Risks and Risk Regulation: Personal Reflections

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I. A RISK REGULATION STORY

Risk has always been part of my life. Growing up as part of a very mobile family accustomed me to the personal risks of new places and new people. However, my real introduction to the broader individual and the social meanings of risk, as distinguished from the individual personal meaning of risk, came when at the age of 20 I first went to West Africa for research, and then later during my PhD studies and early subsequent research when I lived in an African village for almost three years. People in the village and further afield daily encountered risks such as malaria, schistosomiasis, onchocerciasis (river blindness), not to mention occasional famine, which are strikingly different from and generally more life-threatening than risks in economically wealthier countries.

Consequently, when, years later, I first came to the concept of risk society and to risk regulation as an academic field, I was initially bemused. These ideas, developed starting in the mid-1960s but of course with a longer intellectual history, seemed to me to be seriously misleading, indeed mere rhetoric, if not downright ideological (in many senses) ways of granting our contemporary capitalist societies a scarcely deserved veneer. Regardless of how narrowly these ideas had been delimited by the original authors, the concepts of risk society and risk regulation were in my mind the subject of great scepticism, or more accurately of a heavy dose of anthropological relativism, assigning them to the bundle of ideas and theories which we academics (and also businesses) generate and manipulate in an effort to understand life in a world increasingly dominated by high finance and big science.

This is no longer true, or I think that at least to some extent it is no longer true. This is not to say that my own reading, teaching and research on risk regulation have convinced me that our lives are more risky than those of the rural villagers with whom I lived some time ago. Not at all: they are generally less risky, but the risks are of a different type. Instead, it is to confirm two points. First, the risks to which the initial theorists of risk society and risk regulation referred were then features mainly of wealthier countries, the risks of wealth and science. Second, globalisation and the worldwide development of the market economy unfortunately have spread many of these same risks throughout the world. These processes have resulted in an increasing gap between the "haves" and the

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"have-nots", a gap entirely contrary to basic humanity and ideas of social justice. As a result, much of the world today shares risks which previously were limited mainly to wealthier countries. In addition, however, many of the "have-nots" also continue to suffer from the serious economic disadvantages, life-threatening diseases and social and political instability from which they suffered before. Risk society and risk regulation remain very relative terms, in spite of recent increases in their geographical scope and despite their wide academic and political currency.

In my own teaching and research, the concept of risk regulation began to assume a greater role when I joined the London School of Economics and the Centre d'Etudes et de Recherches Internationales et Communautaires (CERIC) at Aix-Marseille University. The LSE Law Department, together with the Australian National University, was the most notable intellectual home of regulation research, notably through the work of Julia Black and Colin Scott, who were associated with both institutions. The CERIC, long known for research on European and international law, institutions and economics, was beginning a shift toward European, international and comparative environmental law, with a particular focus on technical standards and food safety. My research at the time concentrated mainly on international trade and on food safety regulation. Almost inevitably, both institutions and the ideas which tended to dominate their research informed and infused my own teaching and research and continue to do so.

Having begun in 1997 part-time teaching and research in China, in 2010 I joined Peking University School of Transnational Law, a newly-created postgraduate law school along American lines, offering a bilingual, combined J.D. and J.M. programme with courses in Chinese law, U.S. law, EU and international law to a graduate student body fluent in both English and Chinese, and located at Peking University Shenzhen Graduate School in Shenzhen, south China. Shenzhen was the first of the well-known Special Economic Zones at the heart of the Chinese economic miracle. In the past 30 years, it has grown from a fishing village of several hundred thousand people to a dynamic metropolis of between 15 and 20 million people, which is rapidly becoming part of a much larger, more tightly integrated urban Pearl River Delta region embracing Shenzhen, Zhuhai, Hong Kong, Macau and Guangzhou. Risk-taking has been at the heart of Shenzhen's growth and innovation for several decades. Poetic justice might also assign it an important role in risk regulation research.[1]

In my work, this began in 2013, when I was asked to serve as the leading foreign expert to give advice to the Chinese central government on how to reform the system of food safety regulation. Though informed by my earlier research on food safety and of course some previous knowledge of Chinese law, this challenge represented a plunge into a different world. Law often appeared to be swamped by the context; institutional reform, and issues of legal borrowing and cultural relativism and public education assumed greater salience. Preparing a sensible contribution to China's legal reform programme involved a steep but fascinating and exciting learning curve. This experience proved to be an enormous stimulus for my research on *Food Safety Law in China: Making*

[1] For an example, see Jin Zining, "Environmental Impact Assessment in China's Courts: A Study of 107 Judicial Decisions" (2015) 55 *Environmental Impact Assessment Review* 35.

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Transnational Law,[2] a project which sought to combine risk regulation, transnational law and global legal pluralism.

The field of risk regulation is intellectually stimulating for me for three reasons. First, it involves a process of constant discovery, continuous learning and the intellectual and personal efforts to conjoin law with other disciplines, such as history, political science, economics, sociology, anthropology, chemistry and medicine.[3] Second, it presents the challenge of having to analyse and to come to grips with the unknown, and therefore with the limits of law and of our personal knowledge and capabilities.[4] Third, it is very important from the standpoint of the wider society, and indeed worldwide, and hence invokes the social responsibility of the teacher and researcher, especially for an expatriate scholar who, after all, is a guest in the host society. In this respect, research on risk regulation offers great intellectual challenges and the opportunity to make a real contribution to social development and legal (and wider) reforms.

II. Risk regulation research

Risk regulation research is research which focuses on the regulation of risks. The term "regulation" has in recent decades assumed four main guises or approaches. One approach is the *école de la regulation* founded by Robert Boyer in France to develop an economic institutionalist perspective to study the ways in which the dominant social and economic features of capitalist society were reproduced.[5] Another is economic and social regulation as pioneered in the United States, which was concerned with the problem of "market failures" and the consequent necessity for the government to "intervene" in the market, hence to "regulate". This approach assumes the free market as the ideal and regards governmental action as "intervention". A third approach is the current school of *droit de la regulation* founded in France by Marie-Anne Frison-Roche.[6] Owing much to its national setting, it focuses the ways in which governmental regulation seeks to ensure open markets and also to protect the public interest, for example in markets which recently have been "liberalised". A fourth approach, to which I subscribe, is that formed mainly by the work pioneered at the LSE, already noted, which focuses on the ways in which social goals are achieved by the government and other actors (or "regulators") through a variety of normative instruments, including law and "soft law". Unlike the second approach above, it does not assume that the government is absent in a market economy; on the contrary, governmental action is necessary for the creation and maintenance of the market economy. The four approaches

[2] Francis Snyder, *Food Safety Law in China: Making Transnational Law* (Leiden: EJ Brill Publishing, for the Xiamen Academy of International Law, Collected Courses, Vol VI, 2016).

[3] See Francis Snyder, "The Contribution of Anthropology to Teaching Comparative and International Law" in Marie-Claire Foblets, Gordon Woodman and Anthony Bradney (eds) *The Trials and Triumphs of Teaching Legal Anthropology* (Farnham: Ashgate Publishing Co, for the Max-Planck Institute for Social Anthropology, Halle s/Salle, Germany, 2017, forthcoming).

[4] See Francis Snyder [lead author], Lu Yi and Gulrez Yazdani, "Traditional Chinese Medicine and European Union Law" (2014) 2(1) July *Peking University Law Journal* 129.

[5] For example, Robert Boyer, *La Théorie de la regulation: Une analyse critique* (Paris: La Découverte 1986).

[6] For example, Marie-Anne Frison-Roche, *Les 100 mots de la regulation* (Paris: Presses Universitaires de France, "Que-sais je?" No 3971 2011).

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tend adopt different starting assumptions and/or to concentrate on different types of risks. The following paragraphs focus on the fourth approach.

Risk regulation has long been an important part of the academic fields in which I have participated. These fields include EU law, EU-China relations, food safety law and product standards. Although risk regulation research was not until recently a significant part of EU constitutional and administrative law, for more than two decades it has played an increasing important role in EU administrative law regarding various policy areas. Beginning with the Single European Act in 1986, environmental law became an express competence of the then EEC, albeit shared with the Member States. Even before then, however, risk regulation was an important aspect of environmental law in the Europe, both in national environmental law and in the embryonic EEC environmental law which developed in the interstices of the EEC Common Agricultural Policy (CAP). Subsequently, also within the CAP, it emerged as a central element in the debacle of the BSE "mad cow" disease crisis. In 2002, it was consecrated in legislative form in the EU Food Law, Regulation 178/2002,[7] the EU's Food Safety Law. The central role which risk regulation occupies in EU law, for example in the form of the precautionary principle, was symbolised by its incorporation into what long had been the EEC's only common policy.[8]

Risk regulation research has been at the heart of EU-China relations for several decades, though until recently it has usually assumed other labels, which vary according to the policy field. A first example concerns food safety and product standards. In both areas, as in many others, the EU and China have elaborated numerous forms of cooperation, usually involving soft law and "soft institutions". Some institutions are more legalistic than others, as we can see by comparing the normative arrangements for sectoral dialogues such as the Consultation Mechanism on Industrial Products and WTO/TBT Issues, the MOU on Administrative Cooperative Arrangements between DG SANCO and AQSIQ, the EU-China Road Map on Safer Toys and the Arrangement on Joint Prevention of Illegal Action for Import and Export of Food. More generally, the EU and China cooperate in both bilateral and multilateral forums in the development of product standards.[9]

A second example concerns environment, energy and climate change. As early as 1994 the EU and China began an Energy Dialogue, which laid a foundation for numerous later developments. In 2003 they created an Environmental Policy Dialogue; in 2005 they established a Partnership on Climate Change. In 2005 the EU and China issued a Joint Declaration on Climate Change and in 2006 they agreed an MOU on Near-Zero Power Emissions Technology.[10] Since then cooperation on environment and climate change has become a central plank in EU-China relations.[11] Risk regulation and

[7] Regulation 178/2002 of the European Parliament and the Council [2002] OJ L31/1.

[8] See Francis Snyder, "CAP" in Erik Jones, Anand Menon and Stephen Weatherill (eds), *The Oxford Handbook of the European Union* (Oxford: Oxford University Press 2012) 485.

[9] See Francis Snyder, "The EU, China and Product Standards" in Sebastian Bersick, Kerry Brown, Andrew Cottey, Jorn-Carsten Gottwald and Wei Shen (eds), *Routledge Handbook on EU-China Relations*,(London: Routledge 2017, forthcoming).

[10] The above dialogues may be found in Francis Snyder, *The European Union and China, 1949–2008: Basic Documents and Commentary* (Oxford: Hart Publishing 2009).

[11] See "EU-China Strategic Agenda for Cooperation", issued at EU-China Summit meeting in November 2013, available at <http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf>, last accessed 29 November 2016. See also Etienne Reuter and Jing Men (eds), *China – EU: Green Cooperation* (Singapore: World Scientific Publishing 2014).

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risk regulation research is an integral part of these policy fields, though up to now it has been focused mainly on either the EU or China; hence there is considerable room for future bilateral or multilateral research cooperation.

III. Predictions and agenda

Risk regulation research has a bright future. This may be regrettable in an ideal world, but unfortunately we do not live in an ideal world. Instead, the conjunction of "old" and "new" risks is increasingly obvious today. For example in the current EU refugee crisis, in which the risks of famine, disease and poverty combine with the risks of modern science and high technology warfare to produce a humanitarian crisis of virtually unprecedented scale. In addition to the necessity of overcoming the lamentable lack of cooperation among EU Member States and of developing new forms of international cooperation to deal with this crisis, the conjunction of "old" and "new" may indicate some perspectives for present and future risk regulation research. In summary, risk regulation research is certain to continue, but in my view it needs to engage with both "old" and "new" risks.

I would like also to suggest a major reorientation of the field. Among the key topics of risk regulation research in the future, in my view, should be, first, to find an alternative to warfare and terrorism as a means of dealing with conflicts. A second priority, often related to the first, is putting an end to wide-spread famine and poverty. A third priority is the detection, prevention and cure of pandemic and epidemic diseases[12] and of other major illnesses such as heart diseases and the numerous forms of cancer. A fourth priority is to manage the current competition for food and water, scarce resources which are likely to provoke increasing conflict and risks in the future. Finally, I would add research on biotechnology, nanotechnology and other implications of contemporary technology, such as the use of robots, artificial intelligence, life sciences and increased exploration of space and the oceans. Risk regulation research on these vast topics is likely to be fragmented and piecemeal, which suggests the great potential benefits to be achieved by teamwork and international cooperation. But definitely it can be done, given sufficient imagination and determination to seek innovative approaches and theoretical and practical responses to social, economic and intellectual problems.

Overall, in my view, risk regulation research should increasingly take a perspective which might be characterised as a focus on social solidarity ethics. By "social solidarity ethics", I mean the conjunction of "the values of development, respect for the environment and social justice".[13] The recently amended Chinese Food Safety Law might provide a nudge in this direction. It provides, among other things, that "In the food safety work, priority shall be given to prevention and risk management, full process control shall be implemented, [and] the whole society shall participate…". Sometimes called "society co-governance",[14] this involves broad public participation in risk regulation.

[12] For a list, see World Health Organization, "Pandemic and Epidemic Diseases", available at <http://www.who.int/csr/disease/en/>, last accessed 29 November 2016.

[13] For further discussion in the context of international trade relations, see Francis Snyder, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation* (Oxford: Hart Publishing 2010) 381–423.

[14] With regard to food safety in China, it was first proposed by Vice-Premier Wang Yang in 2013 and reiterated by Premier Li Keqiang in 2014: see Sun Ying, "From Risk Communication to Society Co-governance: Ways of Dealing

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This risk regulation "turn" creates new opportunities and poses new challenges for our risk regulation research. From this perspective, we note that the "old risks" are just as important as the "new risks", and while most researchers do not really suffer from the "old risks", a very large number of other people in the world do. The idea of "risk society" is a kind of signalling device, it is a symbolic representation of certain types of risk, and it is a narrative to which we all contribute when we study risk regulation, bearing in mind both its advantages and its limitations.

(F'note continued)
with Crisis in Governmental Administration of Food Safety" (2016) 4(4) July *China Legal Science* 100, 112–114; see also Wang Yang, "Focusing on food and drug safety supervision", available at <http://www.china.org.cn/opinion/2013-08/23/content_29804616.htm>, last accessed 29 November 2016. More generally, see John Ackerman, "Co-Governance for Accountability: Beyond 'Exit' and 'Voice'" (2004) 32(3) *World Development* 447.

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