



III-3.7: The Third Biennial Conference of the European Consortium of Political Research's (ECPR) Standing Group of Regulation. University College of Dublin, June 17-19, 2010

Tuesday 16 November 2010, by Alex Raiffe, Junior Editor, Tatiana Jovanic, Member of the Editorial Committee

MAIN INFORMATION

The Biennial Conference of the European Consortium on Political Research Standing Group on Regulatory Governance is the leading interdisciplinary conference on regulation and regulatory governance held in Europe. For the third time, it attracted many papers from all over the globe and from disciplines including political science, law, accounting, business, sociology, economics, international relations, anthropology, public administration and other cognate disciplines.

The ECPR's Standing Group on Regulatory Governance was founded in 2005 by David Levi-Faur, of Hebrew University, and Jacint Jordana, of Pompeu Fabra University. This group aims to provide a platform for scholars from all disciplines studying questions relative to 'regulatory governance'.

The great success of this event was made possible by a Local Organising Committee, led by Professor Colin Scott, whose efforts enabled this conference to be as comfortable for the participants as it was intellectually stimulating. The Conference included two important keynote lectures by Professor Adrienne Héritier (EUI) and Professor Michael Moran (University of Manchester). Professor Héritier's keynote lecture 'Self-regulation by Industry in the Shadow of Hierarchy: Emergence, Effectiveness and Legitimacy' was held on Thursday 17 June in the Dublin Castle. Official Conference Opening included the Introduction by Dr Hugh Brady (President of UCD), Mr Conor Lenihan (Minister for Science, Technology, Innovation and Natural Resources). Moran's lecture 'Regulation and the Financial Crisis' was presented on 18 June, preceding the Presentation of the Majone Prize for the best paper at the conference by an early career researcher. This Prize is established in honour of Giandomenico Majone for his outstanding contribution for the study of regulatory governance in the European Union and well beyond it. This award recognises outstanding research by scholars in early stages of her or his career in the field of regulatory governance from all relevant disciplinary backgrounds. The Prize is limited to scholars having completed their PhD no more than seven years before the deadline for submission. The prize committee, composed of Prof. Per Lægreid (University of Bergen) Chair, Prof. Bronwen Morgan (University of Bristol) and Prof. Kutsal Yesilkagit (University of Utrecht) decided to award the prize to the paper of Hanan Haber from the School of Public Policy at the Hebrew University Jerusalem for his paper "Regulating for welfare: A Comparative study of Regulatory Welfare regimes in the Israeli, British and Swedish Electricity Sectors".

Before the formal opening of this Conference, a Round Table Discussion 'The Future of Transnational Private Regulation' was held as a special pre-conference event on the morning

on Thursday 17th June, sponsored by The Hague Institute for Internalization of Law, within the frame of the project on Private Transnational Regulation. Panellists were Sol Picciotto (Onati)m Julia Black (LSE), David Levi-Faur (Hebrew University, Jerusalem), Frans van Waarden (Utrecht), Errol Meidinger (SUNY Buffalo). During the Conference, a new Steering Committee of the Standing Group on Regulatory Governance was appointed, with Claudio M. Radaelli being the new convenor.

This conference brought together hundreds of scholars, who presented their research in over 63 different themed panels, divided into 10 different streams, over the three days the conference was held. In our opinion, some of them deserve further attention.

CONTEXT AND SUMMARY

Stream A: Regulation and the Financial Crisis

Stream A encompassed eight panels including a wide array of topics closely related to recent Financial Crisis. Some authors focused on the systemic component of the crisis, the others compared the implementation of neoliberal policies before and after the financial crisis, and two panels were entirely dedicated to corporate governance issues in relation to the financial crisis.

The first paper of the Stream A, its first panel on Global Financial Regulation, and in the same time the first paper presented at the conference, *The Emerging Dynamics of Global Financial Regulation*, was presented by Professor **Jonathon Koppell** of the Yale School of Management. This paper is based on the main ideas the author has elaborated in his new book entitled *World Rule: Accountability, Legitimacy and the Design of Global Governance* (University of Chicago Press, 2010, forthcoming) which was presented at the Conference, in a Special Session – Author Meets Reader Panel, where the author responded to three readers discussing their views of this book. In this paper the author reflected upon the model of global financial governance described in documents accompanying consensus among G20 leaders and the existing patterns in global governance necessitated by the global financial crisis. On the basis of an empirical study of transnational rulemaking bodies (such as the IMF, OECD, IASB, IOSCO etc.) the author argues that many of the compromises embedded in the existing global rulemaking organizations will persist in future design of robust global regulators.

Systemic Risk and Global Financial Regulation after the Crisis was presented by **Mary Condon**, of the Osgoode Hall Law School. In the first part of her paper, the author unveiled tensions between risk regulation and new governance. In terms of this, her main idea is that the systemic risk may open a way for a new paternalism in financial regulation, opposed to a new governance approach that could foster a more flexible approach between financial actors. The paper also seeks to explore the possible meanings ascribed to systemic risk in jurisdictions such as the U.S., Canada and the EU. Among a number of competing regulators, the author has particularly focused on the role of the International Organisation of Securities Commissions (IOSCO) in assuring the legitimacy of the role of securities regulators in regulating systemic risk.

The recent financial crisis unveiled important policy challenges such as the role of a state in ensuring a balance between efficient market regulation and the protection of the

public welfare. In a paper entitled *Rethinking neoliberalism and regulation before and after the financial crisis*, **Damien Cahill** of the University of Sydney focused on the relationship between neoliberal theory and the regulation of economic processes. This paper interrogated various approaches and interpretations of neoliberalism, and questioned the attitude of many authors who interpreted state responses to financial crisis as re-regulation.

Stream B: The Governance of Risk and Technology Regulation

Stream B revealed emerging normative concepts and regulatory trends in the oversight of New Technologies. Conceptually, this group of papers was mostly focused on regulating nanotechnologies, as one of the most complex issues in technological risk regulation.

Within this Stream, Panel 3B on developing a normative framework was stimulating, in particular the two interlinked papers, written by the faculty of King's College of the University of London, raising concerns over techno-regulation. **Roger Brownsword** has submitted an interesting work questioning the regulatory responsibility in times when info, bio and nano technologies are accelerating. In the Paper entitled *Singularity, Plurality and Precaution: The Range of Regulatory Responsibility* the author re-casts some of the objections which he further elaborated in a book *Rights, Regulation, and the Technological Revolution* (Oxford University Press, 2008), and urges for the adoption of parameters relative to which a risk is to be judged as 'acceptable'. The author particularly argues for precautionary reasoning within the range of regulatory responsibility. On the basis of Brownsword's fundamental objections to techno-regulation, **Karen Yeung** in a paper *Is techno-regulation morally illegitimate?* explored ethical objections to techno-regulation, attempting to identify whether there are certain conditions in which techno-regulation should be welcomed, despite of the fact that as such it leaves no room for judgments of moral responsibility.

Panel 6B was fully devoted to governing nanotechnologies, actually a shift from risk regulation to the governance of innovation. There are four papers, all of them submitted by authors representing a faculty at Northeastern University, USA. Of them, **Kirsten Rodine Hardy** in a paper entitled *Big Government for Small Technology – European Regulation for Nanotechnology* contrasted the EU approach to the US approach, also paving a way for comparing European regulation and governance with emerging approaches in Canada, Australia and Japan. The European Union has developed a multi-level stakeholder set of governance and regulation around the emerging fields of nanotechnology, while the US is marked by a patchwork of governance at the local, state and federal levels. On the basis of empirical analysis of variations across member states, and the solid theoretical framework, the author examines whether the EU approach constitutes a separate 'European model' and whether it substantially varies from other fields of European regulation and governance.

There is no common answer to scientific uncertainty in policy and administrative decision-making and how to mitigate it. **Rob A. DeLeo** dealt with this issue in his paper on *Governance and Uncertainty: A Meta-Analysis with applications to health and environmental impacts of nano-technology*. His meta-analysis is based on three distinct theoretical frameworks: a) public policy studies; b) organization theory and c) anticipatory governance, a theoretical framework drawing from a host of disciplines including sociology, political science, and science and technology studies. The author presented a thorough conceptual investigation of uncertainty in regulating technological risks and the treatment of uncertainty in the three frameworks, including tools for limiting uncertainty. In the final

section the author particularly considered the applicability of these frameworks to the potential environmental and health side effects of nanotechnology.

Stream D: The Politics of Regulation

Stream D was devoted to the political aspect of regulation, notably regulators' autonomy, interaction between regulators themselves, interaction between regulators and the public sector as a whole, and the theme of accountability.

Within this group, **Dr. Janice Beecher**, of the Institute of Public Utilities, at Michigan State University, presented a paper entitled *Regulatory Independence and Regulatory Networks in the U.S. Experience*. It is noteworthy that the Institute of Public Utilities, because of its long history in training regulators, has at its disposal a great wealth of information about regulators' behavior as concerns their appurtenance to a network and their decision-making. Dr. Beecher's paper explores the history and current state of regulator's networks in the United States, especially as concerns the prestigious National Association of Regulatory Utility Commissioners (NARUC) and explores both the influence that membership in such a network may have on regulators' decisions, and the benefits and drawbacks of such networks themselves. This cost/benefit analysis especially takes into account the risks of didacticism and mimicry versus the beneficial aspect that membership has on regulatory independence from industry, and the benefits of sharing experience.

Addressing the politics of European food safety regulation, **Alexander Kobusch**, a doctoral student at the University of Tübingen, presented a paper on *Independence and Influence in the European two-tiered network of food safety agencies*, where he examined the relationships between European and national food-safety authorities. He examines structural variables in the internal makeup of national regulatory authorities, positing that national authorities that have adopted the European Food Safety Agency's (EFSA) internal organizational structure (full separation of risk assessment and risk management functions) are more likely to show higher cooperation and understanding with other agencies. This has the result of making them more autonomous on the national level, which Kobusch demonstrates makes them more powerful on the European level. He concludes that the power of a national food safety authority in a European network is quite affected by its resources, independence and centrality on the national level; and that cooperation between network actors to define a common position reinforces each member of the network, and positively influences their political clout.

Stream F: Regulating Food Safety and Quality

Stream F was entirely focused on regulation and governance of food safety and its quality, and the issue of public-private collaboration seems to have been a dominating topic. After several food scandals in the past decades, regulatory regimes in food safety have been reformed on the EU level and worldwide, including non-state, market-driven governance system. Traditional international rules and institutions were assigned the task with more or less success, but in the last decade private schemes of transnational regulation have increasingly gained prevalence in the food governance field. The private component is raising concerns, especially in relation to the legitimacy of private food regulation.

Exactly this issue is being questioned in a Paper exploring *The legitimacy of private transnational regulation, The Case of Private Food Governance*, delivered by **Jan Wouters** and **Nicolas Hachez** of the University of Leuven, Leuven Centre for Global Governance

Studies (the draft paper is actually entitled *Scrutinizing the Democratic Legitimacy of Private Standards – The Example of Global G.A.P.*). This paper attempts to contribute to the determinations of legitimacy in global governance, in the context of private food governance. Through a case-study of the most pervasive global food safety private standards GLOBAL G.A.P. this paper seeks to make an inquiry into the conditions under which global private standards may be viewed as legitimate. In a first part, the paper develops the most important determinants of legitimacy to the public. It then seeks to describe the conditions under which the democracy ideal could be put to use in relation to private global standards. On the basis of this the authors further analyse the concepts of accountability mechanisms.

Daniele Pisanello, a lawyer specialized in European Union food legislation at Lex Alimentaria in Taviano, Italy, presented his paper on *Shortcomings in Enforcing EU Food Law. What does EU Food Law stand for?* He explained the complexity and opacity of European Union food legislation as a barrier to proper enforcement, both in the redaction of the legislation itself, as in its implementation in individual member states. Through a comprehensive evaluation of the shortcomings in the legislation itself and the shortcomings in its implementation, compounded by an imperfect cooperation between various competent authorities on the EU level between themselves and with member states, and an incomplete harmony between EU law and older national law, Daniele Pisanello exactly highlights the problems in order to propose coherent solutions for their resolution.

Stream H: Non-State Regulation and Meta-Regulation

Stream H was fully dedicated to the issue of public-private divide in regulating the economy and the role of non-state and hybrid regulatory regimes. The last two panels (7H-8H) in this Stream were separated from the rest under the working title 'Regulation and Limits of Competition'.

In his paper entitled *Two Visions of Regulation*, presented in the first Panel of this Stream, **Professor Tony Prosser** of the University of Bristol contrasted two opposite visions of regulation. The first is that of regulation as an infringement on private autonomy, based on the assumption that self-regulation in correcting markets facilitates efficiency maximisation. This vision of regulation emphasises that relations between regulators and regulated can be seen as analogous to a contract. The second vision of regulation sees self-regulation as a delegation of authority to ensure that economic, social or distributive goals are carried out more effectively. Opposed to the first vision, which emphasises the independence and strict accountability of regulators, the second vision attempts to explain how legitimacy can be achieved through direct representation of interests of all stakeholders. Hence, rather than contracts between regulators and regulated, the second vision of regulation assumes that regulatory process is taking place in a complex network involving different stakeholders.

Dr. Vijaya Nagarajan, of Macquarie University, presented a very interesting paper on *Rights and Competition Policy: Theorising the practice of the Australian regulator*, in which she examined the discourse of the Australian competition authority in order to explore whether it was inclusive or exclusive in its decision making. Indeed, through an exploration of the 'authorization procedure' employed by the Australian competition authority, in which it authorizes *a priori* collusive conduct by corporations in the public interest (for example, refrigerator companies organizing to dispose of used refrigerators properly, in order to avoid

the release of CFC gasses into the air). The study of these decisions reveals that there is a growing tendency within the Australian authority to consider that ethical practices cannot be quantified, and that the agency cannot approve something it cannot quantify. Therefore, economic-efficiency factors are taking the upper hand over moral considerations, the number of authorizations for ethical practices having greatly decreased since the 1990s.

Stream I: Regulatory Capacity and Instruments

Stream I included many important panels focusing on the concept of regulatory capacity, including non-state capacity, issues in compliance strategies, quality of regulation and new regulatory approaches.

This first Panel of this Stream (I1) deserves a particular attention. **Arie Freiburg**, Dean of the Faculty of Law, Monash University, Australia (famous for its Centre for Regulatory Studies) presented a stimulating paper entitled *Re-Stocking the Regulatory Toolkit* where he took a broad view of regulation, and rightly observed that “theoretical challenges of regulatory design and the choice of regulatory methods are considered passé”. It is clear that regulation involves more than legal rules, and the tools of government are nowadays more diverse and inter-connected. Freiburg examined the range of tools that Australian regulators are challenged to use and grouped them into six broad categories: economic, transactional, authorisational, structural, informational and legal regulation, which represents a quite unique approach in contemplating regulatory taxonomies. The author’s approach is novel in a sense that it does not distinguish between ‘regulation’ and ‘alternatives’ to regulation, does not differentiate ‘hard vs soft’ or ‘traditional vs alternative’ forms of regulation. Exploring state and non-state forms of regulation, this author suggests a distinction between ‘passive’ and ‘active’ regulation and the process of ‘regulatory reconfiguration’, a term that describes the on-going reorganisation of the various forms of regulation and the changing balances between state and non-state regulation.

Two other panels which were presented in this panel also ought to be briefly presented. In a paper on *Regulatory Capacity and Networked Governance*, professor **Colin Scott** and co-author Chara Brown of the University College Dublin School of Law extensively elaborated the diffusion of regulatory capacity beyond government to non-state actors and the possibility of a greater use of networks as instruments of control. In conceptualising regulatory capacity, Scott suggested a shift in the focus from that suggested by Christopher Hood in his seminal 1983 work on *The Tools of Government*. Whereas Hood depicted government as the centre of networks, Scott stresses that that networks within modern regulatory regimes are nowadays more complex and therefore non-governmental actors may have central positions. This raises another concern, the question of legitimacy, which should be shared between governmental and non-governmental actors in the era when social networks are gaining the importance in the process of regulation. This paper has been based on a thorough analysis of the concept of regulation, on the basis of which authors argue that a central response of actors within regulatory space is to participate in and actively use networks as a means of accessing the capacity of others within a policy domain. Hence, regulatory capacity is the sum of the resources available to actors within regulatory regimes and these resources are typically spread not only amongst state bodies, but also between state and non-state actors.

Renowned for their work on conceptual issues in regulatory governance, professors **Julia Black and Robert Baldwin** of the London School of Economics (both affiliated with the

prominent Centre for Analysis of Risk and Regulation) are further refining their research into decentred and networked governance by elaborating a 'collaborative' approach to the design and evaluation of decentred or networked models of regulation. The authors identified five regulatory regime characteristics which present challenges for an effective collaboration within the regulatory networks. These are described in Section 1, including their variations and the nature of the divergences in these which may occur within a regulatory network. Section 2 addresses the specific challenges of network co-ordination, and section 3 further draws on the public administration. Section 4 focuses on the attributes of a good administration and the final section draws conclusions on the value of the collaborative approach.

Lastly, another notable paper in this stream was presented by Professor **John Brady**, of University Anglia Ruskin, whose research interests particularly focus on the improvement of regulatory guidance and governance, especially through the notion of guidance. This paper, entitled *Taking Advice – the role of advice, guidance, and persuasion in compliance*, presents the role of advice and guidance given by regulators to regulatees as an important educational tool for the dissemination of "good practices" and the furthering of regulatory goals. However, regulators seem wary of the role of advice and guidance, seeing it as ambiguous in relation to their responsibilities and their missions. Through a categorization of different types of advice and guidance, and study of types of guidance and research into the effectiveness of their use during inspection visits, John Brady demonstrates the usefulness and applicability of these important tools for the furthering of regulatory goals and the improvement of compliance.

Stream J: Theories of Regulation/Regulating Network Industries

Stream J is twofold: the first two panels are focused on Theories of Regulation, while Panels 4J to 8J are entirely dedicated to emerging issues in regulating network industries. The two panels on Conceptual and theoretical analysis of regulation (J1-J2) are particularly important for the ideas the papers belonging to them revealed. These papers are not interlinked, but may be considered sequential. Elaborating the issue *Public Interest regulation reconsidered: From capture to credible commitment* **Jørgen Grønnegård Christensen** of Aarhus University contrasted classical public interest theory, capture theory and the modern theory of credible commitment. On the basis of the supporting evidence, the author contributed to the rehabilitation of classical public interest theory by urging the shift in focus towards procedures ensuring the inclusion of all interests at stake. Rather than upholding the idea of an administration that pursues a clearly defined public interest, such a changed focus has many implications for future theorising of grounds for and models of regulation.

Sidney Shapiro of the Wake Forest University immediately followed presenting a paper entitled *Back to the Future: Will the U.S. Return to the Social Model of Regulation*, by pointing to the social conception of regulation which reflects American pragmatism, particularly the thought of democracy as an on-going discussion reflected in the work of John Dewey. Shapiro rightly observed that government intervention should not only be justified where the market fails: government intervention is not only about producing more efficiency. Therefore, equity, fairness and social concerns, that emerged in the wave of social regulation of the 1960s, should again be taken into account. The author revealed several predictions about the future of the forthcoming U.S. model of regulation. The United States may be entering another deregulation period, or may renew its commitment to a

social vision of government. The author then concludes that hurdles in regulatory future are more substantial than in the past, because of a growing imbalance between political and financial resources of government opponents and the more meagre resources of regulatory proponents.

In a Paper on Theories of Regulation after the Great Financial Crisis, Professor **David Levi-Faur** of the Hebrew University continues on questioning the market failure paradigm and the hegemonic position of the economic theories of regulation since 1970s in an attempt to identify which theory of regulatory governance will dominate the years to come after the financial crisis. The author concludes that it is ultimately 'regulatory capitalism', opposed to pure neoliberal narrative, which may bring in the systemic character of regulatory governance.

Panel 4J was devoted to Regulatory Governance in Network Industries, and more specifically, of Energy Regulation. Professor **Giuseppe Bellantuono**, a prominent scholar of Energy regulation at the University of Trento, presented a paper on *Comparing regulatory decision-making in the energy sector*, in which he revealed the difficulty of evaluating differences and regulatory quality across borders. Indeed, law and finance, and the World Bank's 'Doing Business' reports attempt to evaluate energy regulation, but both these approaches disregard the way institutions work, especially important in the political field that is energy regulation. Instead, Professor Bellantuono proposes through his paper to use behavioural law and economics: to compare decision-making processes across countries and interpret them using psychological literature as a way to identify important frictions or hurdles, and to improve on regulatory solutions in an interdisciplinary method.

Panel 6J was the second part of the Regulatory Governance in Network Industries stream. Within this panel, **Martin Maegli**, a regulatory economist at the Swiss Post, and **Christian Jaag**, of the Ecole Polytechnique Fédérale de Lausanne, presented his research on *Postal markets and electronic substitution: what is the impact of convergence on regulatory practices and institutions?*, in which he compared telecommunications regulation to postal regulation. Deftly identifying the recent convergence between the two markets, but which are yet marked by the divergence between active and passive networks (the post cannot control distribution frequency, quantity of letters sent, or quality of service objectives, whereas telecommunications operators have greater freedom to limit or optimize the use of their network), Maegli asks the question of whether the recourse of traditional postal services to electronic services in order to regain control over the use of the postal network justifies changes to, or even a substitution of, the definition and role of Universal Service.

Burkard Eberlein and **Sandra Eckert** of the University Osnabrück contributed to Panel 8J, also dedicated to energy regulation, with a theoretical and empirical investigation of the effectiveness of private governance in energy market. A paper entitled *The Role of Private Governance in the Internal Energy Market* is focused in particular on transmission system operators and the way they coordinated their actions in resolving cross-border issues posed by market integration in the electricity sector in the EU. The authors concluded that although European regulation formalised their role in the institutional architecture of the Internal Energy Market, transmission system operators still enjoy a considerable amount of discretion.