



Regulation & Governance

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March 2007

Editors' introduction

Can regulation and governance make a difference?

John Braithwaite, Cary Coglianese and David Levi-Faur

Articles

Regulatory regimes and accountability

Peter J. May

Abstract: This research considers accountability issues for new forms of regulation that shift the emphasis from prescribing actions to regulating systems or regulating for results. Shortfalls at various levels of accountability are identified from experiences with these regimes in the regulation of building and fire safety, food safety and nuclear power plant safety. These experiences illustrate how accountability shortfalls can undermine regulatory performance and introduce a potential for subtle forms of regulatory capture. These concerns underscore the importance of finding the right fit between regulatory circumstances and the design of regulatory regimes.

From government to governance: External influences on business risk management

Bridget M. Hutter and Clive J. Jones

Abstract: The influence of external organizations and pressures on business risk management practices has hitherto been examined through the influence of state regulatory regimes on businesses. This article concentrates on key socio-legal concerns about the influence of the law in social and economic life. We know that the sources of regulation and risk management are diversifying beyond the state. What we *do not* have is much empirically informed research about the range of sources influencing the business world and in particular the weighting of influence exercised by them. In this paper we explore the understandings regulatory actors have of the different external pressures on business risk management through an empirical study of the understandings of those in the food retail sector about the management of food safety and food hygiene risks. A broader objective is to throw some further light onto the debate about regulation within and beyond the state.

Information technology and public commenting on agency regulations

Steven J. Balla and Benjamin M. Daniels

Abstract: In this research, we assess whether the number of public comments filed in response to proposed agency rules has dramatically increased as a result of the automation of the submission process. Specifically, we compare the volume of comment activity across two large sets of rules issued by the Department of Transportation, one that occurred before the launch of an agency-wide electronic docket system and another that occurred after this launch in 1998. Our analysis shows that, contrary to expectations held by many researchers and practitioners, the overall levels and patterns of stakeholder behavior showed a remarkable degree of similarity across the two periods. This finding implies that public involvement in rulemaking is not likely to become vastly more prevalent in the information age, confounding both hopes of democratization of the process and fears of costly and harmful mass participation.

Regulation by generalization

Frederick Schauer and Richard Zeckhauser

Abstract: Both criminal and regulatory laws have traditionally been skeptical of what Jeremy Bentham referred to as evidentiary offenses – the prohibition (or regulation) of some activity not because it is wrong, but because it probabilistically (but not universally) indicates that a real wrong has occurred. From Bentham to the present, courts and theorists have worried about this form of regulation, believing that certainly in the criminal law context, but even with respect to regulation, it is wrong to impose sanctions on a “Where there’s smoke there’s fire” theory of governmental intervention. Yet, although this kind punishment by proxy continues to be held in disrepute both in courts and in the published work, we argue that this distaste is unwarranted. Regulating – even through the criminal law – by regulating intrinsically innocent activities that probabilistically, but not inexorably, indicate not-so-innocent activities

is no different from the vast number of other probabilistic elements that pervade the regulatory process. Once we recognize the frequency with which we accept probabilistic but not certain burdens of proof, probabilistic but not certain substantive rules, and probabilistic but not certain pieces of evidence, we can see that defining offenses and regulatory targets in terms of non-wrongful behavior that is evidence of wrongful behavior is neither surprising nor inadvisable.

Research Forum

Governing the ungovernable: The challenge of a global disaggregation of authority

James N. Rosenau

Abstract: The processes of globalization have led to a proliferation of spheres of authority and significant challenges for global governance. In this paper is discussed the concept of spheres of authority, the factors that encourage their proliferation, and the prospects for global governance in a world of disaggregated authority. The proliferation of spheres of authority does not mean that global governance is impossible, but that it will not result from a global government. Instead, governance will emerge from the interaction of overlapping spheres of authority; regulation will be achieved not through centralized authority but through the spread of norms, informal rules, and regimes.

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June 2007

Articles

Globalization and legal change: The “Americanization” of European law?

Robert A. Kagan

Abstract: Intensified global economic competition, economic liberalization, and the rise of EU governance have led some observers to argue that there has been a trend toward the “Americanization” of the European “way of law.” This article addresses that contention, focusing on legal change in European member states. It first describes ways in which the American legal tradition has differed most sharply from the national legal systems of Western Europe (including Great Britain) and the political and economic factors that account for this “American legal distinctiveness.” Similar political and economic factors currently are at work in Europe, the article acknowledges, creating incentives for legal convergence. But it also argues that European legal culture and the political organization of European national states generate path-dependent forces that impede European movement toward American ways of law, and it discusses six important differences between European and American law that remain entrenched and are unlikely to disappear.

When trade liberalization turns into regulatory reform: The impact on business–government relations in international trade politics

Cornelia Woll and Alvaro Artigas

Abstract: Business–government relations on trade issues are generally characterized as protectionist lobbying or – less often – lobbying for the liberalization of markets. However, with the evolution of the trading system, negotiations today concern not just market opening, but also the regulatory frameworks that structure international trade. This transformation has important consequences for the ways in which private interests can contribute to trade negotiations. Instead of simply trying to exert pressure, businesses and other private actors now form working relationships with governments based on expertise, learning, and information exchange. This article illustrates these new forms of public–private interactions with examples from the USA, the European Union, and Brazil.

Does border enforcement deter unauthorized immigration? The case of Mexican migration to the United States of America

Wayne A. Cornelius and Idean Salehyan

Abstract: This paper asks whether the migration decisions of unauthorized Mexican immigrants to the USA have been influenced by stronger US border enforcement efforts since 1993 that have sharply increased the physical risk and financial cost of illegal immigration. These measures were supposed to have decreased the probability of successful entry, thereby lowering the expected benefits of migration. We carried out a logistic regression analysis of data from a recent survey of 603 returned migrants and potential first-time migrants in rural Mexico. Our findings indicate that tougher border controls have had remarkably little influence on the propensity to migrate illegally to the USA. Political restrictions on immigration are far outweighed by economic and family-related incentives to migrate. An alternative, labor-market approach to immigration control with higher probability of effectiveness is outlined.

On the value of formal assessment of uncertainty in regulatory analysis

Judson Jaffe and Robert N. Stavins

Abstract: The US Office of Management and Budget introduced in 2003 a new requirement for the treatment of uncertainty in Regulatory Impact Analyses (RIAs) of proposed regulations, requiring agencies to carry out a formal quantitative uncertainty assessment regarding a regulation’s benefits and costs if either is expected to reach \$1 billion annually. Despite previous use in other contexts, such formal assessments of uncertainty have rarely been employed in RIAs or other regulatory analyses. We describe how formal quantitative assessments of uncertainty – in particular, Monte Carlo analyses – can be conducted, we examine the challenges and limitations of such analyses in the context of RIAs, and we assess how the resulting information can affect the evaluation of regulations. For illustrative purposes, we compare Monte Carlo analysis with methods typically used in RIAs to evaluate uncertainty in the context of economic analyses carried out for the US Environmental Protection Agency’s Nonroad Diesel Rule, which became effective in 2004.

Research Forum

[The economic significance of “insignificant” rules](#)

Robert Hahn and Caroline Cecot

Abstract: We know relatively little about the economic effects of “insignificant” rules because they are not typically analyzed. Yet, these rules could be cumulatively important. We provide an economic analysis of one proposed rule to control hazardous air pollutants, which is not considered to be economically significant. This rule is of particular interest because it is one of the first in a long series of rules that Environmental Protection Agency (EPA) will consider for limiting hazardous air pollutant emissions. Our analysis suggests that the proposed controls that EPA has considered are not likely to pass a benefit–cost test. We recommend that an agency base its decision to allocate additional resources to benefit–cost analysis on the expected value of the improved information. In addition, agencies should consider applying a rule of thumb that would specify a threshold level of risk reduction that needs to be achieved before some kinds of regulation are considered.

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September 2007

Articles

Globalization and institutional competitiveness

Martin Marcussen and Lars Bo Kaspersen

Abstract: Only dead institutions do not change and only rarely do institutions change by themselves. To maintain performing institutions takes institutional entrepreneurs who are willing to take risks and who possess the capacity and the talent to innovate. A regulation discourse, in contrast to a marketization discourse, would not picture the relationship between globalization and institutional change as a deterministic one. Rather, it would expect that all kinds of actors play a large number of different roles in the course of ongoing institutional change. The result of such complex institutional change, at the level of welfare states, multinational businesses, public administration, and training systems, to mention just a few of the empirical areas covered in this special issue, cannot be fully understood by applying an overly rigid, static, and dualistic approach to modern capitalist economies. The concept of institutional competitiveness, on the contrary, allows for institutional entrepreneurship and institutional hybrids constituting pulsating polities.

Multinationals and institutional competitiveness

Peer Hull Kristensen and Glenn Morgan

Abstract: This article discusses how institutional competitiveness and multinationals are mutually enriching concepts. Multinationals transfer capital, technology, and knowledge into new settings. They allow subsidiaries access to new markets, new resources, and new processes. Potentially, therefore, institutional competitiveness can be increased by the presence of multinational corporations (MNCs) and their subsidiaries. However, this depends on the type of multinational and the type of institutional context. By differentiating two types of MNC in terms of short-term and long-term orientations to investment, and two types of host institutional setting in terms of strength of institutional complementarities and interconnectedness, we develop a typology of four types of interaction between MNCs and institutional settings. We then analyze how each type influences institutional competitiveness. We conclude that these outcomes, while structurally shaped, are still dependent on how actors (individuals, firms, collective organizations, and governments) strategize to develop institutional frameworks in the context of highly competitive global markets.

Institutional competitiveness, social investment, and welfare regimes

Paul Bernard and Guillaume Boucher

Abstract: Are the rather generous welfare regimes found in most European countries sustainable; that is, are they competitive in a globalizing economy? Or will they, on the contrary, be crowded out by the more austere and less expensive regimes generally found in liberal Anglo-Saxon countries? We first discuss this issue conceptually, focusing on the notions of institutional competitiveness, social investment, and short-term and long-term productivity. We then briefly present the results of an empirical study of 50 social indicators of policies and outcomes in 20 Organization for Economic Cooperation and Development (OECD) countries during the early 2000s. We conclude that welfare regimes have not been forced to converge through a "race to the bottom." There remain three distinct ways to face the "trilemma" of job growth, income inequality, and fiscal restraint: Nordic countries achieve high labor market participation through high social investment; Anglo-Saxon countries attain the same objective through minimal public intervention; while Continental European countries experience fiscal pressures because their social protection schemes are not promoting participation to the same extent.

Institutional competitiveness in the global economy: Denmark, the United States, and the varieties of capitalism

John L. Campbell and Ove K. Pedersen

Abstract: Despite high taxes, a large welfare state, and much economic regulation, Denmark competes successfully against other advanced capitalist economies. Denmark's success is based in large part on its institutional competitiveness – its capacity to achieve socioeconomic success as a result of the competitive advantages that firms derive from operating within a particular set of institutions. The institutional basis for successfully coordinating labor markets and vocational training programs are

examined for Denmark and the US – two countries that were very different institutionally but very successful in the 1990s and in the 2000s. We show that there is no one best way to achieve success in today's global economy, except with respect to social inequality; that the mechanisms underlying institutional competitiveness are more complex than often recognized; that institutional hybrids can be as successful as purer political economic cases; and that high taxes and state spending can enhance socioeconomic performance. As such, this paper challenges both neoliberalism and the varieties of capitalism school of comparative political economy.

Contemporary challenges to the German vocational training system

Kathleen Thelen

Abstract: The German vocational training system has played a central role in sustaining the competitive strength of German manufacturing. This article provides an analysis of contemporary developments in this system to assess its likely future trajectory. I begin by underscoring the differences and similarities of the German system to alternative arrangements that have emerged in other countries. I then turn to recent trends in Germany that have caused concern among policy-makers about the continued strength and viability of the vocational training system. I discuss reforms undertaken in the past few years that point to incremental, though possibly transformative, changes in the system designed to reduce costs and increase flexibility through renegotiations on two fronts: between general training standards and firm needs and training practices, and between the in-plant and school-based components of training.

Neoinstitutionalism: Still no intellectual hegemony?

Colin Crouch

Abstract: Despite its greater realism, neoinstitutionalism has not been able to rival neoliberal approaches in the minds of many public-policy communities. This article suggests four reasons why this is the case: the way that neoliberalism appears to be rooted in the strong paradigms of neoclassical economics, the related simple appeal of marketization as a solution to policy problems, the dominance of short-term calculation in financial markets as the apparently most successful form of economic activity, and the role of corporate actors as public-policy insiders. It is argued that an essential solution to the problem is a rapprochement between neoinstitutionalism and neoclassical economics, which is itself not necessarily wedded to neoliberalism.

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December 2007

Articles

[De facto independence after delegation: A fuzzy-set analysis](#)

Martino Maggetti

Abstract: The phenomenon of delegating public authority from elected politicians (or ministries headed by elected politicians) to formally independent regulatory agencies (RAs) is becoming increasingly widespread. This paper examines the relation between formal independence, as prescribed in the constitutions of agencies, and de facto independence. Toward this end, it conceptualizes and assesses de facto independence of RAs, and discusses organizational, institutional, and political explanations for divergence from formal independence. The complex relations between de facto and formal independence are examined with a cross-national, cross-sectoral comparison of 16 Western European RAs using fuzzy-set analysis. The results show that formal independence is neither a necessary nor a sufficient condition for explaining variations in the de facto independence of agencies. Other factors, such as the lifecycle of agencies, veto players, and European networks of agencies, have a decisive impact.

[Do markets enhance convergence on international standards? The case of financial regulation](#)

Hyoung-Kyu Chey

Abstract: Why do countries that did not participate in the establishment of international standards converge on them in the absence of external coercion? The market-based perspective asserts that market forces enhance cross-national convergence on international standards. This paper challenges the market-based perspective, focusing on compliance with the 1988 Basel Capital Accord in South Korea and Taiwan. First, it argues that adoption of the Basel Capital Accord by these countries was mainly driven by their regulatory authorities' concern about the potential risk of foreign market closure to noncompliant banks. Second, it demonstrates that enforcement by the two countries' regulatory authorities was crucial in ensuring compliance. These findings suggest that national regulatory authorities are still key actors in voluntary convergence on international standards.

[Flexible enforcement and fine adjustment](#)

Christopher S. Decker

Abstract: This paper considers the level of, and changes in, optimal noncompliance penalties under the following conditions: (i) where the regulator responsible for setting policy parameters, such as a penalty, is different from (and thus may have a different objective from) the regulator responsible for enforcing existing regulations; and (ii) where enforcement behavior changes from one in which enforcers are unresponsive to overtures on the part of firms to increase compliance to one in which enforcers are responsive to such overtures. The model developed shows that when enforcers "switch" from unresponsive to responsive enforcement, the optimal penalties for noncompliance need to be reduced. The analysis also gives insights as to what variables dictate the degree of penalty reduction.

[Seeking forgiveness in an intergroup context: Angolan, Guinean, Mozambican, and East Timorese perspectives](#)

Félix Neto, Conceição Pinto and Etienne Mullet

Abstract: Forgiveness is a key concept in many governance and responsive regulation issues. The notion of intergroup forgiveness was examined among people from four countries: Angola, Guinea-Bissau, Mozambique, and East Timor. Nine hundred and eighty-five adults who had suffered from the many conflicts in their areas, either personally or through injuries inflicted on members of their family, agreed to participate in a study that was specifically about seeking intergroup forgiveness. In all four countries, most participants of the study agreed with the ideas that (i) seeking intergroup forgiveness makes sense; (ii) the seeking process must be a popular, democratic, and public process, not a secret elite negotiation; (iii) the process must be initiated and conducted by people in charge politically, not by dissident factions; and (iv) the process is aimed at reconciliation, not at humiliating the group requesting forgiveness. Differences between the four countries were found regarding the extent to which (i) international organizations may be involved in the process; (ii) the demand must include the former perpetrators; and (iii) emotions and material compensation are ingredients in the process.

[Can non-state global governance be legitimate? An analytical framework](#)

Steven Bernstein and Benjamin Cashore

Abstract: In the absence of effective national and intergovernmental regulation to ameliorate global environmental and social problems, “private” alternatives have proliferated, including self-regulation, corporate social responsibility, and public–private partnerships. Of the alternatives, “non-state market driven” (NSMD) governance systems deserve greater attention because they offer the strongest regulation and potential to socially embed global markets. NSMD systems encourage compliance by recognizing and tracking, along the market’s supply chain, responsibly produced goods and services. They aim to establish “political legitimacy” whereby firms, social actors, and stakeholders are united into a community that accepts “shared rule as appropriate and justified.” Drawing inductively on evidence from a range of NSMD systems, and deductively on theories of institutions and learning, we develop an analytical framework and a preliminary set of causal propositions to explicate whether and how political legitimacy might be achieved. The framework corrects the existing literature’s inattention to the conditioning effects of global social structure, and its tendency to treat actor evaluations of NSMD systems as static and strategic. It identifies a three-phase process through which NSMD systems might gain political legitimacy. It posits that a “logic of consequences” alone cannot explain actor evaluations: the explanation requires greater reference to a “logic of appropriateness” as systems progress through the phases. The framework aims to guide future empirical work to assess the potential of NSMD systems to socially embed global markets.

Research Forum

[Trade liberalization and the spread of regulatory institutions: The case of Chile](#)

Benedicte Bull

Abstract: It is currently widely recognized that trade liberalization leads not only to deregulation but also to re-regulation. However, it is less well understood how trade agreements and trade liberalization affect domestic regulatory institutions. This article aims to contribute to such an understanding through a case study of Chile. Since 1990, Chile has pursued a strategy of economic integration through bilateral, regional, and multilateral agreements. The study shows how this strategy has led to the partial implementation of a patchwork of competing regulatory institutions, many of which can trace their roots to the domestically preferred institutions of Chile’s major trading partners.

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March 2008

Guest editors' introduction

Health care and new governance: The quest for effective regulation

Louise G. Trubek, Joseph V Rees, A. Bryce Hoflund, Marybeth Farquhar and Carol A Heimer

Articles

The orderly use of experience: Pragmatism and the development of hospital industry self-regulation

Joseph V. Rees

Abstract: This article focuses on the origins and the development of American hospital industry self-regulation. Drawing on extensive archival research, this article suggests that the American College of Surgeon's Hospital Standardization Program was closely linked to the American pragmatist tradition. So understood, the Program represents a major milestone in the history of American regulation, perhaps the first self-regulatory system steeped in pragmatist principles of social ordering, a Progressive-era model of governance that long ago foreshadowed some of today's most significant regulatory innovations.

Thinking about how to avoid thought: Deep norms, shallow rules, and the structure of attention

Carol A. Heimer

Abstract: If the core problem for decision making is the limited capacity of people and organizations to collect and process information, it is their limited capacity to pay attention that poses the challenge for regulation. Much regulatory activity is thus focused on devising methods for ensuring that organizations and their staff pay attention to the "right" things. Yet outsiders' claims on attention often are trivialized by insiders because outsiders make those claims without understanding what will be displaced. Drawing on a study of how rules are used in five HIV clinics, this article analyzes forms, training and meetings, and delegation to new occupations as devices for conserving attention. In asking *how much* thought is required, *what* should be thought about, and *who* should do the thinking, people argue about the moral priority of treatment, research, and administration. Allocation of attention is not just about using a scarce resource efficiently, but is also about the right to decide for oneself what is important.

A revisionist model of hospital licensure

John Blum

Abstract: This article explores the use of a new governance approach in the context of American acute care hospital regulation, specifically focusing on the core regulatory process of licensure. This article calls for the alteration of current command and control regulations through the adoption of a four-part revisionist licensing model. The model seeks to reinvigorate the licensing process by making it not only more relevant to efficient operations, but also adaptable to current industry challenges. Based generally on alternative regulatory models such as responsive regulation, meta-regulation, and management-based regulation, the revisionist licensing proposal is driven by the broad goals of bureaucratic reduction, participatory regulation, and more focused obligations. Elements of the model include refocusing on baseline requirements, problem identification and correction, negotiated obligations, and alteration of the structure of oversight. Specific application examples are provided in the areas of charity care and health planning.

Regulatory innovation in the governance of human subjects research: A cautionary tale and some modest proposals

Scott Burris

Abstract: Under US regulations known as the "Common Rule," federally-supported human-subject research must be reviewed by an Institutional Review Board (IRB). The Common Rule system from a distance looks like an innovative instantiation of prescriptions for constitutive regulation and soft law, but in practice has grown into a self-referential, unresponsive, and legalistic bureaucracy. This article reviews criticism of the Common Rule. It also discusses why the system fails to regulate in an efficient and effective way, pointing in particular to the poor fit between the IRB and its assigned tasks. Turning

to reforms, the article uses the heuristic of “regulatory space” to describe the range of actual and potential regulators with the capacity to set standards, monitor compliance, and discipline violators. Regulatory reform is framed by three conceptual changes: recognizing the limitations of the IRB as an oversight body; narrowing the range of risks the system is tasked to control; and disentangling the conflicting regulatory logics of behavioral standard-setting and virtue promotion. The article concludes with a roster of possible changes that would make the IRB a more responsive regulator, enroll a wider range of actors in the promotion of virtue, focus resources on more serious risks, and address the structural causes of researcher misconduct.

Hybrid design, systemic rigidity: Institutional dynamics in human research oversight

Sydney Halpern

Abstract: New governance scholars see hybrid regulation as a means for achieving regulatory flexibility and responsiveness. The US system for overseeing human subjects research embodies three dimensions of hybridity: it brings together governmental and non-governmental controls; it combines central and local authority; and it engages a multiplicity of policy actors. Yet this system became rigid 20 years into its development. Sources of rigidity included shifts in the regulatory environment, temporal constriction in the range policy participants, and risk aversion on the part of non-governmental institutions charged with implementing federally mandated controls. This article explores the implications of these institutional dynamics for the relationship between hybridity and regulatory responsiveness. It also examines possibilities for renewed flexibility generated by the recent advent of both accreditation and regulatory innovation by university research administrators.

The European Union’s governance of health care and the welfare modernization agenda

Tamara K Hervey

Abstract: In the face of “permanent welfare austerity,” the European Union (EU) is increasingly involved in the governance of health care through various “new governance” tools. This development coincides with a growing interest in modernization of welfare, including health care. One of the fundamental critiques of new governance in the EU context concerns the (perceived) inability of new governance to protect the “social” against the “market” in Europe’s constitutional settlement. Using multi-level governance and constructivist approaches, this article considers whether the EU’s governance of health care via the “Open Method of Coordination” advances a neo-liberal agenda of health care modernization.

Challenges of democratic experimentalism: A case study of the National Quality Forum in health care

A. Bryce Hoflund and Marybeth Farquhar

Abstract: Networks are an increasingly common aspect of administrative life in almost any public policy arena. In health care, networks have emerged in order to address “wicked” quality problems. One such network organization, the National Quality Forum (NQF), was created as a response to the fragmentation and information deficit that have plagued the health care industry’s efforts to improve health care quality. Its purpose is to bring diverse health care stakeholders from the public and private sectors together to discuss and debate quality and performance measurement issues. Democratic experimentalism offers one way of assessing the NQF’s efforts. The purpose of this article is to examine the NQF’s efforts through the lens of democratic experimentalism and to explore some of the virtues and shortcomings of applying a democratic experimentalist approach to health care regulation.

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June 2008

Articles

Constructing and contesting legitimacy and accountability in polycentric regulatory regimes

Julia Black

Abstract: The legitimacy and accountability of polycentric regulatory regimes, particularly at the transnational level, has been severely criticized, and the search is on to find ways in which they can be enhanced. This paper argues that before developing even more proposals, we need to pay far greater attention to the dynamics of accountability and legitimacy relationships, and to how those in regulatory regimes respond to them. The article thus first seeks to develop a closer analysis of three key elements of legitimacy and accountability relationships which it suggests are central to these dynamics: The role of the institutional environment in the construction of legitimacy, the dialectical nature of accountability relationships, and the communicative structures through which accountability occurs and legitimacy is constructed. Second, the article explores how organizations in regulatory regimes respond, or are likely to respond, to multiple legitimacy and accountability claims, and how they themselves seek to build legitimacy in complex and dynamic situations. The arguments developed here are not normative: There is no “grand solution” proposed to the normative questions of when regulators should be considered legitimate or how to make them so. Rather, the article seeks to analyse the dynamics of legitimacy and accountability relationships as they occur in an attempt to build a more realistic foundation on which grander “how to” proposals can be built. For until we understand these dynamics, the grander, normative arguments risk being simply pipe dreams – diverting, but in the end making little difference.

Decentralized enforcement in organizations: An experimental approach

Yuval Feldman and Orly Lobel

Abstract: Social enforcement, the decentralized action by organizational actors of monitoring, identifying, and reporting legal violations, is widely recognized as a key factor in ensuring good governance. This article reports on an experimental survey conducted in the US and Israel examining the behavior of individuals when confronting workplace unlawful conduct. The study provides novel insights into the relationships between state based, organization based, and employee based enforcement. It finds that the likelihood and the manner of reporting will vary depending on the type of illegality and are strongly correlated to perceptions of legitimacy, job security, and voice within the workplace. Comparing illegalities, employees prefer to report clear violations by rank and file employees rather than violations by managers. At the same time, external reporting to government or media entities is most likely when violations involve the organization as a whole or implicate top management. The study also finds cultural and gender differences in reporting patterns. Finally, the study provides support for the understanding that social norms are more predictive of social enforcement than expected organizational costs.

Regulation lite: The rise of emissions trading

Robert Baldwin

Abstract: Emissions trading is the governmentally promoted hope for a sustainable world. In different contexts, trading regimes display varying potential – both in absolute terms and in comparison with other regulatory instruments. Emissions trading, however, is a device that raises urgent issues regarding its objectives, cost-effectiveness, fairness, transparency, and legitimacy. Its use places emphasis on its “acceptability” and the virtues of regulation that is “lite” because it is non-threatening to the most powerful interests. Emissions trading is resonant with assumptions that are highly contentious – notably that it is acceptable because it involves no losers, or because, in desperate global circumstances, we have no choice but to use it. There is a need to confront the difficult issues presented by emissions trading and to face the challenges of combining “market” and “democratic” systems of legitimization. It is also necessary to avoid taking refuge in all too comfortable beliefs in cumulative checks and balances.

Wheat from chaff: Third-party monitoring and FEC enforcement actions

Todd Lochner, Dorie Apollonio and Rhett Tatum

Abstract: Regulatory theory suggests that providing agencies with multiple sanctioning options allows them to dispose promptly of less serious matters and thereby conserve resources to pursue serious

offenders. However, agencies dependent on third-party monitoring may have their enforcement agendas skewed toward more trivial violations. We consider these competing expectations by analyzing enforcement actions at the US Federal Election Commission ([FEC](#)) from 1999 to 2004. The FEC – an agency heavily dependent on third-party monitoring – expanded its enforcement options in 2000 by creating two new programs to pursue low-level offenders, while leaving its monitoring strategy unchanged. We hypothesized that more sanctioning options would allow the FEC to allocate its resources more efficiently, and thus deal more effectively with the skew created by third-party monitoring. We found instead that although the FEC disposed more promptly of low-level infractions, it was no more effective at focusing on serious violations. Our results suggest that for many agencies, expanding enforcement options without addressing monitoring has limited ability to resolve enforcement problems.

[Infinitely repeated contests: How strategic interaction affects the efficiency of governance](#)

Sherrill Shaffer and Jason Shogren

Abstract: Contests over the scope and strength of regulation and governance are commonplace – and commonly repeated. The same players vie for the same government prize year after year: for example, environmental standards, government contracts, research grants, and public good provision. The open question is whether more rents are dissipated in repeated regulatory contests than onetime competitions. This question matters for regulation and governance because societies should design policies to waste the fewest scarce resources. According to some, the answer is “no”, but others say “yes” – more resources are wasted when people compete repeatedly for the same government prize. Herein, we use two game theoretic equilibrium concepts to help untangle the answer. Our results suggest non-myopic contestants are more likely to behave as partners than rivals – provided the context is relatively sterile. Several common complications help break up the tacit partnership, including a disparity in relative ability, a shrinking prize, and additional players.

[Limits to non-state market regulation: A qualitative comparative analysis of the international sport footwear industry and the Fair Labor Association](#)

Axel Marx

Abstract: Non-state market regulation has become a central focus and continues to receive scholarly attention. The present paper provides an assessment of the conditions under which multinational firms join a multi-stakeholder certification initiative. The cases of the Fair Labor Association and 17 international sport footwear companies have been selected for this purpose. A Qualitative Comparative Analysis of the 17 cases is performed. The paper argues that the combination of sustained NGO pressure and public ownership of a firm is a necessary precondition for firms joining a multi-stakeholder certification initiative. The theoretical and policy implications of this result are discussed.

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Articles

[Compliance costs, regulation, and environmental performance: Controlling truck emissions in the US](#)

Dorothy Thornton, Robert A. Kagan and Neil Gunningham

Abstract: When explaining regulatory policymaking and the behavior of regulated business firms, scholars have supplemented economic models by emphasizing the role of public-regarding entrepreneurial politics and of normative pressures on firms. This article explores the limits of such entrepreneurial politics and “social license” pressures by examining regulation of emissions from diesel powered trucks in the US. We find that the economic cost of obtaining the best available control technology – new model lower emissions engines – has: (i) limited the stringency and coerciveness of direct regulation of vehicle owners and operators; (ii) dwarfed the reach and effectiveness of the governmental programs that subsidize the purchase of new less polluting vehicles; and (iii) elevated the importance of each company’s “economic license”– as opposed to its “social license”– in shaping its environmental performance. The prominence of this “regulatory compliance cost” variable in shaping both regulation and firm behavior, we conclude, is likely to recur in highly competitive markets, like trucking, that include many small firms that cannot readily either afford or pass on the cost of best available compliance technologies.

[What do we really know? The effect of reporting thresholds on inferences using environmental right-to-know data](#)

Lori S. Bennear

Abstract: Environmental right-to-know regulations require regulated entities to publicly disclose measures of environmental performance but exempt entities from these disclosure requirements if they manufacture, process, or use a chemical below some threshold level. Environmental right-to-know data are widely used to assess environmental performance by academics, regulators, non-profit organizations, and the public. This paper uses data from Massachusetts to estimate the effect of reporting thresholds in environmental right-to-know programs on the validity of inferences using data from these programs. The analysis indicates that errors in inference introduced by reporting thresholds may be significant. Up to 40% of the observed decline in reported toxic releases in Massachusetts may be attributed to non-reporting due to the reporting thresholds. In addition, quartile rankings of facilities may be in error up to 45% of the time when behavior around the reporting thresholds is not taken into account.

[The influence of foreign direct investment on contracting confidence in developing countries](#)

John S. Ahlquist and Aseem Prakash

Abstract: This paper examines whether foreign direct investment (FDI) influences confidence in commercial contracts in developing countries. While the research on how host countries’ policy environments encourage FDI inflows has flourished, scholars have paid less attention to how the policy environment and local actors’ beliefs might, in turn, be affected by FDI. This is surprising because multinational enterprises are well-recognized political and economic actors across the world. We expect that their increasing economic salience will influence the policy environments in which they function. By employing an innovative measure of property rights protection – contract-intensive money – we examine how foreign direct investment influences host countries’ contract-intensive money ratio in a large panel time series of both developed and developing countries from 1980 to 2002. Our analysis suggests that higher levels of FDI inflows are associated with greater confidence in commercial contracts and, by extension, the protection of property rights in developing countries.

[Regulation through titling laws: A case study of occupational regulation](#)

Dick M. Carpenter II

Abstract: This case study examines a form of occupational regulation infrequently examined in academic literature – titling laws. These laws regulate who may legally use a phrase, or title, to describe their work to the public. Focusing on the interior design industry, this article demonstrates how industry

leaders use titling laws as the first step in a push for full occupational licensure. In so doing, they allege a need for regulation out of concern for public health and safety, but as data in this case study indicate, there appears to be no threat to public health and safety from unregulated interior designers. Instead, designers advocate for increased regulation of their own industry, through the evolution of titling laws to full licensure, due to the benefits it affords them.

Research Forum

[An overview: A new era of tax enforcement – from “big stick” to responsive regulation](#)

Sagit Leviner

Abstract: Recent developments in regulation and tax administration in Australia inspired this article on tax compliance and responsive regulation. This article analyzes the economics of crime and compliance as the dominant approach to tax enforcement of the past three and a half decades. It evaluates the key advantages and disadvantages of the economic approach as well as its application to tax. The article then explores responsive regulation as an alternative method that draws on the economic paradigm but also supplements this approach with other theories, particularly those involving identity, conflict escalation, and procedural justice. Building on this analysis and a case study of Australian investors in mass marketed tax schemes, the article suggests that the broader, more balanced, and closely tailored method of regulating responsively may enable regulators to draw on the advantages of the economic model while alleviating some of its drawbacks. Responsive regulation may therefore constitute a superior method for regulating compliance.

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December 2008

Editors' Introduction

[Change and challenge in regulation and governance](#)

John Braithwaite, Cary Coglianese and David Levi-Faur

Articles

[Sharing sovereignty for global regulation: The cases of fuel economy and online gambling](#)

John Mikler

Abstract: Globalization is sometimes taken as a synonym for market liberalization, because it is claimed that power has flowed from states to markets. Whether happening as a result of undeniable "forces" or some hegemonic consensus, many on both the left and right of politics agree that this is a reality. However, this article argues that states which share sovereignty with market actors are able to influence outcomes beyond their borders. The cases of fuel economy and online gambling regulations are used to illustrate the point. In the former case, Japanese and European industry-driven regulations are being "exported" in the attributes of the products of their car industries. In the latter, UK market-friendly regulations are likely to be "exported" to the European region and beyond because of industry support, and market liberalization principles embodied in European Union institutions. Both cases indicate that sharing sovereignty in the process of making and implementing national regulations produces opportunities for global regulation.

[An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU](#)

Caroline Cecot, Robert Hahn, Andrea Renda and Lorna Schrefler

Abstract: Governments throughout the world are requiring greater use of economic analysis as a way of informing policy decisions. This paper provides a comprehensive analysis of the use of impact assessment in the European Union, using US assessments as a benchmark. We find that recent EU impact assessments include more economic information than they did in the past, although important items are still missing. We also provide evidence that the quality of EU impact assessment increases with the expected cost of a proposal. Furthermore, we find that the quality of EU assessments that report high total costs is similar to that of US assessments.

[The case of the camera in the kitchen: Surveillance, privacy, sanctions, and governance](#)

Edna Ullmann-Margalit

Abstract: In the summer of 2007, a member of the Rationality Center at the Hebrew University of Jerusalem took it upon himself to install a closed-circuit TV camera in the Center's kitchen. An email explained that the camera was installed in an effort to solve the problem of cleanness in the kitchen. The camera was removed a week later: within this week, the members of the Center exchanged close to 120 emails among themselves, expressing their opinions for and against the camera, and discussing related issues. Taking off from this exchange, this article explores some of the surprisingly rich set of normative concerns touched upon by the kitchen camera incident. Among them: public surveillance and people's polarised attitudes to it, the invasive gaze and the argument that "if you have nothing to hide you have nothing to worry about," the efficacy of disciplining behavior through sanctions along with the problem of shaming sanctions, the notion of privacy and its arguable relevance to the kitchen case, and more. In an epilogue, I offer some reflections in the wake of the incident, connecting it to the incipient literature on regulation through observation. I find that it is precisely the smallness, concreteness, and seeming triviality of this incident that helps bring a large set of interconnected, vexing normative concerns into sharp relief.

[The liberalization and \(re\)regulation of Dutch gambling markets: National consequences of the changing European context](#)

Sytze F. Kingma

Abstract: This paper deals with the liberalization of Dutch gambling markets, in particular the (re)regulation of these markets after 2002. It is argued that during the 1990s a neo-liberal "risk regime"

of gambling regulation replaced the traditional moralizing and restrictive gambling policies. However, this risk regime has recently been challenged by the development of Internet gambling, the discussions about the “Services Directive” in the European Parliament and cases brought to the European Court of Justice. These circumstances are redefining the European context for national gambling policies and gambling organizations. Together with a growing risk awareness, this has caused the Dutch government to reconsider its gambling policies. This paper outlines the basic features of the risk regime of gambling regulation, and makes clear that after a decade of great leniency and tremendous market growth, the Dutch gambling markets, including casinos, lotteries and slot machines, were confronted with serious backwashes.

Even clubs can't do without legitimacy: Why the anti-money laundering blacklist was suspended

Rainer Hülse

Abstract: This article uses the case of anti-money laundering regulation to investigate international club organisations' efforts to secure compliance with their rules. As these rules can hardly claim much legitimacy, one would expect that they are complied with only if the club organisation uses side-payments or coercion. Indeed, the Financial Action Task Force against Money-Laundering (FATF), the international standard setter in that field, has used blacklisting to force non-members into compliance. But although it had greatly improved compliance, the blacklist was suspended again after a short period of time. Why? This article argues that this was due to allegations of the blacklist being illegitimate. The FATF reacted by withdrawing the blacklist and also by engaging in various legitimacy practices, because even club organisations need legitimacy if they want to achieve results. Only if the rules are considered legitimate, will there be actual, and not just formal compliance. Hence this article denies the existence of a dilemma between legitimacy and effectiveness (the conventional view), suggesting that only legitimate rules can be effective.

Comment

The cybersecurity challenge

Michael Chertoff

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Articles

[Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?](#)

Kristina Murphy, Tom R. Tyler and Amy Curtis

Abstract: Procedural justice generally enhances an authority's legitimacy and encourages people to comply with an authority's decisions and rules. We argue, however, that previous research on procedural justice and legitimacy has examined legitimacy in a limited way by focusing solely on the perceived legitimacy of authorities and ignoring how people may perceive the legitimacy of the laws and rules they enforce. In addition, no research to date has examined how such perceptions of legitimacy may moderate the effect of procedural justice on compliance behavior. Using survey data collected across three different regulatory contexts – taxation (Study 1), social security (Study 2), and law enforcement (Study 3) – the findings suggest that one's perceptions of the legitimacy of the law moderates the effect of procedural justice on compliance behaviors; procedural justice is more important for shaping compliance behaviors when people question the legitimacy of the laws than when they accept them as legitimate. An explanation of these findings using a social distancing framework is offered, along with a discussion of the implications the findings have on enforcement.

[Responsive regulation at the Dutch Food and Consumer Product Safety Authority: An empirical assessment of assumptions underlying the theory](#)

Peter Mascini and Eelco Van Wijk

Abstract: Responsive regulation usually boils down to the assumption that enforcers should not shift to coercing before it has become clear that persuading does not work. This presupposes that it is possible to determine what the correct enforcement style is, that enforcers can apply the most suitable style, and that enforcers control the negative unintended consequences of their conduct. We have studied the applicability of these presuppositions at the Dutch Food and Consumer Product Safety Authority by way of observations, interviews, and a survey. The applicability of all three presuppositions has proven problematic; enforcement agents apply different styles in comparable cases; they are impeded in applying the most appropriate style; and they do not control the perverse consequences of their conduct because regulatees tend to perceive it as more coercive than intended by inspectors. Our findings are not unique to this inspectorate and hence raise questions about the applicability of the theory of responsive regulation.

Research Forum

[Cost–benefit analysis: New foundations on shifting sand : A review of Matthew D. Adler and Eric A. Posner's New Foundations of Cost–Benefit Analysis \(Harvard University Press, 2006\)](#)

Amy Sinden, Douglas A. Kysar and David M. Driesen

Abstract: *New Foundations of Cost–Benefit Analysis*, by Matthew Adler and Eric Posner, represents the most ambitious and credible effort to date to build a solid theoretical defense of the use of cost–benefit analysis (CBA) in evaluating government regulation. In this review, three cost–benefit “skeptics” offer their reactions to this ambitious and important book. We note its virtues – its humility, its scrupulousness, its open-mindedness. We also explore its vices. If preferences are to be “laundered,” is it intellectually defensible to remove the bad but not consider adding the good? Does Adler's and Posner's welfarism really play the limited role they suppose, or does it risk “crowding out” other important deontological and distributional values? If CBA is merely a decision procedure that provides an imperfect proxy of welfare – the moral criterion we really care about – how do we know that the proxy it provides in practice will actually be accurate enough to be useful? Isn't this at bottom an empirical question that cannot be answered by this thoroughly theoretical book? If CBA is no more than an imperfect proxy for welfare, then alternative imperfect decision procedures may perform better in the real world.

New foundations of cost–benefit analysis : A reply to Professors Sinden, Kysar, and Driesen

Matthew Adler and Eric A. Posner

Abstract: This article responds to the criticisms of *New Foundations of Cost–Benefit Analysis* that appeared in a review by Amy Sinden, Douglas A. Kysar, and David M. Driesen. We argue that their criticisms are either based on misunderstandings of our approach or are too demanding, in the sense that no reasonable decision procedure would satisfy them. We illustrate this second argument by demonstrating that their preferred approach – feasibility analysis – has little to recommend it.

Regulatory Policy Forum

Salt, high blood pressure, and performance-based regulation

Stephen D. Sugarman

Abstract: Performance-based regulation is a new approach to public health promotion. The aim of this article is to explain how this idea might be applied to the public health goal of reducing salt consumption as a way of reducing high blood pressure and thereby saving lives. Performance-based regulation is compared with competing regulatory strategies.

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June 2009

Articles

[The devaluation of life](#)

W. Kip Viscusi

Abstract: The US Environmental Protection Agency (EPA) has been the target of two recent controversies involving the devaluation of life: the 2003 use of a senior discount for the value of statistical life for people over age 65, and the 2008 downward reassessment of the value of statistical life by the EPA Air Office. Even though these new values of statistical life were still among the highest used in the Federal government, there was a strong negative public reaction to each. The public outcry over the EPA policies appears to have stemmed from an irrational response to decreases in the value of statistical life. Proposed Congressional legislation that purportedly seeks to reform the valuations would politicize benefit assessments. A sounder approach is to establish a peer-reviewed scientific advisory panel to advise agencies on the value of statistical life.

[Divided government and US federal rulemaking](#)

Jason Webb Yackee and Susan Webb Yackee

Abstract: Despite paying a great deal of attention to the effects of divided government on legislative outputs, scholars of American politics have surprisingly ignored the potential impact of divided government on bureaucratic regulatory outputs. In this article we argue that divided government should reduce the volume of federal agency rulemaking. We test this hypothesis against a data set covering 21,000 rules from 1983 to 2005. Our study is one of the first to analyze the determinants of federal bureaucratic rulemaking activity across such a long period of time. Our results demonstrate that during periods of divided government, agencies issue fewer rules and fewer substantively significant rules than they do during periods of unified government. These findings suggest that divided government impedes agency rulemaking.

[Counting on codes: An examination of transnational codes as a regulatory governance mechanism for nanotechnologies](#)

Diana M. Bowman and Graeme A. Hodge

Abstract: This article examines the rise of nanotechnology-specific codes of conduct (nano-codes) as a private governance mechanism to manage potential risks and promote the technology. It examines their effectiveness as well as their legitimacy as regulatory instruments in the public domain. The study first maps the rise of voluntary nano-codes and the roles played by different actors. Focusing on five specific nano-codes, the article then discusses their adequacy in terms of scientific uncertainty, gaps in existing regulatory regimes, and broader societal concerns. It concludes that these voluntary nano-codes have weaknesses including a lack of explicit standards on which to base independent monitoring, as well as no sanctions for poor compliance. At the same time it also highlights the potential power of these governance mechanisms under conditions of uncertainty and co-regulation with government. It is likely that nano-codes will become the “first cut” of a new governance regime for nanotechnologies.

[Not again! Public perception, regulation, and nanotechnology](#)

Douglas J. Sylvester, Kenneth W. Abbott and Gary E. Marchant

Abstract: It is often argued that immediate government action regarding nanotechnology is needed to ensure that public opinion does not mistakenly view nanotechnology as dangerous, to restore public trust in government, and to increase the legitimacy of government action through increased public participation. This article questions whether governments can achieve these goals. As the world lurches toward regulation of nanotechnology, we should ask Why the rush? Can anticipatory action, perceived as the government doing *something*, fulfill the competing hopes to “restore trust,” “pave the way” for nanotechnology, “increase awareness,” and “satisfy democratic notions of accountability”? Or is government action more likely to increase existing divisions over nanotechnology’s future?

Research Forum

[The German *Gemeinwirtschaftslehre*: Implications for modern nonprofit economics](#)

Vladislav Valentinov

Abstract: This article examines the way modern nonprofit economics can be informed by the *Gemeinwirtschaftslehre*, a strand of public and nonprofit economics that was popular in German-speaking countries until the 1980s. Despite its present decline, the *Gemeinwirtschaftslehre* yields a valuable implication that nonprofit firms address market failure by supplanting the pecuniary entrepreneurial motivation with a nonpecuniary one. In this article, this implication is used to reconsider two central and controversial issues in modern nonprofit economics: the rationale behind the nondistribution constraint in nonprofit firms, and the integration between the market failure and supply-side theories of the nonprofit sector. The article concludes by discussing the emerging prospects for empirical research.

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Symposium on Adversarial Legalism

Power to the legal professionals: Is there an Americanization of European law?

Frans Van Waarden

Abstract: Twelve years ago, Robert Kagan asked “Should Europe worry about adversarial legalism?” He answered this question with a qualified “no,” and identified a number of sources of resistance to such a trend. More recently, he broadened the issue in this journal by asking whether European countries experience an “Americanization” of their legal systems. The articles in this Symposium on the Americanization of European Law all revisit that question. The present article introduces the topic, discusses the elements that make up adversarial legalism, and summarizes and compares the findings of the articles in the Symposium. The articles find an increase in one dimension of adversarial legalism, namely, more *legalism*, that is, more litigation, more formalism, and more verdicts interfering with politics, but hardly any increase in *adversarialism*. Tenacious pre-existing national legal and political cultures and institutions resist a further move in the direction of American style adversarial legalism. The mix of more litigation, more legalism, and more politicization, overlaid on the pre-existing hierarchic authority of courts and legal functionaries has, however, strengthened the societal and political power of the judiciary vis-à-vis other powers. A professional elite is increasingly making the political choices that in a democratic society ought to be made by democratic representatives. Perhaps Europe should worry about *this*.

“Adversarial legalism” in the German system of industrial relations?

Britta Rehder

Abstract: The US has a distinctive legal style, which Robert Kagan has called “adversarial legalism.” It is marked by a pattern of political decisionmaking and conflict resolution in which the courtrooms and the law are systematically exploited as political arenas for making and implementing political settlements and policy outlines. In this article it is argued that a “German way” of adversarial legalism is about to emerge in the German industrial relations system. Economic liberalization, the fragmentation and decentralization of lawmaking authority in the political sphere, and the common-law-like nature of German labor law have contributed to the appearance of a judicialized pattern of governance. Nonetheless, Germany is not converging on the “American way of law” and major differences are expected to persist in the years to come.

Adversarialism versus legalism: Juridification and litigation in corporate governance reform

John W. Cioffi

Abstract: Recent reforms of corporate governance law and related litigation rules in the US and in Germany indicate that reports of the spread of adversarial legalism are greatly exaggerated. Politics and legislation in the US since the mid-1990s have turned quite decisively against shareholder litigation even as corporate governance and securities law reforms have expanded the role and scope of the regulatory state. Germany's extraordinary expansion of financial and corporate governance regulation since the early 1990s exemplifies juridification. Although these reforms included some liberalization of shareholder litigation rules, the changes reflected skepticism towards private litigation and imposed new constraints on the most prevalent forms of shareholder suits. Marketization of economic relations and the era of finance capitalism have produced far more legalism than adversarialism, more regulation than judicialization, and more ex ante transparency rules than ex post litigation remedies.

From corporatism to lawyocracy? On liberalization and juridification

Frans Van Waarden and Yuri Hildebrand

Abstract: In 1997 Robert Kagan questioned whether European countries had to fear the coming of American style adversarial legalism. He answered this question with a qualified “no.” Today we are no longer so sure the answer is “no,” even in a country that Kagan considered the antipole of US

adversarial legalism, the Netherlands, traditionally characterized by informal and consensual conflict resolution. In the present article we chart a trend of increasing juridification and legalism, that is, more formal and legal conflict resolution, in the Netherlands between 1970 and 2008. The trend is related to major changes in economic governance institutions, which generated a shift from corporatism toward lawyocracy; from power of the associations of civil society toward power of courts, lawyers, and judges. Yet the newly dominant system of governance is modified and merged with elements of the old system, producing a specific Dutch version, which one could call “corporatist lawyocracy.” We identify two types of liberalization as major driving forces: social liberalization in the 1970s and 1980s, followed by economic liberalization in the subsequent decades. If one considers economic liberalization a product of neoliberal “Reaganomics,” the legal changes are in a way an “American export product,” although a different one than the lawyering styles of large international American law firms mentioned by Kelemen and Sibbitt in 2004.

Comments

[Can social science numbers save public policy from politics? : A comment on W. Kip Viscusi's “The devaluation of life” \(Regulation & Governance, 2009\)](#)

Bruce G. Carruthers

[The political valuation of life : A comment on W. Kip Viscusi's “The devaluation of life” \(Regulation & Governance, 2009\)](#)

Marion Fourcade

[Valuing lives, valuing risks, and respecting preferences in regulatory analysis : A comment on W. Kip Viscusi's “The devaluation of life” \(Regulation & Governance, 2009\)](#)

Lisa A. Robinson

[Reply to the comments on “The devaluation of life”](#)

W. Kip Viscusi

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December 2009

Articles

[Legitimizing beliefs: Sources and indicators](#)

Margaret Levi and Audrey Sacks

Abstract: The more a government is effective and fair, the more legitimacy that government is likely to attain, and the more it will possess the potential to elicit compliance without excessive monitoring or punitive action. We explore this proposition using contemporary survey data from sub-Saharan Africa. In particular, we are interested in the conditions that promote popular legitimating beliefs that provide support for governments that are attempting to serve their entire populations competently and in a manner that is relatively impartial and equitable. This article provides empirical support for a long hypothesized link between the extent of government effectiveness, procedural justice, and citizens' willingness to defer to governmental tax authority. The sample, drawn from a continuum of developing societies in Africa, allows us to analyze the impact of variations in government effectiveness and citizen perceptions of fairness on the sense of obligation to comply with the tax authorities, our indicator for legitimating beliefs.

[The regulatory state and the UK Labour Government's re-regulation of provision in the English National Health Service](#)

John S. F. Wright

Abstract: Following its election in 1997, the UK Labour Government embarked upon a 10 year program of reform of the National Health Service (NHS). By 2005, Labour had doubled the NHS budget and dramatically transformed the shape of the Service. In England, a basic characteristic of the NHS is the organizational split between provider and commissioning agencies. In this article I argue that Labour's re-regulation of NHS provision is a coherent representation of the influence of the "regulatory state" in restructuring arrangements between government, market, and society. The article offers an account of the regulatory state based on a discussion of five key theses: The Audit Society, Regulation Inside Government, The New Regulatory State, The British Regulatory State, and Regulatory Capitalism. The article unfolds Labour's program of reform across themes common to these accounts: the division of labor between state and society, the division of labor within the state, the formalization of previously informal controls, and the development of meta-regulatory techniques of enforced self-regulation. It concludes that the key themes of the regulatory state are at work in Labour's transformation of NHS provision and it offers a discussion of the implications for both scholars of regulation and the UK and European health policy literature.

[Regulation and voluntarism: A case study of governance in the making](#)

Tamar Barkay

Abstract: In this article I analyze a multi-stakeholder process of environmental regulation. By grounding the article in the literature on regulatory capitalism and governance, I follow the career of a specific legislative process: the enactment of Israel's Deposit Law on Beverage Containers, which aims to delegate the responsibility for recycling to industry. I show that one crucial result of this process was the creation of a non-profit entity licensed to act as a compliance mechanism. This new entity enabled industry to distance itself from the responsibility of recycling, and thereby frustrated the original objective of the legislation, which was to implement the principle of "extended producer responsibility." Furthermore, this entity, owned by commercial companies and yet acting as an environmentally friendly organization, allowed industry to promote an anti-regulatory agenda via a "civic voice." The study moves methodologically from considering governance as an institutional structure to analyzing the process of "governancing," through which authoritative capacities and legal responsibilities are distributed among state and non-state actors. Two key findings are that this process and its outcome (i) are premised on an ideology of civic voluntarism, which ultimately delegates environmental responsibilities to citizens; and (ii) facilitate an anti-regulatory climate that serves commercial interests.

[Testing responsive regulation in regulatory enforcement](#)

Vibeke Lehmann Nielsen and Christine Parker

Abstract: The policy ideals of responsive regulation have been developed on the basis of substantial empirical evidence. The overall formulation of responsive regulation theory itself, however, has rarely been empirically tested. This article sets out the theoretical concept of responsive regulation in the

context of business regulation enforcement and discusses how we might operationalize and empirically measure it. We develop two alternative theoretical interpretations of responsive regulatory enforcement: “tit for tat” responsive regulation and “restorative justice” responsive regulation. We then measure business firms’ perceptions of the reactions and counter-reactions of a regulatory enforcement agency throughout the investigation and enforcement process. We find little evidence of tit for tat responsiveness actually occurring in practice. To the extent that tit for tat responsiveness does exist, we find a small amount of evidence that it has the hypothesized effects on behavior but not on attitudes. We find clearer evidence of restorative justice responsiveness having the hypothesized effects on attitudes but not on behavior.

Comparing the legitimacy and effectiveness of global hard and soft law: An analytical framework

Sylvia I. Karlsson-Vinkhuyzen and Antto Vihma

Abstract: The international norms that are developed as tools of global governance can be placed on a continuum from traditional “hard law” treaties to the vaguest and voluntary “soft law.” In this article we develop an analytical framework for comparing norms on different positions along the continuum, thus for comparing international hard and soft law. We root the framework in both the rationalist and the constructivist paradigms of international relations by focusing on two overarching evaluative criteria: effectiveness and legitimacy. These broad concepts are divided into smaller building blocks encompassing mechanisms through which norms can exert influence; for example, by changing material incentives, identities, and building capacity, and by contributing to building source-based, procedural, and substantive legitimacy. We illustrate the applicability of the framework with three norm processes of varying degrees of “softness” in global climate governance.

Citizen oversight of independent police services: Bifurcated accountability, regulation creep, and lesson learning

Graham Smith

Abstract: By examining developments in England and Wales this article considers police reform in the context of the tension between operational independence and citizen oversight. The article assesses the nexus between regulation and accountability in order to shed light on how a bifurcated accountability paradigm has protected police autonomy. Particular significance is attached to the cold-blooded police shooting of an innocent man as a critical moment in the recent history of police governance. The lesson-learning strategy of the Independent Police Complaints Commission, created under the Police Reform Act 2002, is singled out as an important driver of police reform. Although police governance reform in England and Wales is context specific, it is held that appreciation of the regulation accountability nexus and complaints as lesson-learning opportunities are of significance in other jurisdictions and sectors.

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March 2010

Editorial

Regulation & Governance Best Article Prize winners for 2009

Carol Heimer, Robert A. Kagan, David Levi-Faur and David Vogel

Articles

Optimization and its discontents in regulatory design: Bank regulation as an example

William H. Simon

Abstract: Economists and lawyers trained in economics tend to speak about regulation from a perspective organized around the basic norm of optimization. In contrast, an important managerial literature espouses a perspective organized around the basic norm of reliability. The perspectives are not logically inconsistent, but the economist's view sometimes leads in practice to a preoccupation with decisional simplicity and cost minimization at the expense of complex judgment and learning. Drawing on a literature often ignored by economists and lawyers, I elaborate the contrast between the optimization and reliability perspectives. I then show how the contrast illuminates current discussions of the reform of bank regulation.

Trust but verify? Voluntary regulation programs in the nonprofit sector

Aseem Prakash and Mary Kay Gugerty

Abstract: In this article we examine how information problems can cause agency slippages and lead to governance failures in nonprofit organizations. Drawing on the principal-agent literature, we provide a theoretical account of an institutional mechanism, namely, voluntary regulation programs, to mitigate such slippages. These programs seek to impose obligations on their participants regarding internal governance and use of resources. By joining these programs, nonprofit organizations seek to differentiate themselves from nonparticipants and signal to their principals that they are deploying resources as per the organizational mandate. If principals are assured that agency slippages are lower in program participants, they might be more likely to provide the participants with resources to deliver goods and services to their target populations. However, regulatory programs for nonprofit organizations are of variable quality and, in some cases, could be designed to obscure rather than reveal information. We outline an analytical framework to differentiate the credible clubs from the "charity washes." A focus on the institutional architecture of these programs can help to predict their efficacy in reducing agency problems.

The role of inspection sequence in compliance with the US Occupational Safety and Health Administration's (OSHA) standards: Interpretations and implications

Kilkon Ko, John Mendeloff and Wayne Gray

Abstract: We examined the Occupational Safety and Health Administration's (OSHA) inspections in the US to identify the effects of repeated inspections and the time between inspections on non-compliance. Our sample included 549,398 inspections conducted from 1972 through 2006 in manufacturing plants in the 29 states where federal OSHA enforces the law. We controlled for inspection type, industry, establishment size, and year. The number of total violations cited fell by 28%–48% from the first to the second inspection; after that, the numbers declined much more slowly. These effects were found in every one of the four sub-periods examined. The number of violations cited increased with each additional year since the prior inspection after controlling for other variables; however, the increases were small, totaling approximately 15% over five years. OSHA should probably give higher priority to first time inspections than to repeated inspections. The current requirement that at least two years elapse between planned inspections should probably be lengthened.

Improving democratic governance through institutional design: Civic participation and democratic ownership in Europe

Chris Skelcher and Jacob Torfing

Abstract: In this article we provide a conceptual and argumentative framework for studying how institutional design can enhance civic participation and ultimately increase citizens' sense of democratic ownership of governmental processes. First, we set out the socio-political context for enhancing the

democratic governance of regulatory policies in Europe, and highlight the way in which civic participation and democratic ownership is given equal weight to economic competitiveness. We then discuss the potential for institutionalized participatory governance to develop and its prospects for improving effective and democratic governance in the multi-layered European polity. We conclude by outlining a research agenda for the field and identifying the priorities for scholars working interactively with civil society and governments.

Unpackaging synthetic biology: Identification of oversight policy problems and options

Jennifer Kuzma and Todd Tanji

Abstract: The emerging field of synthetic biology (SB) is just entering policy debates. Reports from non-governmental organizations, such as the ETC Group and the International Risk Governance Council, have recently been issued, but there have been few systematic analyses of the policy problems that we will likely face as this area develops. Biosecurity issues are the most defined; other societal oversight issues and implications have not been well explored. Although SB could assist in addressing pressing global challenges, such as sustainable and renewable energy, there are considerable societal concerns that accompany its development and applications. This article is designed to anticipate and prepare for these concerns by identifying policy problems associated with SB oversight, upstream of its development. Projected applications of SB are reviewed and a typology of them is developed. Key oversight policy problems are then identified based on historical experiences with other emerging technologies, such as nanotechnology and biotechnology. Problems associated with biosecurity, biosafety, intellectual property, and ethics are discussed in relation to the typology of SB applications to identify applications of the highest potential concern. Finally, policy options for SB oversight are considered, preventative to promotional. We propose that different categories of SB application may warrant different oversight regimes: there might not be an appropriate “one size fits all” approach. We stop short of making specific recommendations, but suggest that the typology, problems, and oversight options identified in this article be used as a starting point for deliberative, democratic decisionmaking processes that take into account a wide range of perspectives about risk, economic impact, scientific progress, and moral reasoning in the design of oversight systems.

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June 2010

Articles

Governance without a state: Can it work?

Tanja A. Börzel and Thomas Risse

Abstract: In this article we explore how much state is necessary to make governance work. We begin by clarifying concepts of governance and the “shadow of hierarchy” and we follow this clarification with a brief overview of empirical findings on governance research in developed countries. We then discuss the dilemmas for governance in areas of limited statehood, where political institutions are too weak to hierarchically adopt and enforce collectively binding rules. While prospects for effective policymaking appear to be rather bleak in these areas, we argue that governance research has consistently overlooked the existence of functional equivalents to the shadow of hierarchy. We assert that governance with(out) government can work even in the absence of a strong shadow of hierarchy, we identify functional equivalents to the shadow of hierarchy, and we discuss to what extent they can help overcome issues of legitimacy and effectiveness in areas of limited statehood.

Developmental states, civil society, and public health: Patent regulation for HIV/AIDS pharmaceuticals in India and Brazil

Thomas Eimer and Susanne Lütz

Abstract: While both India and Brazil are seriously affected by the HIV/AIDS epidemic, each country has chosen a different approach to providing affordable pharmaceutical treatment. Whereas the Indian government has paved the way for market-driven solutions, Brazilian public authorities are strongly involved in the research and production of HIV/AIDS medication. Brazilian regulations permit comprehensive and free provision of HIV/AIDS drugs, whereas the majority of the affected population in India does not receive adequate pharmaceutical treatment. To explain the different policy outputs, we draw on the developmental state literature. Efficient decisionmaking structures, a devoted bureaucracy, and effective policy instruments enable public authorities to provide public goods even in the context of relative scarcity. We show that the assumptions of developmental state theory have to be complemented by the assessment of civil society actors' potential to trigger governmental interventions in the market.

Contested hybridization of regulation: Failure of the Dutch regulatory system to protect minors from harmful media

Bärbel R. Dorbeck-Jung, Mirjan J. Oude Vrielink, Jordy F. Gosselt, Joris J. Van Hoof and Menno D. T. De Jong

Abstract: The hybridization of regulatory modes and instruments is currently a popular way to improve public regulation. However, it is still unclear whether combinations of hard law and soft law, co-regulation, and legally enforced self-regulation really make regulation more effective. Using the analytical framework of the “really responsive regulation” approach, in this article we explore effectiveness problems in a hybrid regulatory system that tries to protect minors from harmful media. In our analysis of low compliance rates in the context of system failures, we argue that effectiveness problems seem to arise from poorly informed staff members, lack of internal and external controls, low rule enforcement, insufficient overlap between public and private interests, poor social responsibility in the Dutch media sector, deficiencies in the institutional framework, an inconsistent regulatory strategy, and inadequate responses from responsible regulators. Furthermore, based on our case study we argue that institutional dynamics of standard-setting activities can be detrimental to regulatory goal achievement if there is no compensation at the systemic level. Ongoing “regulatory care” through control, corrective responses, and rule enforcement seems to be crucial for a hybrid regulatory system to perform well.

Institutional processes and regulatory risk: A case study of the Thai energy sector

Darryl S. L. Jarvis

Abstract: Infrastructure provision the world over has undergone a series of profound changes in the manner of its financing and governance over the last 30 years or so. While the role of the state has diminished as a direct provider, builder and operator of infrastructure, its role as regulator and overseer has undergone substantial growth, increasing the regulatory burden on the state. While this transition

has occurred relatively smoothly in developed country contexts, in developing countries the diffusion of the regulatory state has produced manifestly different forms of governance, stressing the regulatory capacity of existing and newly formed regulatory bodies. This paper explores the impact and manifestations of regulatory diffusion in the context of the Thai energy sector and the governance mechanisms responsible for electricity generation, transmission and distribution.

Varieties of corporate social responsibility (CSR): CSR meets the “Nordic Model”

Maria Gjølborg

Abstract: Corporate social responsibility (CSR) is increasingly being promoted as an instrument for global governance to address the regulatory vacuum surrounding transnational business activities and as a method for encouraging business to contribute to sustainable development at the national level. Originally a business-driven, American concept, CSR has now been adopted and promoted by a wide range of governments and multilateral institutions. However, the socio-political model underlying CSR is far from neutral and may conflict with existing models in the societies in which it is introduced. In this article a typology of possible governmental interpretations of CSR is developed, and how CSR is transformed and adapted in its meeting with Nordic governments in order to fit the “Nordic Model” of state-market-society relations is analyzed. The analysis suggests that pre-existing political-economic institutions and cultural norms deeply affect the interpretation of CSR, and that this, when combined with ongoing national political processes, leads to a highly transformed concept of CSR.

Review Section

A short history of studying incremental institutional change: Does Explaining Institutional Change provide any new explanations?

Jeroen Van Der Heijden

Abstract: Kathleen Thelen is one of the leading scholars studying incremental institutional change. In her early works from the 1990s, she introduced the conceptualization of different modes of incremental change. These modes have central attention in her recent co-edited book with James Mahoney, *Explaining Institutional Change* (2010). Compared with Thelen's earlier work, this book provides clearer definitions, addresses the explanatory factors of institutional change, and discusses the patterns and sequences of gradual institutional change. The theory presented by Mahoney and Thelen, however, seems overambitious and subject to a need to be overly crisp and clear.

Tracing and periodizing China's food safety regulation: A study on China's food safety regime change

Peng Liu

Abstract: How has China's food safety administrative system changed since it was founded in 1949? How can we periodize the process of this historical transformation in terms of regulators, regulatees, and regulatory tools? This review article offers an analytical framework that distinguishes three regimes in the history of China's food safety governance: an old regime of command and control (1949–1977), an intermediate regime of mixed instruments (1978–1992), and a new regime of regulatory governance (1993–ongoing). In the article the regimes' features, advantages, disadvantages, and development tracks are discussed, and the groundwork is laid for an analysis of China's emerging regulatory state. Finally, a new notion of “transitional regulatory state” is used to define the current Chinese regulatory state based on its food safety regulation.

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Articles

[Is transparency an effective anti-corruption strategy? Evidence from a field experiment in India](#)

Leonid Peisakhin and Paul Pinto

Abstract: Can freedom of information laws be harnessed by underprivileged members of society and used to obtain greater access to basic public goods that are otherwise attainable only through bribery? Drawing on a field experiment on access to ration cards among New Delhi's slum dwellers, we demonstrate that India's recently adopted freedom of information law is almost as effective as bribery in helping the poor to secure access to a basic public service. We find support for the theoretical proposition that greater transparency and voice lowers corruption even in highly hierarchical and unequal societies.

[Stakeholder governance of organ transplantation: A desirable model for inducing evidence-based medicine?](#)

David L. Weimer

Abstract: Medical governance should secure and apply appropriate expertise, accommodate stakeholder interests, and promote social values. The most common form of governance, public (agency) rulemaking by government agencies, usually involves supplementing in-house expertise through advisory committees. An alternative, private (stakeholder) rulemaking, involves delegating the authority for developing rules directly to stakeholders, who often command relevant expertise, including that arising out of tacit knowledge. The possible advantages and disadvantages of agency and stakeholder rulemaking in medical governance can be assessed both from what we know about these forms in general and from experience with a prominent example of stakeholder rulemaking; that is, governance of the US organ transplantation system. It appears that this governance has been exceptionally successful in promoting evidence-based medicine. The stakeholder role in the governance of transplantation could be replicated in other areas by creating meaningful stakes to engage stakeholders and by increasing isolation from legislative politics through an independent funding source and circumscribed oversight.

[Information disclosure and environmental regulation: Green lights and gray areas](#)

Eungkyoon Lee

Abstract: This research examines the potential of information disclosure for environmental regulation. The research attempts to answer questions of what impact information disclosure has on corporate environmental practices and what interferes with its effective use. A case study of Indonesia's pioneering informational environmental regulation reveals (i) both indirect (e.g. anticipation of external pressure) and direct (e.g. internal learning support) informational effects that enhance environmental awareness at the top management level and stimulate changes in production processes and (ii) detrimental effects of disclosed information that maintain or strengthen the extant power of regulated firms over environmental groups and local communities affected. Regulatory efforts can be leveraged by public disclosure of information regarding firms' environmental performance, especially where the state monitoring and enforcement capacities are weak. However, the introduction of policies of this kind without consideration of different market conditions and political and administrative culture may impede the effectiveness of this potentially useful regulatory method.

[When soft regulation is not enough: The integrated pollution prevention and control directive of the European Union](#)

Charalampos Koutalakis, Aron Buzogany and Tanja A. Börzel

Abstract: Recent debates regarding the effectiveness of regulatory policymaking in the European Union (EU) focus on the merits of soft, non-binding forms of regulation between public and private actors. The emergence of less coercive forms of regulation is analyzed as a response to powerful functional pressures emanating from the complexity of regulatory issues, as well as the need to secure flexibility and adaptability of regulation to distinctive territorial economic, environmental, administrative, and social

conditions. In this article we empirically assess the above normative claims regarding the effectiveness of soft regulation vis-à-vis uniformly binding legislation. We draw on an exploratory investigation of the application of the Integrated Pollution Prevention and Control Directive of the EU in four countries. Our study reveals that effectiveness in the application of soft policy instruments is largely contingent upon strong cognitive, material, and political capacities of both state regulators and industrial actors involved in regulatory policymaking. In the absence of those conditions, the application of soft, legally non-binding regulation may lead to adverse effects, such as non-compliance and the “hollowing out” of the systems of environmental permits to industry. In the medium term, such developments can undermine the normative authority of the EU.

Scenes from a mall: Retail training and the social exclusion of low-skilled workers

Cathie Jo Martin and Jette Steen Knudsen

Abstract: In this article we examine how post-industrial Britain and Denmark undertake vocational training for low-skilled retail workers. Specifically, we evaluate whether leaders in training skilled industrial workers are also doing the best job with low-skilled service workers. While Danish retail is increasingly becoming a haven for low-skilled workers, British workers are gaining in skills levels with the transition to services even in the retail sector. While some suggest that social democratic countries have sacrificed the political interests of low-skilled workers in order to protect core manufacturing workers, we find no evidence of this. Rather, the high expectations of vocational training in Denmark have forged barriers to the easy admission of low-skilled service workers, while the British system provides more entry points for vocational training at different levels. The structures of coordination that had narrowed the gap between white-collar and blue-collar manufacturing workers during the industrial age are creating new cleavages in the post-industrial economy.

Addressing the next wave of Internet regulation: Toward a workable principle for nondiscrimination

Robert Hahn, Robert Litan and Hal Singer

Abstract: The ultimate formulation of the Federal Communications Commission's “nondiscrimination on the Internet” principle could have a significant impact on economic welfare and on innovation. In this article, we explain the economics of discrimination as it applies to the Internet, and we offer a new approach for identifying anticompetitive discrimination. Our proposal would require a complaining content provider to prove (i) the broadband service provider has discriminated in favor of some affiliated content provider that is “similarly situated” to the independent content provider; (ii) such disparate treatment is based on affiliation and not on some other consideration; (iii) the independent content provider has been unreasonably restrained in its ability to compete; and (iv) the harm it suffers as a result of the discrimination would likely redound to the harm of broadband users.

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Articles

[Approval regulation and endogenous consumer confidence: Theory and analogies to licensing, safety, and financial regulation](#)

Daniel Carpenter, Justin Grimmer and Eric Lomazoff

Abstract: Safety regulation – in the form of pre-market approval, licensure, screening, and product entry limitations – governs numerous market realms, including consumer finance. In this article, we ask whether the effects of safety regulation go beyond safety and affect consumers' beliefs about the distribution of products they can use. We model “approval regulation,” where a government regulator must approve the market entry of a product based upon observable, unbiased, and non-anticipable experiments. We show that even if regulator and firm disagree about only quality standards, the disagreement induces the firm to provide more information about its product than it would in the absence of regulation. Put differently, purely first-order disagreements in regulation generate second-order consequences (more certainty about product quality). These second-order consequences of regulation are sufficient to generate first-order effects among end-users (more consumption of superior products), even when users are risk-neutral. In other words, even if approval regulation produces little or no improvement in safety or quality, it still aggregates information useful to “downstream” product users; these users will exhibit higher consumption and will more readily switch to superior products. In contrast with libertarian analyses of entry regulation and licensure, the model predicts that entry restrictions may be associated with greater product or service utilization (consumption) as well as with greater price sensitivity among consumers. Because contemporary cost–benefit analyses ignore these second-order effects, they are unlikely to capture the possible confidence effects of approval regulation.

[Forest certification as a global environmental governance tool: What is the macro-effectiveness of the Forest Stewardship Council?](#)

Axel Marx and Dieter Cuypers

Abstract: Sustainable forest management is a key challenge for local and global governance. The Forest Stewardship Council has emerged as one of the solutions to global forest deterioration and is generally regarded as the prime example of certification as a global governance tool. This article examines the macro-effectiveness of certification on halting deforestation and examines the relationship between certification and governance institutions. The article finds that the macro-effectiveness of certification on halting deforestation is still limited due to the “stuck at the bottom” problem of developing countries, which are kept out of the certification process, and the market-driven nature of certification initiatives. The article does not find a relationship between certification and governance institutions at the macro level. It does find, however, significant variation in certification uptake between countries, pointing to the potential of this policy tool. The implications of the results are discussed.

[Unitary regulatory supervision or multi-entity supervision? A computational approach to a numbers problem in financial regulation](#)

Benjamin M. Cole and Preeta M. Banerjee

Abstract: Policymakers globally have debated (and often implemented) the idea of consolidating numerous financial regulatory supervisory entities into one unitary entity. This article uses a computational model to explore the effect such a decision would have on supervisory performance. Using insights from organizational scholarship on consensus-making among individuals within organizations, the simulation suggests that under most conditions a unitary supervisory entity yields lower performance than smaller, numerous entities with unique mandates, keeping the number of regulatory inspectors constant. This result arises from the heterogeneity of perspectives being shared within the entity and the influence of precedent actions. The results also show a decreasing utility to disaggregation: performance decreases when too few inspectors share among themselves in building consensus. When insufficient heterogeneity within supervisors exists, unitary frameworks outperform multi-entity frameworks. These findings have implications on the design of supervisory frameworks and contribute to research on consensus-building, heterogeneous group membership, and computational modeling.

[Driving growth: Regulatory reform and expressways in Indonesia](#)

Jamie S. Davidson

Abstract: This article uses the case study of Indonesian governments' attempts to construct a 1,000 kilometer toll road through the densest parts of Java to shed light on how governments with a checkered past of enforcing contracts and protecting private property rights go about establishing the requisite regulatory framework to attract private investment for infrastructure. While regulatory reform has taken place in Indonesia, vested interests and power will keep the country's political economy from taking on World Bank-promoted best practice characteristics. Programs that promote private sector participation in infrastructure need to be reconsidered where the main ingredients for these programs' success exist in small measures.

[It runs in the family: Meta-regulation and its siblings](#)

Sharon Gilad

Abstract: Regulators in different countries and domains experiment with regulatory tools that allow organizations to adapt regulation to their individual circumstances, while holding them accountable for their self-regulation systems. Several labels have been coined for this type of regulation, including systems-based regulation, enforced self-regulation, management-based regulation, principles-based regulation, and meta-regulation. In this article, these forms of regulatory governance are classified as belonging to one family of "process-oriented regulation." Based on a review of diverse empirical and theoretical research, it is suggested that the family of process-oriented regulation tends to have a positive, albeit varied, impact on organizations' performance, and the factors that shape this inconsistent effect are analyzed. Building on aspects of Parker's normative construct of "meta-regulation," the article explores the extent to which her innovative notion of a learning-oriented approach to regulation might overcome some of the weaknesses of prevalent process-oriented approaches. It is proposed that under conditions of regulatory uncertainty or entrenched and prevalent non-compliance or both, meta-regulation is likely to have many advantages over other forms of process-oriented regulation. Yet realizing these advantages requires a rare combination of high regulatory capacity, a stable regulatory agenda, and a supportive political environment.

List of Reviewers

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March 2011

Guest Editor's Introduction

The sociological citizen: Pragmatic and relational regulation in law and organizations

Susan S. Silbey

Abstract: The interconnected networks that constitute our everyday lives can be both intensely familiar yet completely unknown. Whether we call it a firm, a university, an industry, a system, or a society, we live and work in collectivities coordinated through human, physical, and chemical transits. Most of the time, we fail to notice the links that connect one action to another, one person to hundreds of others, and one organization to a framing institution or field of action. We may be momentarily reminded of those relations when a major disaster occurs, or we chat with a new acquaintance actively seeking common ground. More often, however, articulations among people and places are mediated through representations, in effect, known of but not part of how we live and work.

Articles

Governing the gap: Forging safe science through relational regulation

Ruthanne Huising and Susan S. Silbey

Abstract: Designed to close the ubiquitous gap between law on the books and law in action, management systems locate the standard setting and implementation of regulation within the regulated organization itself. Despite efforts to more closely couple aspirations and performance, the gap re-emerges because the exigencies of practical action exceed the capacity of system prescriptions to anticipate and contain them. Drawing on data from a six-year ethnographic study of the creation and implementation of an environment, health, and safety management system, this article identifies relational regulation as the approach used by front-line managers to govern the gap: keeping organizational activities within an acceptable range of variation close to regulatory specifications. We identify four practices – narrating the gap, inquiring without constraint, integrating pluralistic accounts, and crafting pragmatic accommodations – and three conditions under which actors may develop a sociological orientation to enact relational regulation. Overall, the article concludes that the mechanism for assuring compliance resides in the apprehension of relational interdependencies rather than the management system per se.

Beyond the fear of discretion: Flexibility, performance, and accountability in the management of regulatory bureaucracies

Roberto R. C. Pires

Abstract: This study explores the implications of different approaches to performance management for inspection work and regulatory outcomes. It assesses to what extent variations in methods for controlling discretion explain why in some cases regulatory inspectors limit themselves to the narrow boundaries of their formal mandate, while in other cases they work collaboratively with inspected firms and other organizations to develop innovative strategies that solve complex regulatory and business problems. After reviewing alternative approaches to the management of discretion, I present a natural experiment that offered an opportunity for controlled comparisons of two current attempts to reconcile bureaucratic performance with accountability: New Public Management and Experimentalist Governance. Case comparisons in the area of labor inspection in Brazil – involving severance payments, fraudulent cooperatives, and safety in construction – suggest that these two approaches to the management of regulatory bureaucracies produce considerably different inspection strategies and regulatory outcomes. The different accountability mechanisms and investigation strategies inspired by each of these approaches create different sets of incentives with direct effects on inspectors' motivation and their ability to resolve compliance problems.

Relational regulation in the Brazilian Ministério Público: The organizational basis of regulatory responsiveness

Salo V. Coslovsky

Abstract: Recent research on regulatory enforcement has been showing that the best way to enforce protective regulations is to thoroughly adapt the remedy to the problem at hand. Unfortunately, this is far

from easy, as organizations and work environments all too often encourage street-level bureaucrats to standardize and simplify their practices. In an attempt to bridge this gap, many scholars equate responsiveness to preprogrammed escalation. This article analyzes how the Brazilian Ministério Público (MP) promotes a more ambitious form of responsiveness, here called relational regulation. While most of the formal features of the MP encourage routinization, groups of reformist prosecutors identify important cases, recruit external allies, and jointly devise innovative and context-specific solutions to problems of non-compliance. Crucially, this mode of action is not an anomaly, the result of individual proclivities or specific and formal job assignments. Rather, it is systematically produced by a mostly parallel and covert organization that operates within and expands beyond the MP itself. These two logics – routinized and custom-made responses – compete, cooperate, interpenetrate, and find common ground within the same organizational umbrella, and through their interaction they create an enforcement agency that is more robust, reliable, and responsive than allowed by current theory.

Rule bending, sociological citizenship, and organizational contestation in microfinance

Rodrigo Canales

Abstract: This article explores how loan officers enact and adapt organizational policies within microfinance institutions. Some loan officers frequently bend or choose not to enforce written rules in an effort to better address client needs, while others enforce the rules strictly. These differences in enforcement styles are analyzed to explore the structural characteristics that generate and sustain rule-bending behavior. In microfinance, the pressures to standardize and automate lending decisions challenge loan officers' ability to manage clients because context uncertainty cannot be fully captured by centralized policies. The article shows that officers exercise discretion productively, as measured by the organization's own criteria to (i) better serve client needs when policies can lead to bad outcomes; (ii) purposefully improve the rules themselves; and (iii) defend loan officer status within the organization. The article unveils two inherent tensions in microfinance. First, increased efforts to centralize and enforce policies in fact only increase the motivation for loan officers to work outside the organization's regulations. Second and ironically, the value of the productive rule bending displayed by some loan officers is best captured when other officers are strict enforcers.

Addressing the risk, reading the landscape: The role of agency in regulation

Fiona Haines

Abstract: The literature pertinent to regulation presents disparate views of the role of human agency in regulatory compliance. Some authors assume regulators' and regulatees' capacity for agency to be self-evident; others show that human agency may be constrained and as a consequence tends toward sustaining the legitimacy of their respective organizations rather than achieving the risk reduction goals prescribed by the regulatory regime. Drawing on Margaret Archer's work (among others'), this article explores how the agency of regulatory actors is critical to the regulatory project yet contingent. This contingency is explored through a comparative analysis of the regulatory responses to an industrial disaster and to counterterrorism efforts at seaports and airports in the wake of the 11 September 2001 ("9/11") terrorist attacks. This analysis found that problem solving in the pursuit of regulatory goals was most effective when there was political support for the authority of the regulators and respect for their expertise and when the risk of concern could be narrowly defined. These conditions could also reap benefits at the worksite level. However, the capacity of regulators to mobilize resources, exert authority, and transform constraints into opportunities in order to reduce risk could be limited. Tight political control, limited knowledge of the environment to be regulated, and a potentially limitless exposure to risk meant that while agency could still be expressed, it was aimed at goals that included shoring up political legitimacy, enhancing personal authority, and allaying public concern.

Beyond Markets: Sociology, street-level bureaucracy, and the management of the public sector

Michael J. Piore

Abstract: This article extends the concept of street-level bureaucracy to address the problem of the inflexibility and rigidity of governmental rules and regulations, a problem at the heart of the standard economic argument against an active government role in the management of the economy. In so doing, it seeks to create a conceptual bridge over which a range of social science disciplines can be drawn into the debate about public sector management and thereby expand the repertoire of policy tools. The article draws primarily on research on one class of street-level bureaucratic organizations, labor inspection organizations in Latin America and southern Europe, and secondarily on a project focusing on DARPA, the research arm of the US Department of Defense. In both organizations, line officers have wide discretion in program development and management and in effect adjust to changing economic and social conditions in a way not unlike the market. These adjustments are grounded in tacit rules that

evolve through discussion among the line agents coping day-to-day with novel cases. Management can influence that evolution by entering into the ongoing discussion and giving it direction. Various ways in which it might do so are examined.

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June 2011

Editorial

Regulation & Governance announces annual “Best Article” prize-winners

Carol Heimer, Robert A. Kagan, David Levi-Faur and David Vogel

Original Articles

Regulatory harmonization and agricultural biotechnology in Argentina and China: Critical assessment of state-centered and decentered approaches

Patrick van Zwanenberg, Adrian Ely, Adrian Smith, Chen Chuanbo, Ding Shijun, Maria-Eugenia Fazio

Abstract: The international harmonization of technology-related regulations seeks certain norms across diverse contexts. Harmonization efforts are based primarily on the promulgation of state-centered command and control forms of regulation, though they may also be accompanied by the diffusion of more plural approaches that are decentered from the state. We contrast the ways in which the “proper” use of transgenic cotton seed technologies is understood in harmonizing regulations with the way this technology is used in practice in regions of Argentina and China. We find divergence that poses challenges for both state-centered and decentered approaches to harmonization. While state-centered approaches are blind to some critical processes on the ground, decentered strategies are found wanting in situations where norms remain deeply contested amongst actors situated in very uneven power relations. In both cases, we find that establishing and securing norms that are socially just and environmentally sustainable means attending much more explicitly to the political economies in which technological practices actually take root.

The weakness of strong policies and the strength of weak policies: Law, experimentalist governance, and supporting coalitions in European Union health care policy

Scott L. Greer

Abstract: The experience of European Union (EU) health care services policy shows the importance of supporting coalitions in any effort to effect policy change and the extent to which the presence or absence of such coalitions can qualify generalizations about policymaking. EU health care services law is substantively liberalizing and procedurally driven by the courts, with little legislative input. But the European Court of Justice (ECJ) has been much better at establishing an EU competency in law than in causing policy development in the EU or member states. Literature on courts helps to explain why: courts are most effective when they enjoy supporting coalitions and the ECJ does not have a significant supporting coalition for its liberalizing health care services policy. Based on interview data, this article argues that the hard law of health care services deregulation and the newer forms of health care governance, such as the Open Method of Coordination and the networks on rare diseases, depend on supporting coalitions in member states that are willing to litigate, lobby, budget, decide cases, and otherwise implement EU law and policy. Given the resistance that the Court has met in health care sectors, its overarching deregulatory approach might produce smaller effects than expected, and forms of experimentalist governance that are easy to deride might turn out to have supporting coalitions that make them unexpectedly effective.

Regulatory Impact Assessment: How political and organizational forces influence its diffusion in a developing country

Alketa Peci and Filipe Sobral

Abstract: Regulatory Impact Assessments (RIAs) are being diffused progressively throughout the world following the recommendations of international organizations. Research has shown that the diffusion of RIA has not produced convergence in actual practices, particularly in developing countries, due to political forces at work in domestic contexts or the available organizational capacities. The Organisation for Economic Co-operation and Development (OECD) has recently recommended that the Brazilian federal government adopt RIA. This article evaluates how contextual variables, specifically political and organizational ones, influence RIA adoption in Brazil. It is based on field research consisting of semi-structured interviews with the main stakeholders of the Brazilian regulatory framework. The research explored RIA concept familiarity among stakeholders, the bureaucratic context, the policy process,

pivotal stakeholders' standpoints in adopting RIA, and available organizational capacities. Contrary to previous studies in developing countries, the research reveals that strong organizational capacities are not a sufficient factor for successful diffusion of RIA, because political variables can influence divergence among agencies in future RIA practices.

[Playing games of governance: How and why Fair Trade pioneers evade corporate capture](#)

Anna Hutchens

Abstract: The concept of power in political governance has traditionally focused on domination and the preservation of the status quo. In an economic context, institutional and organizational studies have expressed growing interest in the dynamics of agency and institutional change, captured in the concept of “institutional entrepreneurship.” In the context of global free trade, the Fair Trade movement's experience shows that ongoing institutional entrepreneurship is important for entrepreneurs to transcend absorption by corporate hegemony. In this article I examine the capacity for agency in market institutions through the lens of “defiance” to illuminate the imaginative “game players” who evade institutional capture in the evolution of market governance.

[Book Review Symposium. Andrew P. Morriss, Bruce Yandle, and Andrew Dorchak, Regulation by Litigation \(Yale University Press, 2009\).](#)

Guest Editor: Jonathan H. Adler

Abstract: We believe that careful application of the logic of economics and public choice shines important light on regulation through litigation and can explain at least partly why regulators choose the litigation route, when they choose it, and how the choice may or may not achieve broad goals of efficiency and fairness. We present three case studies: heavy-duty diesel engines, silica and asbestos, and the tobacco industry's Master Settlement Agreement (MSA).

Book Review Symposium

[Regulation by litigation](#)

Bruce Yandle, Andrew Dorchak and Andrew P. Morriss

Abstract: We believe that careful application of the logic of economics and public choice shines important light on regulation through litigation and can explain at least partly why regulators choose the litigation route, when they choose it, and how the choice may or may not achieve broad goals of efficiency and fairness. We present three case studies: heavy-duty diesel engines, silica and asbestos, and the tobacco industry's Master Settlement Agreement (MSA).

[Process choice](#)

Cary Coglianese

Abstract: Regulation scholars have long searched for the best tools to use to achieve public policy goals, generating an extensive body of research on what has become known as instrument choice. By contrast, analysis of options for structuring how officials make regulatory decisions – process choice – remains in relative infancy. Notwithstanding the emphasis legal scholars and political economists have placed on administrative procedures, surprisingly little research has investigated why regulators choose among different process options or what value they and the public receive from different choices. In their book, *Regulation by Litigation*, Andrew Morriss, Bruce Yandle, and Andrew Dorchak make a significant contribution by empirically and normatively examining regulators' choices between notice-and-comment rulemaking, negotiated rulemaking, and what they call “regulation by litigation.” This review article considers three central questions about regulation by litigation. First, how if at all does regulation by litigation differ from other uses of litigation to achieve policy goals? Second, why do regulators choose litigation over other process options? Third, is regulation by litigation as bad as Morriss, Yandle, and Dorchak say it is? By addressing these conceptual, empirical, and normative questions, this review article not only reveals the specific strengths and limitations of the book, *Regulation by Litigation*, but also highlights more general opportunities and challenges for future research on process choice.

[Taking enforcement on its own terms: EPA's heavy-duty diesel engine litigation](#)

Jonathan Cannon

Abstract: The authors of *Regulation by Litigation* characterize the US Environmental Protection Agency (EPA)'s enforcement action against diesel engine manufacturers as an effort to achieve by litigation

what the Agency was unable to achieve by regulation: immediate reductions in emissions of nitrogen oxides. By substituting litigation for rulemaking, the authors of the book argue, the Agency avoided political and judicial accountability and put itself on a suboptimal policy track. This comment argues that the diesel engine litigation may be better understood as what it purported to be, an enforcement action, not rulemaking in disguise. The authors' characterization of the litigation is questionable on at least two grounds. First, it fails to fully appreciate the distinct functions of enforcement and policymaking in a regulatory setting. The goal of enforcement is not primarily to make policy, but to enforce it – to punish violators, deter future violations, and mitigate harms caused by violations. That goal supplies the proper measure of the litigation's success. Second, in applying public choice analysis to create a story of agency circumvention of appropriate rulemaking procedures, the authors' account misses key features of how agency enforcement decisions are made – and were made in this litigation. This latter shortcoming raises broader questions about the difficulties of applying public choice analysis in complex institutional settings.

Regulation by litigation: Not so bad?

William Funk

Abstract: This is a review essay concerning the book *Regulation by Litigation*. Utilizing public choice theory as the basis of its analysis, the book presents three case studies designed to demonstrate that regulation by litigation does not serve the public interest. This review essay attempts to show that public choice theory does not explain the decision to use litigation in these cases, that the alleged failure of litigation in these cases might not be failures at all, and that regulation by litigation is not the unmitigated evil the authors of the book suggest.

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Articles

[Naming without shaming: The publication of sanctions in the Dutch financial market](#)

Judith van Erp

Abstract: Enforcement agencies increasingly disclose or “name and shame” corporate offenders. This article uses responsive regulation as a framework for an empirical study of the impact of non-anonymous publication of sanctions in the Dutch financial market. These publications are characterized as “naming without shaming”, because they are used for technical guidance rather than with the intention to shame. The findings show that naming offenders functions as a general deterrent in the market for financial intermediaries, but considerably less so in the capital market. In both markets, the publication of sanctions weakened the impact of enforcement. In the capital market, the publications neutralized the seriousness of offenses and contributed to the image of the regulator as powerless. In the market for financial intermediaries, naming offenders was perceived as stigmatizing shaming and led to defiance, rather than compliance. The case study suggests, however, that the publication of sanctions may provide an opportunity for guidance, provided they contain a moral message, rather than technical instruction.

[Institutionalizing fairness in financial markets: Mission impossible?](#)

Sharon Gilad

Abstract: This article analyzes the institutionalization of process-oriented regulation, namely: regulatory institutions that allow firms to adapt regulation to their individual circumstances, while holding them to account for the adequacy and efficacy of their internal compliance systems. The article's main focus is on the strategies sought by compliance professionals to attain managers' receptiveness to regulatory expectations. It analyzes British financial firms' responses to a process-oriented regulatory initiative, which sought to transform the widespread culture of product “mis-selling” in this industry. Three key arguments and hypotheses are put forward: first, it is suggested that the existing theoretical literature on process-oriented regulation overly stresses managers' rational, profit-maximizing motivations for (non-)compliance, whilst overlooking their emotive motivations. Second, it is proposed that managers' emotive resistance is expected when regulatory expectations challenge firms' “organizational identities” and thereby their individual identities. Third, it is hypothesized that when process-oriented regulation poses a threat to organizations' identities, its institutionalization will entail delegation of the design and subsequent implementation of compliance systems to managers outside compliance, and reframing of regulatory expectations into existing businesses discourses and methodologies.

[The parable of the poisoned pork: Network governance and the 2008 Irish pork dioxin contamination](#)

Donal K. Casey and James S. Lawless

Abstract: The 2008 contamination of Irish pork with dioxins was one of the most significant recent food **Abstract** incidents in the European Union (EU). While the contamination posed no real risk to public health, it tested the efficacy of EU food safety regulation and governance which has been considerably overhauled in the past decade. The exchange of risk information through networks of regulators is an important element of the EU food safety risk management framework. Networks are a much-lauded form of new governance, though they are not without their problems. In this paper, we address the question of why governance networks can fail. We examine this issues using the case study of the 2008 Irish dioxin contamination and explore the reason for the failure to make more substantial use of networks in the governance of that incident. We hypothesize that the reason for such failure may be found in three inherent tensions which exist in the design and management of networks, namely flexibility/stability, inclusiveness/efficiency, and internal/external legitimacy. The paper concludes that by ensuring the external legitimacy of the EU's Rapid Alert System for Feed and Food (RASFF) through increased transparency of communications, the design of RASFF has stifled its internal legitimacy with regard to certain types of important information exchanges.

Agency under constraint: Ideological preferences and the politics of electricity regulation in Latin America

Cecilia Martinez-Gallardo and Maria Victoria Murillo

Abstract: Whereas both the literature on globalization and the literature on regulatory diffusion stress the pressures that led to policy convergence, this article shows how the ideology of incumbents produced different regulatory outcomes, even in the face of strong financial and technological pressures that constrained policy agency. By looking at the regulatory frameworks adopted at the time of electricity privatization in Latin America, this article shows that right-wing governments adopted regulations that eliminated barriers to entry and investment and limited the discretion of regulators (*market-conforming* regulations), and that former statisticians who had pragmatically converted to the market creed instead chose regulations that tended to impose higher barriers to entry and investment and gave regulators wide discretion in conflict resolution and price setting (*market-controlling* regulations). These findings suggest the need to look at the ideology (and ideological legacies) of government coalitions for a more nuanced understanding of the process of regulatory diffusion that took place across many sectors in most regions of the world.

Bypassing public procurement regulation: A study of rationality in local decisionmaking

Lisa Hansson and Johan Holmgren

Abstract: Using private contractors through procurement is common in most public sector areas. Despite the benefits of procurement, officials are sometimes tempted to circumvent procurement regulations. The aim of this article is to examine the strategies used by local governmental decisionmakers to bypass procurement regulations and to analyze the rationality underlying these officials' actions. Interviews, court documents, municipal documents, and newspaper articles describing the actions of Swedish municipal officials concerning special transport service (STS) procurements were collected and analyzed. In a case in which rural municipalities lost regular taxi services after STS procurement, we demonstrate how decisions were driven by pressure from the public and local interest groups, making municipal officials deviate from procurement regulations in striving to secure the existence of regular taxi services. One outcome was that local businesses were given preferential treatment, violating regulations and reducing economic efficiency.

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Articles

[Can markets be expected to prevent themselves from self-destruction?](#)

Bo Rothstein

Abstract: Even if competitive markets have shown themselves to be the most efficient organizational form for creating economic efficiency, the question of how they can avoid destructive influence from agents with opportunistic motives remains unresolved. Different institutional approaches have argued that to be efficient, markets need to be embedded in a set of formal and informal institutions. Because such institutions will in the long run make all market agents better off, they are labeled efficient institutions. Contrary to what is argued in neoclassical economics, it is unlikely that such institutions will be created endogenously by market agents because the institutions are to be understood as genuine public goods. Moreover, if such institutions have been established, we should expect market agents to face a collective action problem when sustaining them, leading to the destruction of the institutions. The conclusion is that if left to themselves, markets should be understood as inherently self-destructive.

[Revolving door laws and state public utility commissioners](#)

Marc T. Law and Cheryl X. Long

Abstract: This paper investigates the effects of revolving door regulations – laws that restrict the post-government employment opportunities of public sector workers – on the characteristics of state public utility commissioners. We find that commissioners from states with revolving door regulations have less expertise, serve shorter terms, and are less likely to be subsequently employed by the private sector, compared with their counterparts from states without revolving door laws. These findings suggest that revolving door regulations may have costly unintended consequences.

[“Capacity-building” in global Internet governance: The long-term outcomes of “multistakeholderism”](#)

Slavka Antonova

Abstract: “Capacity building” is a catch phrase from the UN development discourse. In recent years, it has entered the global Internet governance (IG) arena. At World Summit of the Information Society (WSIS 2003), “capacity building” was identified as a key public policy issue. It is proposed in this study that ‘capacity building’ be defined in a different manner – as the principal outcome of the experimental multistakeholder (MSH) process in global IG. The open and inclusive process of stakeholder deliberation leads to accumulation of intellectual capital, development of relational infrastructure for the domain (epistemic community), and emergence of common global consciousness. When cast as a capacity-building process, MSH collaboration at global Internet governance arenas exhibits long-term and large-scale intangible outcomes. This study contributes to the understanding of the capacity-building potential of MSH collaboration in IG. By employing concepts from International Relations and Organizational Learning, the author develops a model of tangible and intangible outcomes of MSH collaboration. This unique model can be used for studying the effects in other stakeholder venues of governing global resources and processes.

[Regulating non-government schools: Explaining success and failure](#)

Amos Zehavi

Abstract: The challenge faced by governments in the regulation of powerful private actors has allegedly intensified in recent years. This study explores the means at the disposal of governments, and their effectiveness, with respect to the regulation of private actors that demonstrate considerable independence and political efficacy. It is argued that a modified ‘Contextual Interaction Theory’ (CIT), which focuses on the interaction between generic policy instruments (carrots, sticks, and sermons) and target group attributes (motivation, information, and power), and is augmented by a consideration of a separate institutional dimension, offers a useful analytical framework for understanding both the challenge faced by governments and the options for dealing with it. This framework is applied to a study of the introduction of ‘new accountability’ to Australian and Israeli non-government schools. The use of the standard CIT lenses helps explain Australian success and Israeli government failure in the introduction of new accountability. Australian success is attributable to a judicious mix of ‘hard’ and ‘soft’

instruments that favorably impacted target group information and motivation. In Israel, in contrast, policy instrument mixes failed to alter the main target group's oppositional stance. Institutional engineering, however, could provide a promising way for Israeli policymakers to enhance policy instrument effectiveness, by influencing target group power and motivation.

[The global institutionalization of microcredit](#)

Peter Aagaard

Abstract: This article explains how microcredit as a policy idea has been institutionalized at the transnational level, and what role strategic actors play in the institutional change and governance of microcredit. Special attention is given to three dominant actors, the Grameen Bank, the World Bank, and SKS Microfinance. To explain the emergence of microcredit as a transnational policy idea this article explores the relations between theories of institutional change and Rosenau's concept of spheres of authority.

[Uniformity as response to soft law: Evidence from compliance and non-compliance with the Dutch corporate governance code](#)

Reggy Hooghiemstra and Hans van Ees

Abstract: The objective of the paper is to examine how firms have dealt with the trade-off between flexibility and uncertainty that is characteristic for the decision-making of firms in coping with self-regulatory initiatives in general and the comply-or-explain principle in corporate governance in particular. Using unique data for 126 listed Dutch firms, we find that firms respond to this self-regulatory initiative by largely complying with the code recommendation, possibly out of fear that the firm's reputation may be damaged. Furthermore, we find evidence suggesting that firms confine themselves to adopting a specific set of code recommendations and use similar arguments to explain non-compliance. Our findings indicate uniformity in adopting the standard of good governance which is not in line with the logic of corporate governance codes and casts doubt on the effectiveness of this form of soft law. Overall, the paper's findings indicate that more restrictive (regulatory) instruments may be necessary to make firms conform to the spirit of codes.

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March 2012

Editors' Introduction

Regulation & Governance announces annual "Best Article" prize winners

Carol Heimer, Robert A. Kagan and David Levi-Faur

Articles

When risk-based regulation aims low: Approaches and challenges

Julia Black and Robert Baldwin

Abstract: Risk-based regulation is becoming a familiar regulatory strategy in a wide range of areas and countries. Regulatory attention tends to focus, at least initially, on high risks but low-risk regulatees or activities tend to form the bulk of the regulated population. This article asks why regulators need to address low risks and it outlines the potential difficulties that such risks present. It then considers how regulators tend to deal with lower risks in practice. A body of literature and survey-based research is used to develop a taxonomy of intervention strategies that may be useful in relation to low-risk activities, and, indeed, more widely. In an article to be published in the subsequent issue of this journal, we will then develop a strategic framework for regulators to employ when choosing intervention strategies and we will assess whether, and how, such a framework could be used by regulatory agencies in a manner that is operable, dynamic, transparent, and justifiable.

The many uses of regulatory impact assessment: A meta-analysis of EU and UK cases

Claire A. Dunlop, Martino Maggetti, Claudio M. Radaelli and Duncan Russel

Abstract: Research on regulation has crossed paths with the literature on policy instruments, showing that regulatory policy instruments contain cognitive and normative beliefs about policy. Thus, their usage stacks the deck in favor of one type of actor or one type of regulatory solution. In this article, we challenge the assumption that there is a predetermined relationship between ideas, regulatory policy instruments, and outcomes. We argue that different combinations of conditions lead to different outcomes, depending on how actors use the instrument. Empirically, we analyze 31 EU and UK case studies of regulatory impact assessment (RIA) – a regulatory policy instrument that has been pivotal in the so-called better regulation movement. We distinguish four main usages of RIA, that is, political, instrumental, communicative, and perfunctory. We find that in our sample instrumental usage is not so rare and that the contrast between communicative and political usages is less stark than is commonly thought. In terms of policy recommendations, our analysis suggests that there may be different paths to desirable outcomes. Policymakers should therefore explore different combinations of conditions leading to the usages they deem desirable rather than arguing for a fixed menu of variables.

Mandated justice: The potential promise and possible pitfalls of mandating procedural justice in the workplace

Yuval Feldman and Tom R. Tyler

Abstract: This study addresses the question of whether and how legal authorities ought to intervene in work organizations in order to most effectively regulate the behavior of employees. This question is examined empirically, by exploring whether the association between the level of fairness employees experience in procedures regarding pay and benefits, and their adherence to workplace rules, differs depending upon whether those procedures are enacted by companies voluntarily or mandated by law. This question was addressed using both a survey of a representative sample of employees in Israel, as well as their reactions to an experimental vignette. The results generally suggest that evaluations of the procedural justice of performance appraisal hearings more strongly influenced judgments of overall workplace fairness, perceptions of management legitimacy, and employee rule-adherence behavior when employees believed fairer workplace procedures were required by law.

[Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective](#)

Agnes Batory

Abstract: The Central Eastern European member states of the European Union have introduced a host of anti-corruption measures in the past two decades, yet corruption is still prevalent. Rather than asking what is wrong with the letter of the law, which has traditionally been the focus of analysis, this article identifies some of the reasons why those whose behavior the law seeks to change fail to act as expected. Drawing on theoretical insights from implementation studies and using Hungary as an illustrative example, the article finds that both incentives and normative judgments are skewed towards non-compliance with anti-bribery laws. The main policy implications are that anti-corruption interventions should pay more attention to raising awareness among target groups, take existing social norms into account, and rely on positive incentives as well as, or rather than, increasing penalties.

[Governance and regulation of urban bus transportation: Using partial privatization to achieve the better of two worlds](#)

Daniel Albalade, Germà Bel and Joan Calzada

Abstract: Mixed delivery of public services is gaining increasing attention as a way for public managers to avoid deciding between a purely public and purely private delivery system. The unusual coexistence of public and private operators in the urban bus market in Barcelona provides an interesting context in which to analyze the challenges and opportunities posed by this system. Competition for concessions among private operators and the regulation of concessionaires generate incentives to improve efficiency and quality. Furthermore, partial privatization increases the efficiency and feasibility of public operators. In fact, competitive bidding is effective in disciplining private operators and increasing the regulators' bargaining power over both public and private firms. The reform implemented in Barcelona offers an interesting insight into all metropolitan areas that are in a position to create a number of separate concessions large enough to benefit from economies of density.

[The political economy of regulatory change: The case of British merger control](#)

Hubert Buch-Hansen

Abstract: This article aims to explain the broader evolution of British merger control. To this end it outlines a novel critical political economy perspective on regulation and regulatory change which differs from established political economy approaches, such as the regulatory capitalism/state perspectives, in three main ways: it places regulatory ideas at the heart of the analysis, it differentiates between different degrees of regulatory change, and it links regulatory change in delineated issue areas with changing power balances between fractions of capital and labor. The application of this perspective to the analysis of the evolution of British merger control provides some important new insights, most notably that the content, form, and scope of merger control in Britain have been deeply transformed in accordance with neoliberal ideas since the 1980s and that this process, which was part of a broader regulatory and ideational shift, was premised on the ascendancy of transnational capital.

Regulation & Governance Forum

[The politics of de-delegation: Regulatory \(in\)dependence in Turkey](#)

Isik Ozel

Abstract: This essay explores the rise and decline of regulatory independence in Turkey. Framing the ongoing process of limiting independence of these agencies as the politics of de-delegation, it raises the question of why Turkish regulatory agencies have become subject to increasing political intervention. Contending that institutional legacies and mounting illiberal predispositions of the Turkish state facilitate the politics of de-delegation, the essay focuses on centralization, executive discretion, and politicization of bureaucracy as the major institutional legacies. Then it briefly discusses formal and informal mechanisms of political intervention, which have impaired the independence of the regulatory agencies.

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June 2012

Articles

[When risk-based regulation aims low: A strategic framework](#)

Julia Black and Robert Baldwin

Abstract: This article develops a strategic framework for regulators to employ when choosing intervention strategies for dealing with low risks and reviewing performance, building on the analysis by the same authors in the previous edition of this journal. The framework occupies the operational “middle ground” between risk analysis and formal enforcement action. At its core is a matrix, the Good Regulatory Intervention Design (GRID), which provides a framework to categorize sites or activities on the basis of two factors: the nature of the risk and the nature of the regulatee. Using GRID, regulators can select which intervention tools to use, and determine the overall level of regulatory intensity that should apply. GRID is accompanied by the Good Regulatory Assessment Framework (GRAF) for agencies to use in reviewing their performance and provides a step-by-step process for enabling “double loop learning.” The article also argues that the process of developing such a framework highlighted the extent to which “low risk” and “high risk” regulation are distinct. “Low risk” means “low priority.” Justifying why certain risks should not receive much regulatory attention requires a particular type of engagement, and has a bearing on the regulatory strategies that are adopted.

[From norms to programs: The United Nations Global Compact and global governance](#)

Daniel Berliner and Aseem Prakash

Abstract: Norms shape policy when they get translated into concrete programs. What if a widely shared norm gets translated into a weak program? How might this influence the program's legitimacy? We examine these issues in the context of the United Nations Global Compact, a voluntary program that embodies the widely shared norm of corporate responsibility. While both international intergovernmental organization (IGO) and international non-governmental organization (INGO) networks support this norm, they differ on the adequacy of the Compact's program design. We explore how this tension affects the diffusion of the Compact across countries, which vary in their levels of embeddedness in IGO and INGO networks. Our findings suggest that embeddedness in IGO networks encourages adoption, while embeddedness in INGO networks discourages it. Our analysis provides important lessons for sponsors of voluntary governance mechanisms. Widespread support for a norm does not automatically ensure support for a program that claims to embody it.

[Using the institutional grammar tool to understand regulatory compliance: The case of Colorado aquaculture](#)

Saba Siddiki, Xavier Basurto and Christopher M. Weible

Abstract: What is the relationship between the design of regulations and levels of individual compliance? To answer this question, Crawford and Ostrom's institutional grammar tool is used to deconstruct regulations governing the aquaculture industry in Colorado, USA. Compliance with the deconstructed regulatory components is then assessed based on the perceptions of the appropriateness of the regulations, involvement in designing the regulations, and intrinsic and extrinsic motivations. The findings suggest that levels of compliance with regulations vary across and within individuals regarding various aspects of the regulatory components. As expected, the level of compliance is affected by the perceived appropriateness of regulations, participation in designing the regulations, and feelings of guilt and fear of social disapproval. Furthermore, there is a strong degree of interdependence among the written components, as identified by the institutional grammar tool, in affecting compliance levels. The paper contributes to the regulation and compliance literature by illustrating the utility of the institutional grammar tool in understanding regulatory content, applying a new Q-Sort technique for measuring individual levels of compliance, and providing a rare exploration into feelings of guilt and fear outside of the laboratory setting.

[The triumph of regulatory politics: Benefit–cost analysis and political salience](#)

Stuart Shapiro and John F. Morrall III

Abstract: While benefit–cost analysis (BCA) is now a permanent part of the regulatory process in the United States, and many other countries around the world as well as the European Union have adopted

it or are moving toward it, there have been few empirical attempts to assess either whether its use improves regulations or how BCA interacts with the political environment. We use a unique US database of the costs and benefits of 109 economically significant regulations issued between 2000 and 2009 to examine whether the amount of information provided in the BCA or political factors surrounding the regulation better correlate with the net benefits of the regulation. We find that there is little correlation between the information provided by the analysis and the net benefits. However, we find that regulations that receive few public comments and are not issued at the end of an administration, have the highest net benefits. These are the regulations that are the least politically salient. This interaction between the political environment and the economic performance of a regulation has been under-examined and deserves further study.

Enabling global principle-based regulation: The case of risk analysis in the Codex Alimentarius

David Demortain

Abstract: This paper deals with the creation of global principle-based standards. For such standards to be accepted and effective, particular conditions must be fulfilled. One such condition, little explored, is that standard-makers and -takers share knowledge about the meaning of the principles, as well as the practices through which they are likely to be applied. The paper shows that this condition is fulfilled when transnational cultural systems exist, by means of which both types of actors engage in the explication and representation of their practices so that a common, standard understanding emerges of how principles may be interpreted on the ground and informs the negotiations. A transnational cultural system is a crucial governance infrastructure to set global standards, as shown by the long history of creating a risk analysis guideline by the Codex Alimentarius, the inter-governmental body for food standards.

Torn in translation: An ethnographic study of regulatory decision-making in Turkey

Ebru Kayaalp

Abstract: There is much literature on the diffusion and translation of regulatory agencies from the perspective of formal political models. Ethnographic research of regulation process is, however, much less common. This is even more evident with regards to the study of regulatory agencies established outside the “West.” This article analyzes the translation process of the Turkish tobacco regulatory agency, which was established in 2002, under commitments made to the International Monetary Fund and the World Bank. Based on an ethnographic analysis of two controversial cases, the study shows that tobacco regulation was being shaped and pursued in an environment of ambivalence and uncertainty. The study concludes that the decision-making process of the agency is context-specific and constructed within the perpetual struggles and interactions among the actors involved in this process.

Institutional shrinkage: The deviant case of Swiss banking secrecy

Simon Steinlin and Christine Trampusch

Abstract: Using the Mahoney–Thelen causal model one would expect “layering” to be the dominant kind of institutional change affecting Swiss banking secrecy. Our research into governance in Swiss banking shows that it does not fit this theoretical model. Applying deviant case analysis we have refined our understanding of institutional change. We argue that the removal of rules and the momentum of pressure should be acknowledged when explaining variations of institutional change and we suggest that the processes of shrinkage should not be ignored.

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Understanding the Rise of the Regulatory State of the South. Guest Editors: Navroz K. Dubash and Bronwen Morgan

Understanding the rise of the regulatory state of the South

Navroz K. Dubash and Bronwen Morgan

Abstract: This paper, and the special issue it introduces, explores whether, and how, the rise of the regulatory state of the South, and its implications for processes of governance, are distinct from cases in the North. With the exception of a small but growing body of work on Latin America, most work on the regulatory state deals with the US or Europe, or takes a relatively undifferentiated “legal transplant” approach to the developing world. We use the term “the South” to invoke shared histories of many countries, rather than as a geographic delimiter, even while acknowledging continued and growing diversity among these countries, particularly in their engagement with globalization.

The rise of the constitutional regulatory state in Colombia: The case of water governance

Rene Urueña

Abstract: This article interprets the regulatory state in Colombia as the result of a dialectic process between transnational knowledge and domestic politics, which influence, transform, and inspire each other. Such a process results in an interesting *constitutional* variant of the regulatory state, in which neo-constitutionalism becomes a counterbalance to the unchecked expansion of neo-liberal regulatory practices. I, therefore, distinguish between neoliberal and constitutional regulatory states. As a result of neo-constitutionalism, the domestic judiciary is empowered, and becomes a crucial actor to understand both the specific traits of this regulatory experience, and its interaction with global centers of power.

Implementing independent regulatory agencies in Brazil: The contrasting experiences in the electricity and telecommunications sectors

Mariana Mota Prado

Abstract: This paper explores hypotheses that could explain both the creation of independent regulatory agencies (IRAs) in Brazil, and the differences in the design of the Brazilian IRAs in the telecommunications and electricity sectors. To formulate specific hypotheses that make sense of the Brazilian case, the paper critically interrogates the “weak state” hypothesis and the “political bias” hypothesis. The first argues that countries with flawed governance structures, such as Latin American countries, are less likely to establish independent regulators than European countries. The second argues that “political bias” is a determinant factor in predicting the implementation of IRAs in Latin America. The first part of the paper uses these two general hypotheses as a basis to formulate specific hypotheses to explain the creation of IRAs in Brazil. The second part of the paper formulates specific hypotheses that could explain why institutional guarantees of IRA independence are stronger in the telecommunications sector, than in the electricity sector. In particular, the paper argues in support of a revised version of the “political bias” hypothesis to explain sectoral divergence, suggesting that bureaucratic resistance to reform may be the cause for the variations observed in Brazil between regulatory reform in electricity and in telecommunications.

Judiciaries as crucial actors in Southern regulatory systems: A case study of Indian telecom regulation

Arun K. Thiruvengadam and Piyush Joshi

Abstract: This article addresses regulatory reforms in the Indian telecommunications sector and emphasizes the role of the Indian judiciary. Our claim is that when confronted with a series of disputes relating to the nascent telecom regulatory landscape, the Supreme Court of India sought to make a constructive contribution to both the actual disputes as well as the overall regulatory framework. Our reading of these cases suggests that in the sphere of telecom, the Supreme Court has been less interested in stamping its own authority on issues, and has instead sought to bolster the authority and legitimacy of the recently constituted telecom regulatory institutions. We seek to draw attention to the role of the Indian judiciary as marking an exceptional feature of evolving regulatory systems in the Global South. Conventional wisdom in the regulatory jurisprudence that has evolved in the Global North

suggests that judiciaries should have little or no role to play in regulatory systems. We suggest that to overcome the special challenges that regulatory systems in the Global South confront, more established institutions and actors might have to lend credibility and legitimacy to enable nascent regulatory actors to develop over time. At least in the Indian case, this is one way to understand the Indian judiciary's interventionist actions in the sphere of telecom regulation.

[Regulatory mobilization and service delivery at the edge of the regulatory state](#)

Nai Rui Chng

Abstract: Where there is weak state capacity to carry out regulatory, redistributive, and developmental functions characterizing much of the developing world, the role of governance and service delivery is also performed by a myriad of private actors. Institutional reform in the utility sector in developing countries has often failed to distinguish between social and economic regulation. I show how private actors like NGOs and local community groups undertake what I term "regulatory mobilization" to influence the new rules of the service delivery game, as well as to deliver much-needed basic services to urban poor communities. Based on extensive fieldwork carried out in the Philippines, this article reveals and explains the politics of the informal sector at the edge of the regulatory state. More than a decade since the privatization of the Metropolitan Waterworks and Sewerage System in Metro Manila in 1997, water access for the urban poor remained limited as privatized water utilities faced difficulties in extending service provision. In the context of an unpredictable regulatory landscape and an oligarchic patrimonial state, unexpected collective action by organized urban poor communities and NGOs has taken place around water as a subsistence right. Combining hybrid mobilizations to obtain water as well as influencing the rules governing their provision, these forms of regulatory mobilization appear to be peripheral and episodic. However, depending on how local and sectoral politics are conflated, such regulatory mobilization may sometimes not only result in obtaining subsistence goods, but may also occasionally project countervailing power in the policy sector, and influence formal regulatory frameworks in surprising ways.

[Civil society and the regulatory state of the South: A commentary](#)

Kathryn Hochstetler

Abstract: The basic rationale of the regulatory state is to insulate certain kinds of decisionmaking from political actors. The main purpose of this commentary is to assess the ways that members of civil society, in fact, often shadow and contest the central actors of the regulatory state, even though they are ostensibly well outside it. I offer three distinctions to help broaden and sharpen analysis of the roles and impact of civil society actors: whether civil society actors have special expertise or not; whether the regulatory state is being put in place or already exists; and whether civil society actions are broadly complementary to, or substitutive of, state action. In discussing each of these, I also explore the consequences of the transfer of the regulatory state to the global South, and the way that change in location shapes both the role and impact of civil society and the regulatory state itself.

Symposium on Experimentalist Governance. Guest Editors: Tanja A. Börzel and Sandra Eckert

[Experimentalist governance: An introduction](#)

Sandra Eckert and Tanja A. Börzel

Abstract: This symposium critically engages with the volume *Experimentalist Governance in the European Union: Towards a New Architecture* (2010), edited by Charles F. Sabel and Jonathan Zeitlin. "Experimentalist Governance" (EG) opens up an original theoretical perspective on the emergent governance architecture of the EU and sheds new light on developments in key policy sectors. This symposium brings together a transatlantic group of distinguished political scientists and legal scholars to discuss the added value of EG as a concept for analysis, its theoretical underpinnings, empirical relevance, and normative implications, in terms of legitimacy. Contributors discuss EG from different disciplinary and theoretical perspectives, referring to a variety of empirical examples in the EU context and beyond. The symposium closes with a response from the authors to their critics. This collection of essays sheds new light on debates around the nature of the EU and democratic governance beyond the nation state.

[Experimentalist governance in the EU: The emperor's new clothes?](#)

Tanja A. Börzel

Abstract: Most students of the EU agree by now that it is best described as a governance system. There is far less consensus on what kind of governance the EU actually features: modern, postmodern, network, cooperative, innovative or simply new? Sabel and Zeitlin have advanced yet another concept. This paper discusses the added value of their "experimentalist governance" (EG), as presented in an

edited volume published in 2010, for understanding and explaining the nature of EU policymaking, addressing four questions: First, to what extent is EG distinct from existing concepts of governance? Second, how pervasive is EG in the EU when compared to alternative forms of governance? Third, what is the effect of EG on EU policy outcomes, on the one hand, and the overall architecture of the EU, on the other? Finally, does EG solve or exacerbate the EU's democratic deficit?

Experimentalist governance in the European Union: A commentary

Amy Verdun

Abstract: Sabel and Zeitlin's *Experimentalist Governance* offers an insight into European governance in those cases where the EU institutions do not have clear competence and where member states are not prepared to accept a unified policy on a problem at hand. *Experimentalist Governance* identifies four steps of action: agree on common goals, have lower levels propose ways to meet goals, then report on their meeting of goals, and, finally, periodically reevaluate the review procedures. By looking at the developments in EU policymaking through the lens of experimentalist governance (EG), one obtains an appreciation of how goals might be achieved that would otherwise not likely have been achieved through the community method. Sabel and Zeitlin highlight how EG can be effective in obtaining results, integrating peers, and incorporating deliberation, and offer a different way to deal with accountability and legitimacy. This article closes by taking the next step, namely, asking what challenges EG poses to democratic processes.

Reflections on experimentalist governance

John Erik Fossum

Abstract: This article critically engages with Sabel and Zeitlin's important notion of experimentalist governance (EG). It is cast as a "recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing them in different contexts." This is a useful heuristic device to capture policymaking and implementation in complex, dynamic, and highly diverse political entities. This article discusses the micro-foundations underpinning EG, how it relates to hierarchical modes of governing, and how well it captures the distinctive traits of the EU. It also discusses EG from a democratic perspective. In democratic terms EG is understood as a form of direct deliberative polyarchy. This article notes that the question of EG's contribution to democratization cannot, however, be adequately addressed unless we pay more systematic attention to representation and representative democracy.

Constitutionalism and experimentalist governance

Mattias Kumm

Abstract: This comment explores how experimentalist governance is connected to wider constitutional questions and makes two claims. First, there are good reasons to believe that experimentalist governance can only flourish in a world where the precepts of liberal democratic constitutionalism have been widely accepted and institutionalized. Experimentalist governance is part and parcel of the world of liberal democratic constitutionalism. Second, it is not only governance in Europe that can be described in experimentalist terms. The concept is also useful to describe the dynamics of European constitutionalism.

Experimentalism in the EU: Common ground and persistent differences

Charles F. Sabel and Jonathan Zeitlin

Abstract: Our central claim in this rejoinder is that experimentalist forms of organization in making regulatory rules, organizing social services, and articulating constitutional norms arise and diffuse as the problem that the actors and the state face shifts from ignorance to uncertainty. We argue that this has consequences for forms of accountability and for the conception and organization of democracy and constitutionalism. The EU, founded by diverse states in a period of continuing uncertainty, intensified by growing interdependence, proves to be a natural laboratory for observing urgent efforts to adjust to this new situation, and the symposium focuses on developments there. The symposium has brought us to see that there is more common ground in these debates than prior exchanges may have suggested. We therefore emphasize convergence on large points, while underscoring and, we hope, clarifying persistent differences, with the aim of encouraging the joint exploration of them already underway, in part explicitly, in part implicitly.

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Articles

[Regulatory policy outputs and impacts: Exploring a complex relationship](#)

Christoph Knill, Kai Schulze and Jale Tosun

Abstract: In this article, we pursue the objective of empirically testing the extent to which changes in environmental policy outputs can explain changes in environmental impacts. Previously, systematic testing of this relationship was hampered by the lack of a compelling measurement of changes in regulatory policy outputs. To remedy this, we present a novel approach to the measurement of events of regulatory output change. We illustrate our concept by employing data on changes in clean air regulations in 24 advanced democracies from 1976 to 2003. In a next step, we explore the extent to which changes in clean air regulations can account for changes in air pollutant emissions. The empirical analysis suggests that changes in clean air regulations cannot be unconditionally associated with changing intensities of air pollutant emission. We deem these results to have far-reaching implications for the study of regulatory policy change.

[Incentivizing self-regulation: Federal vs. state-level voluntary programs in US climate change policies](#)

Lily Hsueh and Aseem Prakash

Abstract: How does program sponsorship influence the design of voluntary programs? Why and how do voluntary programs on climate change sponsored by the state and federal governments in the United States vary in their institutional design? Scholars emphasize the signaling role of voluntary programs to outside stakeholders, and the excludable benefits that induce firms to take on non-trivial costs of joining voluntary programs. Scholars have noted several types of benefits, particularly reputational benefits programs provide, but have not systematically studied why different programs emphasize different types of benefits. We suggest that excludable benefits are likely to take different forms depending on the institutional context in which program sponsors function. We hypothesize that federal programs are likely to emphasize less tangible reputational benefits while state programs are likely to emphasize more tangible benefits, such as access to technical knowledge and capital. Statistical analyses show the odds of a voluntary program emphasizing tangible benefits increases by several folds when the program is sponsored by the state as opposed to federal government.

[The relationship between regulation and contracts in infrastructure industries: Regulation as ordered renegotiation](#)

Jon Stern

Abstract: This paper discusses the relationship between regulation and contracts in infrastructure industries and the role of regulation, particularly the role of regulatory agencies in the review, revision, and renegotiation of contracts. The paper starts with a short survey of relevant economic and legal issues. Examples are presented of how and why infrastructure contracts, including concession contracts, have been combined with monitoring and enforcement by external regulatory agencies. The examples discussed include historical UK experience, recent French experience, and developing country experience. The paper concludes with a discussion of the role that regulatory entities can play to reinforce trust and sustain contracts by enabling simpler contracts, resolving contract misunderstandings, and providing processes for ordered renegotiations.

[Regulating the Internet infrastructure: A comparative appraisal of the legitimacy of ICANN, ITU, and the WSIS](#)

Ingo Take

Abstract: How to generate legitimate forms of governance beyond the nation state is often considered a central question in contemporary world politics. To proceed in theory-building, scholars need to systematically assign the theory-driven assumptions on legitimate forms of governance beyond the nation state with the various, already observable, forms of global governance. This article aims to conduct a comparative appraisal of the legitimacy quality of different patterns of governance by applying a framework of indicators for their assessment. The indicators are selected from the scholarly

debate within International Relations on the legitimacy of global governance arrangements and structured by a multidimensional concept of legitimacy (input, throughput, and output dimensions). This framework is then applied to international, transnational, and private forms of global governance in the field of Internet regulation in order to show how each of them tries to produce and maintain legitimacy, which strategies it applies, and in how it interacts with its stakeholders.

Market making via regulation: The role of the state in carbon markets

Markus Lederer

Abstract: Proponents as well as critics of carbon trading underestimate the institutional and political underpinnings of evolving carbon markets. Based on institutionalist approaches, this paper argues that the strong embeddedness of carbon markets explains why certain characteristics (positive and negative) materialize. Focusing on the actors who initiate and who influence carbon markets, this article also shows that currently only states and intergovernmental agreements provide the necessary regulation for carbon markets to exist and to work. Today, neither market actors nor NGOs nor public private partnerships have the political power to set up, regulate or capture evolving market structures. Thus, whether or not market-based instruments bring about the desired results depends on good public regulation, which is – at least up to now – represented by the state. Four instances of the commodification of carbon serve as illustrations: the European Union Emission Trading System (EU ETS); the Clean Development Mechanism (CDM); the voluntary market; and new sectoral approaches, particularly Reducing Emissions from Deforestation and Degradation (REDD+).

Negotiating climate legislation: Policy path dependence and coalition stabilization

Janelle Knox-Hayes

Abstract: This article investigates the nature of policy path dependence through analysis of climate policy formation in the United States. In 2008 the US Congress attempted to pass the Lieberman–Warner bill, a comprehensive climate and energy package that would have capped greenhouse emissions and established a nationwide cap and trade program. In the same year, California successfully enacted the Global Warming Solutions Act. This article explores the circumstances of both cases and raises the question of why legislation at the state level was successful and took such a divergent form from legislation at the federal level. The divergence of these cases is used to highlight the nature of coalition formation and policy path dependence in the legislative process. Explanations of policy tend to gravitate toward either the generalizability of game theoretic approaches or the empirical depth of case studies. This article suggests a combined approach that uses case studies to analyze the positions and motivations of actors and to then model policy development over time. The approach examines policy through the formation and negotiation of policy coalitions. Drawing on the Advocacy Coalition Framework and omnibus analysis, the approach expands these coalition theories first by analysing legislative development at the interface of legislators and constituent interest groups, and second by adding temporal dimension to the analysis. The findings suggest that policy is path dependent in that it is negotiated between coalitions that in turn create stability in the policy process and insulate policy fields from external shocks. Policy path dependence suggests that theory alone is insufficient to predict policy outcomes; policy results depend strongly on prior policy efforts, historically and socially contingent coalitions, and the resulting framing of policy possibilities.

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March 2013

Special Issue

:Twenty Years of Responsive Regulation
An Appreciation and Appraisal

Editorial

Regulation and Governance Best Prize Announcement for Vol. 6

Tim Bartley, Cristie Ford, David Levi-Faur and Walter Mattli

Articles

Twenty years of responsive regulation: An appreciation and appraisal

Christine Parker

Abstract: It has now been 20 years since the publication of Ian Ayres and John Braithwaite's *Responsive Regulation: Transcending the Deregulation Debate*. Responsive Regulation is one of those "canonical" texts that helped constitute the very field of which it is a part. It is, therefore, appropriate to celebrate its achievement. It is also apposite to appraise where Responsive Regulation has taken us with a special issue of *Regulation & Governance*, a journal co-founded by John Braithwaite, that is itself at the forefront of further establishing regulatory studies as a scholarly and policy oriented field.

Prospects for scalability: Relationships and uncertainty in responsive regulation

Cristie Ford

Abstract: Many of the very significant insights in Ian Ayres and John Braithwaite's 1992 book, *Responsive Regulation*, have transcended the book's time. At the same time, on the 20th anniversary of its publication, two things about the book are striking. The first is the direct, personal relationship on which the regulatory interaction is premised. The second is the boundedness and manageability of the regulatory project. At least in prudential regulation of global financial institutions in the wake of the recent financial crisis (though surely elsewhere too), neither of these features can be taken for granted. This brief essay seeks to open a preliminary conversation about responsive regulation in terms of its scalability. It considers whether as a practical matter, responsive regulation can be scaled up to more diffuse, multiparty, logistically complex contexts, such as financial regulation. As a matter of representation, it asks whether by projecting the focal object, the responsive relationship, outward, responsive regulation distorts our image of regulation in other contexts (or even in responsive regulation's own home environment). The essay closes by arguing that in order to incorporate responsive regulation's considerable discursive and relational benefits into regulatory environments like global financial regulation, it needs to be buttressed by additional regulatory technologies.

Ambiguity and relational signals in regulator–regulatee relationships

Julien Etienne

Abstract: *Responsive Regulation* translated an ongoing academic debate about behavior orientation and regulatory enforcement into a synthetic framework. Yet ethnographic studies reveal that ambiguity pervades regulator–regulatee interactions and suggest that the reality of regulatory encounters may be too ambivalent to fit the picture of the regulatory "game" at the heart of Ayres and Braithwaite's theory. This article proposes to address this ambivalence by drawing the outline of a relational signaling approach to regulatory encounters. The regulatory game is deconstructed into several ideal types of regulator–regulatee relationships. Within each ideal type ambiguity is managed with relational signals, namely behaviors that take a specific signification depending on the nature of the relationship. A relational signaling approach can account for the varying meanings of cooperation, defection, and mutual social control across different regulator–regulatee dyads.

Why was the enforcement pyramid so influential? And what price was paid?

Peter Mascini

Abstract: Although responsive regulation includes much more than the enforcement pyramid, it is the pyramid that has received most attention from academics and practitioners. This is despite the fact that

the implementation of the strategy of gradual escalation has proved challenging in many respects. Why has the enforcement pyramid been so attractive? Apart from its scholarly and policy usefulness, this paper suggests that it appeals to practitioners because it provides a theoretical endorsement of the professional autonomy to which practitioners aspire. It was, and is, still appealing to scholars because it provides a practical means to improve regulation, which is congruent with the dominant neoliberal reflex to depoliticize the regulation of capitalist economies. All in all, because responsive regulation has very largely been reduced to the enforcement pyramid, the literature has neglected the normative issues surrounding the regulation of capitalist economies that were central to Ayres and Braithwaite.

Transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK

Steve Tombs and David Whyte

Abstract: This paper considers the context for the development of the concept of responsive regulation, namely the transcending of the deregulation debate. It argues that claims regarding responsive regulation when allied to risk-based rationales for enforcement can, in fact, allow a “deregulatory” momentum to develop. This argument is grounded with reference to a case study of the regulation of workplace health and safety in the UK, with a particular focus upon the period 2000–2010. The paper casts doubt on the relevance and robustness of the concept of responsive regulation. In a context that might have been fertile ground for developing genuinely responsive regulatory policy, empirically we find the development of policies that are better described as “regulatory degradation.” Thus we argue in this paper that, whatever the intentions of its proponents, there is a logical affinity between responsive regulation, and effective de-regulation, and that it is this affinity that has provided a convenient political rationale for the emergence of a neo-liberal regulatory settlement in the UK.

Pyramids and the value of generality

Pauline Westerman

Abstract: *Responsive Regulation* advocates a differentiated style of regulation and enforcement that is more responsive to the behavior of the regulated parties than a system of general or uniform rules. This article investigates whether such a differentiated approach can be reconciled with the traditional ideal of general law. On the basis of a conceptual analysis of generality, it is argued that the notion of generality is at best tautological and not inconsistent with a differentiated approach to regulation and enforcement. However, the value of generality is based on the assumption that rules function as reasons, rather than as instructions. As reasons, rules need not comprise large categories, but they do need to last for a long period of time. The conclusion drawn is that flexibility (rather than differentiation) is hard to reconcile with the notion of rules as reasons, although it may be demanded by a notion of rules as effective implementers of policies.

Taking responsive regulation transnational: Strategies for international organizations

Kenneth W. Abbott and Duncan Snidal

Abstract: *Responsive Regulation* (RR) introduced important new ways of thinking about regulation. But RR was designed for domestic settings in which a single agency had clear jurisdiction, full regulatory capacity, and extensive information, and could (contingently) deploy stringent sanctions against well-defined targets. Under globalization, many regulatory problems have shifted to the transnational arena, characterized by multiple regulators, public and private, with limited capacities, authority, and information, and modest sanctioning ability; globalized production also renders the targets of regulation diffuse and difficult to identify. RR holds important lessons for transnational regulation, but it must be adapted to these challenging conditions. Some components of transnational RR are already emerging, including numerous private and public–private schemes that regulate business through voluntary norms: “transnational regulatory standard-setting” (TRSS). Alone, however, TRSS schemes face serious limitations. Intergovernmental organizations (IGOs) are best positioned to “take RR transnational” by supporting and working with the nascent TRSS system. Two regulatory strategies are particularly promising: collaboration and orchestration. In “regulatory collaboration,” IGOs promote business self-regulation, much as in RR; they can escalate in response to defection by deploying reputational and market sanctions. In “orchestration,” IGOs support and steer intermediaries, including TRSS schemes and NGOs, which use their material and ideational capacities to regulate target behavior. Orchestration cumulates regulatory competencies, creates avenues of escalation, and provides many benefits of RR “tripartism.”

Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process

Peter Grabosky

Abstract: This comment extends the vision of *Responsive Regulation* by noting subsequent developments in regulatory pluralism, in particular those occurring under private auspices. The apparent weakening or withdrawal of state regulatory institutions has inspired considerable regulatory activity on the part of non-state actors. In addition, the concurrent growth and pervasiveness of digital technology have greatly facilitated the involvement of individual citizens in non-state regulatory activity. However, the full implications of what might be called “wiki-regulation” remain to be seen. The risks that accompany private regulation may include the lack of accountability of non-state regulatory actors, and the possibility of their failure. There is also a risk that with the increasing salience of what Vogel calls “civil regulation,” state regulatory institutions may atrophy, or fail to develop at all.

Relational republican regulation

John Braithwaite

Abstract: This response refutes point (i) in the Ayres comment's abstract. It argues that at its heart responsive regulation is about seeking strategies that will render regulation more relational when it counts. This is possible even in domains like tax compliance where 99 per cent of the routine regulatory action occurs without face-to-face encounter. A number of critiques in the special issue are embraced. While practitioners who reject civic republican values can learn from the responsive regulation literature, regulation conduces to tyranny if it is not explicit in a value commitment to reducing domination in the world. Concern that the republican elements of the argument have been insufficiently prominent in subsequent writing of the authors is therefore embraced. Freedom as non-domination requires a transnational regulatory vision for strategies with transnational leverage that reduce domination globally, not just nationally. A paradox advanced is that the largest regulatory errors of recent history on the global stage are best corrected by micro relational strategies invented with a global imagination for crafting micro–macro linkages.

Responsive regulation: A co-author's appreciation

Ian Ayres

Abstract: In this comment, I try to do three things: (i) set the record straight about the disproportionate contributions of my co-author; (ii) briefly comment on the excellent articles by Etienne, Ford, and Westerman in this special issue; and (iii) describe how the *Responsive Regulation* concept of partial-industry regulation might usefully be extended to tradable licenses and randomized regulation experiments.

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June 2013

Articles

Continuity, change, and priorities: The quality and use of regulatory analysis across US administrations

Jerry Ellig, Patrick A. McLaughlin and John F. Morrall III

Abstract: This paper compares the quality and use of regulatory analysis accompanying economically significant regulations proposed by US executive branch agencies in 2008, 2009, and 2010. We find that the quality of regulatory analysis is generally low, but varies widely. Budget regulations, which define how the federal government will spend money or collect revenues, have much lower-quality analysis than other regulations. The Bush administration's "midnight" regulations finalized between Election Day and Inauguration Day, along with other regulations left for the Obama administration to finalize, tended to have lower-quality analysis. Most differences between the Bush and Obama administrations depend on agencies' policy preferences. More conservative agencies tended to produce better analysis in the Obama administration, and more liberal agencies tended to do so in the Bush administration. This suggests that agencies more central to an administration's policy priorities do not have to produce as good an analysis to get their regulations promulgated.

The war on cartels and the social meaning of deterrence

Christine Parker

Abstract: The global war on cartels has had much success in introducing tough sanctions for cartel conduct, such as price fixing and market sharing. The policy rhetoric justifying criminalization assumes that compliance can be induced through deterrence. This, in turn, assumes that business people know about the law, believe that they are likely to be caught and face enforcement action and jail if they break the law, and calculate that they should comply. This paper problematizes these policy assumptions using evidence from a survey of a random sample of Australian business people and in-depth interviews with 25 cartelists. This paper argues that business people's knowledge about the law is less important than their relationship with (or distance from) the law. Corporate elites see themselves as intimate with the law and, therefore, able to strategically "play" the law; while small business people and managers lower down the corporate hierarchy see themselves as "innocent" of any knowledge of the law. The impact of a policy of increased sanctions for misconduct cannot be understood solely in terms of marginal difference in aggregate levels of deterrence. It must also be understood in terms of how it interacts with people's experience of the law to create and maintain or contest and destabilize social segmentation and inequality.

Shall the law set them free? The formal and actual independence of regulatory agencies

Chris Hanretty and Christel Koop

Abstract: Regulation by independent agencies, rather than ministries, is believed to result in better policy outcomes. Yet this belief requires one to accept a complex causal chain leading from formal independence to actual independence from politics, to policy decisions, and, ultimately, to policy outcomes. In this study, we analyze the link between the formal and actual independence of regulatory agencies in Western Europe. New data on the appointment of chief executives of these agencies is used to create a proxy for the actual independence of agencies from politics. The analysis demonstrates that formal independence is an important determinant of actual independence, but the rule of law and the number of veto players matter as well.

Risk and the limits of governance: Exploring varied patterns of risk-based governance across Europe

Henry Rothstein, Olivier Borraz and Michael Huber

Abstract: Risk-based approaches to governance are widely promoted as universally applicable foundations for improving the quality, efficiency, and rationality of governance across policy domains. Premised on the idea that governance cannot eliminate all adverse outcomes, these approaches provide a method for establishing priorities and allocating scarce resources, and, in so doing, rationalise

the limits of what governance interventions can, and should, achieve. Yet cursory observation suggests that risk-based approaches have spread unevenly across countries. Based on a comparison of the UK, France, and Germany, this article explores the ways in which, and why, such approaches have “colonised” governance regimes in the UK, but have had much more limited application in France and Germany. We argue that the institutionally patterned adoption of risk-based governance across these three countries is related to how entrenched governance norms and accountability structures within their national polities handle both the identification and acceptance of adverse governance outcomes.

The limits and variety of risk-based governance: The case of flood management in Germany and England

Kristian Krieger

Abstract: Risk-based governance is argued by many to hold the promise of a more rational and efficient state, by making explicit the limitations of state interventions and focusing finite resources on those targets where probable damage is greatest. This paper challenges the assumption that risk-based governance has the potential for universal and uniform application, by comparing contemporary flood management in Germany and England. On first inspection, flooding appears to be a paradigmatic case of risk colonizing European policy discourses, with the traditional notion of flood defense giving way to flood risk management in the context of climate change, increasingly frequent flood disasters, political and cost pressures on flood protection, and publicly available European-wide flood assessments. Drawing on in-depth empirical research, this paper shows how the role, and even the definition, of “risk” is institutionally shaped, and how the respective institutional environments of German and English flood management practices impede and promote risk colonization. In particular, the use and conceptualizations of risk in governance are variously promoted, filtered, or constrained by the administrative procedures, structures, and political expectations embedded within flood management and wider polities of each country. The findings of this research are important for the design and implementation of supranational policies and regulations that endorse risk-based approaches, such as the recent EU Flood Directive, as well as scholarly debate as to how to legitimately define the limits of governance in the face of uncertainty and accountability pressures.

Symposium on David Vogel's *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States*

The politics of precaution, and the reality

Jonathan B. Wiener

Abstract: In his new book, *The Politics of Precaution: Regulating Health, Safety and Environmental Risks in Europe and the United States* (2012), David Vogel makes the claim that there has been a “transatlantic shift in regulatory stringency since 1990” (Vogel 2012, p. 5), from greater American precaution before 1990, to greater European precaution after 1990. He suggests that which side is “more risk averse” has reversed (p. 2), and in some cases there has been “a literal ‘flip-flop,’ with the US and the European Union (EU) switching places” (p. 5). He states that this shift has been reflected in and enabled by the EU’s adoption of the precautionary principle (e.g. in the 1992 Maastricht Treaty), in the face of US criticisms (p. 9). To demonstrate this shift, Vogel offers several salient case studies. He argues that this shift has been driven by three main factors: public opinion, preferences of government leaders, and criteria for policy evaluation.

Commentary on Vogel's *The Politics of Precaution*

R. Daniel Kelemen

Abstract: David Vogel’s *The Politics of Precaution* (2012) is an instant classic. This outstanding book has all the attributes that scholars of regulation have come to expect from Vogel’s work over the years – from books such as *National Styles of Regulation* (1986), *Trading Up* (1997) and *The Market for Virtue* (2006). Vogel identifies a policy puzzle and poses a big and important question. He identifies the shortcomings of potential answers to the puzzle found in existing literature, and then offers his own compelling explanation. Finally, he offers a wealth of data to support his analysis. While many studies of regulation and governance focus on minutiae and lose sight of big questions, Vogel has a gift for stepping back from the fray to recognize the fundamental questions that more scholarship should be focusing on. In many ways, this book ties together various strands of research Vogel has been conducting over the past 30 years – his work on national regulatory styles, international regulatory competition, risk regulation, and business power. *The Politics of Precaution* is a tour de force. While the book is a gem, this review will not simply offer unalloyed praise. For, while Vogel’s analysis is generally convincing, he leaves some important questions unanswered – suggesting important avenues for further research.

Response to Jonathan B. Wiener and R. Daniel Kelemen

David Vogel

Abstract: I welcome the opportunity to respond to the commentaries on my book, *The Politics of Precaution*, by Jonathan Wiener and R. Daniel Kelemen. I will first address Wiener's comments and then turn to Kelemen's. As Jonathan Wiener notes, an important reason why we reach different conclusions as to whether there has been a transatlantic shift in relative regulatory stringency has to do with our respective case selections. Wiener's selection criteria are much broader than mine. I confine my study to regulations that address consumer and environmental risks, primarily to public health and safety, and which are largely caused by the decisions of business firms. Accordingly, I exclude regulations that are intended to protect nature, such as the marine environment (chapter 8 in *The Reality of Precaution*), as well as biodiversity conservation (chapter 9), as they do not address risks to public health or safety. I do not examine the risks of terrorism and weapons of mass destruction (chapter 12), as these risks are not caused by business. My more restrictive case selection criteria accounts for why, in my treatment of bovine spongiform encephalopathy (BSE)/mad cow, I do not include restrictions on blood donations, because they do not regulate business firms. For similar reasons, my book does not address the risks of medical errors and patient safety (chapter 11).

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Articles

[Who governs? Delegations and delegates in global trade lawmaking](#)

Terence C. Halliday, Josh Pacewicz and Susan Block-Lieb

Abstract: Who governs in the international organizations (IOs) that promulgate global norms on trade and commercial law? Using a new analytic approach, this paper focuses on previously invisible attributes of a global legislature – the state and non-state delegations and delegates that create universal norms for international trade and commercial law through the most prominent trade law legislature, the UN Commission on International Trade Law (UNCITRAL). Based on ten years of fieldwork, extensive interviews, and unique data on delegation and delegate attendance and participation in UNCITRAL's Working Group on Insolvency, we find that the inner core of global trade lawmakers at UNCITRAL represent a tiny and unrepresentative subset of state and non-state actors. This disjunction between UNCITRAL's public face, which accords with a global norm of democratic governance, and its private face, where dominant states and private interests prevail, raises fundamental questions about legitimacy and efficacy of representation in global lawmaking.

[From disguised protectionism to rewarding regulation: The impact of trade-related labor standards in the Dominican Republic](#)

Andrew Schrank

Abstract: Policymakers in the Dominican Republic have responded to foreign pressure by rewriting their labor laws and revitalizing their labor ministry. What are the likely consequences? Is aggressive labor law enforcement more likely to protect vulnerable workers from abuse and exploitation or to undermine their ability to compete for labor-intensive employment in an unforgiving world economy? And what are the broader implications of the answer? I address these questions by analyzing qualitative as well as quantitative data on workplace regulators empowered by the Dominican Republic in response to trade-related labor standards imposed by the United States and find that they reconcile social protection with economic adjustment by simultaneously discouraging “low road” employment practices like informality, union-busting, and the exploitation of child labor, and encouraging “high road” alternatives that link firms, farms, and families, on the one hand, to public educational, training, and financial institutions, on the other. The result is a potentially inclusive alternative to the repressive industrial relations regime that fueled export-led development – and the East Asian “miracle” in particular – in the late twentieth century.

[From support to pressure: The dynamics of social and governmental influences on environmental law enforcement in Guangzhou City, China](#)

Benjamin Van Rooij, Gerald E. Fryxell, Carlos Wing-Hung Lo and Wei Wang

Abstract: This paper examines how changes in governmental and social influences affect environmental enforcement in Guangzhou city, China, between 2000 and 2006. The paper finds that a form of “decentered regulation” has developed. Regulatory enforcement is no longer the sole affair of the government and the regulatory bureaucracy, but has been increasingly influenced by societal forces. The transformation over time shows the promises and limits of decentered regulation in Guangzhou's dynamic authoritarian setting. Analyzing a set of longitudinal survey data and qualitative interviews, the paper finds that by 2006, the rise of civil society and its increased support for protecting the environment had a double-edged impact on the enforcement of environmental regulations. The paper demonstrates that on the one hand, by 2006, when government support for enforcement was low, societal forces developed an ability to counterbalance such lack of governmental support and positively influence enforcement. However, it also shows that when government support was high, a concurrent rise in societal support created a negative effect on enforcement. Thus too much societal support can become an enforcement burden.

Types of knowledge utilization of regulatory impact assessments: Evidence from Swiss policymaking

Christof Rissi and Fritz Sager

Abstract: *Ex ante* policy appraisals, such as Regulatory Impact Assessments (RIAs), are promoted because they are expected to inform decisionmakers and, thus, to lead to better quality regulation. Such instrumental use is not the only possible use of RIAs. *Ex ante* policy appraisal can affect the policy process in various ways. However, a consolidated theory on the conditions for utilization of RIAs in the policy process has yet to be developed. In order to explore these conditions, we analyze three case studies of Swiss decisionmaking processes and apply concepts from knowledge utilization literature. In conclusion, we find that policy arenas matter more than the institutional context and design of RIA procedures. In line with previous literature, political use seems to be a prevalent type of utilization. Yet we find that, under specific conditions, RIAs also provide a basis for the optimization of policy designs (instrumental use), help improve interagency relations (policy-process use), and may change how a policy issue is understood (conceptual use).

“Embedded regulation:” The migration of objects, scripts, and governance

Emilie Cloatre and Robert Dingwall

Abstract: This paper asks why an officially unregulated market in pharmaceuticals in a least developed country, Djibouti, behaves as if it were strictly regulated, with limited access to a small number of high-cost drugs. We use Actor-Network Theory (ANT) to show that the explanation is more complex than critics of the international pharmaceutical industry have supposed. Regulation and property rights generated in developed countries have become embedded in the drugs and “black boxed” to the point of invisibility. This has allowed them to travel to Djibouti with the drugs, while maintaining their effects in action. This case study develops our understanding of the way in which materials that are not designated as regulatory agents may still have regulatory impacts through their ability to enrol complex networks of actors, rules, values, and practices. Finally, it argues against the notion of law as a fixed and distinctive space for action, as opposed to the ANT vision of a fluid and contingent order, where law is part of a socio-technico-legal alliance that happens to achieve certain effects.

Regulation-by-information in areas of limited statehood: Lessons from the Philippines' environmental regulation

Eungkyoon Lee, Raul P. Lejano and Robert J. Connelly

Abstract: This research examines conditions under which environmental regulatory disclosure is more versus less likely to work, with focus on the case of the Philippines. Two major findings arise out of a case study. First, we observe a mismatch between the nature of information and the main addressees of the disclosed information, which led the operation of the subject disclosure program to deviate from its targets. Second, this institutional deficiency has to do with the organizational culture and routine practice of the implementing agency. The second finding challenges a major justification of information-based environmental regulation (IBER) administered in weak states and underscores the role that administrative capacity plays in making novel regulations come into effect. Contrary to the popular belief that IBER creates non-governmental forces that offset a limited statehood, it may be less likely to work where state administrative capacity is weak.

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Regulating Finance After the Crisis: Unveiling the Different Dynamics of the Regulatory Process.
Guest Editors: Manuela Moschella and Eleni Tsingou

Regulating finance after the crisis: Unveiling the different dynamics of the regulatory process

Manuela Moschella and Eleni Tsingou

Abstract: It is now widely recognized that regulatory failures contributed to the onset of the global financial crisis. Redressing such failures has, thus, been a key policy priority in the post-crisis reform agenda at both the domestic and international levels. This special issue investigates the process of post-crisis financial regulatory reform in a number of crucial issue areas, including the rules and arrangements that govern financial supervision, offshore financial centers and shadow banking, the financial industry's involvement in global regulatory processes, and macroeconomic modeling. In so doing, the main purpose of this special issue is to shed light on an often understudied aspect in regulation literature: the variation in the dynamics of regulatory change. Contributors examine the different dynamics of regulatory change observed post-crisis and explain variations by accounting for the interaction between institutional factors, on the one hand, and the activity of change agents and veto players involved in the regulatory reform process, on the other.

The gradual transformation? The incremental dynamics of macroprudential regulation

Andrew Baker

Abstract: This article focuses on the transformatory potential of macroprudential ideas following the financial crash of 2008, examining how they are being mediated by existing institutional contexts and how and why the task of building a new body of technical macroprudential knowledge is proceeding slowly. It is argued that the movement toward a form of macroprudential regulation has a distinctly incremental dynamic that means any macroprudential transformation will be a gradual process that is likely to span a decade or more. Using Peter Hall's framework of three orders of policy change across substantive and temporal dimensions, the article argues that the macroprudential ideational shift can be compared to third order change. In this sense, it was intellectually radical and took place rapidly in a period of around six months. However, intellectual radicalism does not automatically translate into a radical change in regulatory practice, because of a variety of countervailing political, institutional, and informational variables. In this respect, the task of developing first and second order macroprudential policy is proving to be a much more politically contested process. Furthermore, macroprudential policy is being developed by cautious technocrats who rely on the gradual accumulation of data and evidence to justify policy. The result is a distinctly incremental dynamic to macroprudential policy development that displays many of the features of a process that historical institutionalists refer to as "layering."

Why reregulation after the crisis is feeble: Shadow banking, offshore financial centers, and jurisdictional competition

Thomas Rixen

Abstract: A crucial element in the complex chain of factors that caused the recent financial crisis was the lack of regulation and oversight in the shadow banking sector, which is largely incorporated in offshore financial centers (OFCs), but instead of swift and radical regulatory reform in that sector after the crisis, we observe only incremental and ineffective measures. Why? This paper develops an explanation based on a two-level game. On the international level, governments are engaged in competition for financial activity. On the domestic level, governments are prone to capture by financial interest groups, but also susceptible to demands for stricter regulation by the electorate. Governments try to square the circle between the conflicting demands by adopting incremental and symbolic, but largely ineffective, reforms. The explanation is put to empirical scrutiny by tracing the regulatory initiatives on shadow banks and OFCs at the international level and within the United States and the European Union, where I focus on France, Germany, and the United Kingdom.

Financial industry groups' adaptation to the post-crisis regulatory environment: Changing approaches to the policy cycle

Kevin Young

Abstract: This article explores the advocacy efforts of financial industry groups since the financial crisis. I describe key changes in the post-crisis financial regulatory environment and argue that financial industry groups have adapted their advocacy strategies to these new conditions in innovative ways. Faced with a more challenging environment, financial industry groups have shifted their emphasis along the different stages of the policy cycle. Specifically, increased issue salience and a strained policy network have weakened financial industry groups' capacity to veto regulatory proposals at the stage of actual policy formulation. Focusing on the advocacy strategies of the global banking and derivatives industries, I show evidence that the response has been to invest in more subtle advocacy strategies which focus on other stages of the policymaking cycle. Self-regulatory moves attempt to affect the agenda setting stage of policymaking, and a strong focus on the timing, rather than the content of new regulations, has attempted to affect the implementation stage. Such a transformation of advocacy strategies differs sharply from most depictions of financial industry groups simply "blocking" regulatory change since the global financial crisis.

Economic models as devices of policy change: Policy paradigms, paradigm shift, and performativity

Lasse F. Henriksen

Abstract: Can the emergence of a new policy model be a catalyst for a paradigm shift in the overall interpretative framework of how economic policy is conducted within a society? This paper claims that models are understudied as devices used by actors to induce policy change. This paper explores the role of models in Danish economic policy, where, from the 1970s onwards, executive public servants in this area have exclusively been specialists in model design. To understand changes in economic policy, this paper starts with a discussion of whether the notion of paradigm shift is adequate. It then examines the extent to which the performativity approach can help identify macroscopic changes in policy from seemingly microscopic changes in policy models. The concept of performativity is explored as a means of thinking about the constitution of agency directed at policy change. The paper brings this concept into play by arguing that the "performative" embedding of models in institutions is an important aspect of how paradigm shifts unfold that the current literature has neglected.

Regular Articles

Subprime catalyst: Financial regulatory reform and the strengthening of US carbon market governance

Eric Helleiner and Jason Thistlethwaite

Abstract: The 2008 financial crisis has had an important, but neglected, impact on carbon market governance in the United States. It acted as a catalyst for the emergence of a domestic coalition that drew upon the crisis experience to demand stronger regulation over carbon markets. The influence of this coalition was seen first in the changing content of draft climate change bills between 2008 and 2010. But the coalition's more lasting legacy was its role in shaping the content of, and supporting, the passage of the Wall Street Reform and Consumer Protection Act (the Dodd–Frank bill) in July 2010. Although that bill was aimed primarily at bolstering financial stability, its derivatives provisions strengthened carbon market regulation in significant ways. This policy episode demonstrates new patterns of coalition building in carbon market politics as well as the growing links between climate governance and financial regulatory politics. At the same time, the significance of these developments should not be overstated because of various limitations in the content and implementation of the Dodd–Frank bill, as well as the waning support for carbon markets more generally within the US since the bill's passage.

Gorillas in the closet? Public and private actors in the enforcement of transnational private regulation

Paul Verbruggen

Abstract: This paper examines to what extent the background presence of state regulatory capacity – at times referred to as the "regulatory gorilla in the closet" – is a necessary precondition for the effective enforcement of transnational private regulation. By drawing on regulatory regimes in the areas of advertising and food safety, it identifies conditions under which (the potential of) public regulatory

intervention can bolster the capacity of private actors to enforce transnational private regulation. These involve the overlap between norms, objectives, and interests of public and private regulation; the institutional design of regulatory enforcement; compliance with due process standards; and information management and data sharing. The paper argues that while public intervention remains important for the effective enforcement of transnational private regulation, governmental actors – both national and international – should create the necessary preconditions to strengthen private regulatory enforcement, as it can also enhance their own regulatory capacity, in particular, in transnational contexts.

Orchestrating sustainability: The case of European Union biofuel governance

Philip Schleifer

Abstract: This article provides an empirical analysis of orchestration – that is, the initiation, support, and embracement of private governance arrangements through public regulators – in the field of European Union biofuel governance. It examines the emerging sustainability regime and shows that orchestration has been extensively practiced. Regulators in the European Union have used a range of directive and facilitative measures to initiate and support private biofuel certification schemes and to incorporate them in their regulatory frameworks. This has given rise to a hybrid regime in which public and private approaches are closely intertwined. Discussing the benefits and complications of engaging with private biofuel sustainability governance, the article's findings point to a partial failure of orchestration in this policy area.

Regulation & Governance Forum

The Brazilian Association of Regulatory Agencies: Integrating levels, consolidating identities in the regulatory state in the south

Andrea C. Bianculli

Abstract: This article discusses a unique organization in the regulatory world, the Brazilian Association of Regulatory Agencies (ABAR), which brings together federal, state, and municipal regulatory agencies across different policy sectors. The paper argues that as a regulatory policy network, ABAR has been crucial to the professional socialization, capacity building, and institutionalization of regulators in Brazil. Moreover, it has promoted their identity as professionals and differentiated them from politicians, regulatees, and societal actors. Thus, while ABAR raises the shield of expertise to secure independence from political and social interference, it has itself become a relevant actor in the country's regulatory political dynamics, contributing as such to the strengthening of the Brazilian regulatory state.

List of Reviewers

List of Reviewers

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March 2014

Articles

[Transnational business governance interactions: Conceptualization and framework for analysis](#)

Burkard Eberlein, Kenneth W. Abbott, Julia Black, Errol Meidinger and Stepan Wood

Abstract: This special issue demonstrates the importance of *interactions* in transnational business governance. The number of schemes applying non-state authority to govern business conduct across borders has vastly expanded in numerous issue areas. As these initiatives proliferate, they increasingly interact with one another and with state-based regimes. The key challenge is to understand the implications of these interactions for regulatory capacity and performance, and ultimately for social and environmental impact. In this introduction, we propose an analytical framework for the study of transnational business governance interactions. The framework disaggregates the regulatory process to identify potential points of interaction, and suggests analytical questions that probe the key features of interactions at each point.

[Assembling an experimentalist regime: Transnational governance interactions in the forest sector](#)

Christine Overdevest and Jonathan Zeitlin

Abstract: Transnational governance initiatives increasingly face the problem of regime complexity in which a proliferation of regulatory schemes operate in the same policy domain, supported by varying combinations of public and private actors. The literature suggests that such regime complexity can lead to forum shopping and other self-interested strategies, which undermine the effectiveness of transnational regulation. Based on the design principles of experimentalist governance, this paper identifies a variety of pathways and mechanisms, which promote productive interactions in regime complexes. We use the case of the EU's Forest Law Enforcement Governance and Trade (FLEGT) initiative, interacting with private certification schemes and public legal timber regulations, including those of third countries such as the US and China, to demonstrate how an increasingly comprehensive transnational regime can be assembled by linking together distinct components of a regime complex. We argue that it is the experimentalist features of this initiative and its regulatory interactions, which accommodate local diversity and foster recursive learning from decentralized implementation experience, that make it possible to build up a flexible and adaptive transnational governance regime from an assemblage of interconnected pieces, even in situations where interests diverge and no hegemon can impose its own will.

[Does California need Delaware? Explaining Indonesian, Chinese, and United States support for legality compliance of internationally traded products](#)

Benjamin Cashore and Michael W. Stone

Abstract: The purpose of this paper is to shed light on the emergence and institutionalization of a unique form of transnational business governance (TBG): legality verification (LV) systems, which track products along global supply chains. Instead of imposing wide ranging global standards commonly applied through "gold standard" certification systems, LV helps domestic governments enforce their own laws. Three processes help explain why Indonesia (as a producer), China (as a manufacturer) and the United States (as a consumer) moved, in the 2000s, from lukewarm interest or opposition to formalized support: how triggers enabled by economic interdependence are pulled; how ceding of instrument/process state sovereignty may reinforce substantive sovereignty; and historical institutional processes that shift organizational interests and problem definitions. Looking backward, the empirical results are consistent with a "Delaware effect" in which economic globalization is asserted to lead to a "ratcheting down" of environmental and social standards. Looking forward, we theorize about, and identify the conditions through which, widespread coalitions in support of the *institution* of LV, may pave the way for a "ratcheting up" process that is consistent with, but nuances, Vogel's "California effect."

Dynamic governance interactions: Evolutionary effects of state responses to non-state certification programs

Lars H. Gulbrandsen

Abstract: Research has recognized that states enable or constrain private governance initiatives, but we still know too little about the interactions between private and public authority in the governance of various social and environmental problems. This article examines how states have responded to the emergence of forest and fisheries certification programs, and how state responses have influenced the subsequent development of these programs. It is argued that historical and structural differences in the management of forest and fisheries have resulted in divergent state responses to certification programs, but that both trajectories of interaction have led to a strengthening of the non-state program. The article draws upon these cases to inductively identify types of interaction between state policies and non-state certification programs, the causal mechanisms that shed light on interaction dynamics, and the conditions under which state involvement is likely to result in either strengthening or weakening of non-state programs.

Transnational governance and the re-centered state: Sustainability or legality?

Tim Bartley

Abstract: After two decades in which transnational governance of production processes has typically meant voluntary subscription to privately developed standards, some transnational rulemaking projects are promoting mandatory compliance with law. The emerging timber legality regime is one example of this, and scholars' efforts to theorize this regime have produced provocative new analyses of interactions between public and private standards. Recent analyses, including those in this issue, predict that the new legality regime will bolster voluntary initiatives that certify sustainable forests. Based on research in Indonesia and China, I argue that this prediction is questionable and that the rise of the timber legality regime could constrict, rather than expand the space for global private authority. Further, I argue that it would not be entirely a bad thing if the legality regime overtook sustainability certification. Behind these specific arguments are general perspectives on how domestic circumstances shape transnational business governance and on the role of states in pluralistic fields of governance – both issues that are obscured by more architectural approaches.

Technical systems and the architecture of transnational business governance interactions

Tony Porter

Abstract: This article sets out the concept of a technical system and explores its ability to explain why some transnational regulatory domains are governed by a single transnational business governance (TBG) scheme, while in others there are many such schemes. By linking the numbers of TBG schemes that govern any particular transnational regulatory domain to technical systems in this way, important insights are provided into TBG interactions. Where technical systems are present, the TBG schemes that govern them will be specialized and complementary, rather than competitive. More generally, a technical systems approach illuminates the set of extended relationships that connect TBG schemes to the industry they seek to regulate. By tracing out these relationships we can reveal indirect interactions between TBG schemes that may be mediated through firms or market infrastructures. These indirect interactions can be obscured by approaches that only focus on the direct interactions among TBG schemes. The article analyzes two cases of TBG schemes in global finance. The first, derivatives, has a single overall TBG scheme. The second case, professional financial designations, has multiple competing TBG schemes.

Confronting trade-offs and interactive effects in the choice of policy focus: Specialized versus comprehensive private governance

Graeme Auld

Abstract: In setting standards for responsible business practices, certification programs create issue boundaries delineated by the focus of their standards. These issue boundaries may impede action on certain causes of problems (i.e. problem interactive effects) or lead to policy actions that affect other governance initiatives (i.e. policy interactive effects). When these interactions are extensive, programs confront trade-offs: develop as a comprehensive program (i.e. have a broad policy focus) and take on higher internal administrative costs, or develop as a specialized program (i.e. have a narrow policy focus) and undertake to develop mechanisms to facilitate across-program coordination. This paper explores these trade-offs. It examines the origins of the different policy foci of coffee, forest, and fisheries certification programs, and identifies five strategies that programs are currently using to

manage policy and/or problem interactive effects. Then, informed by research in public administration and international relations, it details additional approaches for improving issue-boundary management.

Regulation and Governance Forum

Cross-national variations in industry regulation: A factor analytic approach with an application to telecommunications

Susan Perkins

Abstract: This study applies factor analytic techniques to 131 telecommunications regulatory agencies in 80 countries to develop a comparative framework for better understanding the cross-national institutional variation in industrial regulation. While some of these measures are specific to the telecom industry (i.e. World Trade Organization Basic Telecom Agreement participation), most of these regulatory variables can be applied to other regulated industries. After analyzing 30 variables, these techniques identify and quantify six distinct dimensions of industry regulation, namely, the competitive market structure rules, industry standards rules, entry barrier rules, institutional stability, political appointment process, and the regulatory governance structure. Despite the conventional wisdom that suggests the “rules of the game” are key to industry regulation, this study finds that the single largest source of cross-national variation is the level of regulatory institutional stability (accounting for 16 percent of the total variation in cross-national industry regulation). This suggests that more focus and attention should be given to the role formal institutions play in industry regulation. This study also finds differences in industry regulation between developed, developing, and least developed nations. Developed countries on average have significantly higher regulation, with the US being the highest. This suggests that regulation is a critical component of industrial regimes and the competitiveness of developed economies.

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June 2014

Announcement

[Regulation & Governance announces annual “Best Article” prize-winners for Vol. 7 \(2013\)](#)

Articles

[Politics of private regulation: ISEAL and the shaping of transnational sustainability governance](#)

Allison Loconto and Eve Fouilleux

Abstract: Scholars describe the proliferation of sustainability standards by multi-stakeholder initiatives as part of an organizational field for sustainability. The aim of this article is to gain a better understanding of the institutionalization process of this global organizational field by focusing on the case of the ISEAL Alliance (the global association for sustainability standards). We show how ISEAL puts specific strategies into place to both reinforce and expand the role and influence of sustainability standards. This institutional entrepreneurship consists primarily of two dimensions: institutionalizing macro-standards based on a market-driven and procedural vision of sustainability; and simultaneously legitimating both the tools and ISEAL through internal and external enrolments and entanglements. The characterization of ISEAL's activities in this way brings politics back into the analysis of sustainability standard-related technical debates and extends our understanding of how the micro-dynamics within organizational fields are interdependent upon macro-dynamics outside organizational fields.

[Polanyi in Brussels or Luxembourg? Social rights and market regulation in European insurance](#)

Deborah Mabbett

Abstract: The decision of the Court of Justice of the European Union to ban sex discrimination in insurance has shown the potential reach of the principle of non-discrimination. This paper discusses the different positions taken by participants in the policy process leading up to the decision, in order to reveal the potential and limitations of non-discrimination as the basis for market-regulatory social policy. It is shown that the European Commission's initial support for prohibiting insurance discrimination faltered with the realization that the measure would have little efficacy as a distributive social policy. It was left to the Court to assert that non-discrimination rights are constitutive for European markets, regardless of their functional and instrumental limitations. The Court's focus was on the market-integrative potential of rights as sources of norms for the conduct of insurance relationships. It is argued that this form of constitutive regulation is distinct from distributive social policy as it does not require that outcomes are egalitarian, but, rather, that the processes governing market relations should respect fundamental rights.

[Courage, regulatory responsibility, and the challenge of higher-order reflexivity](#)

Oren Perez

Abstract: Contemporary regulators must respond to ever-increasing societal demands in various domains. Regulators must cope with these demands under conditions of extreme epistemic scarcity and ideological divide. This leaves regulators perplexed about what action they should take. Regulatory praxis offers two primary responses to this moral and epistemic dilemma: technical canonization and reflexive regulation. While these two approaches represent contrary regulatory philosophies, they suffer from two common blind spots: (a) disregard of the critical role of discretionary judgment in regulatory action; and (b) disregard of the dilemma of higher-order reflexivity. The article explores the idea of higher-order reflexivity in the regulatory context. This exploration renders visible the abysses that are faced by regulators as they attempt to resolve regulatory dilemmas through a cognizant and introspective process. The article argues that the Socratic concept of courage and the idea of forward-looking responsibility provide a plausible framework for thinking about the challenge of regulatory judgment. It concludes with a discussion of the legal and institutional mechanisms that could both facilitate and put to scrutiny the realization of this ideal (but noting also several features of the contemporary regulatory system which constitute potential barriers).

Historical perspective and better regulatory governance: An agenda for institutional reform

Edward J. Balleisen and Elizabeth K. Brake

Abstract: Compared to economics, sociology, political science, and law, the discipline of history has had a limited role in the wide-ranging efforts to reconsider strategies of regulatory governance, especially inside regulatory institutions. This article explores how more sustained historical perspective might improve regulatory decisionmaking. We first survey how a set of American regulatory agencies currently rely on historical research and analysis, whether for the purposes of public relations or as a means of supporting policymaking. We then consider how regulatory agencies might draw on history more self-consciously, more strategically, and to greater effect. Three areas stand out in this regard – the use of history to improve understanding of institutional culture; reliance on historical analysis to test the empirical plausibility of conceptual models that make assumptions about the likelihood of potential economic outcomes; and integration of historical research methods into program and policy evaluation.

What price fairness when security is at stake? Police legitimacy in South Africa

Ben Bradford, Aziz Huq, Jonathan Jackson and Benjamin Roberts

Abstract: The legitimacy of legal authorities – particularly the police – is central to the state's ability to function in a normatively justifiable and effective manner. Studies, mostly conducted in the US and UK, regularly find that procedural justice is the most important antecedent of police legitimacy, with judgments about other aspects of police behavior – notably, about effectiveness – appearing less relevant. But this idea has received only sporadic testing in less cohesive societies where social order is more tenuous, resources to sustain it scarcer, and the position of the police is less secure. This paper considers whether the link between process fairness and legitimacy holds in the challenging context of present day South Africa. In a high crime and socially divided society, do people still emphasize procedural fairness or are they more interested in instrumental effectiveness? How is the legitimacy of the police influenced by the wider problems faced by the South African state? We find procedural fairness judgments play a key role, but also that South Africans place greater emphasis on police effectiveness (and concerns about crime). Police legitimacy is, furthermore, associated with citizens' judgments about the wider success and trustworthiness of the state.

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September 2014

Articles

[To enforce or not to enforce? Judicialization, venue shopping, and global regulatory harmonization](#)

Dirk De Bièvre, Arlo Poletti and Lars Thomann

Abstract: The regulation of intellectual property rights takes place in a range of international venues. This proliferation of international venues greatly enhances the potential for venue shopping. We argue that different levels of domestic regulation and differing degrees of judicialization account for actors' preferences over institutional venues. We take into consideration two scenarios. Conceiving of judicialization as the delegation of adjudication to an independent third party and the enforcement through multilaterally authorized sanctions, we show that: (i) upward regulatory harmonization leads actors preferring weak regulatory intellectual property rights standards to strive for venues with low degrees of judicialization, whereas those favoring stringent intellectual property rights protection prefer highly judicialized venues; and (ii) downward harmonization leads to the opposite constellation of institutional preferences. We show how these expectations hold by way of in-depth case studies of two instances of global intellectual property rights regulation: the regulation of plant genetic resources and intellectual property rights for medicines.

[Disowning Fukushima: Managing the credibility of nuclear reliability assessment in the wake of disaster](#)

John Downer

Abstract: This paper reflects on the credibility of nuclear risk assessment in the wake of the 2011 Fukushima meltdowns. In democratic states, policymaking around nuclear energy has long been premised on an understanding that experts can objectively and accurately calculate the probability of catastrophic accidents. Yet the Fukushima disaster lends credence to the substantial body of social science research that suggests such calculations are fundamentally unworkable. Nevertheless, the credibility of these assessments appears to have survived the disaster, just as it has resisted the evidence of previous nuclear accidents. This paper looks at why. It argues that public narratives of the Fukushima disaster invariably frame it in ways that allow risk-assessment experts to "disown" it. It concludes that although these narratives are both rhetorically compelling and highly consequential to the governance of nuclear power, they are not entirely credible.

[Failure of auditors: The lack of compliance for business combinations in China](#)

Ross Taplin, Yafang Zhao and Alistair Brown

Abstract: This empirical study investigates the compliance of 344 Chinese listed companies with the *Accounting Standard for Enterprises No. 20-Business Combination*, a mandatory reporting standard applicable to companies involved in business combinations. China has recently reformed its auditing sector, enabling private firms to provide auditing services. The results of the study show a low level of compliance by Chinese listed companies. While companies audited by Chinese domestic auditors have significantly lower compliance than companies audited by Big Four auditors on supplementary disclosure that is mandatory under the Chinese accounting standards, compliance remains low even after companies receive unqualified reports from these international auditors. There appears to be a lack of commitment, and possibly expertise, among Big Four auditors, in fully applying the reporting requirements of the business combination standard in a Chinese setting. This raises concerns about the independence of Chinese auditing in disclosing reliable information about business combinations. Broader theoretical contributions of the paper go beyond the Chinese context by problematizing whether well-resourced international auditors uphold internationally expected standards or succumb to local non-compliant practices.

[Ensuring regulatory compliance in banking and finance through effective controls: The principle of duality in the segregation of duties](#)

Oskar Engdahl

Abstract: Today the segregation of duties is commonly used to ensure regulatory compliance in various industries. This article considers the organizational requirements for the effective implementation of this principle, through an examination of a duality-based segregation-of-duties type control system and its

fundamental characteristics. Cases from the Swedish banking and finance sector are discussed to show how breakdowns in duality-based systems have compromised compliance and even encouraged crime, and how crimes could be carried out in practice. Particular attention is paid to the critical role that gullibility, loyalty, and dependency relations among employees played in these cases, in leading control persons to neglect their responsibility to review and approve their colleagues' work, while bringing no consequences for their ability to carry on performing their work tasks. The argument is made that an effective duality-based segregation-of-duties type control system presupposes social relations characterized by relative autonomy and third-party dependence, along with work task interdependence.

What motivates adherence to medical recommendations? The procedural justice approach to gaining deference in the medical arena

Tom Tyler, Avital Mentovich and Sagarika Satyavada

Abstract: Although it is within their long-term interest, patients often fail to follow health care recommendations made by medical experts. This failure results in the widespread occurrence of preventable health problems and a significant increase in health care costs. Taking a new approach to confronting this issue, this paper examines whether the procedural justice model, which has been useful in explaining cooperation with legal and managerial authorities, can provide a basis for increasing patients' willingness to voluntarily adhere to health care recommendations. Three studies tested and supported this proposition. Study 1 experimentally manipulated physicians' procedural fairness or unfairness to explore its influence on patients' acceptance of doctors' recommendations. Study 2 used patients' reports about the fairness of their personal physicians and linked those evaluations to their willingness to follow their doctor's recommendations. Finally, study 3 explored the role of general procedural justice judgments in promoting willingness to accept health policies when they are advocated by private doctors and government health care authorities. The results of all three studies support the argument that when health care authorities use fair procedures, patients are more likely to accept their recommendations. Importantly, this procedural justice effect is distinct from, and in some cases stronger than, the influence of competence.

Globalization, state, and innovation: An appraisal of networked industrial policy

Marian Negoita

Abstract: One of the most pressing questions in comparative social science is whether, and to what extent, the rapid advance of globalization has negatively affected states' capacity to initiate successful economic and social policies. This paper puts forward the notion that states continue to be relevant because they have the potential to build and sustain networks of production and learning, which are sorely needed in the current era of globalization when productive arrangements are dominated by decentralized production networks. The paper argues that government efforts aimed at building and sustaining such networks, labeled as "networked industrial policy," have become predominant. The study features a series of fixed-effects time series cross-section (TSCS) regressions linking innovation performance to several networked industrial policies in 17 countries from western and central Europe. The study finds that several of the policies have a robust effect on innovation performance and technology competitiveness, even after controls are included. These findings constitute considerable support for the notion of networked industrial policy. However, the results of the present study must be treated less as a definitive answer to the research question and more as a first step in an ongoing research process.

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Articles

[Domestic drivers of transgovernmental regulatory cooperation](#)

David Bach and Abraham Newman

Abstract: Transgovernmental cooperation among domestic regulators has generated considerable interest among scholars and policymakers. While previous research has focused on describing such regulatory networks, we know very little about what drives individual jurisdictions to join them. The question of membership is important because it determines the reach of rules and standards promulgated by a given network, and because it is logically prior to understanding the rulemaking dynamic within a network. We develop a set of hypotheses that highlight the role of domestic political factors in shaping network membership. Our empirical analysis, using an original data set for transgovernmental cooperation in securities and insurance regulation, finds that the institutional form of domestic market regulation, as well as the relative domestic weight of the industry, are closely correlated with membership. All else equal, jurisdictions with independent regulatory agencies and those where the industry in question represents a large share of gross domestic product are much more likely to join the respective network than jurisdictions without these characteristics. The paper underscores the important interactions between domestic and international factors for informal cooperation, an issue that has become increasingly central to global governance.

[Building European Union capacity to manage transboundary crises: Network or lead-agency model?](#)

Arjen Boin, Madalina Busuioac and Martijn Groenleer

Abstract: In recent years, the European continent has witnessed a substantial number of “transboundary crises” – crises that cross geographical borders and affect multiple policy domains. Nation states find it hard to deal with such crises by themselves. International cooperation, thus, becomes increasingly important, but it is not clear what shape or form that cooperation should take. This article explores the growing role of the European Union (EU) in managing transboundary crises. More specifically, it reflects on the different ways in which the expanding contours of the EU's emerging crisis capacity can be organized. Using three “performative dimensions” – sense-making, coordination, and legitimacy – the article discusses the possible advantages and disadvantages of a decentralized, network model and compares it with a more centralized, lead-agency model. It concludes that the current network model is a logical outcome of the punctuated and fragmentary process through which EU crisis management capacities have been created. It also notes that the shortcomings of this model may necessitate elements of a lead-agency model. Such “agencification” of networks for transboundary crisis management may well lead to a hybrid model that is uniquely suited for the peculiar organizational and political creature that the EU is.

[Secondary learning and the unintended benefits of collaborative mechanisms: The Federal Aviation Administration's voluntary disclosure programs](#)

Russell W. Mills and Dorit Rubinstein Reiss

Abstract: Along with other types of process-oriented regulation, voluntary disclosure programs are increasingly used by regulatory agencies to supplement traditional inspection activities. Voluntary disclosure programs provide incentives, such as immunity or reduced regulatory enforcement to those submitting reports, while providing regulatory agencies with valuable information on existing risks and areas of non-compliance. This article contributes to the discussion of voluntary disclosure programs by highlighting an important unconsidered benefit of such programs: the secondary learning they generate, above and beyond information about violations. Beyond the information submitted by firms contained in the self-disclosures, the programs generate information and insights about the usual practices of the industry, the division of labor, typical problems, and ways to handle them – those details often invisible to those outside an organization or inside the organization but not “on the ground.” This additional information provides important benefits to both industry management and agency officials. We demonstrate the existence of secondary learning and describe the effect of the structure of voluntary programs on secondary learning with evidence from two case studies of the Federal Aviation Administration's voluntary disclosure programs: the Aviation Safety Action Program and the Voluntary Disclosure Reporting Program.

[Global governance of training standards in an outsourced labor force: The training double bind in seafarer license and certification assessments](#)

Michael Bloor, Helen Sampson and Victor Gekara

Abstract: The shipping industry is among the most globalized of all industries and is characterized by complex modular supply chains, including a largely outsourced labor force of “just-in-time” casualized workers from developing countries and the transitional East European states. Despite long-standing efforts by international bodies to standardize and regulate the education and training of seafarers, variations in practices and standards persist. Employers exercise contradictory influences on education and training providers, on the one hand demanding the urgent provision of more recruits (encouraging corner-cutting), and on the other complaining about the poor quality of recruits received (urging crackdowns on poor quality providers and more rigorous examinations) – the training double bind. This paper reflects on these issues through the study of the problematic use of computerized assessments in seafarer examinations, drawing upon findings from a study involving research in six different case study countries providing maritime labor and interviews with stakeholders.

[Punishing environmental crimes: An empirical study from lower courts to the court of appeal](#)

Carole M. Billiet, Thomas Blondiau and Sandra Rousseau

Abstract: We analyze judicial policy lines concerning the punishment of environmental crime using a unique European dataset of individual criminal cases, including case-specific information on offenses and offenders. We investigate policy choices made by lower criminal courts, as well as their follow-up by the relevant court of appeal. The sanctioning policy of the courts has proven to be varied as well as consistent. Judges carefully balance effective and suspended penalties, most often using them cumulatively, but in specific cases opting to use them as substitutes. Overall, both judges in lower and appeal courts balance environmental law and classic criminal law and aim at protecting individuals and their possessions as well as the environment.

Regulation & Governance Forum

[Public policy's bibliography: The use of research in US regulatory impact analyses](#)

Bruce A. Desmarais and John A. Hird

Abstract: Major US federal regulatory decisions are developed and justified using regulatory impact analyses (RIAs) mandated by executive order. We examine the scientific citation activity in RIAs, a unique effort that we believe holds significant potential for understanding the use of science in policymaking. This paper reports preliminary findings from collecting and examining scientific citations in 104 RIAs from 2008–2012. We present evidence indicating that some agencies make extensive use of science in RIAs, that there is substantial variation in use across agencies, and show variation across journals and disciplines cited by regulatory agencies. Finally, we present analysis showing that regulatory policymakers make greater use of research published in highly cited scholarly journals. We conclude by outlining several future directions for research using these data.