

Workshop Programme

Research Theme: Business, Organizing and Governance

The Transformative Power of Regulatory Governance: Rules, Resistance and Responsibility

February 4-5, 2016, Department of Business and Politics, Copenhagen Business School

“Augustinus Fondens” Meeting Room, Copenhagen Business School, Solbjerg Plads 3

DAY 1: February 4, 2016

- 8:30-9:15am: Arrival, registration and Coffee
- 9:15-9:30am: Welcome and Introduction to the Workshop
- 9:30am-12:15pm **Panel 1: Theorizing Regulatory Governance**
CHAIR: Sine Nørholm Just
- Poul F. Kjær: *Facilitating Transfers: Temporalisation, Spatial Expansions and the Emergence of Regulatory Governance*
- Larry Backer: *Theorizing Regulatory Governance Within its Ecology: The Structure of Management in an Age of Globalization*
- 11:10-11:25am COFFEE/TEA BREAK
- Maj Lervad Grasten: *Authoritarian Liberalism and International Law: The Post-War Regulatory State and Its Economic Constitutionalist Foundations*
- 12:15-1:30pm LUNCH BREAK

1:30-4:30pm **Panel 2: Conceptualizing Resistance and Responsibility in Regulatory Governance**

CHAIR: Eva Hartmann

Antje Vetterlein: *Responsibility Is More Than Accountability: From Regulatory Towards Negotiated Governance*

Andre Noellkamper: *The Regulatory Dynamics of Shared Responsibility*

3:10-3:40pm COFFEE/TEA & CAKE

Sine Nørholm Just: *Banking on the Union? Financial Regulation and Public Trust*

18.30 pm DINNER: Restaurant Radio (see location below)

DAY 2: February 5, 2016

8:45-9:15am COFFEE/TEA

9:15am-12:00pm **Panel 3: The Role of International Organizations in Regulatory Governance**

CHAIR: Stefano Ponte

Lora Viola: *By Invitation Only: From "Systemically Significant" to "Guest" Status at the G20*

Duncan Snidal: *The Role of IOs In Experimental Regulatory Governance*

10:55-11:10am COFFEE/TEA BREAK

Eugénia Conceicao-Heldt: *Accountable to Whom, for What and How? Insulation and Opacity of the World Bank*

12:00-1pm LUNCH BREAK

1:00-2:40pm **Panel 4: Public-Private Relations and Regulatory Governance**

CHAIR: Maj Lervad Grasten

Eva Hartmann: *Authoritative knowledge in corporate education: The role of international coordination service firms*

Paul Verbruggen: *Understanding Transformations in the Regulatory Governance of Food Safety: Regulatory Enrolment as a Governance Response to Change*

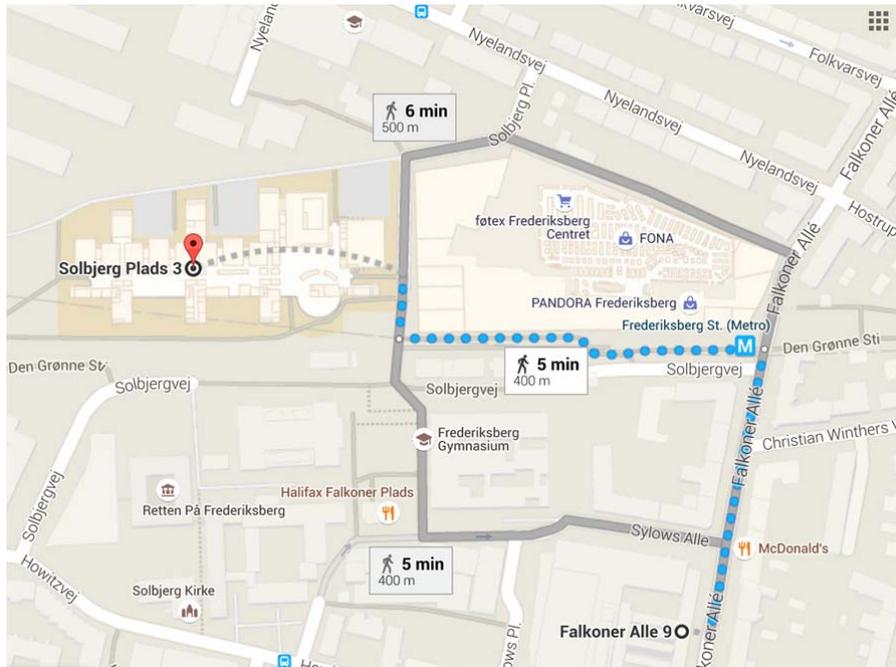
2:40-3:30pm Concluding Remarks and Coffee/Tea

List of Participants:

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Information about Location:

The workshop takes place in CBS' main building, Solbjerg Plads 3. From the SAS Radisson Hotel it is a 6 min walk (about 500 m). See the following map:



“Augustinus Fondens” Meeting Room is located on the 4th floor in part A of the building. If you have difficulties finding the room, there is a Help Desk to the left when you enter the building through the main entrance.

Dinner will take place at *Restaurant Radio*, Julius Thomsens Gade 12, 1632 Copenhagen V.

By Invitation Only: From “Systemically Significant” to “Guest” Status at the G20

Lora Anne Viola

Abstract: The international system has long distinguished among social classes of states, most notably by deploying the term “great power” to distinguish the upper stratum of actors within the system from “middle powers,” “lesser powers,” “emerging powers,” or “rising powers.” Recently, however, a new designation has emerged within regulatory institutions, that of “systemically significant” actors. This designation, used prominently by the G20 but quickly diffusing to other regulatory institutions, has been used to justify the membership composition of regulatory institutions and thus codes the distributive consequences of institutional access. The G20 has no official membership policy, but argues that it is composed of “systemically significant” states without offering any definition of that term. Moreover, while the G20 has used the term to maintain an exclusive membership, it has also developed a tiered membership system that includes, informally, other states as ad hoc and permanent guests. The designation of some actors as “significant” and others as “non-significant,” along with the determination of some states as “members” and others as “guests,” have important distributive consequences when regulatory recommendations being made by a select groups of states have substantial implications for non-member states. This paper assesses the origins and use of the “systemically significant” designation to control access to regulatory authority and investigates the causes and consequences of the G20’s tiered membership system.

Bio: Lora Anne Viola is currently a Jean Monnet Fellow at the European University Institute. She is on leave from the Freie Universität Berlin where she is Assistant Professor in the Politics Department of the John F. Kennedy Institute. She received a PhD in Political Science from the University of Chicago, a Master’s Degree in International Relations from the University of Chicago, and a Bachelor’s Degree in Political Science and Economics from Columbia University in New York City. Before joining the Freie Universität she was a Senior Research Fellow at the Social Sciences Research Center Berlin (WZB) and a visiting scholar at Stanford and Oxford Universities. Viola’s research interests include international institutions and global order, inequality in the international system, international relations theory, historical institutionalism, and US foreign policy and diplomacy. She has published on the G20, changing patterns of IO governance, sovereignty and inequality, and US foreign policy. She is currently working on an edited volume on historical institutionalism in IR and a book manuscript on institutions and inequality.

Facilitating Transfers: Temporalisation, Spatial Expansions and the Emergence of Regulatory Governance

Poul F. Kjaer

Abstract: The concept of governance has mutated into an all-embracing buzz-word characterised by a low degree of conceptual precision and empirical focus. This paper therefore suggests a narrower and more precise understanding of governance and the regulatory function it fulfils by advancing the argument that the essential functional and normative purpose of regulatory governance is to facilitate, stabilise and justify the transfer of condensed social components (such as economic capital and products, political decisions, legal judgements, religious beliefs and scientific knowledge) from

one social contexts to another. Such transfers both involve extraction of social components from the departing context and the incorporation of these social components into the receiving context.

Paradoxically, increased globalisation has implied an increase rather than a decrease of contextual diversity in so far as the implosion of the euro- and later on Western-centric world has increased the pluralistic structural setup of contemporary world society. The contemporary world is at the same a community of common destiny and a world which consists of many worlds insofar as the globe is characterised by a multiplicity of contextual societal orders (societies, communities, regimes etc.) with some of them being state-based and some of the falling outside the category of statehood. This development, acting as the central structural driving force for the emergence of regulatory governance frameworks, can be traced back to specific logics of temporalisation and spatial expansion of a diverse set of social processes in relation to, for example, the economy, politics, science and the mass media.

On this background, the paper will more concretely develop a conceptual framework for classifying different contextual orders and different types of transfers between them. It will, furthermore, explore the role and “quality” of different types of regulatory governance frameworks in relation to the facilitation, stabilisation and justification of transfers.

Bio: Poul F. Kjaer is professor at the Department of Business and Politics, Copenhagen Business School. His research is financed by the European Research Council within the framework of the project ‘Institutional Transformation in European Political Economy – A Socio-Legal Approach’ (ITEPE-312331- www.itepe.eu). He is the author of *Constitutionalism in the Global Realm – A Sociological Approach* (London, 2014) and *Between Governing and Governance: On the Emergence, Function and Form of Europe’s Post-national Constellation* (Oxford, 2010).

Understanding Transformations in the Regulatory Governance of Food Safety: Regulatory Enrolment as a Governance Response to Change

Paul Verbruggen

Abstract: The regulatory governance of food safety has changed dramatically since the 1990s. The outbreak of recurrent major food safety crises (including BSE), the globalization of food supply chains, the growing concentration of economic power among food retailers, a general perception of failing public regulation, and new concerns among consumers about animal welfare, dietary habits, the environment and fair trade have made fertile ground for changes in the institutions and practices of food governance (Marden et al 2010, Havinga et al 2015, Verbruggen & Havinga 2015). These changes have occurred across two key dimensions: (i) *national* systems of food governance have been increasingly subject to *international* influences and (ii) *public* food governance has been challenged, complemented or at times superseded by *private* governance systems. Both transitions fundamentally challenge the capacity of individual regulators (national, international, public and private alike) to devise effective and legitimate systems of food safety governance. As a result, we observe an increased level of coordination between public and private regulatory activities, more and more frequently transcending national (jurisdictional) boundaries.

This paper aims to develop a better understanding of how such coordination is taking place, why and at what level. To that end, it builds on the concept of ‘regulatory

enrolment' developed by Black (2003). Regulatory enrolment can be seen as a governance response to regulatory change and regime complexity. It presupposes that the capacity for regulatory governance is dispersed among a variety of actors, none of which holds such a central position in the regulatory arena that is can unequivocally determine outcomes. In this polycentric conception of regulation, enrolment provides 'a normative framework for considering ways in which the capacity of the system as a whole might be enhanced effectively and legitimately by the careful deployment within it of the regulatory capacities of different actors.' (Black 2003, 91).

The paper will first provide a deeper account of the concept of regulatory enrolment and its relationship to notions of 'polycentric regulation' and 'regulatory capacity' as developed in the literature on regulatory governance (Section I). Second, it will provide a brief, yet systematic overview of the actors currently involved in the regulatory governance of food safety, by which their relative regulatory capacities and potential for enrolment are identified (Section II). Section III offers insights into to the ways in which regulatory enrolment is currently taking place and identifies challenges to this governance strategy (and its proper design) for actors occupying the regulatory space on food safety. Here, the paper draws on previous empirical research conducted on the interplay between various actors concerned with the regulatory governance of food safety. Next, Section IV discusses the ways in which regulatory enrolment might be harnessed to enhance the effectiveness and legitimacy of (some) actors in ensuring regulatory outcomes. Section V concludes.

Bio: Dr. Paul Verbruggen is Assistant Professor of Private Law at the Business and Law Research Centre of Radboud University, Nijmegen, the Netherlands. Paul teaches courses in the field of private law and regulation, and writes on the design and operation of regulatory frameworks (both public and private), focusing on questions of legitimacy and enforcement. His research interests concern (European) private law, regulatory design, risk regulation and certification.

The Regulatory Dynamics of Shared Responsibility

Andre Nollkaemper

Abstract: In this paper I will explore how the concept of shared responsibility can serve as a ground and triggering mechanism for regulations that address situations where multiple actors interact to contribute to harmful outcomes. With the concept of shared responsibility, I refer to situations where a multiplicity of actors contributes to a harmful outcome, and responsibility for this harmful outcome is distributed among more than one of the contributing actors. A defining feature of shared responsibility thus is that the responsibility of two or more actors for their contribution to a particular outcome is distributed between them separately, rather than resting on them collectively. However, shared responsibility is not simply the aggregation of two or more individual responsibilities. In many situations of shared responsibility, two or more actors stand in some relationship to each other, and their conduct or omission mutually influence the (scope of) responsibility of the other.

My main focus is on legal responsibility, that is, on a responsibility for wrongful conduct that is recognized by international law. However, much of the argument does not hinge on the specific legal form of responsibility, and the main claims can be formulated in more general terms. We can also we use the phrase shared accountability to cover situations in which a multiplicity of actors is held to account for conduct in contravention of international norms, but where this does not necessarily involve international responsibility for internationally wrongful acts in its formal meaning.

To address the connection between regulation and shared responsibility, the paper distinguishes between ex ante and ex post responsibility. On the one hand, the term “responsibility” can be used to refer to obligations (or regulatory requirements) that ex ante structure the conduct of the relevant actors. On the other hand, the term can refer to ex post facto responsibility for contributions to injury. This is the meaning most commonly used in international law. The paper will explore connections between responsibility in these ex ante meaning, and responsibility in the ex post way. Thereby, it will identify the regulatory implication, and regulatory dynamics, that are part of the concept of shared responsibility. The paper will develop three connections between shared responsibility and regulations. Together these expose a picture or regulatory dynamics that is inherent in the concept of shared responsibility.

First, acceptance of a shared responsibility by multiple actors in relation to a particular problem serves as a justification, and an incentive, to these actors to engage in a concerted action, and to develop regulations, to address that particular problem. Second, when a particular harm has been caused by concerted action, from a strategic perspective assigning ex ante responsibility can be a better response than turning to ex post responsibility. In view of the reputational effects of ex post responsibility, a turn to regulation can be more acceptable to actors, and easier to negotiate, than ex post responsibility. Third, non-fulfillment by multiple actors of a regulatory requirements (responsibility in the ex ante meaning), can trigger responsibility in the ex post sense. This responsibility will require this actors to engage in a new round of regulatory development, reflecting the interactions and connections between them. It will be argued that too much attention has been given to processes targeted at determining responsibility and reparation, and it has insufficiently been recognized that regulation rather than reparation is the prime consequence of ex post responsibility.

Bio: André Nollkaemper is Professor of Public International Law and Director of the Amsterdam Center for International Law at the Faculty of Law of the University of Amsterdam. He is also external Legal Advisor to the Minister of Foreign Affairs of the Netherlands, Member of the Permanent Court of Arbitration, President of the European Society of International Law and Member of the Royal Netherlands Academy of Arts and Sciences. He is editor in chief of *International Law in Domestic Court (OUP)* and member of the editorial board of the *European Journal of International Law*. His areas of expertise and interest include general international law, the law of international responsibility, and the interfaces between international and national legal orders.

Banking on the Union? Financial Regulation and Public Trust

Sine Nørholm Just

Abstract: One influential explanation of the 2008 financial meltdown with its extensive and enduring economic repercussions is that it was a crisis of confidence (Tonkiss 2009). Surely, the erosion of trust was not the only cause of the crisis (Engelen et al. 2012), but even so a main post-crisis challenge of financial and regulatory actors alike has been to rebuild confidence in the financial system – internally as well as in the public eye (Roth 2009, Levine 2012). This paper focuses on the public trust-financial regulation nexus and investigates the potential of the regulatory reforms of the European Union (EU), most notably the establishment of the Banking Union, for restoring citizens’ confidence in the EU’s ability to regulate the financial sector in a manner that may both stabilize the sector and benefit the economy as such.

The starting point of the paper is that public trust may be seen as a measure of people's perceptions of the EU's output – an expression of how well they think the EU is working and of the extent to which they perceive it to be delivering on its promises (Jones 2009). Thus, public trust is positioned as an important component of legitimacy as this broader concept is discussed in the context of the EU. Here, it is often noted that the EU suffers from a 'democratic deficit' understood as a lack of input legitimacy. The argument is that people do not participate in European elections and other democratic processes, most notably public debate, to a degree that may legitimize the sort of polity the EU has become (see inter alia Bruter 2012, Kohler-Koch & Rittberger 2007, Nitoiu 2012). The notion of public trust, however, may provide an alternative take on this issue by suggesting that people's direct participation is not necessarily as crucial to political legitimacy as is often suggested. Instead, we should focus on the (lack of) publically available communication of the EU's political output (Meyer 1999) in order to assess whether this communication may further people's specific trust in the EU's ability to deliver policy results that could, in turn, enhance their general trust in the EU polity.

How citizens perceive of the EU's legitimacy and how well they believe the EU to be undertaking its regulatory responsibilities may be more important than the degree to which they participate directly in public debates and other legitimacy processes. And such perceptions will be significantly shaped by the available communication. While it is thus important to note what citizens think of the EU, generally, and of the Banking Union, specifically, as e.g. indicated by measurements of their level of support for it, my main aim is to move beyond the question of what current trust-levels are to the study of *how* trust may be shaped through communicative processes of meaning formation. This leads to the following research question: *how is the Banking Union communicated to citizens and how may this communication affect public understanding of and trust in the EU's ability to regulate the financial sector?*

In seeking to answer this question, I will develop a theory of public trust as 'the rhetorical circulation of affective signs' (Chaput 2010, Just 2015), which will be applied to an analysis of the public debate surrounding the Banking Union. More specifically, I will argue that the process of enhancing/diminishing public trust "...is not an isolated instance or even a series of instances but a circulation of exchanges, the whole of which govern our individual and collective decisions" (Chaput 2010: 8) and that this "...circulation process [...] functions independent of rational deliberation, even if it overlaps with and gets absorbed by various political discourses (Chaput 2010: 15). Public trust, then, is not the result of rational arguments, but of the circulation of signs that hold – or may come to hold – affective value. The process of attributing affective value to signs, moreover, happens in and through the circulation; first, "...the more signs circulate, the more affective they become" (Ahmed 2004: 45). Second, the circulation may be both positive and negative in value, but whichever direction prevails will provide the sign with an overall degree of attraction/repulsion, a certain valence (Cox & Béland 2013). Public trust, then, may be seen as the ever-transient outcome of a process of circulating affective signs that, in the present case, may be studied by first investigating how frequently the sign of the 'Banking Union' is circulated in the European public sphere(s) and secondly unpacking the valence of the circulation in order to assess its potential for rebuilding or, indeed, further deteriorating public trust in financial regulation.

Bio: Sine Nørholm Just is a communications scholar working at the interdisciplinary nexus of the social sciences and the humanities. She studies rhetorical processes of meaning formation, focusing on issues of legitimacy, identity, and public opinion. Currently, Sine's research centres upon two main areas: the rhetorical enactment of markets and the constitutionalisation of the EU. Furthermore, Sine maintains a broad

interest in issues of political, intercultural and organisational communication. She also studies the possibilities and constraints that individuals encounter when engaging with organizations.

Accountable to Whom, for What and How? Insulation and Opacity of the World Bank

Eugénia da Conceicao-Heldt

Abstract: Over the past decades, the World Bank been extensively criticized by scholars, civil society groups, member states, and the media for being secretive, unaccountable and ineffective. Confronted with this wave of contestation, the Bank established several internal accountability mechanisms in form of oversight units accountable to different internal parties, which include the Independent Evaluation Group, the Inspection Panel, the Internal Audit, which reports to the President and to the Audit Committee, and the Integrity Vice President (INT), reporting to the Bank's President. Apart from these internal accountability mechanisms, we know little about to whom the World Bank is accountable to, for what and how. In this paper, I dissect different types of accountability mechanisms at the World Bank. Thereby, I argue that the choice of internal accountability mechanisms is more likely to lead to a greater insulation and opacity of international organizations. In this way, the establishment of a myriad of accountability mechanisms had the paradoxical effect of making the organization even less accountable, more complex and opaque.

Bio: Eugénia da Conceição-Heldt is Professor of International Relations at the Dresden University of Technology. Her work focuses on the delegation of power to international organizations, EU trade politics, negotiation analysis, emerging powers, and global economic governance. She has published articles on these topics in journals such as the Journal of Common Market Studies, the Journal of European Public Policy, and International Politics. Her awards include a Fulbright fellowship (2015), a Consolidator Grant from the European Research Council (2012), a Heisenberg fellowship from the German Science Foundation (2010), and a Jean Monnet fellowship from the European University Institute (2007).

The Role of IOs in Experimental Governance

Duncan Snidal

In our view, experimentalist governance, in theory and practice, can be strengthened by closer attention to the logic and difficulties of experiments in the natural and social sciences. We begin that effort in this paper. We do not provide a comprehensive primer on experimentation or its limitations - far from it! Rather, we draw on an extensive literature to show the importance of careful experimental design, control and administration for experimentalist governance.

To be sure, the tightly controlled experiments of chemistry or physics are impossible to replicate in the world of social policies; as our title suggests, we cannot take their lessons fully on board, lest the unattainable experimental "best" becomes the enemy of the governance "good." But there are still significant advantages to beginning the analysis of policy experimentation with the "gold standard" in the field. From that baseline, one can extract key elements, and can consider how to relax the ideal as necessary for real-world governance.

Part 1 of the paper outlines the theory of experimentation from the natural and social sciences. It considers both the conduct of individual experiments and the organization of an experimental system to manage the design and administration of experiments, evaluate their results, and facilitate communication, learning and follow-up, including further experimentation. Part 2 introduces the work of Sabel and colleagues as the most highly developed theory of experimentalist governance. Part 3 advances three general critiques of experimentalist governance based on the lessons of experimentation from the natural and especially the social sciences, and elaborates those critiques across each stage in the experimentalist governance process. Part 4 draws on these critiques to suggest how governors can incorporate key insights of experimental theory into practical governance arrangements.

Bio:

Responsibility Is More Than Accountability: From Regulatory Towards Negotiated Governance

Antje Vetterlein

Abstract: The concept of ‘responsibility’ has become increasingly significant in global governance and has begun to materialize across diverse policy fields such as security (‘responsibility to protect’), the environment (‘common but differentiated responsibility’) and economics (‘corporate social responsibility’). Scholarship has picked up on this development and in particular empirical studies have emerged that investigate responsibility more explicitly, specifically on the policy areas just mentioned. Yet, in this paper I argue that there is a significant lack of conceptual clarity when scholars refer to responsibility. Often responsibility is used synonymously with accountability, which highlights the regulatory aspect of governance with a focus on rights, compliance and sanctions. But responsibility is more than accountability. Conceptually, responsibility is closely linked to morality and ethics and thus highlights the normativity of international politics since responsibility entails a proactive dimension, as in *taking* responsibility based on individually held values of what is right or wrong. Responsibility further contains a relational component, as in *responding* (or ‘answering’) to claims requiring more responsible behaviour. It creates a relationship between an actor – individual or collective – and other social units. Taken together, responsibility – as opposed to accountability – highlights the contestation of policy norms, and thus the negotiated nature of governance.

Against this backdrop, I will develop a typology of responsibility in this paper. Following the debates on responsibility in the literature, we can distinguish two dimensions that are referred to when theorizing about responsibility: the nature of responsibility (moral versus causal) and the source for attributing responsibility (self-judgment versus judgment by others). Combining these two, we arrive at a typology that highlights four specific meaning dimensions of responsibility, i.e. ethics, accusation, obligation and accountability. In a first step, this typology clarifies the meaning of responsibility and the different connotations it carries with it. In a second step, I will then use this typology and apply it to the case of corporate social responsibility (CSR). We will see how different assumptions underlying specific responsibility types are in line with specific CSR practices. Different CSR practices, such as Codes of Conduct, multi-stakeholder initiatives or community projects, differ substantially with respect to the ways in which responsibility is ascribed or taken on, by/to whom and on what basis. The objective thirdly is to identify the conditions under which responsibility claims are successful in

these different contexts, and thus the paper will contribute to shed light on the conditions of enhanced legitimacy in global governance.

Bio: Antje Vetterlein is associate professor at the Department of Business and Politics at Copenhagen Business School (CBS). Her research is located within international political sociology with particular interests in global governance, the politics of development and the relationship between economy and society focusing on political actors and practices at the transnational level and the role of ideas and norms in international politics. She has published articles on these topics in journals such as *Global Governance*, *New Political Economy*, and *European Political Science Review*. She has held fellowships at the Minda de Gunzburg Center for European Studies at Harvard University (2015/16), the Centre for Advanced Study (HWK) in Delmenhorst (2012/13), and the Center for Advanced Study in the Behavioral Sciences (CASBS) at Stanford University (2006).

Authoritarian Liberalism and International Law: The Post-War Regulatory State and Its Economic Constitutionalist Foundations

Maj Grasten and Konstantina Tzouvala

Following the emergence of ‘The Washington Consensus’ internationally administered post-conflict reconstruction in countries such as East Timor, Kosovo and Iraq has largely resulted in extensive neoliberal economic reforms. Whereas neoliberal approaches to state-building and the notion of ‘liberal peace’ have been debated intensively among critical International Relations (IR) scholars (e.g., Chandler 2006; Paris 2002; Pugh 2005; Zaum 2007), the role of international law has remained relatively under-analyzed. Drawing on the case of International Transitional Administrations (ITAs) in Kosovo and Iraq, the purpose of this paper is to explore both the political and legal dimensions of international regulatory governance and their social implications. To this end, the paper reconstructs how international law was continuously interpreted, twisted and reformulated by an international, poly-centered executive constituted by multiple actors, such as the United Nations (UN) Security Council (UNSC), International Financial Institutions (IFIs), the European Union and individual states, such as the United States (US) and the United Kingdom (UK), which resulted in accountability being diffused across multiple sites of transnational authority in the cases of Kosovo and Iraq. In so doing, we demonstrate how international law provided the functional and normative foundation for regulatory governance, which shifted legal practices from a formalist approach to law to a rule by executive decrees, orders and regulations, and was based on claims to international expertise, political neutrality and ‘ordoliberal’ policies aimed at creating a neoliberal market economy and integrating the internationally administered territories into the global economy.

The post-war regulatory state in Kosovo and Iraq emerged out of this authoritarian mode of liberalism and international law provided the functional and normative foundations for this process. To be sure, both the UN’s administration in Kosovo (UNMIK) and the Coalition Provisional Authority (CPA) in Iraq were nominally restrained by international law (Chapter VII of the UN Charter and the relevant UNSC Resolutions) in their executive and legal powers from interfering in the political and legal infrastructures of the administered territories. In the case of Kosovo, UNMIK was committed to ‘respect the territorial integrity and sovereignty of Serbia’ (UNSC Resolution 1244), whereas the CPA was bound by the ‘conservationist principle’ according to the Hague Regulations of 1907 and the Fourth Geneva Convention, which limit the occupier’s legal authority over the occupied state. However, due to the

indeterminacy of international law, the international executives in Kosovo (the Special Representative of the Secretary-General) and Iraq (the US appointed administrator of Iraq, Paul Bremer) continuously re-interpreted and 'twisted' their legal mandates which, based on their own interpretations, would grant them all-encompassing judicial, legal and executive powers over the administered territories and thus the ultimate authority to issue executive decrees (as regulations and orders). These decrees, according to the way in which the international executives reformulated their mandates, would have the force of law in both countries and would supersede existing domestic laws. In a final part, the paper turns to regulatory governance in relation to agriculture in Kosovo and Iraq. In so doing, we draw on the regulations and orders that reformed the agriculture in the two countries to show how local agricultural production was drastically re-orientated in order to become integrated in global value chains by targeting import substitutions and increasing export oriented activities through executive decrees. Given the sensitive nature of agriculture this turn to regulatory governance has had as consequence that the opportunities for democratic deliberation and sovereign decision-making in this sector of the economy have been radically diminished.

Finally, our paper offers a series of reflections on the 'regulatory turn' in the context of post-conflict reconstruction. First, we argue that the cases of Kosovo and Iraq indicate that regulation should not be conceptualized as the antithesis of neoliberalism. Rather, regulation is always-already present in the creation, expansion and function of competitive markets. Secondly, we emphasize the marked *shift* regarding the 'agents' of this neoliberal regulation, arguing that a polycentric, fundamentally unaccountable international executive has assumed crucial regulatory functions.

Bio: Maj Grasten is a Ph.D. Fellow in the Department of Business and Politics at Copenhagen Business School. Her main fields of interest are international political sociology, international legal theory and the interaction of law and politics in global governance. Her thesis explores the role of norms in international practices in post-war legal reforms, in particular in the Western Balkans. She has recently published in *Journal of International Relations and Development* and contributed to an edited volume on the *Power of Legality* (Cambridge University Press, forthcoming).

Bio: Konstantina Tzouvala is a Lecturer in Law and Ph.D. Fellow at Durham Law School. She received an LL.M in international law by University College London, an LL.M in socio-legal studies by the National and Kapodestrian University of Athens and an LL.B by the same institution. Her main research interests are the history and theory of international law, legal theory, international trade and investment law, and law and neoliberalism. Her thesis is concerned with the relationship between law, imperialism and the diffusion of free-market economy.

Authoritative knowledge in corporate education: The role of international coordination service firms

Eva Hartmann

Abstract: It seems that an ever shorter temporal rhythm is gaining ground with the end of the "short twentieth century" (Hobsbawm 1995) challenging the modern temporal horizon (Koselleck 2002; see also, Rosa 2013). Part of this transformation is a new dynamic for which Morris-Suzuki coined the term 'perpetual innovation economy' (Morris-Suzuki 1984 quoted in, Schiller 2000, p. 157). The emerging economy relies on a continuous stream of scientific and technical knowledge closely related to information technology and networks. Notably, Manuel Castells pointed out in his seminal study how

this technology enables new social structures and activities organised through electronically processed information networks (Castells 1999). These social structures have gained a strong global dimension and changed the way authority is constituted and reproduced, as the emerging literature on transnational private authority points out.

The paper explores the consequences of the ever-shorter life cycle of knowledge on the organisation of tertiary education where the distinction between higher education (HE), technical and vocational training (TVET) and career and technical education (CTE) has become blurred in the name of further education. Little attention has been paid so far how this development changes the way authoritative knowledge is produced and disseminate through education. The paper will present the findings of a case study examining global providers and certifiers of information and communication (ICT) education as well as other professional training services which are about to establish a "parallel universe" (Adelman 2000) besides the formal tertiary education. The study will examine in more detail how these providers establish their authority. A key dimension is the coordination role they take on. The paper will conclude by outlining how the study contributes to a better understanding of the enabling conditions of transnational private authority.

Bio: Eva Hartmann is assistant professor in Sociology and Political Economy at the Department of Business and Politics, Copenhagen Business School (CBS). She has published widely in German, English, and French on the internationalization of higher education, cross-border labour mobility, international social policy, international economic sociology, and the role of law in International Political Economy. Her current research project examines the role of multinational companies in promoting an internationalization of education and skill policies and standards.

Theorizing Regulatory Governance Within its Ecology: The Structure of Management in an Age of Globalization

Larry Catá Backer

Abstract: Regulatory governance is sometimes seen as a thing apart, as another framework within which individuals, and productive forces, may be managed, and through which the institutions of a governance apparatus can be legitimated and deployed. It is a technique—replacing the command imperative of law with the sensibilities of management. It is a form of public government (democratic or party-state)—expanding the administrative possibilities of democratic government. It is the normative expression of self constituting private power within non governmental organizations. It is active, reflexive and reactive. It constitutes its own forms of power and resistance to power. It exists simultaneously within the same physical space. It can manifest itself in multiple forms through single individuals. At some level of generality it dissolves into itself and becomes nothing more than the name of the thing that manages individual and collectives lives, that sorts individuals into various aggregations with similar and dissimilar characteristics. This is hardly helpful, though it leads to a set of fundamental ordering questions: Is a gross level of generality necessary to imagine regulatory governance within its ecology, the ecology of globalization? Is it possible to understand regulatory governance within this ecology of globalization? Is it possible to distill the complex interactions that together produce a sustainable habitat for the multiple autonomous, though related, regulatory governance orders that together constitute an emerging global order? Does this global order have a center or is it anarchic? Does it have to be ordered to be sustainable? And what of the great normative principles that served as the foundation of the contemporary, though passing,

governance order—representative democracy, territorially bounded states sovereign within their territories, rule of law, and the principles of human dignity that limited the authority of aggregations of power in the manner and form of its exercise?

This paper considers these questions. Its thesis is this: Regulatory governance is a normative system with its own ecology, a set of normative values and procedural constraints that serve both to structure the internal workings of each regulatory governance order and the relationships and interactions—the structural couplings of regulatory governance in those spaces in which they meet, intermesh, and conflict. The rules of these interactions represent the new constitutional law of regulatory governance systems (and the apparatus through which they are activated); the rules of governance interactions represents the new international law of regulatory governance systems (through which they engage with each other within the global orders). These new orders hold together and constrain the emerging structures of power. But they also challenge the fundamental ordering basis on which the contemporary order rests—sovereignty, democratic representation, classical separation of powers, the separation of public and private orders, and the traditional separation of powers. Part I identifies the ecology within which regulatory governance arises. The context is Bangladesh and its garment industry. Part II then seeks to theorize the meta structures of regulatory governance within this ecology.

Bio: Larry Catá Backer is the W. Richard and Mary Eshelman Faculty Scholar and Professor of Law & International Affairs at the Pennsylvania State University (B.A. Brandeis University; M.P.P. Harvard University Kennedy School of Government; J.D. Columbia University). His research focuses on governance related issues of globalization and the constitutional theories of public and private governance, with a focus on institutional frameworks where public and private law systems converge. He is particularly interested in transnational problem solving through law, broadly defined, including issues of corporate social responsibility, the relationship between state-based regulation and transnational systems of “soft” regulation, state participation in private markets and the emerging problems of polycentricity where multiple systems might be simultaneously applied to a single issue or event, and problems of translation between Western and Marxist Leninist (especially Chinese) constitutional systems. He teaches courses in constitutional law, corporate law (including multinational corporations), transnational law, and International Organizations for both faculties of Law and of International Affairs. His publications include *Lawyers Making Meaning: The Semiotics of Law in Legal Education* (Springer 2013), and *Signs in Law, A Source Book* (Springer 2014) (both with Jan Broekman), casebooks, *Comparative Corporate Law* (Carolina Academic Press, 2002) and *Law and Religion: Cases, Materials, and Readings* (West 2015, with Frank S. Ravitch), an edited collection of essays, *Harmonizing Law in an Era of Globalization* (Carolina Academic Press, 2007) and a number of articles and contributions to published collections of essays. Shorter essays on various aspects of globalization and governance appear on his essay site, “Law at the End of the Day,” <http://lcbackerblog.blogspot.com>. His publications and other work are available on his personal website: <http://www.backerinlaw.com/Site/> or through the Social Science Research Network: <http://ssrn.com/author=259226>.