

**UNITED KINGDOM CONSTITUTIONAL LAW GROUP /
INTERNATIONAL ASSOCIATION FOR
CONSTITUTIONAL LAW**



The Regulatory State: Constitutional Implications

Friday 14th & Saturday 15th November 2008

Venue: Clifford Chance LLP

10 Upper Bank Street, London E14 5JJ

In association with
**THE FACULTY OF LAWS, UNIVERSITY COLLEGE LONDON
AND CLIFFORD CHANCE LLP**

**C L I F F O R D
C H A N C E**



**Blackstone
CHAMBERS**

CONFERENCE ON

THE REGULATORY STATE: CONSTITUTIONAL IMPLICATIONS

About the Conference

We shall explore the impacts on constitutional arrangements of the development over the last thirty years or so of a 'regulatory state' in the UK and other Western countries, and in EU law. Processes of privatisation and regulation which have given rise to this state raise important issues to do with public, political, legal and other forms of accountability (e.g. audit) of industries and regulators, and issues of governance and good governance. The speakers will consider the constitutional implications of these arrangements generally and in particular countries, and will make comparisons between jurisdictions.

Importance of the subject

The subject is of practical relevance in many countries, and in the EU. There has been constitutional litigation about regulation on some of the key issues, notably in France and the USA. Democratic accountability and judicial review of regulators are of particular concern in many countries. We anticipate that insights will emerge in the course of the sessions as to the control and accountability of regulators and of privatised bodies. In some countries the latter may be considered to perform 'public functions' and thus to attract public law controls: this in turn raises issues to do with the public law / private law divide. The independent regulatory agency is becoming the central model in EU policy for the liberalised sectors, for instance in the recent review of telecommunications liberalisation: accountability arrangements here are weak. And finally we expect common concerns to emerge as to how the regulatory state and regulatory techniques might be reformed. This will depend to a great extent on local political and legal cultures.

The delegates

The conference will attract lawyers, both academic and practising, and practising regulators, economists, accountants, civil servants and others involved in regulation in the UK and elsewhere. We expect between 75 and 150 delegates.

Accreditation:

This conference is accredited by the Solicitors Regulatory Authority with 14.5 CPD hours. Bar Standards Board CPD points applied for.

Participants Information:

Please see our website for information about hotels and public transport.
<http://www.ucl.ac.uk/laws/constitution-group>

PROGRAMME:

Thursday 13 November, 6-8.00 pm (UCL Law Faculty)

Pre-conference welcome reception at the Faculty of Laws, UCL, Bentham House, Endsleigh Gardens, London WC1H 0EG.
Free evening.

Friday 14 November, 9.00am- 5.00pm (Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ)

9.00 **Registration, coffee**

9.30 **Welcome**

Professor Didier Maus, President of the International Association of Constitutional Law and Professor Dawn Oliver, chair of the UK Constitutional Law Group

SESSION I: OVERVIEWS

10.00 *Regulatory Governance and the Challenge of Constitutionalism.*
Professor Colin Scott (UCD, Ireland)

10.25 *Constitutional Impacts of the Regulatory State: German and French Experiences Compared.*
Professor Johannes Masing (University of Freiburg, Germany, and the German Federal Constitutional Court)

10.50 Discussion

11.15 Coffee

SESSION II: POLITICS AND REGULATION

11.30 *The Roles of Presidents and Prime Ministers in Regulatory Rule Making: The Implications of Political Controls of Regulation for Constitutionalism and Public Law*
Professor Peter Strauss, (Columbia, USA)

11.55 *Regulation and Democratic Oversight*
Professor Dawn Oliver (UCL, UK)

12.20 Discussion

12.45 Lunch

SESSION III: PUBLIC AND PRIVATE REGULATORY RULE-MAKING

14.00 *Regulatory Rule Making in the UK*
Professor Julia Black (LSE, UK)

14.25 [Private Regulation and European Legal Integration: Towards a New Architecture.](#)
Professor Fabrizio Cafaggi, (EUI, Italy)

14.50 Discussion

15.15 Tea break

SESSION IV: REGULATION AND THE EU

15.45 [“Cap and trade”: A new regulatory challenge for EU and national constitutional law.](#)
Professor Gerd Winter (University of Bremen, Germany)

16.10 [EU and Member States: Regulatory Networking.](#)
Professor Imelda Maher (UCD, Ireland)

16.35 Discussion

19.30 **Conference dinner** (optional)
at Old Refectory, UCL, Gower Street, London WC1E 6BT

Saturday 15 November, 9.30am- 2.00pm (Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ)

SESSION V: ACCOUNTABILITY ISSUES

9.30 [Regulatory Judicial Review.](#)
Professor Richard Rawlings (UCL, UK)

10.00 [Auditing Regulation.](#)
Mr Ed Humpherson (National Audit Office, UK)

10.30 Discussion

11.00 Coffee break

SESSION VI: ISSUES IN THE REFORM OF REGULATION

11.30 [Regulatory Enforcement and Sanctions.](#)
Professor Richard Macrory (UCL, UK)

12.00 [UK Regulatory Reform.](#)
Professor Tony Prosser (University of Bristol, UK)

12.30 Discussion

13.00 Light lunch

14:00 Close of Conference

THE SPEAKERS

JULIA BLACK, Professor of Law at the London School of Economics and Political Science and a Research Associate of the Centre for Analysis of Risk and Regulation at the LSE. Julia Black's principal research interest is in the nature, dynamics and legitimacy of regulatory regimes, both state and non-state. She specialises in financial services regulation, and is interested in the regulation of risk, particularly in biotechnology, and in public law. She has written extensively in the area, and also advised policy makers, consumer bodies and regulators in the UK and overseas on issues of institutional design and regulatory policy.

FABRIZIO CAFAGGI, Professor of Comparative Law, European University Institute, Fiesole. Fabrizio Cafaggi's interests include law and economics, self-regulation and codes of conduct with special emphasis on private law and regulatory techniques, and the role of regulated markets in European contract law. Publications include (Ed. with Horatia Muir Watt) *The making of European private law: Governance design*, 2008; 'Collective enforcement of consumer law: a framework for a comparative assessment', in *ERPL*, 3, 2008; 'Self-regulation in European contract law', *European Journal of Legal Studies*, 1, 2007, available at www.ejls.eu; (Ed.) *Reframing self-regulation in European private law*, 2006.

ED HUMPHERSON, Assistant Auditor General, National Audit Office. Ed Humpherson joined the NAO in 1993. Since 2003, he has been the Director of Regulation, producing reports to Parliament on the effectiveness of regulation across a range of sectors, including communications, the postal market, utility industries, the pensions industry, and competition enforcement. He was also responsible for the NAO's work on Better Regulation, including the evaluation of Regulatory Impact Assessments, the Government's programme to reduce administrative burdens, as well as delivering reviews of how major recommendations have implemented the Hampton review's recommendations. He led the NAO's first study on the Financial Services Authority in April 2007. In July 2007 he was appointed Assistant Auditor General, responsible for the NAO's work on regulators, regulatory reform, Public Private Partnerships and the use of private finance in public services, and overall responsibility for the NAO's work on the new Business, Enterprise and Regulatory Reform department.

RICHARD MACRORY QC, Barrister, Professor of Environmental Law, University College London. Richard Macrory is director of the Centre for Law and the Environment at the Faculty of Laws, UCL. He has been a board member of the Environment Agency, and was a long standing member of the Royal Commission on Environmental Pollution. In 2005/6 Professor Macrory was appointed by the Cabinet Office to lead the Review on Regulatory Sanctions. All the recommendations in his final report 'Regulatory Justice – Making Sanctions Effective' published at the end of 2006 have been accepted by Government. Earlier this year he was appointed an Honorary QC for his work on the development of environmental law.

IMELDA MAHER, Sutherland Professor of European Law, University College Dublin. Imelda Maher's main research interest is in law and governance and her work straddles the two domains of competition law and EU law. She has published extensively on fiscal governance and EMU, co-authoring several influential papers with Dr. Dermot Hodson, a political economist. She is a member of the Advisory Board of the Economic and Social Research Council Centre for Competition Policy, University of East Anglia, an editor of the *European Law Journal* and a jury member of the University Association for Contemporary European Studies book and PhD prizes. This year she gave the general course at the Academy of European Law Summer School at the European University Institute, Florence on Economic Law and Governance. She is author of *Competition Law: Alignment and Reform* (1999).

JOHANNES MASING, Professor of Public Law, PhD (Dr. iur. 1996), University of Freiburg, and Judge of the German Federal Constitutional Court. Johannes Masing was appointed full Professor of Public Law in 1998. His

research focuses on constitutional law, European constitutional history, and the law of regulatory authorities. He has been visiting professor and scholar at Universities in Ann Arbor, Krakow, Lyon III and Paris I and II. Masing is director of the German-Polish Colloquium on Administration and the German-French conference on constitutional and administrative law. In 2008 he was awarded the Prix Gay Lussac-Humboldt. Masing was appointed Judge of the Federal Constitutional Court in April 2008, currently responsible for freedom of speech, data privacy, and right of assembly.

DAWN OLIVER, Emeritus Professor of Constitutional Law, University College London. Dawn Oliver's research and teaching interests are in the fields of UK and comparative public law, and in particular accountability, good governance and standards of conduct in public life. She has taught on Masters courses in Law and Regulation. She was chair of the Advertising Advisory Committee of the Independent Television Commission from 2000 to 2003, and she is currently a member of the Animals Procedures Committee of the Home Office. Professor Oliver has been Chair of the UK Constitutional Law Group since 2005, and a member of the Executive Committee of the International Association of Constitutional Law since 2007.

TONY PROSSER, Professor of Public Law, University of Bristol. Tony Prosser's main research interests are in Public Law relating to privatisation and regulation, especially regulation of public utilities and of broadcasting. His most recent book is *The Limits of Competition Law* (OUP, 2005), and he is now working on different social and economic models of regulation. He is also a participant in a major European project on Reflexive Governance, in particular in relation to services of general interest. His teaching interests are in the areas of law and government, law and the economy, and social and legal theory.

RICHARD RAWLINGS, Professor of Public Law, University College London. Rick Rawlings' research interests include judicial review and regulation, and European administrative law. Recent publications include articles on accountability in multi-level governance, networks, and the centralised EU infringement procedure.

COLIN SCOTT, Professor of EU Regulation and Governance at University College Dublin, and a visiting Professor at the College of Europe, Bruges. Colin Scott's main analytic interests include accountability, regulation and non-state governance. Research interests include communications regulation, consumer protection and regulation of the public sector. His current research projects include an institutional analysis of change in central state functions. He was previously a Reader in Law at the London School of Economics and Senior Research Fellow in Public Law at the Australian National University. He is a co-editor of the interdisciplinary journal *Law & Policy*.

PETER L. STRAUSS, Betts Professor of Law at Columbia Law School, USA and Fernand Braudel Senior Fellow at the European University Institute, Fiesole, Italy. Peter Strauss is a leading scholar of American administrative law whose published works in the field of regulation include *Administrative Law Stories* (Ed., 2006) and numerous law review articles, generally focusing on issues of rulemaking, separation of powers, and statutory interpretation. During 1975-77, Professor Strauss was the first General Counsel of the United States Nuclear Regulatory Commission.

GERD WINTER, Professor of Public Law and the Sociology of Law, University of Bremen. Gerd Winter's teaching focus is on administrative and EC institutional law. His research interests are in environmental law as seen in comparative, EU and international perspectives. He was member of the independent expert commission to draft a German environmental code and of the Ministerial expert commission for risk assessment and management methodology. He served as a member of the German National Committee on Global Change Research. He has broad experience in consultancy in administrative law reform in transition states.

BOOKING FORM

THE REGULATORY STATE: CONSTITUTIONAL IMPLICATIONS

Two-Day Conference

Name 1:

Name 2:

Name 3:

Organisation:

Address:

Tel:

Fax:

Email:

Special dietary requirements:

Please register me/us for the Regulatory State: Constitutional Implications Conference on 14 & 15 November 08.

I/we will be attending the conference and wish to register as:

- Standard Fee
- Paid up member of the UK Constitutional Law Group or individual member of the IACL
- Academic or NGO
- Student
- Member of the Executive Committee of the IACL
- I wish to attend the conference dinner (additional charge of £50)

Payment:

- I will pay online
- I would like to pay by bank transfer; Please invoice me / my firm for the registration fee

NB: If you would like to pay by credit card then please use our online booking service which is available at: www.ucl.ac.uk/laws/constitution-group

REGISTRATION INFORMATION

Enquiries

Ms Lisa Penfold at the UCL Law Faculty
Direct telephone: +44 (0)20 7679 1514
Direct fax: +44 (0)20 7679 1442
Email: lisa.penfold@ucl.ac.uk

Postal Address

Events Office,
UCL Laws
Bentham House, Endsleigh Gardens
London WC1H 0EG, United Kingdom

Venue Addresses:

13th November: Reception
UCL Laws, Bentham House, Endsleigh Gardens,
London WC1H 0EG

14th & 15th November: Conferece

Clifford Chance LLP,
10 Upper Bank Street
London E14 5JJ

14th November: Dinner

Old Refectory, UCL, Gower Street, London WC1E 6BT

Fees:

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|-------------------------------------|------------|
| Standard Fee: | £250 |
| Academic or NGO: | £100 |
| UK Constitutional Law Group / IACL: | £75 |
| Students: | £50 |
| Executive Committee IACL: | FREE |
| Dinner | £50 |

The fee includes conference materials and all refreshments throughout the two-day event.

Book online:

To book and pay by credit card using our online booking service from the following link:
<http://www.ucl.ac.uk/laws/constitution-group>

How to Pay:

Payment of the registration and dinner can be made by credit card using our online booking service - this service is in GBP only and a small fee will be payable.

or

via bank transfer, on the issue of an invoice, from a faxed booking.

Cancellation:

Please note that cancellation must be received **in writing 10 days before the event** and will be subject to an administrative charge of €25. It is regretted that no refunds will be made for cancellations after this time and the full registration fee will be payable. Substitutions can be made at any time.

PLEASE RETURN THIS FORM TO:
Ms Lisa Penfold, UCL Laws
Bentham House, Endsleigh Gardens
London WC1H 0EG

or fax it to **+44 (0)20 7679 1442**