts in France, given the delayed nature of exchange in credit contracts and the risk of loss of capital. Despite availability of guarantees, in the local French credit markets, a good reputation as an honest person was the most important form of security for the lender. A good reputation for trustworthiness mattered a great deal and enabled the debtor not only to find credit more easily, but also to put fewer guarantees on the deed (Crowston, 2011). In rural communities, critical information about a person's credit reputation was relatively easy to come by due to social proximity. Despite such proximity, some information about a borrower's assets, capacities, reputation and prior dealings (such as mortgaged assets with other creditors) could be missing. Moreover, repayment could also be hindered, delayed or become impossible because of unexpected events and external factors.

Where notarized contracts included guarantees, these involved a specific mortgage in identified land, livestock, real estate or simply in the form of a general mortgage of all the borrower's assets. A co-signer might also be added to the deed. In the studied archival sample, collateral in the form of specific plots of land dominated the guarantees offered until the middle of the eighteenth century. It is plausible that the specific plots added as collateral had been negotiated and chosen by the parties beforehand and without the intermediation of the notary.

In sum, before the second half of the eighteenth century, early modern credit contracts across the studied jurisdictions demonstrate a high degree of flexibility as a precondition for sustainable credit. First, parties could negotiate the terms of their agreement even circumventing the legally imposed interest rate limit through payments of interest in kind (linking the terms of credit to the underlying economic activity and repayment capability of the borrower). Secondly, parties would soften contractual repayment terms through tacit "rolling over," whereby each side was apparently satisfied with continuing an on-going agreement. Finally, a degree of flexibility existed regarding the guarantees supporting loans and the function of such guarantees. Pre-industrial finance was closely embedded in networks of interpersonal relations making way for credit exchanges featuring a degree of fairness within a community of advantage (Sugden, 2018). Even after the first banks emerged in the nineteenth century, it took a long time before institutionalized credit fully displaced peer lending (Dermineur, 2015).

Stokvels (South Africa)

Our second case study focuses on "stokvels," an informal saving and lending system, considered as the South African variant of rotating saving and credit associations that continues to be used by black South Africans to this day. It involves a group of people (often, though not always, of prior acquaintance) who regularly contribute to the saving and lending of money through common pooling of resources. It has been estimated that about 8.6 million South Africans belong to a stokvel (which is approximately 23% of the adult population) with an estimated 800,000 existing stokvels (Verhoef, 2001a, p. 285). These figures only relate to officially registered stokvels. In practice, a much larger proportion of South Africans take part in stokvels. The material presented here draws on a study of stokvels in the province of KwaZulu-Natal.[3]

[3] The study was conducted under the auspices of the Department of Consumer Sciences at the University of Zululand in the area around Hluhluwe, lake St Lucia and Richards Bay.

The origin of stokvels in South Africa is uncertain. According to elders in rural Hsushsuwe and Makshasa, reciprocity and mutual aid in their communities belong to a timeless tradition and an indigenous knowledge system, dating well before the penetration of monetization in rural areas and before colonization (Hoppers, 2002). Solidarity has been a prominent tenet of social life. Elsewhere in Africa, Asia and South America, rotating savings and credit associations can also be found, although again the exact period of their emergence is not well established (cf. Ardener, 2014).

The term "stokvel" is said to originate from the nineteenth century "stock fairs."[4] At such fairs, farmers and agricultural workers engaged not only in economic negotiations and livestock bargains, but also in socialization. Popular with rural Black communities, such meetings quickly spread in urban areas. Verhoef underlines that women established stokvels in urban settings in response to their own needs and to their lack of access to formal financial institutions (Verhoef, 2001a, p. 265). Today, female stokvels continue to be prevalent in the face of women's irregular and low incomes.

A stokvel is not a purely implicit or informal arrangement. It is characterized by an agreement between several members in the form of an oral contract or even a written "constitution" establishing the common rules. The amount of the contribution, the number of participants, the purpose of the stokvel and the name of the stokvel, for instance, are either stated in writing or stated orally.[5] Rules are collectively determined, disseminated and understood among the group's members. The stokvel system is said to rely on social and community-based norms of trust, reciprocity, solidarity and fairness. Ubuntu, described as a Pan-African norm, meaning caring for each other's well-being in a spirit of mutual support, constitutes an important cornerstone of the stokvel institution (Verhoef, 2001a, p. 272; 2001b). Despite the creation of a "stokvel," the lack of institutional intermediation, as well as the direct involvement of the parties in concluding transactions and repayment, underscores the non-intermediated nature of this form of credit.

Enrolment in a stokvel happens upon recommendation and co-optation. Members often belong to the same community, live in the same street, frequent the same Church or are involved in the same trade. While homophily in terms of gender, socio-professional background, ethnicity and religion can constitute a criterion of recruitment, the focus is on trustworthiness. Some stokvels are reserved for women, while others feature only male members. While mixed-sex groups do exist, they seem to represent a relatively small proportion of the observed stokvels.

Victoria,[6] a young housekeeper in her late 20s, explained:

> "The primary requirement to join our stokvel is being trustworthy (…) We look for someone that we know from this community because we must know their lifestyle. We don't take just anyone because stokvels are all about money."

Trustworthiness works as a collateral. To sustain trust, most stokvels generally count about a dozen members. The type of stokvel determines its number of participants. Lending stokvels count fewer members, while groceries stokvels can involve up to 200 participants. Members emphasize the flexibility of the stokvel system, highlighting, above all,

[4] Another possible origin points further back in time, to the medieval Low Countries. We thank Jaco Zuijderduijn for this observation.

[5] In the majority of observed cases, the stokvels did not have a written constitution.

[6] All names have been anonymized.

the opportunities for (re)-negotiation with other participants. Flexibility and accommodation are seen to distinguish stokvels as a source of credit from loan sharks.

> After a stokvel meeting, Estelle identified the difference between borrowing from a stokvel and a loan shark:
>
> "The difference is this … today we met to resolve some of our challenges, whilst with a loan shark you might not find the money you are looking for or it might happen that you might not be able to pay the loan from the loan shark and the interest rate will be increasing. But in this stokvel you are able to negotiate with the members, and we are able to see the severity of the person's problem and we able to come up with a solution."

Stokvel transactions do not rely on third-party enforcement, although stokvel members do envisage sanctioning in cases of non-repayment, even without resort to the formal justice system. A system of fines aims to punish late contributions and non-attendance at mandatory stokvel meetings, emphasising the importance of participation. An interviewee explained that if a member cannot repay as agreed, first, some of the stokvel members are sent to negotiate with the defaulter. If the group fails to obtain either repayment or assurance of future payments, a community disciplinary forum may decide to even physically seize a defaulter. Reference was made to the possibility of hanging a defaulter to a tree and whipping them as a coercion method, even if it was not clear whether such enforcement methods are ever used. Ostracism and shaming can be used to underline the untrustworthiness of a stokvel community member. Such sanctions appear to operate in the background, as based on the interviews and the existing literature, default rates in stokvels are apparently very low.

Despite its long pedigree, the stokvel institution itself has evolved through innovation and functional differentiation. A contemporary stokvel fulfils a specific purpose, reflecting the needs of its members. At least four major types of stokvels are still in use in the studied community: savings; investment/building; groceries and burial societies.

Savings stokvels have a polymorphic character as a common variant of a saving institution. A saving stokvel could be a simple rotating system in which each member contributes the same amount of money to a common pot. Money is saved collectively, taking advantage of social discipline. Some groups will even collectively specify a concrete aim. Members take turn in retrieving the entire amount. In cases of emergency, other members can pass their turn to allow a person in need to get the common pot.

> Madelaine belongs to *Zisize* ("help yourself" in Zulu), a rotating stokvel which aims to direct savings of money to build and furnish a house with individual contributions of R100 every month. Members of this stokvel not only pool resources collectively, but they also assist each other in the actual construction of the building. Madelaine underlined that her stokvel uses the savings "productively, so we don't just buy food.".

Other rotating stokvels pool resources and lend the accumulated capital to one or several members for a price. The interest rate applied varies and can be anywhere between 10 and 30%, which is generally higher than interest rates charged by commercial banks. Conditions of repayment also vary from stokvel to stokvel. Any "dividends" collected are distributed equally among all contributing members. Importantly, non-members may be granted a loan upon the recommendation of one or several members. In such a case,

the interest rate is apparently higher. This type of stokvel is very popular among the Black middle-class, including among civil servants.

Groceries stokvels are common in rural communities. Their main function is to pool resources either to get a better deal from wholesale retailers or to save money for December expenditures. The month of December is perceived as the costliest month of the year because of the holidays and the subsequent start of a new school year.[7] While most stokvels count a small number of participants, groceries stokvels can count as many as two hundred. A groceries stokvel can also involve the pooling of resources to buy consumables.

> Elizabeth belongs to a stokvel called *Maisibambisane* ("let's work together"). Together with ten other women, they collectively save money for the purchase of crockery, cutlery and glassware. In her interview, she emphasized the importance of having such brand-new items at home, mostly to enhance her household's good reputation.

A burial society is another type of stokvel, providing financial assistance to its members upon the death of a relative, typically an expensive event (Lee, 2015). In a 2014 estimate, 65% of the stokvel population belonged to a burial society for which the average contribution is R134 per month per member. This type of stokvel is a form of informal insurance functioning like burial societies in early modern Europe predating life insurance.

> Anna, a lady in her late 70s, is a member of a burial society named *Ubumbano* (solidarity or unity) where members contribute R100. When she lost a relative, she was able to cover the costs associated with the burial thanks to her stokvel membership. She also emphasized the social aspect of the stokvel. Members of *Ubumbano* "assist with the cleaning, help you prepare for the funeral and make sure the place is tidy before your guests arrive." Anna considers that being a stokvel member is important "because it assists families that are in need. They get assistance in difficult times, even when you don't have anything, you don't have anyone and no parent or family but we make you our family. We build family."

Overall, one person can—and typically does—belong to several stokvels. In 2014, stokvel members belonged to—on average—1.3 groups, and a group had on average 31 persons. It is difficult to fully grasp the profile of stokvel members. Most members are apparently female, Black and financially disadvantaged. Stokvel members engage in the saving and lending of money for at least two reasons. First, for many, participating in a stokvel is a survival strategy, keeping the household afloat. Secondly, the social aspect appears to be critical, not only as a social activity enabling members of the community to socialize and achieve a common purpose, but also to keep their reputation.

The saving injected into stokvels is sourced from government social grants and remuneration for employment (both official and informal). Since the end of Apartheid in 1994, South Africans have depended heavily on state salaries and welfare payments. Overall, the amount each member contributes varies from stokvel to stokvel. The interviewees indicated a monthly contribution ranging from R100 to R1000 (at a time when average earnings would be around R22,000).

[7] A contemporary commercial variant is an installment payment plan for Christmas hampers, which have been targeted by regulators in some jurisdictions. *Australian Competition and Consumer Commission v Chrisco Hampers* [2015] FCA 1204.

While stokvels are widespread as a form of saving and lending, other channels of credit coexist alongside stokvels. Mashonisas, for instance, are local and unregulated money-lenders, similar to payday lenders. They usually lend small amounts against a short-term repayment deadline with very high interest rates, occasionally taking debit cards as collateral (James, 2015) . Their number is estimated to be over 30,000 (Ardington et al., 2004). While James (2015, p. 93) points out that loan sharks are "not easy to define" and their categorization is fluid and contingent, our respondents did distinguish mashonisas (even if they are members of the same local community).

> Beatrice, a 22 years old female student, refers to one particular loan shark in these terms:
>
> "The loan sharks… I heard many stories about them. They are not good, they are abusive, and sometimes they take everything from you. Where I lived there was once a loan shark called Oskhomba. So Oskhomba was a loan shark and if you had to borrow money, even just 5,000, then it was hard to pay his money. You can ask for a small amount, like 3,000 rand, but these 3,000 rand become 10,000, 30,000, 80,000… and then after that he will go to your home and take your furniture, your car and everything from you. So when I grew up I saw that loan shark is no good, and you end up having nothing because of them…up until he died. And people were free. People were happy and they were saying they were happy because he is dead, and they were so tired of him."

In 2018, official statistics indicated that about 65% of South Africans have a bank account. But accessing credit via a bank is exceedingly difficult for many black South Africans. Most of the rural respondents never accessed a bank loan. South African banking institutions use credit scores to determine loan eligibility, such as the FICO score widely used in the USA. Interviewees reported preference for savings and lending via stokvels.

> Estelle, a 46 year-old mother pointed out that banks do not lend to those who do not work.
>
> Daniel, a 26 year-old small retailer contrasts borrowing from a bank as follows: "if you can't pay in time you get a bad name when it comes to your credit. … There you take money from someone and you pay them whenever you can, and they don't need your identity document and that kind of stuff. It's easy to understand each other, it's no law or something like that. So that's it."

Stokvel members not only resent the credit score system, but were also distrustful of institutions that may discriminate against them, in light of the country's long history of racial segregation in political and economic life. Many respondents indicated defiance at the banking system, highlighting its lack of flexibility, its race bias, the requirement to have a good credit score, the need to show official documentation, and the fact that bank interest rates are high. Paradoxically, while bank interest rates are high, they are often lower compared to the ones paid (sometimes implicitly) to stokvels. The stokvel interest rates, even if higher for the individual, are seen to benefit members of the community as opposed to a bank.

> Eleonore, a 43 year-old civil servant, observed that banks discriminate against Blacks by charging more for a loan. Sophia, a 29 year-old civil servant stated: "I think, when it comes to banks, we are not equal…colour counts, and your race counts when it comes to banking system. (…) So the banks sometimes charge different interest rates, so it's not fair to use them. We use them because they are the standard, and they are generally a reliable financial source, but when it comes to interest rates, they charge us differently."

Notwithstanding the historical separation of stokvels from formal banking, recognising the role played by stokvels as a source of credit and insurance, banks have developed specific products for stokvels. Ithala, a state-owned development bank, for example, proposes deposit accounts specifically for stokvels. The bank charges stokvels to open an account and then 0.66% per R100 deposited.

> A bank manager in Richards Bay noted: "As a banker, I feel good about stokvel because it brings business to us. Stokvel makes deposits of the lump sum to us for saving."

More recent reports suggest an intensification of efforts among South African banks to develop products targeted to stokvels, starting with fee free group savings accounts (to provide security) and other stokvel friendly features (Rumney, 2021), a point to which we will return.

The uptake of information and digital technologies has facilitated communication between stokvel members. In a country where 45% of the population is younger than 25, social media and smartphones are widely used, including in rural areas. Several respondents used smartphone applications such as WhatsApp to communicate with stokvel members. The use of such technology to facilitate communication as between members can also facilitate the relational norms and mechanisms of communication and monitoring of the stokvel.

A new generation of stokvels also appears to have enthusiastically embraced new digital tools, such as blockchain and cryptocurrencies. At the same time, digital technology also enables outsider predators to target and even mimic stokvels. For example, Facebook pages dedicated to stokvels have emerged, most of them proposing membership and alluding to profitable investments, even if these are often scams and Ponzi schemes. Some respondents discussed the online scheme "MMM," which collapsed in 2017 making national headlines. It was a pyramid scheme launched by a Russian financial fraudster. Profiting from a legal void and investor enthusiasm, it promised 30% return on investment. Such schemes mimic stokvels, with MMM describing the operation as a "mutual aid fund where ordinary people help each other" to lure and defraud clients (Chiluwa & Chiluwa, 2020). The scheme was eventually banned by South African regulators, but not before causing harm to vulnerable investors.

Book-up Credit (Australia)

The third case study draws on "book-up," a widely used credit format by indigenous borrowers across remote and regional Australia. In 2015, the local financial conduct regulator (Australian Securities and Investments Commission (ASIC)) commissioned a report on the use and features of this form of direct credit. The report pointed to a number of problematic aspects, including the potentially high costs of borrowing and the tying of borrowers to specific local lenders (ASIC, 2015).

Considering the problems identified, ASIC commenced litigation against one such lender, seeking a judicial declaration that his extension of book-up credit to indigenous customers amounted to unconscionable conduct under the applicable legislation.[8] As a result, in Australian Securities and Investments Commission v Kobelt (2019),[9] the Australian High Court considered the legality of the system of book-up credit provided by a non-indigenous store owner (Kobelt) to members of the remote Anangu community of Australian Aboriginal people.

[8] *Australian Securities and Investments Commission Act 2001* (Cth) s 12CB.

[9] 267 CLR 1.

Kobelt's was a general store in remote South Australia, in which he sold various goods, including everyday items (such as food and other necessities), as well as more expensive items (such as second-hand cars). Many store purchases by the Anangu customers were made on credit. The credit arrangements were not formally solemnized in contracts, though Kobelt did have a rudimentary system of recording the amount owed by his customers. These records, maintained by Kobelt alone, were described in the evidence as chaotic, even if his customers apparently did not ask to consult or check them. More generally, the evidence did not disclose frequent disputes between the parties about the terms of credit, repayment amounts or schedules. Furthermore, there was little evidence adduced that the Aboriginal customers were dissatisfied with Kobelt's extension of credit.

While this transactional format indicates a high level of trust and accommodation between the parties, Kobelt did obtain security for the extension of credit. In particular, the lender required his Aboriginal customers to hand over their bank debit cards together with the pin number for accessing the account. An important income source for many of his customers were government support payments. On the day on which a customer received their payment, Kobelt would withdraw the entire amount from their bank account, putting half of it towards a customer's existing debt. Customers were free to use the other half of their payment, though in practice their freedom to do so was constrained. The easiest option was to use the funds to buy necessities at Kobelt's store. Other uses of a customer's residual funds were apparently at Kobelt's discretion. For example, Kobelt could allow a customer to buy a bus ticket for a trip or he would issue the customer a money order to purchase goods in another store. Kobelt would charge the typically low-income indigenous customer between A$5 and A$10 for a money order (an amount lower than the cost of a money order provided by Australia Post). The evidence suggested that Kobelt had withdrawn a total of A$1 million over two years from the accounts of all his Anangu customers.

There was no substantive negotiation between the parties about the credit terms. Kobelt did not explicitly charge any interest for debt owed by his indigenous customers. The customers went into substantial debt mainly to purchase second-hand vehicles, which they regarded as essential to be able to maintain their relationship with more distant kin members. Kobelt priced the cars by consulting similar offerings in the area and adding a surcharge when the vehicle was bought on credit. In the legal proceedings, the implicit credit charge was estimated to amount to an effective interest rate of anywhere between 20 and 40%, which was higher than personal loan rates offered by commercial banks. The implicit finance charge was not disclosed or discussed with the customers.

In deciding the case, the courts had to apply a broad legislative standard, namely whether Kobelt engaged in "unconscionable conduct" vis-à-vis his Anangu customers, taking into account an extensive statutory laundry list of relevant factors, ranging from the quality of consent to the imbalance in the substantive exchange as between the parties. Given the open-ended nature of the standard and relevant circumstances to be considered, some judges explicitly argued that the objective of the overall inquiry was to determine whether there was moral taint or "obloquy" ([118]-[120]) on the part of the lender, while others asked whether the conduct was "far outside societal norms of acceptable commercial behaviour" ([92]).

At different levels of the judicial hierarchy, judges were divided in their assessment of whether Kobelt's book-up credit amounted to unconscionable conduct. In the High Court, the judges who concluded that book-up credit was not unconscionable emphasized the fact that the Aboriginal customers readily and willingly participated in the transactions without complaint. Their relationship with Kobelt was not acrimonious and, despite low financial literacy, they had an understanding of how book-up operated. Moreover, the borrowers had means through which to opt out of the relationship, at the very least by cancelling their bank

debit card. In fact, they rarely did so, instead continuing to deal with Kobelt and to purchase necessities and vehicles from his store. In the rare cases where a customer failed to repay the debt or cancelled their bank card, Kobelt did not seek avenues to enforce the residual debt.

The majority judges also relied on the evidence from the anthropologist commissioned by the regulator to study the community transacting practices. This evidence was said to demonstrate further advantages of book-up credit for indigenous customers in light of common social practices and norms within the community. First, book-up credit allowed indigenous customers to smooth their consumption over the month, compared to the "boom-bust cycle," whereby most money was spent immediately upon receipt. Second, it was said that book-up credit alleviated the pressure upon individuals from the social norm of "demand sharing," whereby when an individual has resources, he or she is expected to share them with members of their community upon demand. It is not clear whether the Anangu themselves regarded these as advantages of book-up, given that much of the evidence was refracted through the anthropologist's expert report.

The (dissenting) judges found that Kobelt's book-up credit amounted to unconscionable conduct. They emphasized the fact that such credit terms were extended only to indigenous customers and would be regarded as unacceptable by the broader Australian community. While the indigenous customers may have consented to the credit terms, they were unaware of the high implicit credit charge when borrowing to buy second-hand cars, which cars were of relatively poor quality, breaking down after short periods of time. The only reason such substantively unbalanced terms were acceptable to Kobelt's customers was the fact that the remote Anangu customers had low financial literacy and could not access credit from any other source (including from financial institutions). Finally, on the dissenting view, Kobelt's practice of withdrawing the entire amount from each customer's bank accounts every month ensured that they continued to be tied to his store both for essential provisions and for credit.

Notwithstanding their different conclusions, the judges agreed with a general view that this was a difficult case at the "intersection between the distinctive Anangu society and culture" and the "wider Australian society and its culture and institutions (including the legal and financial systems)" illustrating "varying degrees of incommensurability" between the two ([29)]. The Anangu customers' reliance on book-up credit was said to reflect their preference to "accommodate the values and practices of the market economy" through personalization and brokers, such as storeowners ([32]). Such a view may suggest that once we move outside fairly close-knit homogeneous communities with pre-existing ties of kinship as the source of trust, the risk of a clash of norms and exploitative credit transactions increases. Not only were Anangu customers willing to agree to the terms of credit due to their need for second-hand cars to maintain relationships with their extended community, but also the form of security they provided for such credit undermined the norms favouring reciprocity and sharing resources within their own community.

However, there is another reading of the evidence which arguably better reconciles the two different perspectives on book-up, also in light of the earlier case studies of non-intermediated credit. In instigating the litigation, ASIC acknowledged that there was no evidence of dishonest or predatory behaviour on the part of Kobelt, who was himself a long-term resident of the remote community of apparently modest means. The Anangu customers had a harmonious relationship with him and did not regard him as a loan shark. While Kobelt was characterized as an outside "broker" ([102]) connecting them to the material world of the market economy, the Anangu people's dealings with Kobelt were not too different from the way they dealt with each other. Both the anthropological evidence adduced by ASIC, as well as other studies of indigenous transacting, demonstrate similar characteristics of exchange transactions in such communities (Broome, 2002, p. 57; Berndt

& Berndt, 1990). Importantly, transactions in such communities are not necessarily based on equivalence of exchanged value. This is at least in part because separate from the material dimension of a transaction, an exchange is valued for its social dimension of begetting or continuing a relationship (as in our earlier cases) (Schwab, 1995). Continuous rolling over of transactions is one way of extending and strengthening the personal relationship among the parties, which may explain why neither being tied to Kobelt, nor buying second-hand vehicles from him repeatedly, was seen as problematic by his customers. Finally, within indigenous communities, individuals have apparently developed strategies for coping with demand sharing from community members, without undermining the norms of reciprocity underlying this practice (Schwab, 1995).

Apart from its relational aspect, at least for the Anangu community, this form of credit was sustainable, in the sense we use the concept here. Kobelt did not insist on a particular payment schedule, there were low levels of default and defaulting borrowers were not pursued. The form of security limited the borrowers' autonomy and tied them to Kobelt's store and the substantive cost of credit was high. These aspects reflected historic practices of book-up credit by general store owners and the asymmetric relationship with their indigenous customers. Given the fact that a general store (such as Kobelt's) was effectively the only credit provider to the indigenous customers and was always in the role of lender, the absence of alternative offerings gives such lenders unilateral power to determine the terms of the relationship. Precisely because they regarded the material aspects of the transaction as less important (arguably more so than due to their financial illiteracy), the Anangu customers did not challenge the terms of credit or security. Not having to compare credit terms to other credit providers and having the unilateral power to determine the terms all combine to ensure that book-up lenders like Kobelt maintain skewed terms, even if such terms were not objectively necessary (Galinsky et al., 2006; Kipnis, 1972).

Discussion and Conclusions

The above non-intermediated credit formats are described across very different settings, but share many similar characteristics (see Table 1). One of the most striking features across the case studies is the apparently low instance of repayment default and the limited or no use of enforcement institutions, even in cases where the credit transaction has been formalized and where third-party enforcement is available. Across the three settings, credit serves specific needs for the borrower, while the lender is not a figure of abuse. Moreover, notwithstanding the different contexts, the case studies disclose transactions of sustainable—in the sense of non-destabilising—credit as defined earlier.

What are the normative mechanisms that support these non-intermediated credit transactions? Historians have emphasized that non-intermediated credit is supported by interpersonal connections, solidarity and trust and the importance of fulfilling one's obligations, whereby such norms are guarded by institutions such as the family, the village or the religious group. But as we see, trust is not intrinsic, extended merely because of common community membership. Instead, mutual observability allows the collection of information about borrowers' characteristics and repayment capability. Socially available information is put to work to facilitate exchange and can reduce the likelihood of over indebtedness without formal credit scoring. Defaulting can also prompt social ostracism and exclusion of the defaulter from future transactions.

Table 1 Characteristics of non-intermediated credit formats

Features of the credit system	*Pre-industrial credit (Europe)*	*Stokvels (South Africa)*	*Book-up (Australia)*
Intermediation in the conclusion of contract	None or limited	None	None
Price of the loan	Negotiated between the parties, can be set above usury ceiling	Jointly agreed, higher than banking institutions	Unilaterally and implicitly set by the lender, higher than banking institutions
Terms of the agreement	Highly flexible, joint re-negotiation and accommodation	Highly flexible, joint re-negotiation and accommodation	Flexible, at unilateral discretion of the lender
Normative mechanisms	Social and intrinsic norms, but incentive compatible	Cultural and social norms (Ubuntu), but incentive compatible	Cultural, social and intrinsic norms for the borrowers, incentive compatible for the lender
Role of interpersonal trust	High: reputation is critical, limited use of security or punishment	High: reputation is critical, limited or no use of security or punishment	Asymmetric trust, lending secured through possession of borrower's bank card

Non-intermediated credit transactions are also supported through accommodation by lenders in the face of repayment difficulties, which in turn avoids disastrous consequences for borrowers (such as the loss of subsistence or lodging). In other words, norms supporting credit transactions do not prioritize the originally agreed terms of repayment even in the face of changing circumstances. But again, such accommodation does not reflect merely intrinsic altruistic preferences on the part of the lender. The relational norms that support repayment by the borrower and accommodation by the lender are also and importantly not inconsistent with the parties' material incentives to benefit from continued cooperation given that they continue to have "skin in the game." The important consequence of that observation is that pro-sociality and trust in credit does not necessarily have to depend on intrinsic preferences, such as those generated by pre-existing bonds of familiarity, kinship and proximity, but it can also emerge through repeated dealings and the rolling-over of obligations as a form of "forced solidarity" (Baland et al., 2011). As such, in speaking of an economy of *mutual* obligation—as opposed to a moral economy—historians (Muldrew, 1998) and sociologists (Bourdieu, 1998, p. 94; Laferté, 2010) have also converged on the language of relational contracts scholars (Macneil, 1980).

In analysing these transactions through a relatively narrow lens of sustainable credit, we do not suggest that they are economically efficient or that they do not involve conflict or power. As Banerjee and Duflo (2020) observe, peer credit relations often involved struggles and frictions; they have historically reflected "narrow-mindedness and localism, slowness, patriarchal norms" of small communities, thereby preventing "changes and innovation." Furthermore, the mechanisms supporting personalized credit have also involved imposition and privacy invasion (Corbin, 1999, p. 167).

In light of such observations, are there any lessons for modern finance from historical and contemporary non-intermediated credit? Are these simply a pre-modern phenomenon that is transitory to modem finance. Commenting on the "historical oscillation between disembedding and reembedding credit relations," Renner and Leidinger (2016, p. 142) note that a "return to a system merely based on interpersonal trust" is unlikely, invoking Luhmann's words, that "there is no way back to paradise." While that much may be taken for granted, we argue that the case studies provide takeaway lessons for the extension of sustainable credit to low income or disadvantaged customers, including through the financial sector, as well as for policymakers and regulators seeking to broaden *realistic* access to credit while avoiding over-indebtedness (Micklitz, 2018).

Financial institutions, policymakers and regulators have often searched for successful templates in aiming to broaden credit access to underserved market segments, though such templates have often been transplanted without a full appreciation of the normative mechanisms that support sustainable credit relationships. As Trumbull (2014, p. 30, 39, 92) has shown, a common commercial strategy by financial institutions is to learn from pre-existing credit providers to those segments and transplant or incorporate their business model, typically increasing scale, chains of intermediation and formality. Similarly, in describing contemporary P2P business models, Patwardhan (2018, p. 399) highlights that many do not have a P2P dimension, involve intermediation by platforms which do not verify borrower information, source their funding from large investors and lack "skin in the game" to ensure repayment performance. As such, she warns that so-called P2P platforms could fuel unsustainable credit with disastrous consequences.

We would argue that there is scope for complementarity and interaction between the financial sector and non-intermediated credit as a way of incorporating user perspectives in the decision-making of financial institutions. Such scope is illustrated by the interaction of banks and stokvels in South Africa. As James (2015, p. 111) has argued, stokvels have

continued to be used as a source of credit with many black South Africans choosing to stay within a stokvel because of its relational value or because of its less bureaucratic and intimidating procedures, with awareness of the cost of a higher interest rate. Rodima-Taylor and Bähre (2014, p. 507) point further that such diverse arrangements of mutual security "inventively merge market logic with reciprocal forms of distribution and sharing" and will remain central to regulating resource access.

The National Stokvel Association of South Africa (NASASA) was specifically established to "improve the operational efficiency of stokvels and to consolidate compound savings to negotiate bulk consumer concessions and services from financial institutions" (Verhoef, 2001a, p. 285). Rather than seeking to reproduce or transplant the stokvel model, commercial banks have developed instruments specifically targeted to stokvels as a mechanism for bottom-up engagement with customers' needs. Recent reports suggest substantial ramping up of such efforts in the banking sector, including the development of stokvel tailored investment solutions, as well as a major South African bank building up a "network of partnerships" with stokvels, including a stokvel loyalty programme (Rumney, 2021).

Such interaction with—rather than subsumption within—financial institutions can also attenuate some of the limitations of the stokvel as relational lending. First, non-intermediated credit sources tends to limit the scale and the objectives of projects that can be financed. As the historical benchmark case study illustrates, financing larger projects require the aggregation of investors, and such functional pressures lead towards institutionalized credit (Dermineur, 2015). Secondly, remaining within relatively closed and stable circles of transacting parties and investment projects, stokvels can become "involuted," with contributors "overly dependent on each other" failing to incorporate "valuable knowledge from outside the[ir] network" (Schrank & Whitford, 2011, p. 162). This favours projects that are potentially outdated or wasteful (such as purchasing new homewares), while excluding more productive or more innovative ventures. Finally, while the stokvels survived because of the exclusion of black South Africans from the financial system, like other small group networks, stokvels themselves can exclude members of unpopular groups. Given those shortcomings of peer lending, the networking of stokvels and financial institutions provides a way of maintaining the benefits of non-intermediated transactions while allowing for an increase in the scale of financing, opening stokvels up to new information and project ideas, as well as attenuating the exclusion of the unpopular.

Our discussion of the normative mechanisms supporting non-intermediated credit also carries lessons for policymakers seeking to extend credit as a strategy to help raise incomes or to emancipate historically disadvantaged groups. In such policy efforts, we also observe failed transplants because of insufficient attention to the normative mechanisms that support peer lending.

For instance, nineteenth-century German rural credit cooperatives are one successful example of social autoregulation and collective discipline in the extension of credit that has been copied elsewhere (Guinnane, 2001). In the German rural cooperatives, farmers pooled resources for financing projects, while witnessing low rates of default. Inspired by the German cooperatives' success, rural cooperatives were launched in nineteenth-century Ireland. However, unlike the German example, the capital was injected by the government, rather than by the farmers themselves. As such, the borrowers were not risking their own and the savings of their neighbours, but impersonal funds. The Irish transplant of the credit cooperatives have been ultimately regarded as a failure, because it was not sensitive to how the incentive mechanisms supporting credit transactions reinforce relational ones (Guinnane, 1994; Taleb, 2018).

Similarly, microcredit (or microfinance) agencies have been viewed as a “miracle” format for credit extension to lift people out of poverty. The evidence about the extent to which microfinance ensures repayment, avoids over-indebtedness or alleviates poverty is mixed (Guérin, 2014, p. S44; Banerjee, et al., 2015) and microfinance has been reported to contribute to over-indebtedness (Bateman, 2019, for South Africa). While microfinance business models involve intermediation, microfinance agencies seek to incorporate the discipline of social monitoring among local village or family members by extending loans to groups as a way of mimicking the relational nexus between lender and borrower in non-intermediated credit. Hsu (2016), for example, reports a microcredit model attentive to the interaction of different normative mechanisms. The microcredit agencies she studied lent to an entire village, with a local political official held responsible in case of default of a fellow villager. This form of “entire village lending system” had better repayment rates compared to schemes in which agencies lent to smaller groups because enforcement was not purely horizontal, but also vertical. In terms of the normative mechanisms supporting credit transactions, it is the interaction of social norms (through monitoring and ostracism) and effective quasi-legal (coercive) norms that apparently enhanced borrower repayment (cf. Greif, 2006).

Finally, our study of non-intermediated credit can also benefit financial regulators aiming to regulate the provision and the terms of credit offered, particularly for low-income, underprivileged or historically excluded groups. As argued earlier, prescriptive and punitive approaches to regulating credit and finance typically address only the most egregious practices, such as the use of falsified documentation in lending, or the fraudulent mimicking of stokvels, whose offerings (once discovered) were banned by the South African authorities. However, most efforts to regulate the terms of credit have the unintended consequence of cutting off access to credit for certain groups either completely or by increasing costs, as observed in the book-up credit litigation in Australia.

In its case against Kobelt, the Australian regulator ASIC sought a declaration that Kobelt engaged in unconscionable conduct and a punitive sanction of A$100,000. One of the underlying concerns for the judges who ultimately found against ASIC was that Kobelt’s credit system was fulfilling a need for his indigenous customers who borrowed without complaint. Given the widespread use of book-up as the only source of credit for many indigenous Australians, and given the broad multi-factor statutory standard of unconscionable conduct, a finding against Kobelt would have produced uncertainty about the legality of book-up more generally. Such legal uncertainty may have extinguished this form of credit, importantly without necessarily replacing it with an alternative source.

The harsh substantive terms of Kobelt’s book-up credit can be explained by their widespread use and the absence of alternative credit sources as benchmarks for both lenders and customers, as demonstrated by ASIC’s, 2015 report. As such, book-up credit transactions reflect the “dark side” of ongoing relational ties devolving into “persistent domination on one side and dependence on the other” (Gordon, 1985, p. 570). That much was recognized by ASIC in oral argument by pointing out to the court that Kobelt’s customers could not “know that there were other ways [credit] could be done that they would prefer if they knew that they existed.”[10]

But precisely that acknowledgment points to an alternative approach to regulate credit access for these communities through iterative problem-solving that ensures a continued

[10] Transcript of Oral hearing in the High Court of Australia.

source of direct credit fulfilling the needs of indigenous customers, while tempering imbalanced and unnecessary aspects of such transactions. For example, in the litigation, a few alternative forms of security were canvassed by ASIC, though there were open questions about whether they were feasible in this transacting context. Such policy and strategy questions could not be resolved judicially based on the available evidence. By contrast, a problem-solving regulatory intervention would allow exploring such alternatives with book-up credit providers, in ways that ensure continued credit access while giving indigenous customers greater autonomy and control over funds. Finally, given that the Anangu customers already had basic access to financial services (through a bank account with a debit card), financial institutions could themselves be included either in providing alternative lines of credit at a lower cost (even if extended through general stores), or in crafting alternative arrangements for securing loans made by such stores. Such an approach identifies opportunities for other credit providers to supply alternatives or to improve credit arrangements for indigenous communities in ways that do not simply take lack of financial literacy for granted and that would allow borrowers input in financial product design.

We have argued that non-intermediated credit relationships persist, perhaps in part, because they fulfil a need for the extension of sustainable credit, being supported by multiple interacting normative mechanisms that avoid over-indebtedness and inflexible and destabilising adjustment to repayment difficulties. As such, even for those who think that a wholesale return to such credit relationships is neither likely nor desirable, non-intermediated credit formats still provide lessons for financial institutions, policymakers and regulators seeking to broaden the provision of credit, particularly to low income and underprivileged groups, as well as regulating the terms of such credit. Quite apart from viewing them as alternatives or just a temporary transition to formal finance, we have pointed to the scope for more dialogic interaction between financial institutions and non-intermediated credit in ways that temper the shortcomings of both models, while giving final consumers greater voice in the evolution of finance.

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Data Availability The datasets generated during and/or analysed during the current study are available from the corresponding author on reasonable request.

Declarations

Conflict of Interest The authors declare no competing interest.

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