RISK REGULATION AND ADMINISTRATIVE CONSTITUTIONALISM pdf

1: Liz Fisher | Oxford Law Faculty

About Risk Regulation and Administrative Constitutionalism. Over the last decade the regulatory evaluation of environmental and public health risks has been one of the most legally controversial areas of contemporary government activity.

Advanced Search Elizabeth Fisher is well-known for her work on the precautionary principle and risk in the field of technological standard setting. In this book, Fisher considers how administrative decision makers should assess environmental and public health risks whether or not they are also setting standards for them in a range of case studies including the Southwood Working Party on BSE in the UK, US risk regulation rulemaking in the s, the precautionary principle in Australia, the STS Agreement under the WTO agreement and the application of the precautionary principles in the EU. She argues that disputes over how risk is regulated in these spheres should be re-characterised to focus on differing attitudes and approaches to rule making rather than the oft-relied on distinction between rules based on science or democracy. While the disputes are legion, it is fairly widely accepted within most academic circles that analyses of the social relationships between and within scientific communities and between and within their social, economic and institutional contexts have challenged established approaches to understanding scientific knowledge. The reverberations of these debates have been widely felt, but are particularly relevant in the environmental sphere where administrative decisions makers are bound by the inadequacies of scientific uncertainty and indeterminate risks. It is not possible to draw a neat dividing line with facts on one side and values on the other, since it is not a simple case of basing standards either on scientific expertise or arriving at a democratic decision, both rule-making approaches entail a role for the other, albeit in subsidiary terms. However objective science can or cannot be, when identifying, evaluating, assessing or managing risks, expert knowledge can only provide one input into the decision-making process. To the extent that risks are perceived and managed by individual actors, corporations or governments, risk regulation inevitably entails a range of factors, including both scientific however defined and deliberative, to be taken into account in the decision-making process. Consequently, as the scientific bases for regulatory standard-setting affect law as much as science or social studies, lawyers are just as required to consider the scientific evidence and the social demands that shape regulatory standard setting for technological risk as analysts of the social dimensions of science. This work is inevitably inter-disciplinary. Both groups must identify the factors that influence legitimate knowledge in their respective fields, validating the epistemological assumptions made by their differing traditions. Famously, in the United States the Daubert factors of testing, peer review, error rates and acceptability in the relevant scientific community were accompanied by an obligation imposed by the U. These evaluations are central to any imposition of liability if technological developments cause harm however these concepts are defined in any legal context and show clearly how law can have a transformative impact on what constitutes scientific knowledge. In the United Kingdom, meanwhile, the reliability of expert evidence in court has received the greatest public scrutiny in child welfare, where, for example, the evidence given in R v Sally Clarke EWCA Crim , alleging infanticide, was simplified to such an extent with the witness explaining to the jury that the risk of two infants dying of Sudden Infant Death Syndrome in the same family was 1 in 73 million that it was subsequently widely vilified. Communities of expertise publicly disagreed about the way in which scientific facts should be interpreted in order to reach a decision, in this case on criminal responsibility. It suggests that RI control appears to miss the point. Inevitably, these categorisations are not hermetically sealed and, according to Fisher, a clear distinction between the two approaches is not always attainable in practice, but when tracked through her five case studies, she concludes that overall the RI paradigm is currently generally in ascendancy though for different reasons in different jurisdictions with the two paradigms often co-existing. This is a conclusion that clearly has implications for risk evaluation given the concern by many risk theorists that some decision makers and in particular lawyers often underplay the complexity of risk evaluation and assessment, preferring quantitative solutions to the multi-textured, interpretative approach more emphasised by the DC paradigm approach. This discussion is important since

public administrators and legislative drafters are required to synthesise and interpret the scientific evidence and economic considerations to formulate and develop regulations on risk. The question for those concerned with public administration is how these formulations of technological standards are developed. Given that numbers or processes cannot be plucked from the air, agreed procedures, mechanisms and strategies for standard setting need to be established, albeit with differing strategies depending on the context. If both science and law are culturally and socially situated then these procedures are more complex than they appear at first. Even so, her section on preliminary findings is tantalisingly short and, one suspects, an aspect of the book that may be further developed in future articles. These will no doubt be as thoughtful and insightful as the book itself, and well worth the wait. Published by Oxford University Press. For Permissions, please email:

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2: Risk Regulation and Administrative Constitutionalism: Elizabeth Fisher: www.enganchecubano.com: Boo

*Risk Regulation and Administrative Constitutionalism [Elizabeth C. Fisher] on www.enganchecubano.com *FREE* shipping on qualifying offers. Over the last decade the regulatory evaluation of environmental and public health risks has been one of the most legally controversial areas of contemporary government activity.*

Oxford and Portland, Oregon: Elizabeth Fisher argues that scholarly and public discussion of risk regulationâ€"and of regulatory policy more generallyâ€"has focused on the wrong contrast. The discussions are cast in terms of an opposition between science and democracy. For some, regula- tory policy should be set by experts in the relevant science, while public participation in regulatory decisions injects ignorance and passion into what should be a rational process. For others, regulatory policy should be set through a process in which ordi- nary people set policy, just as they do when they vote for their representatives, while expert domination of the regulatory process reflects the kind of elitism that the demo- cratic revolutions of the past centuries were aimed at eliminating. Each contains elements of the conventional dichotomy. These elements are then supplemented by visions of public administration and law. Expert decision-makers are held accountable by interest groups and, using a principal-agent model, a form of administrative law focusing on authorisation and ultra vires-like ideas. In the deliberative-constitutive paradigm, politics is fundamen- tally deliberative, a process pervaded by values that are defined and redefined as decisions are made. Administrative law is itself a self-constituting process, and account- ability depends on the substantive acceptability of risk-regulation decisions. The case studies are interesting in themselves. Her argument clearly has some intuitive appeal. Yet, one wonders precisely how the components of the paradigms are linked. One could have a legal culture in which science was treated as objective and administrative decision-making was fully deliberative, for example. Thus, the paradigms must be historical and ideological constructs. Here Fisher also offers some hints. The focus is less upon deliberative problem-solving than upon accurate analysis and the application of method- ology. The next step would be to connect the desire or political interest in simplicity to the development of the adminis- trative structures that seemingly are converging on the rational-instrumental paradigm. Her work opens the way to even more textured accounts of the relevant legal cultures. Alphen aan den Rijn: Content is kingâ€"or so the story goes. As the information society unleashes its tech- nological potential for convergent service delivery, what users start caring about is what is on offer rather than how they can access it. The great promise associated with this development is that the intangible character of information goods will ultimately result in a maximum of choice anywhere and anytime, whether access is technologically mediated by a computer, a cell phone or a television set. Digital convergence will spur demand for new services, which in turn will lead to economic growth and employment in content production and distribution. Does the existing European legal order already provide sufficient means to cope with the anticipated developments? These are the leading questions asked by this stimulating volumeâ€"a collection of 11 chapters on the regulation of content under EU lawâ€"that emerged out of a seminar hosted by the Austrian EU Presidency in March The objectives pursued by the team of authors are twofold. On the one hand, the analysis is to produce a systematic overview of existing interventions in the content industry p. Consequently, the study of content assumes a horizontal character due to the comprehensiveness of the approach chosen, which contrasts with employing a number of sectoral lenses corresponding to each of these industries. In order to provide an alternative logic of classification around which to structure the inquiry, the book emphasises the different legal bases of regulatory activity that are of major importance to the activities of the content industry. To add an analytical logic to the discussion of these sub- stantive fields, the authors finally identify four objectives embodying the aims of European policy with regard to the media and related creative sectors: Possible fears that use of such a structuring pattern would prejudice the ensuing analysis towards an overly schematic presentation prove to be unfounded thanks to its creative deployment by the authors who take care to reorganise the pattern to fit with the flow of their exposition. This is necessary not least because these objectives apply only to a rather limited extent to some of the regulatory areas under review. While this may provoke questions about the utility of such a grand scheme, it is clear that the

approach succeeds in eliciting unconventional perspectives on some of the areas analy- sed, such as the discussion of how sector-specific regulation at the infrastructural level helps to ensure a basic supply of content for the general public pp. September Book Reviews level of analysis when being exposed to the substantive issues at hand rather than evaluating the conclusions produced by it. The range of matters that it has allowed authors to address within the scope of a relatively small volume1 is certainly substantial, ranging from an overview of the importance of EU primary law and the various initiatives of EU information society policy pp. Although such comprehensive coverage naturally comes at the expense of detail, it represents an achievement in its own right, and the volume may thus serve as a good starting point for those familiar with one or more of the areas discussed to explore other aspects of European content regulation. The real question, however, is to what extent the book succeeds in pulling together the disparate analytical threads to provide the reader with an enhanced understanding of what is meant by the very notion of European content regulation itself. Here, the authors collapse their original four objectives into two overarching goal functionsâ€”safeguarding functioning market structures, and the realisation of public interest objectives p. Here they advance the thesis that cultural and technological aspects of content both favour an integrative approach to the European content industry, but do so without necessarily urging the adoption of a unified regulatory framework. Instead, differentiated regulatory solu- tions should be sought while at the same time increasing the overall level of cohesion, and the book closes with a discussion of how this might be achieved. Its obvious merits notwithstanding, an assessment of this volume would remain incomplete without highlighting the following caveats. The appendices comprising the tables of EU legislation and cases have not received the attention that would have been necessary for the book to realise its potential as a quick reference guide to European content regulation. A similar limitation arises from the literature cited, as the majority of references are drawn from German and Austrian legal scholarship and may there- fore pose issues of availability or accessibility for some of its users. Similarly, the language of the book will often remind the perceptive reader of its Germanic roots, although this does not impede intelligibility to an undue extent. Finally, the cross- referencing between chapters could have been more fully developed to achieve a higher degree of integration among the different chapters, especially those in the second part. If one is prepared to disregard these presentational issuesâ€”as indeed I think one shouldâ€”what remains is a thought-provoking and novel contribution to the literature. Although the 1 As compared to, for example, Nikos Th. For this it deserves to be widely read among aca- demics and practitioners alike. Concepts, measures and policy processes. Radaelli and Fabrizio de Francesco. Manchester University Press, Ask any official working in the area of better regulation BR in the EU institutions or EU Member States to name a leading academic in this field and there is a strong chance that the first name they will mention will be Claudio Radaelli from the University of Exeter. In recent years, as a growing number of institutions and administrations have paid increasing attention to developing and implementing strategies to simplify and improve the regulatory environment, Radaelli has become a well-known and much- respected figure for his insightful analysis and ability to relate the practical, day-to-day concerns of officials working to apply the key BR tools, such as Regulatory Impact Assessment RIA and consultation, to a wider, more theoretical framework. From direct personal experience, I can state that this often helps officials to avoid failing to see the wood for the trees. From this perspective, Radaelli, together with his co-author and former research student, Fabrizio de Francesco, do not disappoint with this new volume. The book begins by examining issues surrounding the concepts of quality, indicators and BR itself. The authors adopt an approach which views BR as an emerging public policy in its own right, meaning that it ought to be examined in terms of the actors involved, the problems and challenges they face, the resources deployed, the rules of interaction, the decision-making structures and the outcomes. Rather the focus is on examining the application and institutionalisation of the key BR tools. For the purpose of this volume, the authors have chosen to examine RIA, consultation, simplification pro- grammes, and regulatory access and transparency. They also note that this conceptu- alisation of BR as a public policy is applicable if the tools of BR are integrated and not seen as individual elements to be applied. September Book Reviews to adopt different definitions of success and criteria for the assessment of BR tools. The authors accept that such a conceptualisation is not in line with the normal views

expressed by economists, governments and international organisations. This determi- nation to examine regulatory quality within a richer context, leads the authors to develop three systems of indicators which can be applied to measure progress made in terms of the institutionalisation of BR in public administrations in the EU. The importance of institutionalisation is underlined in considering how BR procedures and tools can contribute to positive outcomes in terms of key objectives such as enhancing competitiveness and promoting good governance. For the former, the authors argue that BR can have a direct impact by changing the regulatory culture as a consequence of altering the way actors think about regulation. The benefits it brings in terms of good governance derive from the way in which the application of BR tools can open up the policy process through its emphasis on transparency, consultation and the use of evidence to inform policy choices. In developing the indicators, the authors have been informed by empirical research examining the existing degree of institutionalisation in EU Member States. The research findings allowed them to cluster Member States into one of three groupings: So, although there is a general acceptance that concepts of BR have become widely diffused in the EU, there is no evidence of standardisation. The three systems of indicators have been designed to account for the more complex reality set out by the authors. The first system is related to questions around the quality of the process. It can be applied across all administrations. As the name indicates, these indicators are applicable to evaluations con- ducted by bodies or actors outside the administration. The authors remind us that such evaluations need to be based on evidence beyond the indicators developed in this volume. Interestingly, they also argue against suggestions that such external evaluation be entrusted to any single body. As noted earlier, the intention is not for the indicators to apply in full to all admin- istrations at the same time. This is chosen over the informal network of Directors of Better Regulation, due to the fact that the High Level Group is formally incorporated in the structure of the Council. This is an interesting, thought-provoking, and potentially useful volume which examines a range of issues that have increasingly occupied the attention of academics, stakeholders, public officials and politicians in recent years. However, the fact that more and more attention is being paid to BR has the effect that things tend to move and develop very rapidly. Indeed this is acknowledged in the book itself. It means that potentially important recent developments are not considered in the book. All important considerations, but which have come too recently to be addressed in this book. Nevertheless, it is pretty safe to assume that both Radaelli and de Francesco are already applying their minds to considering the implications for regulatory quality in Europe. Oxford and New York: Oxford University Press, EU lawyers engage with a legal system that is in practice primarily directed at market opening. Much of the recent and contentious legislative activity of the EU has focussed on liberalising national markets that were previously either state-run or state-licensed monopolies. In , for example, the European Commission is expending consider- able political capital in seeking to advance, and in some cases complete, the liberalisa- tion and effective regulation of energy, telecoms and postal markets. If successful, these initiatives will doubtless serve as templates for similar advances in other sectors such as access to rail networks. The book contains case studies on the history of market opening in specific sectors in a number of European countries including descriptions of the legal developments which facilitated the liberalisation process: The ambition of this volume is more general, seeking to explain on a much broader scale why, and how, markets in European countries are opened. Its interest for lawyers goes beyond an academic interest in context. If its hypotheses are correct, they point to some necessary conditions for policy change. September Book Reviews is argued, vary the nature of the economic institutions that govern sectors and thus the space in which different aspects of the law can apply. Clients seeking to access regulated, and hence generally more extensively politicised markets, or conversely, to prevent erosion of de facto monopoly positions, would be advised to have strategies that seek to influence these conditions. The latter is defined as pressures on national policy makers which are outside of their control. Contrary to some received opinion, technological and economic change on their own are found not to have been sufficient to force reluctant national governments to modify national economic institutions through direct impact on the national markets in ques- tion. This is not surprising, since these monopolised national markets could not be fully incorporated into, and thus directly affected by, international markets without the legal barriers separating them from wider markets being dismantled.

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3: Risk Regulation and Administrative Constitutionalism (ebook) by Elizabeth Fisher |

Introduction 1: Risk Evaluation Through the Lens of Administrative Constitutionalism I THE SCIENCE/DEMOCRACY DICHOTOMY IN REGULATING TECHNOLOGICAL RISK A Technological Risks B The Science/Democracy Dichotomy C The Role of Law D Problems with the Science/Democracy Dichotomy II TECHNOLOGICAL RISK, PUBLIC ADMINISTRATION, AND ADMINISTRATIVE CONSTITUTIONALISM A The Necessary Role of Public.

In particular she focuses on the role of science in that interelationship. She is author of Environmental Law: Publications Displaying 1 - 50 of Sorted by year, then title. Law also provides important forums for dispute resolution. These frames and forums create legal stability in the wake of the legal disruption created by the introduction of wind energy as a significant energy infrastructure. Highlighting that role raises important questions for scholars of energy transitions, planning law, and social regulation more generally. This is because it is a polycentric problem; the assessment of future climate impacts must deal with uncertainty; climate change is socio-politically controversial; and addressing climate change requires recognising a dynamic physical environment. As such, climate change can be thought of as legally disruptive in that it requires lawyers and legal scholars to reconcile the legal issues raised by climate change with existing legal orders. The legal disruption catalysed by climate change has not only led to the creation of new legal regimes but also given rise to a multitude of legal disputes that require adjudication. A study of some of these cases highlights the need for active and deliberate reflection about the nature of adjudication and the legal reasoning embedded in it when confronted by a disruptive phenomenon like climate change. Courts are expected to ensure the accountability of agency actions through their legal oversight role, yet on matters of science policy they do not have the expertise of the agencies nor can they allow themselves to become amateur policymakers in the course of their review. Given these challenges, we set out to better understand what courts are doing in their review of agency science. Our findings, albeit preliminary, suggest the emergence of a constructive partnership between the courts and agencies in science policy in NAAQS cases. In overseeing scientific challenges, the courts appear to serve as a necessary irritant, encouraging the agency to develop much stronger administrative governance and deliberative decisions on complex science-policy issues. The courts and agencies thus appear to work symbiotically through their mutual efforts on the establishment of rigorous analytical yardsticks to guide the decision process. While our findings may be limited to the NAAQS, which likely present a best case in administrative process, the findings may still offer a grounded, normative model for imagining a constructive and even vital role for generalist courts in technically complex areas of social decision making. It concerns the operation of jurisdictional fact review in planning and environmental cases, focusing on the line of case law that led to the High Court decision in Corporation of the City of Enfield v Development Assessment Commission Facts from a legal formalist perspective are understood as objective and hard-edged while from a legal pluralist perspective they are more likely to be conceptualised as contested and uncertain. The nature and consequences of these narratives are considered in the context of the first U. This analysis has implications for both how scholars understand their expertise in this area, and how they should foster it.

4: Risk Regulation and Administrative Constitutionalism : Elizabeth A. Fisher :

This is problematic because, as shown in this book, legal disputes over risk evaluation are disputes over administrative constitutionalism in that they are disputes over what role law should play in constituting and limiting the power of administrative risk regulators.

5: Risk Regulation and Administrative Constitutionalism: Elizabeth C. Fisher: Hart Publishing

This discussion is important since public administrators and legislative drafters are required to synthesise and interpret the scientific evidence and economic.

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This book is a study of the interrelationship between risk regulation, public law, and theories of legitimate administrative governance.

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