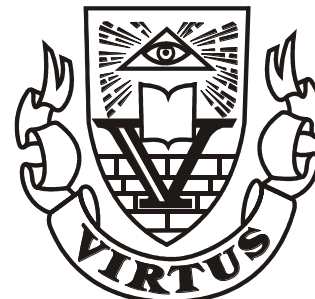


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OVERCOMING THE HARD LAW/SOFT LAW DICHOTOMY IN TIMES OF (FINANCIAL) CRISES 8

Rolf H. Weber

Traditional legal doctrine calls for hard law to regulate markets. Nevertheless, in financial markets, soft law has a long tradition, not at least due to the lack of multilateral agreements in this field. On the one hand, the recent financial crisis has shown that soft law does not suffice to avoid detrimental developments; on the other hand, a straight call for hard law would not be able to manage the recognized regulatory weaknesses. Therefore, emphasis should be put on the possibilities of combining hard law and soft law; specific areas allowing realizing such kind of “combination” are organizational issues, transparency requirements, and dispute settlement mechanisms.

A DISCUSSION ON THE RESILIENCE OF COMMAND AND CONTROL REGULATION WITHIN REGULATORY BEHAVIOR THEORIES 15

K.P.V. O’Sullivan, Darragh Flannery

This paper provides the first insights into the factors that may drive the resilience of command and control regulation in modern policy making. We show how the forces of uncertainty and internal dynamics among customers, producers and regulators are the most dominate factors preventing the adoption of non-CAC regulations. Using case study evidence of internet regulation, we then integrate our analysis into the most prominent regulatory choice behavior theories and illustrate that regardless of the theory, these factors can help explain the dominance of command and control as a choice of regulation.

ACCOUNTABILITY LEGISLATION: IMPLICATIONS FOR FINANCIAL AND PERFORMANCE REPORTING 25

Daphne Rixon

The purpose of this case study is to first examine the implications of accountability legislation on the financial and performance reporting of a public sector agency in the Canadian province of Newfoundland and Labrador and secondly, to compare the level of accountability with Stewart’s (1984) ladder of accountability. This paper is based on the first phase of a two-phase study. The first phase focuses on the initial impacts of accountability legislation on agencies and the challenges created by the legislation’s ‘one size fits all’ approach. The second phase of this study will examine the impact of the legislation on stakeholders after it has been in operation for five years. The second phase will include interviews with stakeholders to ascertain the level of satisfaction with the new legislation. The first phase of the study is significant since it highlights how governments could consider stakeholder

needs when drafting such legislation. This research contributes to the body of literature on stakeholder accountability since there is a paucity of research focused specifically on the impact of accountability legislation on public sector agencies. An important contribution of this paper is the introduction of a framework for legislated accountability reporting. The main theoretical frameworks used to analyse the findings are Stewart's (1984) ladder of accountability in conjunction with Friedman and Miles (2006) ladder of stakeholder management and engagement.

中监为体、西监为用 OR THE SPECIFICS OF CHINESE BANK REGULATION 36

Violaine Cousin

The present paper aims to propose an explanation for the rationale behind the current banking regulatory arrangement in China. A now stable and relatively healthy banking system emerged largely unscathed from the financial crisis without relying much on recognized international best practices in bank supervision. China combines a strong regulatory hand together with a capital adequacy requirements stick, without much intervention of foreign or private institutions in the larger sense of the term. After an in-depth review of the Chinese framework we recognize that it is exactly this lip service to private monitoring mechanisms on top of restrictive regulators that allows for stability and growth - at least for now. China uses Chinese supervision as the core and western regulatory instruments as useful add-ons - a manner similar to the catch phrase used over a century ago to rejuvenate China.

CAUSES OF NEW ZEALAND FINANCE COMPANY COLLAPSES: A BRIEF REVIEW 55

Noel Yahanpath, John Cavanagh

During the period 2006 - 2010, 49 finance companies, in New Zealand, collapsed or entered moratoriums, owing investors in excess of \$8 billion, and the fingers of blame continue to point in circles. The blame for this tremendous financial crisis is extensive and a consolidation of arguments is essential for the wider understanding of the topic and to put responsibilities into perspective. A part of this paper is to recognise who can and is being held legally responsible for investors' sake, and also identify parties who have failed their responsibilities. We have highlighted the major issues created by corporate governance being the most direct cause of finance company failure in NZ. We believe in some way these findings will help avoid a similar crisis in the future and resolve a still commonly blurred line in public opinion.

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Ulrich Schmidt

This paper analyzes agency costs and the moral hazard problem in the presence of income taxation. As basic framework, income taxes are integrated in the hidden action model of agency theory. In the case of symmetric information no agency costs occur, i.e. optimal risk-sharing can be achieved, if and only if the tax is proportional. It is well-known that asymmetric information causes a welfare loss, termed agency costs, even if no taxes are imposed. Introducing a proportional income tax now increases (decreases) these agency costs if the agent exhibits decreasing (increasing) absolute risk aversion. Additionally, we show that non-proportional taxes cause higher (lower) agency costs than a proportional tax if the agent's marginal tax rate exceeds (is smaller than) the marginal tax rate of the principal.

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Hugh Grove, Lisa Victoravich

The importance of structural corporate governance factors identified by the New York Stock Exchange's 2010 Commission on Corporate Governance was reaffirmed here with various empirical and forensic studies. The key, recurring structural factors were all-powerful CEO (the duality factor and related Board independence issues), weak system of management control, focus on short term performance goals (and related executive compensation packages), weak code of ethics, and opaque disclosures. Such weak corporate governance factors were key contributors to both fraudulent financial reporting and excessive risk-taking which facilitated the U.S. financial crisis in 2008. Corporate governance listing requirements by major stock exchanges around the world will help mitigate such problems from recurring in the future.

EVALUATING AND INTEGRATING CORPORATE SOCIAL RESPONSIBILITY STANDARDS: IMPLICATIONS FOR CSR CONCEPTS

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Markus Stiglbauer, Marc Eulerich

Standards play a major role when concepts of corporate social responsibility (CSR) ought to be implemented and corporate social performance (CSP) ought to be assessed. Ethical reasoning and stakeholders' expectations help to measure companies' intentions to implement CSR standards and to measure their efficiency. With different standards of CSR (company standards, industry standards, multi-stakeholder standards and independent standards) companies may implement we categorize and evaluate those standards and give advice which opportunities but also threats may arise for companies when implementing such codes within firm-specific CSR concepts. We suggest a combination of different standards and replenish them with firm-specific codes of conduct.

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