

# Risk & Regulation

Magazine of the ESRC Centre for Analysis of Risk and Regulation

No 9 Summer 2005

## *also*

Risk & Deregulation

Sarbox, Hampton  
and Auditability

Stereotypes of (de)regulation

Making Inquiries

Meet the Advertising  
Standards Authority

## Risk&Regulation: CARR Review No 9 Summer 2005

Editor: **Robert Kaye**

Assistant Editor: **Sabrina Fernandez**

Enquiries should be addressed to: Centre Manager  
ESRC Centre for Analysis of Risk and Regulation  
The London School of Economics and Political Science  
Houghton Street, London WC2A 2AE  
United Kingdom

Tel: +44 (0)20 7955 6577 Fax: +44 (0)20 7955 6578

Website: [www.lse.ac.uk/Depts/carr/](http://www.lse.ac.uk/Depts/carr/)

Email: [risk@lse.ac.uk](mailto:risk@lse.ac.uk)

Published by the

ESRC Centre for Analysis of Risk and Regulation  
The London School of Economics and Political Science  
Houghton Street, London WC2A 2AE

Copyright in editorial matter and this collection as a whole:  
London School of Economics © 2005

Copyright in individual articles:

p4 © Kai Wegrich 2005

p11 © Crown copyright material is reproduced with the  
permission of the Controller of HMSO and the Queen's

Printer for Scotland.

p12 © Andrea Mennicken 2005

Kai Wegrich and Andrea Mennicken  
have asserted their moral rights.

All rights reserved. No part of this publication may be  
reproduced, stored in a retrieval system, or transmitted, in  
any form or by any means, without the prior permission in  
writing of the publisher, nor be issued to the public or  
circulated in any form of binding or cover other than that  
in which it is published.

The School seeks to ensure that people are treated  
equitably, regardless of age, disability, race, nationality,  
ethnic or national origin, gender, religion, sexual orientation  
or personal circumstances.

The information in this leaflet can be made available in  
alternative formats. Please contact Sabrina Fernandez

Tel: +44 (0)20 7849 4635 Email: [risk@lse.ac.uk](mailto:risk@lse.ac.uk)

Design and Art Direction: **LSE Design Unit**

Photography (unless stated):

**CARR and LSE Photography**

Printed by: BSC Print Ltd

ISSN 1473-6004

Online ISSN: 1473-6012

Front cover photography: [www.sxc.hu/index.phtml](http://www.sxc.hu/index.phtml)

### 3 Editorial: Risk & Deregulation

CARR Co-Directors, **Bridget Hutter** and **Michael Power**, reflect on the  
relevance of CARR's work following the UK general election.

### 4 Guest Column: Stereotypes of (De)regulation

**Kai Wegrich** argues that a more realistic debate on the costs and  
benefits of regulation cannot be left to regulators and the regulated.

### 5 CARR News

All the latest news plus expert contributions from CARR members.

### 6 Independent Regulatory Agencies in Europe

Just how independent can regulators be? **Mark Thatcher** examines the  
rise of the independent regulatory agency.

### 8 Making Inquiries

**Robert Kaye** on the perils and pitfalls of public inquiries.

### 10 Responsive Risk Regulation? Immigration and Asylum

**Will Jennings** warns of the dangers when responsive risk regulation  
panders to the lowest common denominator.

### 12 CARR Student: When International Standards Travel

**Andrea Mennicken** on how international audit standards respond to  
cross-border transplantation.

### 13 CARR Conferences

Details of conferences in Exeter, London and Brussels, and a call for  
papers from research students.

### 14 CARR Seminars

Details of CARR's Tuesday seminar series.

### 16 CARR Books: Sarbox, Hampton and Auditability

**Mike Power** suggests that the answer to regulatory overkill is a  
cultural shift.

### 17 CARR in Print

New publications by CARR members.

### 18 Meet the Regulator

We talk to **Claire Forbes** of the Advertising Standards Authority on  
subcontracting for Ofcom and 40 years of self-regulation.

### 19 CARR People

CARR staff and their expertise.



[www.lse.ac.uk/Depts/carr/](http://www.lse.ac.uk/Depts/carr/)





## Claudio Ciborra (1951-2005)

Professor Claudio Ciborra, convenor of the Department of Information Systems and PwC Chair in Risk Management, died on Sunday 13 February, aged 53, having suffered from cancer.

Claudio joined CARR in 2001 as PricewaterhouseCoopers chair in risk management, a position he held until June 2004. Within CARR he introduced glamour and high opera in addition to intellectual insight and fresh, multidiscipline approaches to risk and information systems. He led us into his academic 'labyrinths' and at a personal level we never

knew what to expect next – cakes fresh in from Naples, photos from Sardinia, or a tour of his 'palazzo'. His knowledge and interests were informed by the renaissance and modern philosophy (a sustained interest in Heidegger), by music, night clubs, 'punk design', among other things.

In an exchange in his last month about Stromboli he declared yet another interest, signing off 'Love from your volcanologist and risk expert'. Sadly, what he referred to as his own personal 'system disaster management' didn't avert the disaster, but he leaves CARR a legacy of work on risk, philosophy, organisations and information on which others may build. One of his last publications was a CARR discussion paper, *Digital Technologies and the Duality of Risk*, examining how information and communication





Public inquiries play a vital regulatory function. Very often they are the investigator of last resort, charged not only to investigate the substance of some or other crime, mistake or catastrophe, but, as with the recent inquiries into Foot and Mouth Disease and the Shipman murders, to establish why other regulatory structures failed.

In a recent article (*Parliamentary Affairs* 58 (1)) I argued that the experience of the Hutton inquiry into the death of David Kelly had brought into focus deficiencies in the current arrangements for holding inquiries



were held on behalf of parliament. Under the new Act, public inquiries into government are conducted for government and report to government.

Instead, the Government had laid itself



# Responsive Risk Regulation? Immigration and Asylum

**Will Jennings** warns of the dangers when responsive risk regulation panders to the lowest common denominator.

No other domestic regulation issue has become as increasingly salient since May 1, 1997 than government policy on immigration and asylum. The events of September 11, 2001, transformed population flow and border security/control into a prominent risk regulation issue. Over







## CARR hosts regular risk and regulation conferences.

### The Regulation of Genetics Outside the State

Workshop in conjunction with the ESRC Centre for Genomics in Society (Egenis), University of Exeter Egenis, March 2005

How effective are non-state actors in managing the challenges and risks posed by advances in genetics? The societal impacts of increasing genetic knowledge and technologies are of increasing significance, whether it be the social and psychological consequences of genetic testing, the development of so called 'dual use' technologies that are as applicable to biowarfare as to human well-being, or the 'privatisation' of genetic knowledges by bio-business. Yet in many of these cases the state has opted to take a regulatory back-seat, preferring to 'outsource' regulation to private actors in the form of civil society organisations, corporations and health care professionals and scientists.

A workshop jointly hosted by CARR and Egenis at Exeter University set out to explore the possibilities and limits for governance through non-state actors in this important domain. The workshop brought together 50 academics and practitioners to discuss these issues over two days and included presentations on the failure of self-

regulation for dual-use biomedical technologies by Dr Filippa Corneliussen (LSE); the ethical, psychological and regulatory challenges of genetic testing by Dr Carlos Novas (LSE), Dr Paula Saukko (Egenis), and Stuart Hogarth (Cambridge); the factors shaping research agendas and funding in the biosciences by Dr Alf Game (BBSRC) and Dr Christophe Bonneuil (CNRS); and the disputed status of intellectual property rights over biotechnology products by Dr Jane Calvert (Egenis) and Dr Alain Pottage (LSE).

### Governance and NGOs of the Future

in association with the European Policy Forum and the European Economic and Social Committee, Brussels, January 2005

This meeting brought together international organisations, academics and NGOs to discuss trends in governance and their implications for NGOs of the future. It explored the principles of a code of conduct that might help NGOs adapt to the changes in governance that are predicted.

The event was chaired by Lord Plant of Highfield, and speakers included Claudio Radaelli, Richard Fries and José Candela Castillo, Head of Unit Governance at the European Commission.



## Taking Stock of Trust LSE, 12 December 2005

Hosted by the ESRC Social Contexts and Responses to Risk Network (SCARR) and the ESRC Centre for Analysis of Risk and Regulation (CARR)

Trust enables people to collaborate, negotiate and trade under conditions of uncertainty. The demands placed on trust in a more complex and globalised economy, where people live more flexible and diverse lives, are growing, at a time when trust in experts, public authorities and other institutions is increasingly questioned. This one-day conference will analyse developments and discuss future directions in trust research.

### Speakers include

Professor Lord 1842-63 LSE Trust and social protection programme TD1 gs.sr.02356M



but already it is bristling with tensions and uncertainties. Will it inevitably become 'the next GM'? Can new forms of public engagement take place 'upstream', at an early stage in research and development processes? How can we strengthen the reflective capacity of nanoscientists to address social, ethical and political questions?

### international food safety standards and who uses them?

Dr Diahanna Post, *Brookings Institution and the University of California, Berkeley*  
3 May 2005

Conflicts over food safety standards have emerged as one of the most controversial international trade issues in recent years. The World Trade Organization has encouraged countries to adopt food safety standards passed by the international Codex Alimentarius Commission in order to facilitate the removal of non-tariff barriers to trade. How have these international standards affected domestic regulations? This talk compared the successful influence of an international standard for processing safe food, called Hazard Analysis and Critical Control Point (HACCP), with the much more circumscribed influence of the Codex food additive standard. It examined the uptake of the two standards across four very different regulatory environments: the US, the EU, Argentina, and the Dominican Republic. The major finding was that the role of interest groups is of much less importance than theories of political economy would presume, and that in fact structural factors of regulatory legacies and participation in regional integration initiatives is a greater determinant of the observed outcomes.

### innovation: the case of GM agriculture in Europe

Bronislaw Szerszynski, *Institute of Environmental and Public Policy, Lancaster University*  
24 May 2005

This seminar explored the idea that in the 21st century a key site of 'biopolitics' – of a politics oriented to the shaping and optimising of vital forces within society – might be technology itself. In the context of global economic competition, the principle source of economic value for advanced capitalist societies is increasingly lying neither in the physical labouring power of the human worker, nor in the use or exchange value of artefacts, but in the very temporal dynamism of technology – its vital capacity continuously to develop and evolve. The enhancing and shaping of technology's momentum thus becomes a key biopolitical project in itself, and the state has found a new role in relation to technology – not the stabilising of steady-state

technology in the context of state-organised welfare capitalism, but the nurturing of spaces and networks which foster technology's liveliness, in the context of the 'far-from equilibrium' economics of global neo-liberalism. Using the case of GM agriculture in Europe, the seminar explored the pressures that this unruly biopolitics of technology is placing on the classical biopolitical 'compact' in which governments promise to protect the health and security of populations.

### The New Transitional Public Law: the case of forest certification

Professor Errol Meidinger, *University of Buffalo*  
31 May 2005

Plausible arguments can now be made that a new transnational public law is emerging and that it is not reducible to the activities of governmental and intergovernmental agencies. This paper took those propositions as a starting point and offered a preliminary description of the dynamics of the new transnational public law in the arena of forestry regulation. The most important development in the field has been the establishment of a set of competing forest certification programs. These are non-state based institutional systems for certifying to a putatively global public that forest based products have been produced in an environmentally sustainable and in some cases socially just manner. These programs involve formal standard setting and enforcement structures and produce the equivalent of social licences for forestry enterprises. This seminar outlined some emergent central principles and institutions in the field as well as central areas of contestation. It also described calculations and strategies used by transnational environmental organisations in trying to shape and establish the new public law, responses of industry based interests, and current dynamics of the process.

### Regulating Contaminated Land: policy, sustainability and risk

Philip Catney, *University of Sheffield*  
7 June 2005

The recycling of brownfield (and contaminated sites) has come to be viewed as a sine qua non of sustainable land use policy in the UK. Freeing up urban areas for re-development is central to the Labour government's objective of stimulating urban renaissance in Britain's cities and towns. Yet the redevelopment of seriously contaminated land poses special risks not encountered on many brownfield sites. This seminar analysed the emergence and development of the policy regime for dealing with contaminated land in England. Philip Catney explored the particular characteristics of the UK approach to remediating contaminated land, and offered a preliminary assessment of its strengths and weaknesses.

### FORTHCOMING LUNCHTIME SEMINAR



### A Technology to Produce Risk and Disease: a comparative

## CARR Books

CARR Books and Special Journal



## CARR Discussion Papers

### RECENTLY PUBLISHED

**DP 33** The Attractions of Risk-based Regulation: accounting for the emergence of risk ideas in regulation

Bridget M. Hutter, March 2005

**DP 32** Is the Market Classification of Risk Always Efficient? Evidence from German Third Party Motor Insurance

Reimund Schwarze and Thomas Wein, February 2005

**DP 30** Regulatory Experiments: Putting GM Crops and Financial Markets on Trial

Javier Lezaun and Yuval Millo, February 2005

**DP 28** Decentralisation of Economic Law – An Oxymoron

Myriam Senn, March 2005

A complete list of our discussion papers can be found at:  
[www.lse.ac.uk/collections/CARR/documents/discussionPapers.htm](http://www.lse.ac.uk/collections/CARR/documents/discussionPapers.htm)

### SELECTED RECENT PUBLICA005

*Risk&Regulation* is also published on CARR's website. Register online for enhanced articles and back copies:  
[www.lse.ac.uk/resources/riskAndRegulationMagazine](http://www.lse.ac.uk/resources/riskAndRegulationMagazine)

**CARR:** The idea of contracting out regulatory functions was floated by Ofcom in our last Meet the Regulator. Could you say a little about how this came about?

**CF:** To put it in context, the ASA began in 1962, but up until last

CARR research staff

---

**Tim Besley**

Director of Suntory and Toyota



ESRC Centre for Analysis of Risk and Regulation  
The London School of Economics  
and Political Science  
Houghton Street  
London WC2A 2AE  
United Kingdom

Tel: +44 (0)20 7955 6577  
Fax: +44 (0)20 7955 6578  
Website: [www.lse.ac.uk/Depts/carr/](http://www.lse.ac.uk/Depts/carr/)  
Email: [risk@lse.ac.uk](mailto:risk@lse.ac.uk)