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**THEMED ISSUE:
PERSPECTIVES ON THE NEW REGULATORY ERA**

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For many decades the word “regulation” has been a bogeyman concept evoking images of unproductive and wasteful government bureaucracy. While this image has been a popular rallying cry for politicians over the years, every interest group—with the exception of libertarians—has actively supported and lobbied for regulation in certain domains of the economy and society. With the recent financial crisis, this bogeyman image of regulation has been turned on its head. This Essay explains some of the causes for the change and highlights several expected directions that the new regulatory era is likely to take.

REGULATORY TRUST	<i>Rebecca M. Bratspies</i> 575
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When regulators make decisions in the face of uncertainty, what gives legitimacy to their decisions? This question arises more and more frequently as globalized markets and new technologies crash through pre-existing social and political fault lines. In the myriad contexts of regulation, the same refrain plays over and over—governments must make high-stakes regulatory choices that implicate poorly understood risks. Trust clearly plays a role in facilitating agency legitimacy, but what is the relationship between law and trust?

While trustworthy regulators may enhance social resilience, uncertainty erodes public trust and alienates citizens. This grim reality is reflected in declining levels of trust in government institutions. Loss of trust undermines not only regulatory effectiveness, but also society’s resilience—its capacity to persevere and even to thrive in the face of multiple, unpredictable risks.

This Article offers a framework for “regulatory trust”—the unique form of social trust invoked when regulatory agencies make decisions under conditions of uncertainty. In doing so, it examines what regulatory trust means, why it matters, and how it can be produced, maintained, and restored. The resulting framework identifies the key components of regulatory trust and explores means to cultivate the trust necessary to allow regulatory agencies to govern effectively in the face of fundamental uncertainty.

In *The Problem of Social Cost*, Ronald Coase was highly critical of the work of Cambridge University Economics Professor Arthur Cecil Pigou, presenting him as a radical government interventionist. In later work, Coase's critique of Pigou became even more strident. In fact, however, Pigou's *Economics of Welfare* created the basic tools, including the transaction costs model, that Coase's later work employed. Much of what we today characterize as the Coase Theorem was either stated or anticipated in Pigou's work. Further, Coase's extreme faith in private bargaining blinded him to the problems of bargaining in two-person markets that Pigou saw quite clearly and that remain with us to this day.

THE ENVIRONMENTAL DEFICIT: APPLYING LESSONS FROM THE ECONOMIC RECESSION

Christine A. Klein 651

In 2007, the nation entered its greatest financial downturn since the Great Depression of the 1930s. What followed was a period of national introspection. Although prescriptions for financial rescue varied widely in the details, a surprisingly broad consensus emerged as to the underlying pathology of the crisis. This Article explores three principal contributing factors and the lessons associated with each that make up this pathology. These factors include: rejecting rules through deregulation, trivializing risk through overly optimistic analyses, and overconsumption supported by reckless borrowing and lending practices.

The powerful lessons from this pathology, considered by a stunned nation in the midst of financial collapse, apply with equal force to the growing environmental deficit, which this Article defines as the unsustainable spending-down of natural resource assets. This Article argues that the environment could benefit from a dose of the same medicine that has been suggested for the economy: enforcing rules through re-regulation, abandoning inaccurate models of cost-benefit analysis that trivialize risks, and limiting consumption to sustainable levels.

This Article tells two parallel stories of fiscal and environmental unraveling, capturing the cultural moment through the often frank admissions of political and intellectual leaders amidst crisis. It features a Section (Part II.A) on the curious phenomenon of "midnight regulations," including an Appendix showing the most recent enactments in table format.

LITTLE BROTHER IS WATCHING YOU: NEW PATERNALISM ON THE SLIPPERY SLOPES

Mario J. Rizzo & Douglas Glen Whitman 685

The "new paternalism" claims that careful policy interventions can help people make better decisions in terms of their own welfare, with only mild or nonexistent infringement of personal autonomy and choice. This claim to moderation is not sustainable. Applying the insights of the modern literature on slippery slopes to new paternalist policies suggests that such policies are particularly vulnerable to expansion. This is true even if policymakers are fully rational. More importantly, the slippery-slope potential is especially great if policymakers are not fully rational, but instead share the behavioral and cognitive biases attributed to the people their policies are supposed to help. Accepting the new paternalist approach creates a risk of accepting, in the long run, greater restrictions on individual autonomy than have been heretofore acknowledged.

NOTES

FLUSHING THE FOURTH AMENDMENT DOWN THE TOILET: HOW COMMUNITY URINALYSIS THREATENS INDIVIDUAL PRIVACY

Christopher L. Hering 741

Scientists have developed new technologies that examine tiny samples of municipal sewage for the presence of illegal drugs. These samples are essentially a drug test for an entire community, making them akin to a “community urinalysis.” Public health experts hope to use the data generated from community urinalysis to create a more accurate profile of drug use in America. Civil libertarians, however, fear that law enforcement will ultimately use this technology to monitor every home for drug use. This Note explores the Fourth Amendment implications of community urinalysis technology. It argues that the testing of a home’s wastewater constitutes a search requiring a warrant. Because plenty of doctrinal room exists for a contrary conclusion, however, the Note also argues that statutes and regulations are potentially a better way to address community urinalysis’s impact on personal liberties.

REFORMING THE CIVIL ASSET FORFEITURE REFORM ACT

Eric Moores 777

Civil asset forfeiture laws provide law enforcement agencies with the power to seize property and money connected to illegal activity. Over the last forty years, the system has grown exponentially and now constitutes a significant source of funding for law enforcement operations. Without adequate safeguards, however, citizens are at risk of losing their property to overzealous police forces motivated more by the prospect of forfeiture proceeds than a desire to enforce laws and protect society. The Civil Asset Forfeiture Reform Act of 2000 attempted to level the playing field between law enforcement and property owners. Unfortunately, it has failed and further reform is needed at both the federal and state levels. The Note examines the dangers created by the current civil asset forfeiture program and proposes changes necessary to create a fairer process.

ARIZONA CASE NOTES

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