

Risk Regulatory Concepts and the Law: A Discussion Paper

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An Academic Perspective

What are Risk Regulatory Concepts?



“handling risk has become more central to the work of government in recent years” (UK Cabinet Office, 2002)

A Critical and Contextual Approach

- **Risk regulatory concepts regulating administrative power**
 - Defining competence of administrators
 - Limiting administrative discretion
 - Enabling more accountable decisions
- **Based on prescriptive understandings of public administration (Fisher, 2007)**
 - Rational instrumental v. deliberative-constitutive
 - Risk regulatory concepts as mainly rational-instrumental

Many Roles and Definitions

Many Roles

- Public management reform
- Re-characterization of regulatory subject matter
- Enforcement and criminal justice decision-making
- A general debate about the role of the state.

Many Definitions

- Variations between disciplines
 - Variations due to different regulatory purposes
- BUT**
- Emphasis on quantification and methodological rigour

Criticisms of Risk Regulatory Concepts

- inaccurate
- operation ignores important issues
- open to abuse
- do not effectively regulate administrative power
- normatively objectionable

The Need for Critical Reflection

Law and Risk Regulatory Concepts

- **Legal culture**
 - Different legal cultures in a globalizing world
 - Legal uncertainty
- **Constituting and limiting public administration**
 - constitutional and institutional competence
 - limiting discretion
 - procedures
- **Holding decision-makers to account**
 - the setting of standards;
 - the obtaining of an account
 - the judging of such an account;
 - consequences that arise from such a judgment.

Taking A Critical and Contextual Approach: Five Useful Questions

1. Why are risk regulatory concepts being deployed or promoted?
2. What models of good public administration are being promoted by risk regulatory concepts?
3. What disciplines are needed for the operation of risk regulatory concepts?
4. What is the role of law in the operation of risk regulatory concepts?
5. What does experience with risk regulatory concepts tell us?