

## Abstracts

### **Reconciling Contracting in Public Law - the Case of Planning Agreements. A Case of Conflicting Values?** **Tola Amodu**

Contracts and agreements are widely used by local authorities to bring about gains in large-scale, land-use planning developments, e.g. community benefits in conjunction with commercial development. Their use in this context might at first sight appear anomalous, given that it would seem to incorporate market values at odds with those more commonly found in the statutory regime e.g. values of efficiency and expediency (the pragmatic) rather than those of probity and participation in public decision-making with the existence of appropriate mechanisms of oversight to supervise the exercise of discretion. If this is indeed so what does this mean in the town planning context?

The paper will explore these issues to discern whether a divergence exists in the values generally associated with contracting and those more commonly found within the context of a statutory regime granting public bodies discretion. An assessment will then be made of the implications for the use of contracting as a regulatory strategy in town planning.

### **Implementing Regulation in the Utility Sectors: Evidence from the Italian Water Reform in the Nineties** **Alberto Asquer**

Since a few decades ago many countries experienced a shift in the style of governance and management of the utility sectors, which marked the drawing back of the State from direct command-and-control and the establishment of regulatory frameworks for the market-based production and provision of public services. The transition towards regulatory frameworks - or, in other terms, the implementation of novel public policies intended to elicit and regulate the private-sector action as a way towards the supply of public goods - often presented itself as a troublesome process. This research addresses the issue of why does the process of public policy implementation ends up in either success or failure, with particular reference to the policy intended to liberalise the utility sectors and to establish a regulatory framework for the market-based supply of public services. The research provides evidence from the implementation of the reform of the water sector in Italy in the course of the nineties by narrating the events that unfolded since the passing of the water reform law, in 1994, until the first substantial effects on the target policy domain, in 2001. The comparison between various implementation outcomes at the local level intends to identify the key factors and to refine our understanding of the process leading to implementation success.

### **The Political Economy of Telecommunications Regulation in Argentina: 1990 - 2001** **Paolo Benedetti**

This paper analyses the stability of the telecommunications regulatory framework between the period that followed the privatisation of the sector in 1990 and the last days of Fernando de la Rúa's administration in 2001.

Its main thrust is that, given the Argentine institutional endowment, regulatory frameworks defined in a presidential decree allow the executive to introduce changes to the status quo without facing significant challenges of other veto powers; notably, Congress. Put differently, regulatory frameworks defined in a presidential decree allow the president to unilaterally distort, change or amend the rules of the game in order to adjust those rules to his preferences.

## **What can the EU learn from institutional and constitutional comparative studies of federations?**

**Florentina Bodnari**

There are certain reasons why it makes sense to rethink the legal and political structure of the EU as: people's alienation and dissatisfaction with the working of the EU institutions; the establishment of the European Convention on a constitution for the EU; the enlargement of the EU with the new challenges and the new challenges through the changes of world politics. The objective of this paper is to scrutinize whether a federal structure of the EU could be an appropriate institutional response to the challenges which the EU is faced with. The EC and then the EU has been more analysed through the theories of international relations and as a consequence those of European integration rather than through federalism. This article argues that concepts drawn from federalism can be useful in understanding the EU. The EU policy making process, even if it is unique, has already common features with studies on comparative federalism. I identify the EU challenges, give an overview of the possible scenarios, compare four federations: Germany and United States of America, and Switzerland and Canada and apply the adequate solutions to the EU as a federation in formation. One important question is which social, political, juridical and institutional factors of these federations could have an impact on the building of a European Federation. What are the peculiarities or distinguishing features for the EU federalism?

## **Privatisation and Regulatory Governance for Telecommunications in Taiwan: Towards 'Mad Dogs Disease' or 'Mad Dogs Competition'?**

**Kuo-Tai Cheng**

"Privatisation is simply the wrong starting point for a discussion of the role of government. Services can be contracted out or turned over to the private sector. But governance cannot" (Osborne & Gaebler, 1993, p.45). "Linking regulatory policy with governance will also cement acceptance of regulatory policy as a permanent feature of government and public administration and one that is central to its overall performance and ability to meet citizen's expectations." (OECD, 2002, p.112). Privatisation, therefore, should be treated as a means, not an end; the end is better government and a better society (Savas, 2000, p.238).

The introduction of liberalisation and public management reforms (PMRs) have arguably led to a shift from 'the entrepreneurial state' towards 'the regulatory state' or to a transformation from a 'Keynesian Welfare state' to a more 'Hayekian regulatory state' (Majone, 1994; 1999; Moran, 2001; 2002; Minogue, 2001; 2002; Cook and Minogue, 2002) which is said to involve a change from government to private ownership of network utilities, an increasing emphasis on pro-competition regulation by quasi-autonomy independent institutions (Loughlin and Scott, 1997; Stirton and Lodge, 2001).

Having identified the needs for privatisation policy and regulatory governance to improve economic performance and to protect the public interest, the next stage is to consider the appropriate institutional framework of privatisation and regulatory governance within which these objectives will be undertaken. An institutional framework of privatisation policy and governance mechanisms for regulation is crucial to ensure that objectives are achieved, otherwise there is a risk of 'Mad Dogs Disease' ('policy failure' or 'regulatory capture').

Since 1987, there have been four categories of extensive PMRs that have been launched in Taiwan. These four areas are 'financial liberalisation', 'privatisation of GOEs', 'fair trade and consumer legislation', and 'media regulatory reform'. The GOEs privatisation programme has begun since 1989 and aimed to incrementally privatise most of the GOEs. However, only six GOEs were privatised by the end of 1996. It reveals that the privatisation policy has been more strategic than substantial in nature.

The general goal of the research is to develop understandings and to evaluate the institutional framework of privatisation and governance mechanisms for regulation. This research also employs an innovative methodology, which namely, an 'institutional approach' to studying the case of privatisation and regulatory governance in the telecommunications of Taiwan. This study has identified some interrelated aspects (Clarity of roles; Participation; Independence; Accountability; Transparency) of regulatory framework which capture the main governance mode of regulation and privatisation in terms of literature reviews, and these form the basis of the questionnaire which the author used in the case study.

The focus of this research refers to the creation of new regulatory institutions in the wake of privatisation and liberalisation reforms, the term is so-called 're-regulation' for network utilities and argues that regulation needs to be analysed in the broader context of PMR and governance-based approach which have been spreading across both developed and developing countries.

## **The European Union and Pension Regulation**

### **Matthew Connell**

Who should take responsibility for providing an income to people who are too old to work?

In the past, European governments have tended to take responsibility through social insurance schemes. However, in recent decades demographic change, globalisation and other constraints on government budgets have led them to try and transfer some of the risks involved with guaranteeing future incomes to employer-sponsored pension schemes

However, in return, individuals demand assurances from government that employers will keep promises made over several generations - increasing government's role as a regulator.

This piece of research looks at the role the EU has to play in facilitating this transfer of risk from governments to employers. In particular it looks at the 'IORP' (Institutions for Occupational Retirement Provision) Directive, passed this year. This is an interesting piece of legislation, because it attempts to both reassure individuals by introducing a new layer of European regulation, and to liberalise the regulation of occupational pension schemes by removing some national rules that stop them from investing in equities.

The research looks at what the European Commission is trying to achieve, how its tactics are modified by the political constraints it faces, and whether it is likely to succeed.

## **The Independence of Regulatory Agencies: A Preliminary Assessment of France and the UK**

**Paolo Dasgupta**

The PhD will explore whether independent regulatory agencies (IRAs) are independent from government officials and regulatees in practice. It will draw on existing literature, which has focussed on formal delegation and institutional design of IRAs. It will look at whether the independence of IRAs occurs in practice by looking at a number of variables that define their effective relationships with bodies which can influence their decision-making. While independence has been written about as a factor contributing to desired regulatory outcomes, this paper will address whether IRAs have the ability to carry out their statutory duties without being affected by external pressures. The aim of the PhD is to assess IRAs' degree of independence from governments and regulatees, and seek to explain the findings. The research will use selected comparative case studies by looking at two key sectors (telecoms and finance) in two countries, which are France and the United Kingdom.

The comparison will be two-fold as it will compare independence across countries and sectors providing both country-specific institutional perspectives as well as market-specific context to the paper. The regulators examined for the purposes of this research are the Office of Telecommunications (Ofcom), the Autorité de Régulation des Télécommunications (ART) for the telecoms sector and the Financial Services Authority (FSA) as well as the Commission des opérations de bourse (COB) for the financial one.

This presentation will provide an analysis of the work-in-progress, concentrating on the UK regulators.

## **Characterising Risk Issues in the Regulation of Transgenic Insect-Resistant Maize**

**Adrian Ely**

This paper looks at the employment of science by various actors in the regulation of four different risk issues related to genetically modified crops, specifically analysing the case study of Bt maize in Europe.

The commercial release of Bt176 maize has been suggested to present the possibility of harm to non-target organisms, development of target insect resistance, gene-flow to non-GM maize stocks and increases in antibiotic-resistant bacteria. Each of these four issues can be characterised by the certainty of the science that describes it (formal risk/uncertainty/ignorance), and by other dimensions of the risk such as reversibility and distribution.

Against a background of diverse national legal frameworks and policy networks, the recognition and emphasis of the different risks associated with commercial release has diverged both between EU member states and between different groups of actors in each jurisdiction. This paper documents a comparative study across three EU jurisdictions, drawing primarily on critical science and social constructivist perspectives. I examine the interpretation and employment of specific scientific evidence (related to each of the four issues) by actors such as scientific advisory

committees, firms and environmental groups. The dimensions of the relevant risk issue and the nature of the scientific uncertainty surrounding it are discussed, and related to the extent to which they have been drawn upon in arguments by various actors.

### **Global Regulation and Domestic Institutional Change: South Africa's Regulatory Response to WTO Rules Olu Fasan**

The Uruguay Round of trade negotiations (1986-1994) resulted in a profound transformation of the legal and regulatory landscape of the world trading system. More than ever before, elaborate and detailed rules were created at the international level to constrain the regulatory autonomy of states in many areas of trade and trade-related policy, including intellectual property rights, sanitary and phytosanitary measures, and customs valuation.

The purpose of this paper is to present the findings of a study which focuses on how South Africa has been adjusting to specific WTO agreements, as well as the determinants of its legal and regulatory response. The study tests some explanatory variables derived from legal/regulatory theories, and political economy. For instance, is it true that international regulation/law has an independent compliance pull of its own, derived from its obligatory nature of legal force? Under what conditions would a developing state adjust to international rules and standards? How do factors such as the 'ownership' of the rules as well as perceptions about their fairness and appropriateness affect a state's willingness to implement them domestically? What role do political economy variables such as circumstances, institutions, interests and ideas play in the domestic internalisation process?

### **To regulate because in risk or not? A European Version Panagiotis Flessas**

Audit society, Risk society or Regulatory society? I start by comparing three books that have become classic. I go on examining a book inspired by Cultural theory: 'exploring the disjunction that often exists between the perception of risk and what the statistics actually suggest to us about the true degree of exposure to risk'.

I detest any millenarianism and I value contingency - thus I am rather critical for any Doomsday and doomsayers. So, it seems to me that the prevailing motto to be in this regard: When in risk, regulate! A whole new wave of administration rights. Right not to be mal-administered & Right to information. As for the former, one can conceptualise Ombudsman as Pastoral care and put the Right to be informed in a context of EU glasnost: Down with the opacity of comitology! On the other hand, New ways of accounting emerge: Agencies to gather information.

As well as new fashions of accountability: horizontal, sideways and downwards. All these have given rise to More Agencies and Bodies. That has led to way more interconnections - webs of networks - power relations. If that is so, one can see Accounting/accountability as power techniques and the whole Regulation as a Power Strategy to Order Lifeworld. But in that respect Ordering appears as the ultimate (no-) Communication. Thus, one has to distinguish: Self-description, self-reference or self-reproduction? In any event, Autopoiesis seems to be a domain trapped in a loop of metaphysics.

## **Consumer Overindebtedness as a Risk Problem**

### **Catarina Frade**

In recent decades, the increased use of credit by consumers in European and North American societies has led to rising standards of well-being and to a new dynamism in the economy. By anticipating future income, credit facilitates earlier access to certain goods and services that raise families' quality of life. However, if credit is a factor of economic development, it is at the same time a risk factor of a considerable economic, social and psychological cost to individuals, economic agents and Governments.

The permanent tension between economic progress and social and economic cost places an enormous challenge to the regulators. They have to find the appropriate balance between capitalising on the profits of credit and managing its more perverse effects, i.e. consumer overindebtedness.

In my study, I focus on the risk problem associated with the act of granting loans, more specifically with the regulation of risk from the consumers' viewpoint. Regulating risk requires ex-ante or preventive intervention "on the social or market processes, with a view to controlling potentially adverse consequences" for individuals and for the community (Hood, C.; Rothstein, H.; Baldwin, R., 2001).

The aim of this paper is, however, to make an understanding of the perception of risk by all the social-economic actors because this will shape the regulation produced. The problems of risk of overindebtedness may be approached from two complementary angles: the micro and the macro level.

At the micro level, risk is seen from the viewpoint of the contractual relations between a creditor (financial institution) and a debtor (consumer). At the macro level, credit risk is considered from the viewpoint of larger aggregates: the State, the society and the market. The analysis of this two angles is very important in order to better understand the (in)adequacy of regulation already produced and the desirable profile of the inexistent one.

## **Charity Reinvigorated: reconstructing charity as 'opt-in' regulation for civil society**

### **Jonathan Garton**

Within civil society, regulatory attention is focused on the charitable sector. Whilst other civil society organisations are subject to regulation, this is a consequence of their organisational form or the activities in which they are engaged, rather than their status as part of civil society. Charities, on the other hand, are subject to a specific body of laws and regulation by a dedicated government department.

This paper argues that theories of civil society reveal no functional or structural differences between charities and civil society organisations which operate outside the charitable sector. The only distinction is the legal treatment of charities, which, based on a statute passed in 1601, is unable to reflect contemporary attitudes towards civil society.

Recognising the unlikelihood of any comprehensive reform of charity law and regulation, this paper offers one way of adapting the existing regulatory regime to reflect the way we now see civil society - by reconstructing legal charity as a form of opt-in regulation for civil society organisations. The practical implications of this are

considered, with particular focus on the political activity of charities, the public benefit test and civil society as a whole.

## **The policy arenas of regulation**

### **Christophe Genoud**

Regulatory frameworks differ widely in Europe. The actors, the rules, the instruments of regulation that compose a regulatory framework determine to a large extent the size and structure of the policy arena in which the regulatory process takes place. This thesis seeks to assess the impact of regulatory frameworks of electricity regulation on their respective policy arenas of regulation. It postulates that under a same regulatory framework a given policy arena of regulation tends to be progressively fragmented into sub-arenas along specific regulatory issues (games). In other words, it claims that regulatory games shape the nature and the structure of the policy arena and that differences in games ultimately leads to the constitution of specific policy sub-arenas. To test this hypothesis, this thesis will analyse the regulatory processes and arenas of the three very different regulatory frameworks of electricity regulation of France, UK and Germany. Three regulatory issues will be more specifically studied : pricing, competition regulation and public services obligation provision.

Theories and concepts from the network analysis literature will be used in this thesis to analyse the regulatory processes and games and to formulate hypotheses on actors' strategies and behaviour. Concepts from theories of regulation will help to characterize the regulatory process and the nature of the different regulatory games and issues.

The pertinence of this research project will be illustrated with empirical and theoretical examples.

## **Studying regulatory responsiveness across tasks and organizational units**

### **Sharon Gilad**

In this presentation I intend to focus upon conceptual, theoretical and methodological issues arising from my research design.

The research aims to explore regulatory responsiveness to concentrated business (vs. diffused groups). I conceptualize regulatory responsiveness as the advantage given to certain interests over others in an agency's outputs and procedures and their further internalization in its structure and ideology.

Drawing upon an organizational perspective (in contrast to the individualistic approach of the Chicago economic theory of regulation) the research aims to explore how internal organizational features -critical resource deficiencies and dependencies- affect output and procedural responsiveness and the extent to which the latter are further supported by deeper structures and ideologies. In order to do so I aim to compare regulatory responsiveness across different regulatory tasks (standard setting, information gathering and complaints handling) and organizational units (the Financial Services Authority and the Financial Ombudsman Service).

The presentation will discuss the following issues: a) the concept of 'regulatory responsiveness' vs. 'regulatory capture'; b) the research hypotheses, comparing the expectations of 'resource dependence theory' with those of the Chicago economic

theory of regulation; c) the methodological decision to compare agencies across tasks and organizational units within the same regulatory regime, rather than comparison across sectors and nations.

### **Risk management or risk governance? A case of contaminated land management** **Pauliina Jalonen, University of Vaasa/Finnish Environment Institute, Finland**

We receive new information about former - mainly industrial - contaminating activities in accelerating pace. As a result remediation of contaminated land sites has become an increasing industry. Land contamination as an environmental policy problem is a fairly recent phenomenon, concerns have been magnified in a number of countries by rather major incidents (e.g. Love Canal in USA, Lekkerkerk in the Netherlands).

In the paper I assume that remediation decision making is a social negotiation process informed by scientific and technical information. In my on-going PhD-project I compare cases of local contaminated site management decisions. While some of cases revolve around technical aspects of remediation, others derive from non-technical, social concerns, evoking sometimes controversy. The study analyses the characteristics of the local modes of governance and their significance to the construction of the risk and to the management decision chosen. In my paper I explore the relevance of governance perspective for the studying of contamination management.

### **Project Risk Management in IT Projects: The Consequences of Risk Perception** **Elmar Kutsch**

Many information technology (IT) projects fail meet specified project objectives of scope, time and budget. The failure of project managers to successfully conduct a project as a temporary undertaking to create a unique service is caused by their inefficiency to match estimated risk with the actual risk in a project. On the one hand, the underestimation of risk, which implies, that either uncertainties (conditions characterised by incomplete knowledge) with probable negative effects have not been identified but may actually materialise, or probabilities and/or consequences of identified uncertainties have been assessed lower than their actual value, may lead adverse affects on project outcomes caused by the materialisation of previously underestimated uncertainties with potentially adverse consequences on the project objectives; on the other hand, the overestimation of risk to spending limited project budget and time to identify and to manage uncertainties, which actually do not materialise.

Studies of how managers perceive risk suggest that risk is a subjective phenomenon rather than objective one, and therefore, researchers need to understand how project managers perceive and respond to perceived risk in understanding why project risk management processes are ineffective in reducing or preventing project failure.

However, the consequences of the project managers misperception (over- and underestimation) of risk are not well understood at present and without such understanding, the management to effectively respond to perceived risk is likely to be misdirected.



This research aims to provide a basis for understanding and anticipating a project manager's misperception of risk and its influence on the achievement of the project objectives.

## **Regulatory Policy Gone Astray**

### **Diane R. Maurice**

My thesis will validate the premise that short-term rational actions often give way to large scale unanticipated effects. The policy paradox presented by the 1988 Basel Accord is highlighted by the G10's 1986 study on innovations in international banking which suggested that a likely outcome of the 1988 Accord would be the development of regulatory avoidance - in the form of securitization. Yet securitization was never directly addressed in the 1988 Accord. Why and how the \$7 trillion regulatory-advantaged securitization market evolved after the Accord was approved illustrates the importance of first clarifying several policy issues, such as: What were the intended consequences of the Accord? The positive aspects can be quantified but the unintended consequences are also of academic and practical interest. Did these regulations not only expose the banking system to the threat of potential new systemic disturbances, but also contribute to the global propagation of risk? From a practical perspective, do these countervailing and often counterfactual developments assist us in understanding the possibility for policy shortfalls for future regulatory proposals?

In framing the policy puzzle around these outcomes, one can take the analysis a step further by evaluating incentives of the key political actors to pursue the development of regulatory advantaged products and the ensuing risks and rewards. One prominent theoretical approach centring on interest theory and rational choice perspectives would argue that the Accord had clear winners and losers. One hypothesis related to the rational choice proponents might relate to the UK/US alliance proposing regulations that were clearly favourable to banks in their jurisdiction. Compliance with minimum capital might have been easier for banks headquartered in London and New York, but more difficult for some of the smaller regional-based Japanese and German banks. Because of this UK/US banks might be stronger with a significant competitive advantage over their European counterparts. However, alone, this "interests" perspective would ignore the importance of the institutional structure of the regulatory agencies involved. Were those regulatory bodies involved in implementing the Accord in fact even capable of ensuring the three goals were met?

## **Risk and Regulation in Financial Services Outsourcing**

### **Peter McCormack**

This paper will outline the development of outsourcing regulation and its growing importance in the financial sector and hence its increased importance to the regulator. It will commence with an outline of the FSA regulatory approach since N2, trace the development of outsourcing guidance in the various interim prudential sourcebooks.

It also will outline the role of the ARROW framework in assessing risk to the FSA' statutory objectives, and the approach of the FSA risk review team in assessing the operation and management of outsourcing within authorised firms. The paper will follow the outline of the above publication and also illustrate the approach to research.

## **'Growing Pains': the development of a regulatory community**

**Morag McDermont**

When the regulator 'grows up' or matures at the same time as the sector it regulates the regulator and regulatees jointly develop discourses on the meaning of risk and regulation. What develops is a community of mutual interests; the intertwined nature of the relationship goes beyond conceptions of regulatory capture. Where the regulator is also the funder, as in the case of the Housing Corporation, (the regulator of housing associations), this process is particularly accentuated as the regulator/funder relies on the regulatees to deliver governmental priorities.

Using the Foucault's approach of genealogical analysis it becomes possible to develop an understanding of how this regulatory community has come to be 'made up'. Carrying out an analytics of the government of housing associations exposes how everyday practices develop which enable the regulatees to exercise power within the environment. Such an analysis also reveals the complexity of the exercise of power within the sector, as some organisations become central in shaping perceptions of risk and, consequentially, influencing the value systems of the community. However, if sovereignty is to be ceded to the regulatory community, how can the interests of the marginalised communities whom housing associations provide for be recognised?

## **Imaging the West: Adoption and Adaptation of International Auditing Standards in Post-Soviet Russia**

**Andrea Mennicken**

What happens when regimes of economic and financial regulation are transferred from their local sites into new, unknown territories?

This paper investigates how International Standards on Auditing (ISAs) have entered and shaped the system of Russian audit regulation. The paper is based on a historical analysis of Russian audit standard setting from 1992 until 2002. Throughout the paper it is argued that international auditing standards are not merely a technical device that, without any problems, can be transplanted from one place to another. Although ISAs are often treated as an unproblematic, rational and generally applicable solution to a specific set of problems, their incorporation into the Russian regulatory system is entangled in political disputes, the making and breaking of strategic alliances, relations of domination, struggles for professional identity, and other 'non-technical' issues. ISAs constitute more than an instrument to secure the regulatory needs of private investment; they serve also as an important mode of symbolic communication that helps demarcate professional territories and manage the interface of the profession with critical publics. It is the central task of this paper to unfold this two-sided nature of the standards and its effects on Russian audit rule formation.

The paper is empirically grounded in 47 semi-structured interviews and the study of regulatory texts and archival materials, which have been collected in Moscow during 2001 and 2002.

## **Controlling conflicting objectives - The role of risk management in the evolution of complex organizational controls**

**Anette Mikes**

Both in the risk management and in the accounting & finance literature there is a dearth of empirical accounts, descriptions and explanations of existing risk management arrangements and the roles risk managers play in organisational life. My research, utilising case study material from seventy in-depth interviews with senior managers at three financial organisations, is a step in this direction. The following questions have been addressed: What roles does risk management come to serve within the organisation? Are risk managers succeeding in expanding a narrow technical staff function into a broader role that requires them to interact with a wide range of organisational actors? Are they moving into a more strategic role where they have the ears of top management? Following on from this, what implications arise for the regulation of risk management practices? The presentation outlines some of the findings of the research project.

First, it demonstrates the results of 'six tests of strategic significance' that was developed and applied in the course of the case studies. As risk management seeks to become more strategic and to be more centrally implicated in decision making, planning and control, so it is in contest with other staff groups over the language in which key uncertainties are discussed and over the ways performance is measured and rewarded.

Secondly, it highlights the political aspects of managing risk in organisations which explain the emergence of three types of risk managers, each displaying different strategic and control influence.

Finally, a change in the internal control practices of the observed financial organisations will be discussed. Both governance and management accounting research have long recognised the limitations of the traditional cybernetic notion of control (Koomian, 1993; Dunsire, 1993; Hood-Jones, 2001; Otley, 1994). However, empirical evidence that does not only acknowledge the existence of more complex controls, but also explains them, is at best, sparse. The presentation offers such evidence from the contemporary banking industry and argues that risk management played a crucial role in the transformation of the internal control landscape of the organisations observed.

## **Can democracy and quality come together in risk policy?**

**Alfred Moore**

The political problems surrounding risks to health and the environment are widely thought to exemplify a failure of modern representative democracy. Academic commentary on these 'risk society' problems frequently concludes with a recommendation for some sort of democratization of the definition, analysis or management of risks. Indeed, in policy circles, too, participation has become the 'vogue prescription for many of today's regulatory ills'; (Rothstein, 2003: 1). These calls for various kinds of democratization aim to improve both the quality of risk regulation, with reference to prominent failures such as the BSE crisis, and its democratic legitimacy.

This paper focuses on the arguments regarding the quality of risk policy. Under what conditions, and to what extent, can these models for democratization reasonably hope to improve the quality of risk regulation? I will categorise these models as 'open' or 'closed'. Whether participation is to take place within the epistemic boundaries set by the regulatory institutions themselves or whether it is to develop outside of those boundaries. I will argue that the quality of risk regulation can be improved (on its own

terms) through 'closed' democratization. This, however, will not solve the political problems of risk regulation.

### **When Scientific Advances Generate Risk - Comparing Risk Management in Medical Biotechnology Policies in Britain, in France and in Germany**

**Anne-Sophie Paquez**

The starting point of my research was the paradoxical observation that, in contrast with the traditional situations when scientific progress helps smoothening fears and building some certitudes on which political decisions may rely, the more medical biotechnology developed, the more its risky dimension was revealed. I am interested in determining to what extent risk management may have modified policy-making and regulation in the biomedical field, comparing with three specific appliances (gene therapy, human cloning, preimplantation diagnosis) in three European countries (Britain, France, Germany). Risk management strongly differs from these appliances and countries, as it may result from the analysis of judicial systems. Risk seems to be part of cultural backgrounds, regulated on a national level, reluctant to a European harmonisation. Its taking into account by governments has initiated (France and Germany) or accelerated (Britain) the implementation of new policy tools and procedures ('participative democracy' and bioethics). Four conceptual / methodological questions are currently on review: - To what extent is risk definition dependent upon stakeholders' discourses? - Insofar is biotechnological risk specific? - How assessing the impact of risk management on regulation and policy-making? - Is risk management a tool for public authorities to legitimate their choices?

### **Organisation of authority in European Economic space: The case of bank capital regulation**

**Lenka Polackova**

This paper examines the allocation of authority for bank capital regulation in the EU and its implications for effective governance and democratic legitimacy. Bank capital regulation represents a 'hard case' for investigating whether national differences are systematic and resilient as the Basle II Capital Accord will introduce the revolutionary changes in the way banks are regulated. Three crucial themes run through the paper: the asymmetrical dependence between the Basle and EU capital frameworks, increased political confidence of private actors, and the disaggregation of the nation state yet continuing centralisation of decision-making in domestic arenas. Part One identifies the pertinent issues and the discrepancies in national regulatory policies and explicates the disputes and compromises that are shaping the final design of regulatory policies. Part Two demonstrates how the exogenous economic structural changes in world finance effectively open up and make critical a range of both old and new playing fields, and encourage political confidence of private actors. Part Three investigates the impact of this combination of technocratic and private authority for effective governance and democratic legitimacy. The paper concludes that the transnational regulatory networks represent a reconstitution of state authority with the help of the market and that the capacity of national agents to act is still inextricably intertwined with the maintenance of domestic institutions and national discourses.

## **The Politics of International Food Safety: Risk, Regulation and Revenues**

### **Diahanna L. Post**

In 1997, the World Trade Organization relied in part on international food safety standards to rule against a European Union ban on beef hormones. The dispute ushered in a new era in judging whether domestic regulations are protectionist barriers to food trade or justifiable public health measures. This paper asks how such international standards, adopted by the Codex Alimentarius Commission, influence domestic food safety policies in a range of countries. Part of a larger project, the paper analyses two countries, Argentina and the Dominican Republic, and several food safety policies, including policies on food additives, contaminants, food hygiene and microbiological contamination. This analysis provides an understanding of the conditions under which international standards are more or less influential. Preliminary conclusions point to an important role for regional trade pacts in disseminating Codex standards in these two countries, and for international organizations providing technical assistance. While industry and trade associations might be expected to promote adherence to Codex standards, there appears to be little attention to the Codex standards unless they have already been adopted by government. Thus national governments remain key actors and the key focal point for understanding the emergent governance regime of food safety risk.

## **There is some obstacle for Internal Energy Market? The cases of Spain and France**

### **Imma Puig**

Since the introduction of European Directive for the electricity market in 1996, the impulse to build up the Internal Energy Market (IEM) in Europe began, covering both electricity and natural gas industries. In some member states of the European Union, the privatization and liberalization process of electricity started before this directive, as is the case of Spain.

The Spanish case is relevant due to it represents the fifth largest electricity market in Europe (behind Germany, France, the United Kingdom and Italy). Furthermore, Spain and Portugal signed an agreement in order to create the Iberian Electricity Market (IBELM), by unifying their electricity networks. The integration has to be completed during the 2003. This could be a good new for the european goal but, in order to achieve the IEM it is necessary the cooperation of all countries, this means that Spain (an maybe all Iberian Peninsula, with IBELM) will need a strong cooperation relationship with France, who represents the 'door' towards Europe for Spain.

Under this context, this paper will try to show a serial of theoretical, methodological and empirical questions related to the study of the electricity market deregulation and its consequences in the creation of the IEM in Europe.

## **Y2K as a Lens on Regulation in the UK Aviation Industry**

### **Kevin Quigley**

"The most 'doom and gloom' predictions foresee planes tumbling from the sky" (From the 'The Millennium Bug,' published by the House of Commons Library, 1998).

Aviation disaster was the most feared consequence of the millennium bug (Y2K). The example served to characterise the potential seriousness of Y2K to the public and to

the government. In response to the perceived problem, the Civil Aviation Authority (CAA) had a vast and complex Y2K operation in place, which reflects the far-reaching and interdependent nature of the industry. The CAA audited five British aviation-related industries, which together encompass over 1,800 different organisations. The CAA was also a member of numerous government and international fora. At the end of 1999, the CAA reported to the government's Y2K National Infrastructure Forum that the CAA assessments did not indicate any risk of material disruption to service.

In the end, virtually nothing happened in the aviation industry: on January 1, 2000, one ticketing system failed. Was the CAA's Y2K operation an effective risk management plan? Ironically, despite the hype, aircraft systems have very little date-functionality built into their safety-critical systems. The likelihood of disaster was negligible from the start. Why then, did the CAA do so much to ensure Y2K compliance? And did its slowness to report company-specific information publicly enhance or undermine safety regulation?

For the purposes of this paper I propose to bring Hood, Rothstein and Baldwin's (2001) meso-level, regime-based analytical framework of government regulation to bear on the CAA's management of the millennium bug (Y2K). This paper will draw on recent and original fieldwork on the CAA and the Y2K bug by way of exploring risk regulation regimes in a highly interdependent, safety-critical and high public profile environment.

## **Moral Hazard and Adverse Selection in Corporate Financial Risk Management**

### **Thomas Rangel**

The literature of corporate financial risk management has focused on proposing models that explain why a firm should consider the management of its financial risks. The striking result is that although there are many theoretical benefits of hedging, there is a great proportion of big firms (approximately 40%) that do not think that the benefits are sufficient, and therefore decide not to hedge at all. The common explanation is that the high transaction costs disincentive firms to hedge. This argument may be true for small firms, but not necessarily for big ones. This paper presents a possible rationale to understand why some firms may decide not to hedge. The basic argument is that there could be potential implicit costs, which depend on asymmetries of information between managers and owners. Specifically, the moral hazard and adverse selection problems could be so overwhelming that they could drive firms to abstain from the potential benefits of hedging. Therefore, the paper includes a new dimension not taken into account in the previous literature to understand the apparently differing decisions taken by the non-financial firms' managers.

## **Competition and learning in institutional change: evidence from telecoms regulation in Italy**

### **Francesco Maria Salerno**

What drives institutional change? According to proponents of institutional theory, competition and learning are far weaker in the world of politics than in the economy.

An easy counterexample is, though, before everybody's eyes: that of telecoms regulation. To a high degree, countries in Europe seem to have converged around a 'model' based on liberalization, re-regulation and competition law. The presentation would aim to shed light on the issue of institutional change and converge in the

telecoms sector by drawing on the evidence available from the Italian case whereby, in the space of three years, the country revolutionized its institutions and, what's more, went in the same direction as Britain.

The work is based on empirical research carried out in the course of the PhD.

### **Accounting the Collective Management of Risk: the Case of the Defence of Venice from High Waters** **Rita Samiolo**

My research will try to identify the role of accounting in a controversial project of public works - the construction of mobile barriers to save Venice from the problem of high waters, which challenges its very survival. More specifically, it aims at reconstructing how the logic of economic calculation, sustained by accounting techniques, has competed with more legitimate and visible rationalities in thirty years of political struggles around the project, now finally approved. The concept of risk is at the centre of the case study, since Venice safeguard is made of competing interventions whose approval is a matter of priorities accorded in the name of risk and emergency, essential drivers of financial resources. Changing notions of risk have appeared along the years, as different voices have been credited in shaping the agenda of Venice safeguard and in allocating a great amount of financial resources. Together with disagreeing political authorities at all levels of government, different expertises have been involved in the attempt to provide a stable solution to what has become an "endemic emergency". My work wishes to reconstruct the complex interplay of politics, science and accounting numbers in this collective - half public and half private - effort to save Venice.

### **Using mental models to improve technological risk perception and communication: The case of GM foods** **Anne Katrin Schlag**

My thesis applies the mental model approach to risk perception and communication about GM foods.

In the past, technological risk communication has often been unsuccessful. This lack of success has been attributed to the divergent risk perceptions of expert and lay people. While the expert view of a risk was generally regarded as scientific and objective, the lay public's perception was seen as subjective and irrational. Only recently has there been a change in these assumptions and it has become clear that the public's risk perception cannot simply be discarded but needs to be acknowledged in order to be able to develop better risk communications. As a result, risk communication efforts are slowly moving away from top-down, expert-orientated approaches to more participative two-way communications.

One recent such development to risk communication is the mental model approach (Granger Morgan, Fischhoff, Bostrum, Atman, 2002) which I utilise for my thesis. This approach seeks to identify for a particular risk both accurate and inaccurate beliefs that are held by a target population. Mental models are then used as the basis for developing risk communication material. The goal is to bridge the gap between lay and expert models of the risk by first examining current knowledge, and second, adding missing concepts, correcting misunderstandings, and strengthening correct beliefs.

## **International Regulation of Government: The Case of Chapter 11**

### **Gus van Harten**

The paper offers a 'regulation of government' perspective (Hood and Scott, "Regulating Government...", CARR, 2000) on the investment chapter (Chapter 11) of the North American Free Trade Agreement. NAFTA Chapter 11 creates a rules-based system for the regulation of the NAFTA governments. Its broad scope and private enforceability make Chapter 11 an important example of the trend toward international 'hard law' regulation of government.

With Chapter 11, the NAFTA Parties aspired to regulate government conduct according to international rules; the system operates, as such, to 'regulate the regulators'. Normally, Chapter 11 is approached from the perspective of private commercial arbitration. This paper offers a different perspective by viewing Chapter 11 as regulatory model applied to the conduct of states.

Following a review of the early Chapter 11 jurisprudence, the paper examines what the 'regulation of government' perspective reveals about the nature of Chapter 11. It also comments on whether Chapter 11 has been effective for its purpose, and on potential implications for governments. Ultimately, these issues turn on the clarity and consistency of guidance offered by investor-state tribunals and domestic courts, and on the degree to which the rules are internalised and applied within governments.

## **Derivatives Markets: A New Cartography of Risk in the GPE**

### **Duncan Wigan**

This paper investigates the explosion, both in number and variety of derivatives contracts since the demise of Bretton Woods. The initial impetus for this development may be located in the increased volatility of financial markets inherent in this demise. However, a comprehensive explanation and understanding of this phenomenon cannot be gleaned solely from an examination of this disjuncture and its immediate repercussions, but must be located in the subsequent evolution of financialisation. Indeed, the explosion has been most pronounced in financial derivatives over the past 10 years, and therefore is explained as a reaction within markets to tensions generated through financialisation, and most significantly as a consequence of a redistribution of risk, and responsibility for risk management, between society, the state and finance. Rather than exploring the efficacy of derivatives markets in stabilising market operations, this paper aspires to bring the debate into the broader arena of global political economy, and clarify the implications for the wider social world.

## **The Precautionary Principle and the Rule of Law**

### **Joakim Zander**

The current use of the Precautionary Principle in European risk regulation raises some concerns as regards the respect for fundamental legal principles such as the Rule of Law. The reversal of the burden of proof, the limits of the judicial review carried out by the European Court of Justice, and the problems with maintaining the principle of just expectations when applying the Precautionary Principle are issues that need to be dealt with more in depth. In this presentation I would like to highlight some of these issues as they have appeared in recent case law from the European Court of Justice, most notably the Pfizer case dating from September 2002. The aim of my research is not to criticise the Precautionary Principle as such, on the contrary I



consider it a necessary instrument in today's world of increasingly globalised risks. But in order to ensure an effective use of the Principle it must be made sure that it complies with certain minimum norms of the legal system. Especially in the light of mounting international criticism of the manner in which the EU is applying the Principle it is essential to make sure that it can be defended legally as well as politically.