Abstracts

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The Institutional Embeddedness of Market Failure: Why Speculative Bubbles Still Occur

This paper argues that advanced industrial societies have the knowledge to prevent crippling speculative bubbles. But it will also argue that we are unlikely to put an end to such man-made disasters. The reason, I will show, lies less in our understanding of the economics of speculative bubbles than it does in our understanding of the institutional factors shaping the formulation of economic policy. It is not a failure of knowledge about our economy, rather it is a failure of knowledge about our academic, political, and regulatory institutions and their interpenetration. It is a failure to understand the extent to which economic policy and, in fact, the market system, is embedded in this institutional field. More specifically, it is a failure to predict the corrosive impact of a radical ideology on the robustness of those institutions.

The ideology in question may at first be hard to recognize because of its ubiquitous nature. The idea that financial markets are self-regulating, requiring only minimal state intervention, has appeared throughout the history of capitalism. Each time it is adopted by the state, it leads to a period of innovation and opportunism. As the economic historian Karl Polonyi explained, low levels of market restraint yield both profits and "pernicious effects" (Polonyi 1944). These pernicious effects include increased frauds, defaults, and bankruptcies. Markets contain a "self-destructive mechanism" that societies eventually protect themselves against. From an historical perspective, the question would seem to be what level of dislocation and systemic risk is a society willing to tolerate in return for financial innovation?

But this choice is not a simple rational calculation. This paper develops an analytic framework in which academic, political, and regulatory entrepreneurs take advantage of events to socially construct what they believe to be "market friendly" institutions. Difficult economic conditions, such as the Great Inflation of the 1970s, create opportunities for political and regulatory entrepreneurs to unravel the existing regime of stability and restraint in favor of increased profits. The enactment of weakened social institutions leads to the kind of system failure discussed here. This paper identifies three institutions in particular that contributed significantly to the disastrous societal effects of the recent speculative bubble. These institutions are: 1) the profession of academic economics, 2) the ruling political discourse of the era, and 3) vulnerable regulatory structures. The failure of these institutions to moderate the "self-destructive mechanism" in markets calls their legitimacy into question.

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From Black Box to Glocalised Player? Corporate Personality in the 21st Century and the Limits of Law's Regulatory Reach

'... the corporation is an institutional reflection of the principles of laissez faire capitalism. Changing it must be understood as part of a larger project of economic change.'

J. Balkan, *The Corporation: The Pathological Pursuit of Profit and Power* (Constable & Robinson Ltd, London, 2004) 161.

This paper seeks to investigate the evolving notion of corporate personality from the nineteenth century to the present and the scope for the regulative effect of law thereon. Utilising the work of the economic historian Karl Polanyi on the rise of the self-regulating market in the nineteenth century it will argue that the most appropriate image underlying the dominant legal conception of the company in the twentieth century was that of a black box by which the company was largely isolated from its broader social and political environment as a result of the complex interaction of legal and economic discourses surrounding the emergence of a distinct market-based economic sphere. In the light of the current financial crisis and even more pertinently against the backdrop of the risk of potentially irreversible environmental degradation many of the fundamentals of the market based economic paradigm are being called into question. Accordingly, it will be argued, drawing upon Ulrich Beck's modelling of global power and globalisation, that the black box model of the company is increasingly perceived as inappropriate for the 21st century and that to attain greater legitimacy there is pressure for the legal conception of corporate personality to be re-configured as that of a glocalised player open to its environment. The paper will conclude by examining the limits of law's regulatory power to construct a holistic corporate personality capable of discharging such an institutional role, with particular reference to the significance of section 172 Companies Act 2006.

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Finance, Functional Differentiation and Market Fundamentalism

Karl Polyani's critique of market fundamentalism perhaps appears more apt in 2010 than at any time since the publication of *The Great Transformation*. The financial crisis of 2007-2009 looks to have all the qualities of severe market failure and the consequent social costs that Polyani predicted. The question is, however, whether this period marks the beginning of some profound shift in the relationship between the economy and society any more than was the case in the post-War era. If the last half-century offers any lesson in this regard, it is surely that the market shows an extraordinary resilience in the

face of all manner of challenges—and indeed of efforts to regulate it. As a consequence, is it not in fact more likely that a decade from now we will occupy a world still dominated by the market rather than one characterised by a resurgent society? This paper, by considering one of the distinctive features of the contemporary market that was much less significant in Polyani's day, asks whether the growth of finance represents an intensification of market transactions such that the market is more firmly entrenched than ever as the dominant force or whether that same feature may actually constitute its weakest link. The paper adopts a systems theory approach inspired by Niklas Luhmann, but seeks to examine concrete financial transactions from this perspective rather than arguing at a conceptual level. In this way, the extraordinary seduction of finance is revealed together with an impression both of the robust fastness that it has constructed and, almost paradoxically, of its consequent inherent vulnerability. This approach raises further questions of whether in such circumstances the "solution" to the intensified market is some resurgence of society (manifest in new and perhaps radical regulatory interventions to limit the market and demote it to a less central position) or whether the seduction of the intensified market is such that it will insidiously retain and reinforce its status.

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A Polanyian Take on the Globalized "As-if" Economy

Polanyi's analysis of the (changing) relations between economy and society builds on the idea of "social embeddedness" and related notions of "disembedding" and "re-embedding". However, the use of this terminology is not restricted to the "social embeddedness" of (traditional) economies but also includes the "economic embeddedness" of (modern) societies. Polanyi namely refers to the "market society" which emerged from the industrial revolution and prioritizes "self-regulating markets" as principle of social organization: "Instead of economy being embedded in social relations, social relations are embedded in the economic system." (Polanyi 1957, 57) If we refine economic embeddedness as *cognitive* embeddedness in the *logic* of the economic system, Polanyi's work amounts to a critique of the "embeddedness of economic markets in economics" (Callon 1998). Since modern economics largely builds on so-called "as-if" assumptions, market society is ultimately based on an academic thought experiment which is, nevertheless, taken as a template for social organization. This goes for "nineteenth century civilization" as well as for the here and now: In fact, the postwar welfare states which had once brought about socially embedded market economies have meanwhile entered a prolonged period of "re-forming capitalism" (Streeck 2009) which demonstrates the "performative" effects of economic theories on economic policies and practices. The "as-if" economy notably builds on a set of economic beliefs which are, at the same time, uphold as "legal fictions". In this respect, Polanyi's notion of "fictitious commodities" can be understood as a reference to the modern joint venture of law and economics which turns man into labour (or capital), nature into land (or patents) and

money from a means for exchange into an end in itself. In this paper, I will explore the respective roles and institutional consequences of these legal fictions for the "disembedding" of national economies and their "re-embedding" in transnational regulation.

Oles Andriychuk
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The Concept of Market Failure: A Critical Insight

This paper focuses on the theoretical conflict between the socio-economic and the law and economics visions of the state-market relationship. The leading figures of both approaches are Karl Polanyi and Richard Posner respectively. By analysing their main views on the role of the governments in economic life, the task of the paper is to find a common denominator between these apparently polar views. The proposed solution is situated in the notion of 'two-handed markets' – the roots of this idea has been developed inter alia by the Italian school of constitutionalism (e.g., Einaudi and Amato).

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Public Interest or Public Interference? The Lloyds TSB / HBOS Merger

Prior to September 2008, the UK's merger control regime was cited as a forward looking example of (objective) economics based regulation, free of direct government control. The proposed merger of Lloyds TSB and Halifax Bank of Scotland (HBOS) was encouraged by the government and seen as essential to preventing HBOS from folding. However, the merger raised serious competition concerns; creating a bank with control over nearly a third of the UK mortgage market. When the Office of Fair Trading prepared to refer the merger to the Competition Commission for closer scrutiny, the Business Secretary intervened to force the merger through. He created a new public interest case under section 42 Enterprise Act 2002: 'stability of the UK financial system'. This talk will explore whether Lloyds / HBOS marks the failure of an enduring economics based system of regulation. It will consider both the conditions surrounding the Secretary of State's decision to intervene and the consequent effects of the merger.

Michael Harker
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Public Service Broadcasting, Competition Law and the BBC

This paper will focus on the legal and regulatory constraints which restrict the BBC's ability to enter new or emergent broadcasting markets. It is widely accepted that public service broadcasting (PSB) lacks a clear rationale, or at least one that it articulated effectively. This presents particular difficulties when PSB norms come into conflict with competition / market-based norms, with latter tending to dominate (e.g., Born and Prosser (2001)). The future of broadcasting in the UK and beyond is at a cross-roads. Declining revenues, audience fragmentation, pricing mechanisms making broadcasters more responsive to individual consumer needs, together with the emergence of new broadcasting platforms (in particular video on demand and internet TV) represent both a challenge to, and an opportunity for, PSB. There are two key rationales in favour of PSB. First, the market will fail to deliver sufficient diversity and quality of output. Second, PSB may be conceptualised as a market intervention aiming to achieve more than merely correcting for market failure (e.g., strengthening democracy and horizon-stretching). The future direction of PSB depends crucially upon which goal predominates. This paper will review recent competition and regulatory decisions concerning the entry of the BBC into new markets, evaluating critically the extent to which the current arrangements sufficiently recognise the crucial importance of a broader conception of PSB, i.e., one that goes beyond correcting market failure.

Peter Vincent-Jones
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Embedding Economic Relationships Through Social Learning? The Limits of Patient and Public Involvement in Healthcare Governance in England

The economic and democratic elements in the government's strategy for healthcare modernisation in England co-exist in uneasy tension. As competition intensifies and the form of organisation of healthcare approximates increasingly to the regulatory model found in the public utilities sectors, the neo-institutional economic approach to governance is becoming more important. At the same time, other pressures at national and supra-national levels are reinforcing the general trend in western societies towards more democratic and participatory forms of governance. This paper analyses such tensions in current healthcare policy, with particular reference to the limits of the recently reformed framework of Patient and Public Involvement (PPI) in (re)embedding increasingly economic relationships in social relations. It argues that this can be achieved only on the basis a better understanding of the relationship between economic and democratic strategies for healthcare modernisation, requiring that policy makers pay

specific attention to the social learning dimension of governance in public service sectors such as healthcare, as distinct from more familiar issues of efficiency, legitimacy and accountability.

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Law and the Social Relations in which Foreign Investment is Embedded: Lessons from an Indian Encounter with Investment Climate Discourse

Foreign direct investment (an investment made to acquire lasting interest in an enterprise operating outside economy of investor, with a view to gaining an effective voice in the management of the enterprise) is often instinctively envisioned as an economic action perpetrated on local by foreign actors. In fact those 'investment actors' who engage in foreign investment activities, many of whom are not very foreign, will also engage in a complex range of economic and non-economic relations with other locals and foreigners--employees, suppliers, competitors, civil society actors, neighbours and regulators. So, foreign investment is always to some degree 'embedded' in social relations. The point is to make sure that such relations are as (economically and socially) productive as possible. As a diverse range of literature has emphasised, such productivity is more likely in the context mutual interpersonal trust.

Drawing on the work of Roger Cotterrell, it is possible to identify three mechanisms by which law can and should act as a 'communal resource' to support and encourage such trust. First, law *expresses* existing trust. Second, law promotes *participation* in social life, which nurtures nascent trust. Third, law mediates the *coordination* of diverse, sometimes conflicting, interests and values, thereby maintaining the conditions necessary for trust to emerge in the future.

However, 'investment climate' discourse is placing under duress these communal legal mechanisms which might support mutual interpersonal trust in foreign investment relations. Investment climate discourse is a relic of the Washington consensus, that neo-liberal fantasy in search of a dis-embedded market economy in respect of which we are now supposed to be 'post'. As the example of Bengaluru (Bangalore) demonstrates, when communal legal mechanisms are stifled, perverted and destroyed, foreign investment relations continue to be embedded in social relations. But the social and economic productivity of those relations is put at risk for lack of trust.

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Between Reason and Will: Can Regulation Be Responsive?

The proposed paper offers a novel understanding of the oft-discussed accountability problem in regulation and self-regulation. While the literature usually focuses on the institutional details of the various regulatory institutions, I (following the work of Philip Pettit) demonstrate that collectivising reason leads to *systematic* frustration of popular will, i.e. rationality is always achieved at the expense of democracy. This problem I term rationality gap. I suggest that there are two ways by which contemporary polities mitigate this structural problem – first, by responsibility/thrust in the decision-maker, and second, by rational discourse in the public sphere which eventually aligns (partially) the expert reason and popular passion. However, in increasing number of areas and *loci* of contemporary decision-making neither of the two happens. I argue that whenever the policy choices are made at a level lower than that of the responsible politicians, and on issues, which are not sufficiently salient to be discussed beyond the specialised circles of 'stakeholders', an insurmountable rationality gap arises. Paradoxically, the more technical and the less politicised the issue is, the bigger the frustration of popular will is likely to be.

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Lawyer Stories

Lawyers, like other professionals, have stories that they commonly tell. These stories can shed unique light on how these lawyers perceive and construct their professional experiences and identities. This is especially the case with stories told to outsiders to explain complex events that are central to the professional's experience, for such explanations must employ non-technical, even mythic, language. In this Article, we report on a set of stories told by elite transactional lawyers, primarily in New York and London, to explain the origins of a particular contract clause. This clause, the pari passu clause, is a central term in modern sovereign bond instruments, and yet, embarrassingly, no one seems to know precisely what it means. In the aftermath of litigation over the clause, we collected the various stories that lawyers told about the origins of the clause and mapped them against the empirical data on how the clause evolved over time. As we show, taken one at a time, none of the stories is accurate. Yet taken as a whole, we argue that the stories reveal important information about the nature of this elite cross-border lawyering practice.

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China's Sovereign Wealth Funds: Problem or Panacea?

With the balance of global economic power shifting from west to east, the current financial crisis has rendered SWFs as one of the primary sources of capital, which may change the economic and political landscape. The recent growth in SWFs and the creation of the China Investment Corporation (CIC) renders a heated debate as to whether China's SWFs would serves as a source of market stability or a potential to disrupt global financial market. The soaring SWFs-based merger and acquisitions (M&AS), as well as equity investment, is causing some unease and great suspicion among investment target nations, with a particular concern about the likely political impact of cross-border transactions. Inevitably, it is almost impossible for the SWFs to be independent from China government, with the interplay between the ownership and governing organs taken into consideration. In particular, Chinese SWFs have arguably been conceived as highly politicised, run in an opaque manner and used as an implementation of geopolitical strategies.

This paper attempts to explore whether Chinese SWFs' political and commercial objectives could be compatibly integrated within its investment strategies, after all, as Keynes held, international cash flows are always political. Although SWFs-orientated approaches have been made, such as the GAPP principles and OECD Guidelines, it remains critical whether China's politically-driven SWFs investment could be controlled under the soft law regime. The host countries' response in the form of hard law might trigger the danger of protectionism. Without a global regulatory framework against the eminent issues, compliance with the international initiatives may alleviate Western concerns, if China' SWFs could build legitimacy. As a prerequisite, sound corporate governance would be to the advantage of both SWFs holders as and the hosting countries.

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Corporate Governance and Employees in South Africa

Focusing on employees as stakeholders, we analyse corporate governance initiatives in South Africa encouraging and requiring companies to look beyond their shareholders' interests. Successive non- binding Codes and the provisions of the recent Companies Act 2008 promoting this have been lauded by many commentators. The 2008 Act provides certain opportunities for employees and their representatives to exercise influence at the margins. We nevertheless question how far current corporate governance initiatives are adequate to promote employee interests. On the basis of three case studies of how companies have responded to employees as stakeholders, we conclude that in fact more stringent regulation is required.

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Shareholder Entitlement, Primacy, and Empowerment

Following the initial acceptance of a Berlesian understanding of shareholding in large corporations in which share dispersal was understood to have relegated the claims of shareholders below those of the community, the renewed justification for shareholder primacy in the US was largely based on claims to economic efficiency. This perspective was not dependent upon an absence of shareholder passivity (central to Berle's normative conception of shareholding) and, it was argued, would better meet the needs of the community. In the UK where share holding was not as dispersed, and where institutional shareholders replaced family ownership, shareholder primacy notions continued to emphasise the inherent entitlement of shareholders to the principle goal of governance.

In the US, shareholder entitlement retained some role in shareholder primacy perspectives such as in the notion of shareholders as residual risk takers. However, it was not until the post crisis emergence of 'shareholder empowerment' in the US that shareholders operated as more than mere 'stand ins' or symbols for profitability orientated corporate goals. This paper examines shareholder entitlement, primacy and empowerment in a comparative context and attempts to draw some conclusion as to what these approaches might offer today.

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Critical Perspectives on Harmonisation and Modernisation of Secured Credit Law

This paper turns the spotlight on harmonisation and modernisation of secured credit law. The whole harmonization and modernization agenda appears to be driven by a desire to remove restrictions on the taking of security. This is because of a widespread belief that a "liberal" secured transactions regime promotes economic growth by widening the availability of credit. But the agenda also has its critics. The law of secured finance embodies cultural attitudes and public policy choices that vary greatly among States. Many of the rules governing enforcement of security rights reflect policy interests that are external to the credit relationship itself.

Changes to law and legal doctrine in a particular jurisdiction often mirror changes that have taken place in other jurisdictions. Desire for change may stem from societal developments or from a wish to promote the social and economic infrastructure. In recent times, coercive change has come in subtle forms through conditions attached to loans from the World Bank and IMF to developing countries.

The US strongly influences the workings of these institutions. World Bank and IMF conditionality may require the enactment of measures to enhance the availability of credit by means of a modern secured transactions regime. Prescriptions in this regard are most unlikely to be expressed as crudely as "Enact Article 9 of the American Uniform Commercial Code". Instead, they are more likely to call for progress and advancement in line with best international practice. Best international practice is considered to be represented by the work of organizations such as UNCITRAL. The US, by virtue of economic power and the prestige of its economic and legal models, heavily influences the work of UNCITRAL and analogous bodies. Critical commentators have therefore spoken of imperialist law.

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Rage Against the Business Machine: Civil Society vs. the Individual Corporate Actor

The questions this paper will address can be situated in my broader research which is an application of Marxist theory to accountability of corporate actors (as natural persons and hypothetically as legal persons) in international criminal law. In my this research I show how mechanisms such as self-regulation/"corporate social responsibility" and "international corporate crime" will not achieve the requisite accountability for human rights violations and violations of international humanitarian law committed by corporate actors, but that instead we must focus on individual liability of corporate directors and managers, as occurred in the Nuremberg Trials of the industrialists. However, I will argue in *this paper*, state and corporate elite interests are now confounded to such an extent (*viz*. CSR etc.) that prosecutions of individual business persons are unlikely to be commenced on the initiative of state prosecutors. The initiative to such actions must thus come from civil society actors including representatives of social movements, cause lawyers, etc. Still, as our legal systems (including international law and international criminal law specifically) have been developed to promote elite privilege and impunity, such initiatives (examples will be given) are unlikely to be successful, and are likely to carry only symbolic value and serve awareness-raising and advocacy purposes. The latter, plus other forms of enforcement by non-legal means "from below" (examples given), it is suggested, should aim at (and as such eventually lead to) an "undoing" (or disabling) of the corporate form as a means of shielding elite interests and preventing individual accountability (which was "born" at the time of the "great transformation").
Although my research was carried out specifically in the context of international human rights/humanitarian law violations, its findings are applicable more broadly also to the regulation of financial, environmental and other risks generated by the activities of corporate individuals.

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Agrobiotechnology, Right to Food and Food Sovereignty: Emancipation and Regulation in an Age of Risk

Science and technology has played an important role in human progress. More specifically, in the agricultural sector, the Green Revolution of the 1960s had significantly reduced hunger and malnutrition in much of the Asian and Latin American countries. Modern agrobiotechnology has revolutionised the agricultural production and shows greater promise than the Green Revolution. By using genetic engineering or genetic modification, agricultural biotechnologists have produced genetically modified seeds and plants that can increase the food production in developing countries. Advocates of ‘new Green Revolution’ or more specifically ‘Gene Revolution’ argue that modern agrobiotechnology holds great emancipatory promise for developing countries. It has shown enormous promise to eradicate hunger, poverty, and ensure food security by increasing the food production leading to greater human freedom and social development. Increased production will lead to higher income and rapid economic growth in developing countries. However this economic viability and emancipatory promise also brings risks and hazards to biodiversity and human health. But, what is new and somewhat absent to Green Revolution is the emergence of global actors (WTO and MNCs) and global rules (Cartagena Protocol, TRIPs, UPOV, CBD and ITPGR) which shape the paths of modern technologies. The liberalisation in agricultural trade, commodification of knowledge and biological resources and global regulation of agrobiotechnological inventions presents a serious challenge to the ‘right to food’ and ‘food sovereignty’ of peasant and rural communities in developing countries. In this paper I argue, that this apparent emancipatory promise or technological solutions to social problem is ‘back grounded’ in the risk posed by the globalisation of regulation and privatisation of the knowledge economy and therefore, shows the triumph of ‘market power’ over the ‘biopower’ which can be described as ‘disembedding of the economic out of social relationships’ in Polanyi’s term.

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From Codes of Conduct to International Framework Agreements: Contractualizing the Protection of Human Rights

> « La signification fondamentale d'une constitution démocratique est d'affirmer que le pouvoir sur les hommes, quel qu'il soit, et quel que soit le groupe ou la personne qui l'exerce, doit avoir des limites juridiquement établies »[1].

The regulation of the market by private actors is more and more a reality. The question is to determine how efficient this regulation can be and what mechanisms make it work. Several ways to protect human rights within multinational firms have already been identified by Professors Alston, De Schutter and Clapham among others. Direct and indirect means are based on national law (directly applicable to firms) and international law (applicable mostly to states).
Beyond relying on human rights and on state obligations, it is interesting to turn to criminal and civil national laws. A new type of tool, the international framework agreement (IFA) allows a focus on the contractualization of protection. The idea is that an enterprise could be considered liable on the ground of the IFA it bargained and signed with an international federation. Contrary to codes of conduct which are unilateral, these agreements can be assimilated to contracts and could lead to a better protection of rights. Their use within national legal orders is analyzed (Wal Mart case in the USA, Germany and Spain; Arcelor-Mittal case). The likeliness of such an evolution is then considered as regards the drafting of the agreements. Normatively, pros and cons of such an evolution are examined and alterations are proposed in order to promote a better corporate social responsibility.

[1] "The fundamental signification of a democratic constitution is to stat that the power upon men, whatever it is, and whichever group or person exercises it, should have legally established limits", N. Bobbio, « Per la difesa delle libertà democratiche nelle fabbriche », *Risorgimento*, january 1958, n° 1, p. 19.

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Human Rights under the Corporate 'Sphere of Influence': Socialising Economic Relationships through Corporate Social Responsibility Processes

Globalisation has introduced new kinds of unpredictability, new kinds of risks and new kinds of social actors that the global normative system has to handle, through improvising to a great extent. The move from municipal law to regulating the global economic and social interdependencies is more than a matter of size, and adapting 'soft' and 'hard' regulatory approaches to the new reality proves difficult. Complex phenomena related to globalising processes and the associated counter-movements of localisation bring new challenges, affecting the attempts at trans-national policy design and risk regulation.

The emerging trans-national normative environment uncovers, therefore, points of tension between existing legal mechanisms and governance regimes and the new phenomena of the globalising world. In this sense, new ways of interacting between existent legal actors appear and altogether new legal actors emerge. At the same time, the institutional infrastructures that would be expected to deal with the global social risks are revealed as underdeveloped and incapable of addressing comprehensively the new challenges and the new social (as well as economic) risks.

In this context, corporations – transnational as well as domestic - are increasingly enlisted as agents of international human rights law implementation through mechanisms such as the voluntary codes of conduct, the ethical investment initiatives, the public procurement regulation, but also more unusually, through the acquisition of 'soft' legal agency via instruments such as the (European) bilateral development cooperation agreements. International human rights responsibilities thus get integrated into the (social) contractual relations to whom corporations are parties, through an emerging pluralist system of complementing governance regimes.

This paper examines the process of the 'privatisation' of human rights taking place in relation to corporate activities through a combination of voluntary and regulatory domestic and regional mechanisms that resonate with the international human rights norms. It identifies a normative mosaic which seeks a trans-national regulatory status while being made up of discrete and relatively 'localised' normative instances. The paper explores the spectrum of voluntary/regulatory mechanisms that define the human rights corporate sphere of influence and responsibility, focusing on the regulatory approaches that emphasise soft normativity, flexibility and a preponderant reliance on reciprocity rather than on legal sanctions.

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International Informal Networks of Market Regulators: A Democratic Legitimacy Assessment

International Informal Networks of Market Regulators (IINMR's) have become pervasive actors in the creation of financial market rules; banking, securities and insurance regulations can often be traced to the meetings of IINMR's rather than to the activity of national instances such as parliaments, administrative regulators or courts. However, unlike the latter, IINMR's have important democratic deficits that require an analysis of their democratic legitimacy. The purpose of this paper is to make such an assessment in relation to three IINMR's, the BCBS, IOSCO and the IAIS, on the basis of three criteria: membership, internal governance structure and transparency.

The first part of the paper will provide an analysis of the concept of IINMR's as well as its relevance as an object of academic study. Next, a brief description of the three IINMR's-case studies -the BCBS, IOSCO and the IAIS- will follow. The third part of the paper will continue with the assessment of democratic legitimacy. The analysis will show that, three three IINMR's do poorly represent the whole set of interests involved in financial regulation. However, there are important differences in their organization and internal rules with implications in legitimacy terms; in this sense, on the one hand, BCBS's membership, internal governance and transparency regime are quite weak in democratic terms; on the other hand, IOSCO and the IAIS have developed rules that provide for more representation of general interests and a higher degree of transparency, especially in the case of the IAIS. Moreover, it seems to exist a relation between the membership of the networks and the quality of their internal regulatory output; in this sense, the IAIS, composed by insurance supervisors has developed internal rules that are far more democratic than those of the BCBS and IOSCO, composed by central banks and securities supervisors respectively.

The results of this paper will provide the basis for further analysis regarding the instruments of parliamentary control over IINMR's. In this sense, different degrees of democratic legitimacy require diverse parliamentary responses that address the specificities of the different networks and their members. In addition to this, the results that analysis will be useful for understanding and confirming whether differences of democratic legitimacy between the networks can be explained on the basis of the degrees of parliamentary control exerted over the networks' members.

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From *Allied* to Argentina: Revisiting Property in Sovereign Debt

The recently released UN report on reform of the international financial architecture relies on a simple formula: bankruptcy can rein in excessively risky creditor behaviour without fundamentally changing the foundations of the sovereign bond market. This paper argues otherwise. Excessively risky creditor behavior is underpinned by property.

This paper analyses market responses to judicial interventions in two key sovereign debt crises- Costa Rica (Allied) and Argentina to conceptualise property in sovereign debt. Since the Allied batch of cases in the 1980's, creditor risk has been underpinned by the takings jurisprudence (the property justification). Legally, a bond represents personal, intangible property. On default, a debtor is obliged to compensate each creditor for taking their property. There is no reciprocal obligation on each creditor to use their property responsibly: they were rewarded irrespective of their behaviour. This blanket property justification exacerbated the holdout problem and the social impact of debt crises.

Consequently, in 2005, for the Argentine workout to settle, the market had to rein in holdout behaviour by restraining the use of their property. To account for this change the markets reliance on the property justification is reconceptualised. Markets rely on personal property as an imagined notion. This immunises the market from official intervention, socialises the costs of risky lending and privatises the rewards. Secondly, each creditor's property in debt is subject to market restraints, it is more appropriately described as 'fungible' property which creditors are not attached to except as a source of money. Conceptually, this property represents a utility bundle creditors acquire over the lifetime of a bond. This limits debtor responsibility to compensate for the loss of each conceptually severable utility on default and provides a template to limit creditor risk.

Paddy Ireland
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The Collapse of the Neoliberal Vision: Pension Privatization, Financial Property and the Idea of Ownership Societies

The paper will use pension privatization to explore the highly 'financialized' neoliberal vision of economic and social development and the neoliberal attempt to create a world of allegedly autonomous, self-reliant, financially literate and responsible, property-owning individuals. It will also seek to examine the ways in which this vision has impacted on corporate governance and the implications for it of the financial crisis. The neoliberal vision, it will argue, is based on a fundamental misunderstanding of the nature of financial property and is unravelling.

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Risk Regulation, Market Construction and Private Actors - the Fight against Money Laundering and Terrorism Financing as an Example

Risk regulation is on the agenda in all areas of law and increasingly so in the area of EU financial crimes. For example, the Third Money Laundering Directive is based on risk for the identification, prevention and fight against dirty money and terrorist financing. This Directive is based on the market provision of Article 95 EC (now Article 114 TFEU) introduces the concept of risk regulation to the fight against dirty money and the financing of terrorism. This poses not only the question of the adequateness of such a combination (i.e. the combination of dirty money and the financing of terrorism in the same instrument) but also the governing function of 'risk' in the intersection between market integration and criminal law. Moreover, the Directive imposes the obligation on lawyers and banks to report suspicious money laundering transactions as part of the risk based approach. In this way private actors are part of the risk based approach to transnational money laundering transactions. This highlights questions of accountability and the effectiveness of the anti money laundering framework within the EU as it remains unclear how the private actors should and could be held accountable. It also touches on the socially intriguing relationship between lawyer and client and the obligation to report suspicious money laundering transactions as part of the EU market regulation framework where the notion of risk constitutes the driving principle.

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Trust and Regulation: Insights from the Mining Industry

Trust plays an important role in regulation, yet there is still much to be learnt about trust-based regulation within different industry contexts. This paper employs sociological perspectives on trust to identify and analyse the dynamics of trust-based regulation in the mining industry. It draws on data collected between 2004 and 2008 by way of participant observation, document analysis, and in-depth qualitative interviews with the mining industry, NGOs and regulators. The research looks at the key drivers of corporate behaviour, and pays particular attention to the role of trust-based regulation in steering corporations towards improved social and environmental outcomes. In the process, it identifies some of the characteristics that foster corporate responsiveness to other actors. The paper concludes with a consideration of some of the limitations of trust-based regulation in the context of the mining industry.

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Emotion, Values and Risk Regulation

The act of framing issues of government or global policy in terms of *risk regulation* reflects certain assumptions about what sorts of disciplinary inquiries and cognitive processes might be required to address them. Risk analysis tends to assume measurable phenomena that lend themselves to standard economic methodologies. Yet the pressing issues of the day are normatively complex and have no definitive, value-neutral answers. Standard economic models that strip away the fear, anxiety, disgust, hope, empathy and compassion that drive human nature and that infuse debate about national and transnational values are ill-equipped to deal with such questions.

Framing a concern as a regulable risk entails judgments not only about the appropriate scope of governmental or intergovernmental power, but, less visibly, about social norms and values. A problem may be framed as economic or social, as isolated or systemic, as the product of individual choice, or simply as an act of God. The choice of frame is consequential.

Drawing on the emerging interdisciplinary field of emotion theory, this paper will explore the dynamics of framing issues in terms of regulable risk, and of determining whether problem and solution are economic or social in nature. It will use current debates about crime and punishment, terrorism, immigration and natural disasters to illustrate these dynamics.

It will argue that identifying and delineating risks implicates a cognitive process that is both normative and affect-laden. Any discussion of problems and solutions will be influenced, in part, by evaluative assumptions and biases about who has relevant expertise, who is deserving of aid, what is fixable and what is inevitable, what is part of a pattern and what is isolated and unpredictable, and who is within the relevant circle of empathy and compassion. It is crucial to identify and evaluate these assumptions rather than to permit them to influence debate *sub rosa*.