Book Reviews

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After ENRON should be read by all those interested in the regulatory state and the workings of the market place. The theme of this book is that what made the collapse of ENRON is that all the gatekeepers failed – both the official regulators such as the SEC and the market watchdogs, including the accountants, auditors, lawyers, the business press, the rating agencies and the banks.

The book brings together eight different authors as well as contributions by the editor, William A. Niskanen, the chairman of the Cato Institute. Different chapters on each of the different gatekeepers, official and private, examine why each link in the chain failed to spot the balance sheet deception at Enron and failed to blow the whistle in time.

At the root of the problems are two issues – one intractable and the other analytic. The intractable problem is fraud by senior managers of a company. The analytic question concerns agency. The managers of companies are, in theory, agents for the shareholders and their interests may diverge. Bankers, auditors and lawyers as well may see their interests aligned with management rather than shareholders as they have their own interests too. What this book discusses is the practical world of agency problems.

Blame for the failures is distributed evenly. The SEC is castigated for the failure of its company reporting system to see anything of what was happening. But the most interesting chapters are those that discuss the market failures – the complicity of the banks in setting up offshore vehicles that disguised borrowings as receivables and the equal complicity of the lawyers in failing to disclose the true nature of crucial items on Enron’s balance sheet.

Another important theme is the interrelationship between the official bodies that failed and the market watchdogs that failed. The book suggests, for example, that the market in corporate information provided by rating agencies has been inhibited by the way official bodies have relied upon and given their seal of approval to far too limited a range of providers. There is the suggestion too that it may have been the capital adequacy requirements imposed by bank regulators that have encouraged banks to securitise and off load credit risk and consequently be less attentive to the quality of the original asset. Corporate tax laws are also indicted for providing perverse incentives in the structuring of corporate balance sheets and executive remuneration.

In the wake of the Enron collapse, politicians rushed to provide instant legislative ‘remedies’ in the form of the Sarbanes-Oxley Act. An essay by Alan Reynolds on the political response characterises the Act as ‘unnecessary, harmful and inadequate’ (p. 40) ‘inadequate’ because, in the view of the author, it misdiagnoses the problems and ‘unnecessary and harmful’ because it piles regulations upon regulation in a way that may damage the wealth-creating dynamics of corporate America.
Of interest also is the discussion of non-legislative remedies that might correct market failures and avert the need for more legislation. These include allowing for greater competition and choice between standard-setters in the accounting world, asking securities exchanges to add ‘reporting up’ requirements to their listing standards for companies so that lawyers would be required to reveal suspected transactions and requiring exchanges to select and pay for the auditors of their listed companies. The development of a market in the votes of companies distinct from the market in shares is another more radical suggestion.

Readers might ask just how robust these and the other proposed remedies to secure reliable information are likely to be. Since demutualisation, exchanges seem to be getting out of the regulatory business because it adds to the costs of their business. In addition, standard-setters in the accounting world such as FASB and IASB seem more directed, with business support, to achieving convergent or equivalent standards rather than competition between standards. Even the authors seem unclear how to improve the quality of credit analysis in the banking world when so much attention is given to transferring bank-originated business to other risk-bearers who ought to do their own due diligence. Despite such questions this book is a riveting case study about agency problems in the corporate world. It should be read and digested both by academics and practitioners.

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What terrorism is to the twenty-first century, AIDS was to the last two decades of the twentieth century: the enemy within. The outbreak of the epidemic promoted something near panic in many countries, raising a host of questions about the balance between civil liberties and the community interest. How far could, or should, the state go in protecting the population as a whole in its efforts to limit the spread of the epidemic? Should there be compulsory screening of those groups who appeared to be most at risk – gays and drug users in this case – and the notification to the authorities of anyone found to be seropositive? Should the rights of those found to be suffering from the disease – like the right to engage in unprotected sex – be circumscribed? Should AIDS sufferers in effect be quarantined? Should potential immigrants be tested before being allowed entry into the country? Should doctors be bound by the doctrine of patient confidentiality or should they warn partners and report to public authorities? Different countries gave different answers to these questions, and the aim of Peter Baldwin’s study is both to explore the nature of the responses and to explore the politics of policy in a range of rich democracies – with some sideway looks at other countries such as Cuba and the Eastern bloc before the collapse of Communism.

All nations confronting AIDS had a battery of legal instruments for dealing with transmittable diseases, mostly dating from the nineteenth century. These included restrictions on the movements and activities permitted to the victims of such diseases, provision for tracing contacts and in some cases mandatory
treatment and care. In the event, however, few of the rich democracies invoked these instruments when it came to AIDS. There had been, as Baldwin argues without using the term, a paradigm shift in the politics of prevention. The transmittable diseases of the nineteenth century – where environmental factors were often implicated, as in the case of cholera – had necessarily called for collective action. The dominating challenges of the twentieth century – heart disease and cancer – however called for more individualistic responses: for example, giving up smoking or taking exercise. No longer was the state responsible for policing the health of society: everyone was to be his or her own policeman. Internal constraints replaced external constraints. Hence, an emphasis on voluntarism – in testing and changing behaviour – rather than compulsion in dealing with AIDS.

While this helps to explain the general trend of public policy across countries, it does not account for variations around that trend, and there are many. Most conspicuously, there is the case of Sweden which ‘subjected seropositive and AIDS victims to restrictions without compare outside eastern Europe’s socialist nations: compulsory examination, mandatory contact tracing, possibly indefinite quarantine of recalcitrants, as well as extensive monitoring of seropositives’ behaviour by the police and social authorities’. Only Bavaria, but not the rest of Germany, followed the Swedish model of applying traditional restrictive policies. But there were many other variations. For example, the United States screened immigrants, some public servants and the army, while other countries did not. And there were differences between countries in their enthusiasm – or lack of it – for introducing needle exchange schemes for drug users.

What explains these differences? Baldwin systematically goes through possible explanations. Political ideology does not help much; there appears to be little correlation between policies and the position of ruling parties on the left–right spectrum. Geographical position – the ability to control immigration – may, as in the case of the US, be a contributory factor. The precise nature of the epidemic in different countries – the extent to which it was confined to the gay community or had extended beyond – also helped to shape responses. There were differences, too, between federal and centralised countries. But above all there was history in two senses. First, attitudes towards the state varied between countries. So, in Sweden’s model welfare society, the state was seen as benevolent, thus making ruthless policies acceptable while in Germany, outside Bavaria, the Nazi past made drastic state action suspect. Second, policy makers built – as always – on traditional assumptions and inherited routines. In the case of Britain there was a tradition of relying on voluntary co-operation in testing and other matters, while in the United States there was a tradition of trying to prevent epidemics by screening immigrants.

A review can present only an over-simple version of Baldwin’s complex and highly sophisticated analysis. And indeed if there is to be any criticism of Baldwin’s study, it is that he allows himself to luxuriate over-much in details whose relevance is not always clear and therefore tends to distract from the main lines of argument. As in his previous books – his magisterial history of the origins of the European Welfare State and his study of public health in the nineteenth century – he shows an astounding capacity to draw on sources in many languages: his dense text of 289 pages is backed up by more than 150 pages of references. Amazement at Baldwin’s
command of his material occasionally comes near to revolt under the bombardment of information, but his sardonic sense of humour helps to provide relief.

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Alan Greer, reader in politics and public policy at the University of the West of England, develops two major themes: the Common Agricultural Policy (CAP) is increasingly less common, and less about agriculture, than is usually supposed. His ‘core assumption . . . is that the national level is crucial at all stages’. Thus the ‘main influences on policy development are national governments, working in the context of exogenous pressures (world trade and technological change), supranational and international institutions (especially the EU), and domestic policy network structures’ (p. 202). Greer refers to a cafeteria CAP with ‘a menu from which countries can choose those dishes most suited to their individual tastes’ (p. 208). Perhaps a more telling metaphor would be a menu touristique, providing the diner with a limited range of options from which to choose.

Whilst not wishing to challenge Greer’s theme in a substantive way, there is a different take on policy developments. First, it might be claimed that the CAP became increasingly more common in the late 1980s and early 1990s, and has since – as Greer claims – become increasingly less so. Thus, prompted by the Single Europe Market project, the diversity of schemes to support sheep producers was harmonised, a common banana regime was introduced, and the huge discrepancies in levels of price support from one Member State to another that had existed in the 1970s and 1980s as a result of the green money system (referred to briefly by Greer) were eliminated. Furthermore, the IACS (Integrated Administration and Control System) arrangements for area and headage payments introduced by the MacSharry reforms of 1992 were an attempt to bring more consistency to the implementation of the CAP by national administrations. Land law and business taxation, of course, have always been Member State rather than EU competencies.

Has the CAP become less about agriculture, and more about rural development? Rural development is referred to as the second pillar of the CAP after traditional price and income support. However, as Greer himself notes, it could ‘be argued that the “second pillar” designation limits rural development by incorporating it into a reformed agricultural paradigm’ (p. 126). Following the French and Dutch electorates’ rejection of the draft European Constitution in spring, 2005, and uncertainty over the EU budget for the period 2007–13, any further switch from first to second pillar spending remains uncertain. An alternative view of the world might be that prior to 1992, under the old CAP market price support advantaged first-stage processing companies (abattoirs, creameries, sugar refineries, etc.) as much as farmers, because the farmer’s produce had to be processed before support was triggered. The MacSharry reforms of 1992 began a switch of support away from the processing of agricultural raw materials and the storage of intervention stocks to more direct support of farming, although that will not be complete until reform of the sugar sector is
finalised. What the Fischler reforms of 2003 have done, with the introduction of the Single Payment Scheme, is tied that support to land, clearly benefiting the landowner rather than the tenant farmer. This alternative view identifies a wider group of economic interests and raises questions about the nature of the policy networks that have impacted on the CAP over the years.

Greer’s presentation of the Fischler reforms outlines the different ways in which the Single Payment Scheme is being implemented between, or in the case of the UK, within the Member States. However the discussion of one of his ‘exogenous pressures’ – the agricultural trade negotiations in the WTO’s Doha Round – does not appear to extend beyond the summer of 2003, and we are left guessing whether or not he believes the Fischler reforms will facilitate an outcome in the WTO, and thus assuage this exogenous pressure (p. 141).

Following a conceptual overview of the agricultural policy process, in a series of chapters the book gives national perspectives for Ireland, France, Greece, the Netherlands and the UK, and occasionally Poland on national actors and agricultural policy, the agricultural policy environment, setting the agricultural policy agenda, policy formulation, policy choices, and policy implementation. Occasionally comments are garbled (e.g. the Peace Clause in the WTO Agreement on Agriculture did not refer to tariffs: p. 140) or unreferenced (e.g. the claim that France used the European Court of Justice to successfully appeal ‘against an element of the Blair House Accord on corn gluten imports’: p. 185); but Alan Greer has assembled a mass of detail for the reader to explore and digest, and challenged our views about the EU’s uncommon food-cum agricultural-cum rural policy.

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