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Toward A 'Responsible' Future: Reframing and Reforming the Governance of Financial Markets

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A. Introduction

On 17 June 2009, the White House officially launched its proposals for reforming the federal government's approach to reform oversight of the banking industry and financial markets.[1] It promised to be the most significant overhaul of any US regulatory system in nearly 80 years, and involved structural and jurisdictional changes that (if passed and implemented) would transform the way both government and the entire financial sector conducted business in the US and globally.

Reflecting the strategic and politically pragmatic orientation of the Obama Administration, this was no mere 'pie-in-the-sky' plan that could be easily blocked and dismissed by the powerful forces in and around Congress that typically find ways to emasculate—if not effectively pre-empt—such schemes. The concerns and/or displeasure of potential opponents from most quarters had been considered, and few if any of the main players complained that they had not been consulted or their ideas given serious consideration. As one measure of how well the Administration had designed the plan for a soft landing on the political runway, Wall Street indicators such as the Dow Jones average barely registered an impact that day despite the transformational nature of what the White House had put on the table.

Although many of the specifics of the Obama plan for reform are likely to be modified as proposals wend their way through the policy-making process, few doubt or challenge the basic premise of the effort: the regulatory system focused on the financial sector in the US is broken to the extent that it requires major repairs. It demanded a regulatory system overhaul that will prevent a recurrence of a situation that had developed over the years and came to a critical head the previous fall with the collapse of several major firms and a 'freeze' of the credit markets that effectively converted an emerging recession into what

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[1] US Department of the Treasury, 'Financial Regulatory Reform: A New Foundation' (2009).

many analysts term an economic depression.[2] In this chapter I argue that this attempt at reform will not, in fact, achieve that objective, but not for the reasons most of its critics offer. Among the critics, the proposals either go too far or do not go far enough in the changes they will bring about. In contrast, I contend that the problems facing these reforms are not a matter of too much or too little reform, but rather an unfocused (and misfocused) approach to reform.

The current efforts to design relevant reforms of the troubled financial markets both in the US and abroad are preoccupied with repairing a fundamentally flawed set of policies. There will no doubt be some initial sense of accomplishment as regulatory jurisdictions are reorganised and regulatory agencies are created and or shuffled about in a reform scheme that seems radical on the surface, but only because it is in fact superficial.

After a brief consideration of the dynamics of the 'blame game' that is generating and shaping most of the reform agenda in Washington, London and elsewhere, I make the case for an approach that goes beyond mere tinkering with traditional regulatory mechanisms and instead focuses on the need to reform the 'governance' of the financial sector. This perspective requires that we shift and raise our sights from the arena of institutions and regulatory mechanisms to the domain of governance regimes. Further, I make the case for the existence of two interrelated regimes that require attention if we are to make any headway in the design of relevant and effective reforms. One of those regimes—the regulatory, which focuses on governance through control—has already received considerable attention from analysts, and I highlight one effort (by Hood, Rothstein and Baldwin (HRB), referred to in more detail below) at framing the elements of that regime. The other regime—accountability, which fosters governance through responsibility—requires more analytic attention, and I offer the foundations for a framework the seeks to emulate the HRB effort. I conclude by offering some basic 'design principles' that need to be kept in mind as we deal with the future of financial market governance.

B. Random Fishing in the Accountability Stream

'It isn't that they can't see the solution. It is that they can't see the problem' (GK Chesterton)

Developing long-term and appropriate solutions to the current financial crisis requires a thorough assessment of the problems that generated the situation. Given the complexity of domestic and global financial markets, even the most knowledgeable minds of the era find the analytic challenge overwhelming.[3]

In lieu of some consensus on credible paradigmatic framing of the crisis, policymakers have found other means for filling the 'problem definition gap'.[4] Thus, although one would

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[2] At the start of the crisis there was considerable debate about whether the US economy was technically in a 'recession'—a debate nurtured by the rather formal process put in place for declaring that condition. Once that hurdle was completed, the term 'depression' was put into play by analysts and commentators. See 'Diagnosing Depression; Economics Focus 2009', *The Economist*, 1 March 2009; see also RA Posner, *A Failure of Capitalism: The Crisis of '08 and the Descent into Depression* (Cambridge, MA, Harvard University Press, 2009).

[3] Economists and other analysts were similarly perplexed during the initial stages of the Great Depression. Keynes drew so much attention because his perspective seemed to fill a void created by the failure of extant theories and models.

[4] On the nature and dynamics of problem definition, see D Dery, *Problem Definition in Policy Analysis* (Lawrence KS, University Press of Kansas, 1984); R Hoppe, 'Cultures of Public Policy Problems' (2002) 4 *Journal*

hope for a more rational approach to designing policies that might prevent any future recurrence of the current problems, we are currently engaged in multiple 'blame games' that will invariably influence the shape of government regulation of financial markets for the foreseeable future.

Beyond the well-studied dynamics of political blame avoidance,[5] driving the emergence of 'blame games' during times of crisis is the pressure policymakers feel as they attempt to fill the gap created by ignorance or uncertainty about the problematic situation they are facing.[6]

To make matters more complicated, those who assume the task of designing policy responses face a range of ontological choices. At one extreme is the assumption that the universe generates problems (eg crises, disasters) randomly—that is, 'stuff happens' without any explicable explanation and the best we can do collectively is prepare for those eventualities that seem to have a greater probability of occurring. A second extreme position—let us call it the 'acts of god(s)' perspective—views the universe as subject to the whims and unfathomable logic of some supernatural beings or forces that cannot be subjected to our powers of understanding. The best we can do under such assumed circumstances is prepare for any eventuality and engage in considerable praying or perhaps some ritual sacrifices.

Modern policy designers (at least those who accept the basic premises of the Enlightenment) assume some position between those two extremes, which ideally requires a careful analysis of a problematic condition so as to determine those causal factors which can be addressed by policy actions—or at minimum those factors that can be addressed by policies designed to ameliorate the consequences or prevent a recurrence.[7] For students of the policy design process, the fact that the universe provides few opportunities for applying objective analysis leads to a fall-back position relying on the social construction of problematic realities that can be subjected to some policy fix. Even here, however, uncertainty (and thus controversy) rules unless there exists some 'theory' or 'model' powerful enough to preclude or direct debates over those factors that policies need to address. Here is where the 'blame game' typically enters the picture.

of Comparative Policy Analysis 305; DR Rochefort and RW Cobb (eds), *The Politics of Problem Definition: Shaping the Policy Agenda* (Lawrence, KS, University Press of Kansas, 1994).

[5] See, eg C Hood, 'The Risk Game and the Blame Game' (2002) 37 *Government and Opposition* 15; DL Weimer, 'The Puzzle of Private Rulemaking: Expertise, Flexibility, and Blame Avoidance in US Regulation' (2006) 66 *Public Administration Review* 569; R Ellis, *Presidential Lightning Rods: The Politics of Blame Avoidance Studies in Government and Public Policy* (Lawrence, KS, University Press of Kansas, 1994); KM McGraw, 'Managing Blame: An Experimental Test of the Effects of Political Accounts' (1991) 85 *American Political Science Review* 1133; KM McGraw, 'Avoiding Blame: An Experimental Investigation of Political Excuses and Justifications' (1990) 20 *British Journal of Political Science* 119.

[6] Studies of the blame game and similar concepts (eg hindsight causal analysis, attribution, issue responsibility) include S Iyengar, *Is Anyone Responsible? How Television Frames Political Issues* (Chicago, IL, University of Chicago Press, 1991); S Iyengar, 'Framing Responsibility for Political Issues' (1996) 546 *Annals of the American Academy of Political and Social Science* 59; JJ Strange and CC Leung, 'How Anecdotal Accounts in News and in Fiction Can Influence Judgments of a Social Problem's Urgency, Causes, and Cures' (1999) 25 *Personality and Social Psychology Bulletin* 436; S Knobloch-Westerwick and LD Taylor, 'The Blame Game: Elements of Causal Attribution and Its Impact on Siding with Agents in the News' (2008) 35 *Communication Research* 723. See also DA Kysar and TO McGarity, 'Did Nepa Drown New Orleans? The Levees, the Blame Game, and the Hazards of Hindsight' (2006) 56 *Duke Law Journal* 179.

[7] For a positive expression of this agenda, see D Lerner and HD Lasswell (eds), *The Policy Sciences; Recent Developments in Scope and Method* (Stanford, CA, Stanford University Press, 1951) and Y Dror, *Design for Policy Sciences* (New York, American Elsevier, 1971); Y Dror, 'Prolegomena to Policy Sciences' (1970) 1 *Policy Sciences* 135.

The 'games' themselves are part of a cultural phenomenon basic to modern societies fixated on determining and dealing with the causes of our collective ills. At least in the realm of public policy, secularisation and 'scientism' have for the most part deposed most forms of fatalism and replaced them with a pragmatic belief that public problems can be analysed and ameliorated, if not actually 'fixed'.

Put otherwise, the salience of these games reflects an inherent bias in our policy-making process that seeks out a causal factor that can be acted upon. The urge to take collective (policy) action to deal with a public problem reflects the perceived possibility of taking effective action—and this, in turn, requires some sense of a link between some factor that can be acted upon and the problem. Deborah Stone[8] provides a simple but insightful view of options offered in her four types of 'causal theories' underlying public policies (see Figure 1). Assuming some degree of consensus among policymakers regarding who or what 'caused' (ie is to blame for) the problem at hand, these 'theories' can have considerable impact on the form and content of resulting decisions. Blame games emerge where such a consensus is lacking, the result being a political struggle to define the cause and (eventually) policy choices that reflect the competition among conflicting views.

In the current debate over the financial meltdown, these 'games' have taken a variety of forms—from well thought out studies to blogger rants to Oxford-style debates—and not

	Consequences:	
Actions:	**Intended**	**Unintended**
Unguided	***Mechanical cause*** intervening agent machines trained animals brainwashed people	***Accidental cause*** nature weather earthquakes machines run amok
Purposeful	***Intentional cause*** assault oppression conspiracies that work programs that work	***Inadvertent cause*** intervening conditions unforeseen side effects neglect carelessness omission

Figure 1. Stone's types of causal theories.

[8] DA Stone, *Policy Paradox: The Art of Political Decision Making*, 2nd edn (New York, WW Norton, 1997) 285.

surprisingly are leading to the conclusion that both everyone and no one has some causal responsibility to bear. Was it Wall Street's fault for taking advantage of newly created instruments and schemes to create a bubble that would eventually burst, or was it Washington's (or London's or Paris's) fault for letting down its regulatory guard allowing the banks to run bullishly through the markets? Or perhaps it was the fault of the Main Street folks who let themselves be conned into believing that home values would rise forever and that there were no risks in taking on the debt obligations of a new mortgage or ever higher credit card balances. A convincing argument has also been made for placing the blame at the systemic level where the interconnectedness of globalised financial markets made the entire network vulnerable to collapse once a critical link (in this case, most point to the US housing market) weakened.

Whatever one can conclude from these various finger-pointing exercises, the significance of these blame games in shaping the causal theories (that will, in turn, shape future policy) might be substantial. Without a consensus view or coherent framing of what caused the present crisis, we should not be surprised to see the emergence of a 'hodge podge' set of proposals that reflect political bargaining and compromise rather than what economists regard as an effective and coherent package of solutions.[9]

That noted, the resulting 'hodge podge' is not without its common thread. If one were to focus on the rhetoric used to rationalise proposals put forth by the White House and others, it would be clear that solutions proffered by a variety of politicians and experts rely on actions designed to improve accountability. The underlying logic is simple and sensible on its face: once we determine (correctly or incorrectly) that someone or some agency or some process is to blame, the steps taken to prevent or mitigate a future recurrence must necessarily include some account-giving mechanisms.

But here, too, the lack of a more developed framing logic proves problematic for designing policy solutions. The issue of which accountability mechanisms are relevant to the current financial crisis remains an open question. What does it mean to demand 'greater accountability' of the various actors in the financial services industry? The typical responses to that question generate a plethora of 'usual suspects'. We want those involved—whether bankers or regulators or customers—to assume greater 'responsibility' for their actions. At the same time, we desire that each be 'answerable' to their respective principals—shareholders for the bankers and the public for the regulators. For bankers and others in the corporate sector of this domain, we require that they live up to the fiduciary 'obligations' they assumed when taking on their respective positions. As for the regulators, we assume they will be 'responsive' to the concerns and complaints brought before them. And for those bankers or regulators or customers who might attempt to circumvent or undermine the mechanisms established for those various purposes, we want them to be 'liable' for the consequences of their possible mis/malfeasances.

The argument I offer here is that, without some effort to define the problems being addressed in a clear and coherent way, reforming the financial services industry by establishing greater accountability will prove difficult at best. The general rhetoric of reform, however, has not fostered any such clarity. 'Make them [more] accountable' is the clarion call from all corners of the policy-making world. And, at least to this point in the crisis,

[9] By the spring of 2009, the main discussion among economists had moved from the academic journals to editorial op-ed pages, the internet and comments made on podcasts and mass media business news shows. Despite criticisms of government proposals that emerged from the blame game, many of the same experts contributed to the cacophony that generated the many and varied proposals.

that rhetorical theme has trumped any effort to focus attention on exactly what it is we wish to accomplish by declaring our desire for more accountability.

For many students of the public policy-making process, the present situation confirms the growing popularity of what is called the 'garbage can model' (GCM) of decision-making. Originally articulated as a model to explain decision-making in 'organised anarchies' such as universities,[10] GCM has been transformed into a widely used model of the complex policy-making process in the US which has features resembling anarchical arrangements. Perhaps the best known of these GCMs was developed by John Kingdon,[11] who described the process as involving three independent 'streams': a 'problem' stream, representing the current flow of issues of potential interest to policy-makers; a 'policy' stream of possible solutions, many seeking a problem to deal with; and a 'political' stream of various actors whose interests and activities vary over time. For Kingdon and others who use this model, the adoption of a policy involves a fortuitous convergence of these three streams during a 'window of opportunity' when all three happen to flow together.

Applied within a particular 'policy domain' such as the reform of financial markets, this multiple streams model helps us make sense of the current situation where the ongoing blame game is generating multiple problems (related to a range of accountability deficiencies) to be 'solved', with policymakers responding by throwing various accountability-based solutions at those situations that seem to be the most salient at a given moment.

Perhaps the most obvious example is the recent flare-up involving the infamous 'retention bonuses' at AIG. In the midst of a major effort to design a reasonable and feasible plan for relieving banks of their 'toxic assets' (which was itself filled with many different accountability-related challenges), the primary policy actors had to contend with a media-fed public outrage by attempting to hold AIG 'to account' for what many (incorrectly, as it turned out) perceived as a violation of the public trust and treasure. Executive compensation restrictions had in fact been part of the ongoing deliberation of how to design the troubled asset-relief programme (TARP) from the outset, but the issue was plucked from a problem stream filled with many more (and less) significant issues, and the resulting 'crisis' generated a frenzied search for a quick-fix response from among those found in the stream of policy instruments that would satisfy the whirlwind that brought turbulence to the political stream.[12]

While the AIG episode may prove to be exceptional in light of the attention it received and the extreme nature of the policy responses it drew, there is nothing in the public record to indicate that a more reasoned (non-GCM-like) process is being applied in response to other issues in this policy domain. Faced with specific issues related to a particular aspect of the financial crisis, policymakers will respond with accountability

[10] For the original version of the model, see MD Cohen, JG March and JP Olsen, 'A Garbage Can Model of Organizational Choice' (1972) 17 *Administrative Science Quarterly* 1; see also JG March and JP Olsen (eds), *Ambiguity and Choice in Organizations* (Bergen, Universitetsforlaget, 1976); MD Cohen and JG March, *Leadership and Ambiguity: The American College President*, 2nd edn (Boston, MA, Harvard Business School Press, 1986).

[11] JW Kingdon, *Agendas, Alternatives, and Public Policies* (Boston, MA, Little Brown, 1984); see also G Mucciaroni, 'The Garbage Can Model and the Study of Policy Making: A Critique' (1992) 24 *Polity* 459.

[12] See B Webel, 'Ongoing Government Assistance for American International Group (AIG)', Congressional Report (Washington, Library of Congress Congressional Research Service, 1992); LG Thatcher, 'Executive Compensation Restrictions under the American Recovery and Reinvestment Act of 2009' (2009) 41(3) *Compensation Benefits Review* 20.

mechanisms pulled from the policy stream that seems the best fit to deal with the narrowly defined problem.

Put another way, the ambiguous nature of the rhetorical calls for 'greater accountability' are producing the expected response (at least under the GCM): an ad hoc proliferation of policy proposals that are incoherent and inconsistent at best. In some instances we have reforms designed (intentionally or not) to strengthen oversight and control—of both the regulated and the regulators! At the same time, demands for greater 'transparency' and open deliberations are made of all parties. In other cases we find accountability mechanisms aimed at ensuring that the internal decision processes (again, of both the regulated banking community and the regulators) follow a certain pattern and that the targeted decision makers behave in an 'ethical' or appropriate way. Still other responses impose 'high stakes' performance standards and measures designed to direct and 'motivate' the various agents and agencies involved.

Each of these policy responses makes sense in light of the narrow and specific nature of the problems drawn from the stream at a given time. The more general question is whether, when taken together and assessed in their entirety, they can constitute an effective effort to deal with the need for 'greater accountability' in the financial services domain.

C. Framing the Design Problem

If we are to develop solutions to the current financial crisis, we need to begin by articulating and framing the problem, and here we can start with a basic assumption about the corporatised market that has been accepted by both political scientists and economists since at least the 1930s: the central problems are those of creating and sustaining 'good governance'.[13]

As with all terms that are part of the common parlance of political dialogue (eg power, sovereignty), reference to the concept of governance requires some analytic clarity. Among those engaged in the analysis of government, however, the focus of attention is so wide ranging that any study must assume an arbitrary position regarding the concept. So, for many, governance is 'what governments do'—the tasks and functions they carry out as the legitimate controllers of the machinery of the modern state.[14] At the other extreme are those who regard governance as 'socio-cybernetic systems' and 'self-organising networks' which emerge as authoritative sources of control within and among all forms of organised

[13] The use of the phrase 'good governance' may be troublesome for some, not merely for its obvious normative implications, but also due to its association with 'neo-liberal' policies of the World Bank and International Monetary Fund. See, eg LS Finkelstein, 'What Is Global Governance?' (1995) 1 *Global Governance* 367; CH de Alcántara, 'Uses and Abuses of the Concept of Governance' (1998) 50 *International Social Science Journal* 105; TG Weiss, 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges' (2000) 21 *Third World Quarterly* 795; M Doornbos, '"Good Governance": The Rise and Decline of a Policy Metaphor?' (2001) 37 *Journal of Development Studies* 93; RV Aguilera and A Cuervo-Cazurra, 'Codes of Good Governance Worldwide: What Is the Trigger?' (2004) 25 *Organization Studies* 415; P Bourdieu, *The Social Structures of the Economy* (Malden MA, Polity, 2005), 10–12. In the analytic exercise that follows I attempt to circumvent both the normative and ideological implications of the concept.

[14] See, eg R Rose, 'On the Priorities of Government: A Developmental Analysis of Public Policies' (1976) 4 *European Journal of Political Research* 247.

life—from the family unit to the modern state and global networks.[15] Taking a somewhat middle course are analysts such as Oliver E Williamson, who traces the study of governance to the work of John Commons and Ronald Coase, and defines it as the examination 'of good order and workable arrangements'.[16]

For present purposes we will follow that 'middle road' definition and assume that the focus of our policy design task is to articulate reforms that can be made to enhance the 'good order and workable arrangements' that 'govern' the form and operations of today's financial markets.

Another central tool for this design task is that of 'regimes', a concept often used by students of governance, whether they are focusing on states, networks or formal organisations. In conventional discussions about politics, the term 'regime' is loosely applied to types of political systems or styles of governance (eg democratic regimes, authoritarian regimes, Stalinist regimes), or the government of a country that has been ruled by some person or party for an extended period (eg the Castro regime, the Communist regime).[17]

Among scholars who study governance, the term 'regime' is typically assigned to those politically relevant social and economic arrangements that endure over time to form the setting within which governments (and political systems in general) operate. More specifically, what the term 'regime' means analytically depends on the scope, breadth and depth of the domain of governance action to which it is being applied. For some, regimes constitute the basic moral order or (in Charles Taylor's phrase) social imaginary[18] that influences the form, direction and force of governance. In Taylor's sweeping historical analysis and critique of the modern 'secular' age, for example, the term regime is synonymous with the underlying 'moral order' of a society, and he regards changes and shift in regimes (ie social imaginaries) to be rare and revolutionary.

For others, regimes are reflected in the patterns of governance that emerge within settings where the traditional structures and mechanisms of government are not available. Students of world politics have paid growing attention to the role that both formal and informal international regimes have played (and continue to play) in transnational relationships and the development of the global economy.[19] Another group of scholars,

[15] RAW Rhodes, 'The New Governance: Governing without Government' (1996) 44 *Political Studies* 652; see also G Stoker, 'Governance as Theory: Five Propositions' (1998) 50 *International Social Science Journal* 17.

[16] OE Williamson, 'Visible and Invisible Governance' (1994) 84 *American Economic Review* 323; OE Williamson, 'The Institutions of Governance' (1994) 88 *American Economic Review* 75; OE Williamson, 'The Economics of Governance' (1998) 95 *American Economic Review* 1; see also JR Commons, 'The Problem of Correlating Law, Economics and Ethics' (1932) 8 *Wisconsin Law Review* 3; RH Coase, 'The Nature of the Firm' (1937) 4 *Economica* 386.

[17] There is notably a negative, judgemental sense implied in the popular use of the word 'regime' evidenced by the fact that the concept is rarely applied to US regimes (typically labelled 'administrations') or many parliamentary regimes (which are noted as 'governments' in the media).

[18] C Taylor, *Modern Social Imaginaries* (Durham, NC, Duke University Press, 2004); C Taylor, *A Secular Age* (Cambridge, MA, Belknap Press of Harvard University Press, 2007).

[19] Eg OR Young, 'Review: International Regimes: Toward a New Theory of Institutions' (1987) 39 *World Politics* 104; OR Young, 'Regime Dynamics: The Rise and Fall of International Regimes' (1982) 36 *International Organization* 277; OR Young, 'International Regimes: Problems of Concept Formation' 32 *World Politics* 331, SD Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables' (1982) 36 *International Organization* 185; SD Krasner, 'Regimes and the Limits of Realism: Regimes as Autonomous Variables' (1982) 36 *International Organization* 497; JG Ruggie, 'Reconstituting the Global Public Domain—Issues, Actors, and Practices' (2004) 10 *European Journal of International Relations* 499; JG Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *International Organization* 379; EB Haas, 'Words Can Hurt You; or, Who Said What to Whom About Regimes' (1982) 36 *International Organization* 207.

many of whom are associated with the public choice perspective that spans economics and political science, regard a regime as the 'logic' of governance (eg Madisonian, Weberian) that develops within a constitutional ordering of political and social relationships.[20] At an even more specific level, students of regulatory policy apply the term regimes to the range of strategic approaches used within a particular policy arena (eg utility pricing, telecommunications).[21]

For present purposes, the concept of regime will be applied to the two governance arrangements that are most salient in the reform of the financial services sector. A regulatory regime involves arrangements of institutions, norms, values and relationships intended primarily to exercise some degree of control over the governed acts and actors. It is somewhat synonymous with Jessop's 'regulation approach' view of capitalist economies, involving 'economic and extra-economic institutions and practices which help to secure, if only temporarily and always in specific economic spaces, a certain stability and predictability in accumulation—despite fundamental contradictions and conflicts generated by the very dynamic of capital itself'.[22]

A regulatory regime can take an explicit form, as manifested in legal and bureaucratic frameworks that generate and enforce laws and rules,[23] or it can take a more implicit form in the development of a Foucauldian 'governmentality' that (in its most extreme) fosters a sense of panoptic oversight and monitoring.[24]

Among the most useful, design-relevant explications of regulatory regimes is that offered by HRB in their watershed book, *The Government of Risk*.[25] Although their study directly addresses social risk policies in the UK, their framework has a broader applicability through its focus on the variations of means and mechanisms used to control individual and collective risk behaviour across several different policy domains, including related to the domestic and global marketplace. Central to the HRB construct (see Figure 2) are three core forms of 'control components' used to deal with risk within an examined domain: information gathering; standard setting; and behaviour modification. These are then explicated in terms of the context (type of risk, public attitudes, organised interests) and content (size, structure and style of regulatory effort). The result is an analytic frame developed to describe (for heuristic purposes) and empirically examine (for research and

[20] See E Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge, Cambridge University Press, 1990); see also E Schlager and E Ostrom, 'Property-rights Regimes and Natural Resources: A Conceptual Analysis' (1992) 68 *Land Economics* 249. A classic expression of the public choice perspective does not rely on the concept of 'regime,' but implies it in considering American public administration from both a Madisonian and Weberian ('Wilsonian') paradigm; see V Ostrom, *The Intellectual Crisis in American Public Administration*, rev edn (Tuscaloosa, AL, University of Alabama Press, 1974).

[21] Eg R Schmalensee, 'Good Regulatory Regimes' (1989) 20 *Rand Journal of Economics* 417; DL Weisman, 'Superior Regulatory Regimes in Theory and Practice' (1993) 5 *Journal of Regulatory Economics* 355; J Rust and G Rothwell, 'Optimal Response to a Shift in Regulatory Regime: The Case of the US Nuclear Power Industry' (1995) 10 *Journal of Applied Econometrics* S75.

[22] B Jessop, 'Survey Article: The Regulation Approach' (1997) 5 *Journal of Political Philosophy* 287, 288.

[23] The 'regulatory state' concept that reflects this view is found in G Majone, 'From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance' (1997) 17 *Journal of Public Policy* 139; G Majone, 'The Regulatory State and Its Legitimacy Problems' (1999) 22 *West European Politics* 1; G Majone, 'Regulation in Comparative Perspective' (1999) 1 *Journal of Comparative Policy Analysis* 309; see also M Moran, 'The Rise of the Regulatory State in Britain' (2001) 54 *Parliamentary Affairs* 19.

[24] See N Rose and P Miller, 'Political Power Beyond the State: Problematics of Government' (1992) 43 *British Journal of Sociology* 173; N Rose, 'Government and Control' (2000) 40 *British Journal of Criminology* 321; NS Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge, Cambridge University Press, 1999).

[25] C Hood, H Rothstein and R Baldwin, *The Government of Risk: Understanding Risk Regulation Regimes* (Oxford, Oxford University Press, 2001).

	Control components:		
	Information gathering	**Standard setting**	**Behaviour modification**
Context: e.g., type and level of risk being tackled, nature of public media attitudes, configuration of lobbies and organized interests	Example: risks individuals can assess at low cost vs risks assessable only by professionals or at high cost	Example: risks involving high stakes for organized groups vs risks with no lobby groups	Example: risks where mass public opinion resist state control vs regulation 'with the grain'
Content: e.g., regulatory stance, organizational structure, operating conventions and regulator attitudes	Example: active vs passive information-seeking by regulators	Example: cost-benefit vs technical feasibility approaches to goal setting	Example: price signals vs command approaches to control

Figure 2. HRB's control components and regulatory regime content and context.

theory development/testing purposes)[26] regulatory regimes aimed at risk. In addition, the dimensions used in the framework can be articulated in forms that facilitate at least comparative (if not even more systematic) assessment. As significant, those interested in generating solutions to problems plaguing a particular policy domain can certainly find value in the design elements implied in the HRB analytic scheme.[27]

Within the governance setting there is a second and quite necessary complement to the regulatory regime that fosters a sense of responsibility and obligation among actors in the domain. This accountability regime involves arrangements and 'assemblages'[28] of institutions, norms, values and relationships related to the fact that governance involves more

[26] See C Hood and H Rothstein, 'Risk Regulation under Pressure: Problem Solving or Blame Shifting?' (2001) 33 *Administration & Society* 21.

[27] D Levi-Flaur, 'Regulatory Capitalism: The Dynamics of Change Beyond Telecoms and Electricity' (2006) 19 *Governance* 497.

[28] See S Sassen, 'Neither Global nor National: Novel Assemblages of Territory, Authority and Rights' (2008) 1 *Ethics & Global Politics* 61.

than a web of control components and associated mechanisms; governance is based as much on some normative order—a 'moral community' context or 'accountability space' within which the governed population (of acts and actors) necessarily operates. It is within that regime space that standards of appropriate and ethical behaviour—in very general terms, expectations of responsible behaviour—are established and sustained, and where trust can be nurtured.

Seen from a domain perspective, governance primarily (but not exclusively)[29] involves both the control of risk and the management of expectations. A governance effort involves both, and an effective ('good') governance effort (which is the assumed goal of policy reform) is one that treats the regimes that address these two functions as complementary.

Applying this two-regime perspective to the current efforts to reform the financial services market, it can be argued that almost all reform efforts have been focused on the regulatory aspects of the general governance problem. In part, this contention reflects the 'blame game' approach that has dominated explanations of what went wrong in the financial sector; in the aftermath of a crisis, when all or most systems have failed or seem in disarray, the regulatory mechanisms (and regulators) provide easy targets for blame gamers. In addition, the concentration on regulatory regime reforms reflects the fact that (re)designing control regimes seems less challenging than designing accountability regimes.

A more fundamental view of the problem is conceptual. The difficulty with designing reforms for the accountability regimes of governance can be traced to our inability to understand and appreciate what this important area of governance entails. In the remainder of this chapter I explore the nature of the accountability regime with the intent of constructing a preliminary framework for the design of reform policies that can offer a more effective approach to solving the governance issues that plague that arena. While the goal is an analytic frame of utility and power equal to the HRB scheme, what follows should be regarded as foundational at best.

D. Mechanisms and Moral Standards

Despite the drawbacks of following the conventional blame gaming approach to determining the problems of a policy domain in crisis, there are some insights to be gained by examining the resulting political rhetoric and policy responses—especially their common focus on the need for 'greater accountability'.

In the talk about reform, accountability emerges in two very different but interrelated conversations. In one conversation, accountability (or the lack thereof) is being discussed as a key factor in bringing about the 'meltdown' of economic relationships built around the high-flying financial services industry. Accountability, in some form or another, is viewed by the participants as a problem—perhaps the problem—that needs addressing.

The other conversation (occurring almost simultaneously) is focused on solutions

[29] Governance, of course, serves many other purposes. See, eg R Rose, *What Is Governing? Purpose and Policy in Washington* (Englewood Cliffs, NJ, Prentice Hall, 1978); R Rose, 'Models of Governing' (1973) 5 *Comparative Politics* 465; BG Peters, *The Future of Governing: Four Emerging Models* (Lawrence, KS, University Press of Kansas, 1996); BG Peters and J Pierre, 'Governance without Government? Rethinking Public Administration' (1998) 8 *Journal of Public Administration Research and Theory* 223.

rather than problems. The major refrain here—repeated constantly in more rhetorical settings—is the need for 'greater' and 'more' accountability as a (if not the) solution to that very same crisis.

This observation about the role of accountability as both problem and solution—cause and cure—begs for clarification if we are to make some sense of the accountability regime's place and role in governance. What does accountability mean to those engaged in these searches for causes and cures, and in what way(s) do various views of accountability impact on our understanding of the financial crisis and/or our responses to it?

Interestingly, the myopic obsession with regulatory control comes into play at this juncture. In discussions dealing with the search for causes of the crisis (ie the 'blame game'), the failure of accountability is typically (if not always) articulated in terms of some specific institutional mechanism or policy instrument failure. The list of suspected culprits ranges from the insufficiency of basic managerial controls and internal corporate governance mechanisms to the lack of transparency and due diligence, the lax enforcement of banking and securities regulations, and the absence of effective oversight of regulators by executive, legislative or judicial officials. Shortcomings abound in all these assessments of the problems—shortcomings in the sense that the regulator or regulated party is just not living up to expectations. Regulatory regime control components overlap with—perhaps are actually embedded in[30]—the accountability regime. Each and all are regarded as part of an accountability infrastructure composed of various tools (eg oversight, audits, inspections, investigations, chains of command) that share a defining characteristic that distinguished them from other control components: each operates by establishing account-giving relationships among at least two parties in an organised effort that addresses the need to deal with unaddressed or unfulfilled expectations.[31]

Viewed narrowly as account-giving mechanisms or instruments, accountability is a means for the management of expectations and takes on the characteristics of a technical feature of the financial marketplace, a functional (often institutionalised) part of the economic, political and social relationships that comprise this sector. It follows that when the focus turns to failures of accountability (that is, these 'mechanisms') as the cause of the current crisis, attention necessarily turns to the absence or breakdown of social

[30] M Granovetter, 'Economic Institutions as Social Constructions: A Framework for Analysis' (1992) 35 *Acta Sociologica* 3; M Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness' (1986) 91 *American Journal of Sociology* 481.

[31] The idea of an 'account-giving relationship' demands some clarification at this juncture in regard to four points. The first is to highlight that we are dealing with social relationships, and therefore these have to be understood as fundamentally social mechanisms despite the fact that we often perceive them too narrowly in strictly formal or legalistic terms. Secondly, although frequently associated with the logic of principal-agent relations (especially when operationalised in academic models), such relationships do not necessarily involve hierarchical or super/subordinate arrangements. At least in theory (and, more often than is acknowledged, in practice), account-giving relations can be horizontal as well as vertical, bottom-up as well as top-down—and even circular in form (eg the 'reflective' practitioner). Thirdly, these relationships are based as much (if not more) on expectations as they are in actions. Often it is the anticipation of claims on one's account-giving capacity that determines the effectiveness of an accountability mechanism. Anxiety about who might seek an account, what action one might be held to account for and when one might be called to account—all play major roles in shaping the relevant relationships. For more on this point, see SL Darwall, *The Second-person Standpoint: Morality, Respect, and Accountability* (Cambridge MA, Harvard University Press, 2006). Finally, these account-giving relationships cannot be viewed in isolation from other social relations, including other account-giving claims. The existence of multiple, diverse and potentially conflicting expectations is itself to be expected in the world of accountability mechanisms.

relationships and expectations. The 'cure' implied in that analysis most often finds expression in proposals to repair or replace the failed or damaged mechanisms.

However, such mechanisms must be regarded as only part of the accountability regime construct. An alternative dimension of accountability is also at work in the cause/cure discussions, one that regards accountability as playing more of a normative role than a technical one. Here the talk is not about the failure of mechanisms or instruments of account-giving, but rather the failure of more amorphous conditions that foster expectation management, such as a moral sense of responsibility, fiduciary obligations, responsiveness and liabilityetc. These reflect the idea of accountability as providing the moral, normative setting for the operation of financial markets. The emphasis here is on the premise that any set of social relationships—especially those involving complex interactions and transaction such as those found in global financial markets—requires some commitment to a functional and effective set of expectations in the form of rules, norms and mores. Among those conversing from this perspective, it is the absence or ineffectiveness or collapse of these normative (that is, 'moral') standards that is at the heart of the current crisis. The implied 'cure' would be whatever policies might restore or reconstruct that normative infrastructure.[32]

Figure 3 attempts to summarise the implications of this distinction (simplified as accountability-as-mechanism and accountability-as-setting) for the discussions about the causes and cures of the present crisis. The implications of this framework for designing policy responses to the financial crisis will be discussed in the next section, but there are two additional observations that require attention before moving to that point.

First is the extent to which one of the perspectives dominates the most important of the

	Focus on:	
Perspective:	Cause	Cure
Accountability-as-Mechanism (i.e., control)	Failure of instrument	Reform, replace, repair the instrument
Accountability-as-Setting (i.e., normative infrastructure)	Absence or collapse of norms, mores, standards	Re-establishing, rebuilding moral community based on effective norms/standards

Figure 3. Accountability as cause/cure.

[32] *Cf* J-E Lane, *Public Sector Reform: Rationale, Trends and Problems* (London, Sage Publications, 1997); also PJ May, 'Regulation and Compliance Motivations: Examining Different Approaches' (2005) 65 *Public Administration Review* 31; PJ May, 'Regulatory Regimes and Accountability' (2007) 1 *Regulation and Governance* 8.

conversations about the financial crisis. Where those conversations really 'matter'—in those venues where policymakers talk about 'causes and cures'—the mechanism perspective drowns out the normative infrastructure (setting) view. In this and other areas where the issue is the breakdown of an ongoing system, 'technical' explanations usually hold sway, and not necessarily because they are more credible or convincing. Rather, as complements to the regulatory control regime, they tend to be 'easier' to grasp conceptually and have the benefit of generating relatively quick solutions. If the problem is determined to be lax enforcement of banking regulations, then enhance the enforcement power of regulators and back it with more funding. If the 'problem' is lack of transparency in the operations of hedge funds or private equity firms, then require more reporting and openness. In both examples, there is a clear sense that regulatory control will be enhanced, but only a vague hope for the more responsible behaviour on the part of the regulated parties. Nevertheless, such reforms are proffered as having enhanced accountability. Whether they actually do have (that is, whether they foster more responsible behaviour) is an empirical question.

This leads to my second point, namely the ironic tendency of policymakers to rely on the rhetoric of accountability in their rhetorical rationalisations for mechanism-focused policy decisions. The justification for undertaking regulatory-based reforms is to create a 'more responsible' market or to make certain actors 'answerable' and 'liable' for their actions. There is an assumed effective link between the exercise of control and the enhancement of responsible behaviour—a link that has rarely been tested in the governance context let alone empirically proved. Each of these rhetorical flourishes at minimum implies the existence of that connection and begs the question about the need for some moral community that provides a normative understanding of what constitutes (ir)responsible and (in)appropriate behaviour.

To summarise briefly, when it comes to accountability regime issues raised by the current financial crisis, (i) there are at least two conversations taking place, one focused on the role of accountability (or lack thereof) in creating the crisis (the 'cause' conversation) and the other positing accountability as a major part of the solution (the 'cure' conversation); (ii) beneath the surface of these conversations are two very different perspectives on accountability, one perspective viewing it as social mechanisms and policy instruments rooted in 'account-giving' relationships (accountability-as-mechanism) and the other seeing accountability as providing the moral setting for the market (accountability-as-normative infrastructure); (iii) among policymakers (the conversations that really matter), the mechanism view prevails as they seek to match control-based technical solutions to technical problems perceived as regulatory; but (iv) the rhetoric of accountability-based reform remains normative-based and is tied to a sense that what is needed is behaviour that is more responsible, responsive, answerable, etc among market actors.

Underlying the present effort is the belief that there is a more substantial case to be made for taking the accountability-as-setting (normative infrastructure) view seriously, not only as part of a more general theory of policy domain governance, but also as the basis for policies that can have a real impact on the future operations of global and national financial markets. Putting that belief to work, however, requires that we develop an HRB-like analytic frame that can do more than help us appreciate the importance of the accountability regime as part of governance. We need a framing that allows us to focus on those elements that comprise the accountability setting in order to facilitate efforts to

describe the regime, assess its effectiveness and (where possible) assist in the design of solutions to the broader governance problems.

E. Articulating Design Options

An effort to emulate the HRB framework for accountability regimes runs into an immediate problem, for the core components of accountability (as imagined here) encompass normative settings as well as 'mechanisms'. While contextual factors play a role in the HRB scheme, they do so as independent or intervening variables affecting the form and content of the core control-components. But, as noted below, in accountability arrangements many aspects of the setting are themselves core components of the regime.

Beyond including those setting factors as core components, our framing should meet two additional, interrelated criteria. First, it should be empirically inclusive and capable of encompassing the range of actionable options that are proposed to deal with the problematic conditions 'greater accountability' is intended to address. Secondly, the options it includes should be problem relevant and expressly aimed at dealing with the causes and/or conditions of the problematic situation. Excluded under this framing scheme would be pseudo-proposals that amount to mere symbolic expressions of the need for reforms and those designed to solve problems outside the scope of policy problems. While symbolic gestures such as a rhetorical call for making the financial system more accountable may serve important political purposes (eg for the mobilisation or acquiescence of publics),[33] they would fall outside our frame unless accompanied by some articulated agenda for reform. Similarly, options aimed at more fundamental changes (eg changing human nature or radically altering the general economic system) would be outside the scope of the framing, given its 'practical' focus.

There are two major efforts to frame accountability regimes, the first relating to reforms that reshape the context and conduct of accounting, auditing and other financial management operations,[34] and the second (more recent) examining the increasingly complex arena of nonprofits operating in a global context.[35] Almost all treat

[33] M Edelman, *The Symbolic Uses of Politics* (Urbana, IL, University of Illinois Press, 1964); M Edelman, *Politics as Symbolic Action: Mass Arousal and Quiescence* (Chicago, IL, Markham Publishing, 1971)

[34] The major work in this area is attributable to James Guthrie and Linda English at the University of Sydney. See L English and J Guthrie, 'Public Sector Auditing: A Case of Contested Accountability Regimes' (1991) 50 *Australian Journal of Public Administration* 347; J Guthrie, 'Critical Issues in Public Sector Auditing' (1992) 7(4) *Managerial Auditing Journal* 27; J Guthrie, 'Australian Public Business Enterprises: Analysis of Changing Accounting, Auditing and Accountability Regimes' (1993) 9 *Financial Accountability and Management* 101; LD Parker and J Guthrie, 'The Australian Public Sector in the 1990s: New Accountability Regimes in Motion' (1993) 2 *Journal of International Accounting, Auditing and Taxation* 59; see also J Broadbent and J Guthrie, 'Changes in the Public Sector: A Review of Recent 'Alternative' Accounting Research' (1992) 5(2) *Accounting, Auditing and Accountability Journal* 3.

[35] See the work of Alnoor Ebrahim and his colleagues: A Ebrahim, 'Making Sense of Accountability: Conceptual Perspectives for Northern and Southern Nonprofits' (2003) 14 *Nonprofit Management and Leadership* 191; A Ebrahim, 'Accountability in Practice: Mechanisms for NGOs' (2003) 31 *World Development* 813; A Ebrahim and S Heerz, ;Accountability in Complex Organizations: World Bank Responses to Civil Society;, KSG Working Paper No RWP 07-060 (John F Kennedy School of Government, Harvard University, 2008), available at papers.ssrn.com/sol3/papers.cfm?abstract_id=963135; A Ebrahim, 'Placing the Normative Logics of Accountability In "Thick" Perspective' (2009) 52 *American Behavioural Scientist* 885. See also L Jordan and PV

		Specificity of accountable activity	
		Low	High
Autonomy of accountable agent	High	**Constitutive** Creation of 'accountable space' of internalised norms and standards	**Managerial** Set 'what' agent is accountable for (objective or standard), allow agent to determine 'how'
	Low	**Regulative** Creation and externalised oversight of actions of agent within 'accountable space'	**Performative** Set 'what' agent is accountable for and 'how' to proceed

Figure 4. Accountability regime's core component types.

accountability as a variant of regulation and control, and not surprisingly are preoccupied with viewing it in 'mechanism' terms. As such, they fail to stress the distinction between the different roles that such mechanisms play in regimes of control and regimes of managed expectations (that is, responsibility). The task here is to construct a framework that stresses that distinction.[36]

Turning specifically to the core components of the accountability regime, the range of options for 'greater accountability' reforms can be usefully framed by focusing on two common features of most proposals: (i) the extent to which they seek to specify the activity and actions of those being held accountable; and (ii) the degree to which the accountable agent is given some degree of discretion to act (ie autonomy).

Of the four resulting core component types, the performative accountability reforms are the most closely associated with the accountability-as-mechanism perspective. Here the assumption is that greater accountability requires the specification of certain actions and behaviours which are to be mandated and enforced, typically by a governing authority outside the organisation. These reforms stress the control functions of accountability, and they are not uncommon in the banking industry. They are so pervasive, in fact, that many view them as the very definition of accountability. Nevertheless, what differentiates these account-giving performatives from controls is the underlying intent that the performance

Tuijl (eds), *NGO Accountability: Politics, Principles and Innovations* (Sterling, VA, Earthscan, 2006); A Ebrahim and E Weisband (eds), *Global Accountabilities: Participation, Pluralism, and Public Ethics* (New York, Cambridge University Press, 2007).

[36] Cf JL Mashaw, 'Accountability and Institutional Design: Some Thoughts on the Grammar of Governance' in MD Dowdle (ed), *Public Accountability : Designs, Dilemmas and Experiences* (Cambridge, Cambridge University Press, 2006).

(conducting an audit, publishing the results, etc) will lead to responsible behaviour. Here there is an implied link between a required behaviour and the sense of responsibility that it is assumed to generate or awaken in the target population. The strength of this assumed link is very high, and therefore clearly stated and strictly enforced reporting requirements by a variety of regulatory and other oversight agencies are regarded as part of the necessary infrastructure for conducting business in many of the world's jurisdictions.[37]

Reforms based on the logic of managerial accountability differ from the performative in allowing greater discretion to the accountable agent while at the same time holding it accountable to meeting a specified objective or standard. Reflecting the growing cultural acceptance of managerialism,[38] it is based on the assumption[39] that those 'professionals' who operate regulated organisations are by definition (after all, they are professionals) predisposed to responsible behaviour once provided with guidance regarding the ends to be achieved. A law or regulatory body might require, for example, that a bank chartered to operate within a state or community commit at least *x* per cent of its loan portfolio to local businesses or individuals. The standard for conducting business is set, but how they go about doing so is left to the bank and its management. This form of accountability assumes that those professionals who manage the financial institution will act, as Berle argued in 1932, 'more as princes and ministers than as promoters or merchants'.[40]

While the mechanism perspective characterises both performative and managerial

[37] R Ball, 'Infrastructure Requirements for an Economically Efficient System of Public Financial Reporting and Disclosure', Brookings–Wharton Papers on Financial Services No 1 (Washington, DC, Brookings Institution, 2001).

[38] The logic of this approach in the corporate world was first described by Berle and Means when they presented their classic exposition of the transformation of the modern corporation into a professionally managed organisation. 'A management may well insist on as free a managerial hand as possible as to how it shall run its business,' they observed. 'Nor has anyone grudged managements this group of powers, not only in law but in ideology. No better principle in carrying on business has yet been worked out than to find able men and give them the completest latitude possible in handling the enterprise': AA Berle and GC Means, *The Modern Corporation and Private Property* (New Brunswick, NJ, Transaction Publishers, 1932) 60. See also ES Mason, 'The Apologetics Of 'Managerialism" (1958) 31 *Journal of Business* 1; LE Preston and JE Post, 'The Third Managerial Revolution' (1974) 17 *Academy of Management Journal* 476; P Miller and T O'Leary, 'Hierarchies and American Ideals, 1900-1940' (1989) 14 *Academy of Management Review* 250.

[39] Although this assumption originated in the private sector, it has been critically examined most often with public sector contexts. On the private history of managerialism, the classics are J Burnham, *The Managerial Revolution* (Bloomington IN, Indiana University Press, 1960) and AD Chandler Jr, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge MA, Belknap Press of the Harvard University Press, 1977). The classic expression of a positive view of public sector managerialism was found in CJ Friedrich, 'Public Policy and the Nature of Administrative Responsibility' in CJ Friedrich and ES Mason (eds), *Public Policy: A Yearbook of the Graduate School of Public Administration of Public Administration, Harvard University* (Cambridge MA, Harvard University Press, 1940). The recent new public management reforms that took root in New Zealand, Australia, the UK and Canada had a strong managerial accountability component; see C Pollitt, *Managerialism and the Public Services: Cuts or Cultural Change in the 1990s?*, 2nd edn (Oxford, Blackwell Business, 1993); C Pollitt and G Bouckaert, *Public Management Reform: A Comparative Analysis* (Oxford, Oxford University Press, 2000), A Cochrane, 'From Financial Control to Strategic Management: The Changing Faces of Accountability in British Local Government' (1993) 6 *Accounting, Auditing and Accountability Journal* 30; C Campbell, 'Does Reinvention Need Reinvention? Lessons from Truncated Managerialism in Britain' (1995) 8 *Governance* 479; C Hood, 'Public Service Managerialism: Onwards and Upwards, or "Trobriand Cricket" Again?' (2001) 72 *Political Quarterly* 300.

[40] AA Berle Jr, 'For Whom Corporate Managers Are Trustees: A Note' (1932) 45 *Harvard Law Review* 1365, 1366–67. In the same publication (1377) he offers the following: 'Most students of corporation finance dream of a time when corporate administration will be held to a high degree of required responsibility—a responsibility conceived not merely in terms of stockholders' rights, but in terms of economic government satisfying the respective needs of investors, workers, customers, and the aggregated community. Indications, indeed, are not wanting that without such readjustment the corporate system will involve itself in successive cataclysms perhaps leading to its ultimate downfall.'

accountability approaches, the regulative and constitutive forms rely more on what can be termed an 'accountable space' perspective. Here accountability is viewed more as a general context or setting—what Bourdieu terms a 'field'[41]—within which relationships occur rather than as a specific relationship per se. These accountable spaces can be characterised by both their structure and substance.

Structurally, they exist as arrangements within parameters set by a range of normative constraints in the form of general roles and rules that shape the relationships that take place within that space.[42] Constitutive accountability reforms[43] focus on the establishment and adjustment of those parameters, effectively constituting (or reconstituting, as the case may be) the environment within which accountable behaviour occurs. Again, we find these types of reforms to be familiar in the financial markets. The roles and rules required by accountability 'regimes' for financial institutions vary depending on the 'constitutional setting' within which they operate. With both deregulation and liberalisation of banking laws over the past several decades, the number of such settings has multiplied. This has created opportunities for banks to 'shop around' for what they regard as more suitable accountability regimes both domestically and globally.

Regulative accountability comes into play when the substance of those roles and rules is determined to call for the active monitoring and oversight of an accountable agent. The logic is drawn from the regulatory regime, but the design premise is different. The assumption here is that the target population will be more 'responsible' in exercising discretionary behaviour knowing that there is a regulatory agent overseeing what is taking place in the accountability space. Parker uses the term 'responsive regulation' to capture this approach:

> Simple deterrence will often fail to produce compliance commitment because it does not directly address business perceptions of the morality of regulated behaviour—it merely puts a price on noncompliance, and the ability of that price to deter misconduct will depend on the operation of the deterrence trap. Responsive regulation, by contrast, seeks to build moral commitment to compliance with the law.[44]

For example, the proposal to establish a consumer protection agency with jurisdiction over credit products is in part designed to enforce 'control' provisions of the law. However, the agency is also intended well to monitor complaints about credit providers from consumers and even rate card services, thereby giving the financial institutions reason to consider a more responsible ('customer friendly') approach to doing business.

As the core components of accountability regimes, each of these stresses the need to establish and foster responsibility (that is, expectations management) over the demand for

[41] P Bourdieu, 'The Social Space and the Genesis of Groups' (1985) 14 *Theory and Society* 723; P Bourdieu and LJD Wacquant, *An Invitation to Reflexive Sociology* (Chicago, IL, University of Chicago Press, 1992).

[42] N Fligstein, *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies* (Princeton, NJ, Princeton University Press, 2001), esp ch 4; see also A Preda, *Framing Finance: The Boundaries of Markets and Modern Capitalism* (Chicago, IL, University of Chicago Press, 2009); GF Davis, *Managed by the Markets: How Finance Reshaped America* (New York, Oxford University Press, 2009).

[43] Perhaps the most relevant and useful approaches to analysing these types of reform is found in the work of Elinor Ostrom and her colleagues, whose work has focused on solutions to the common pool resource problem. See E Ostrom, *Understanding Institutional Diversity* (Princeton, NJ, Princeton University Press, 2005); T Dietz, E Ostrom and PC Stern, 'The Struggle to Govern the Commons' (2003) 302 *Science* 1907; Ostrom, *Governing the Commons*, above n 20.

[44] C Parker, 'The "Compliance" Trap: The Moral Message in Responsive Regulatory Enforcement' (2006) 40 *Law & Society Review* 591, 592; see also I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York, Oxford University Press, 1992).

control. Even the form that comes the closest to a control mechanism—performative accountability—differs in purpose (if not in content) from the behaviour modification mechanisms represented in the HRB frame. Consider, for example, the requirement in section 302 of the 2002 Sarbanes-Oxley Act[45] that corporate CEOs and CFOs attach their signatures to mandated audit reports that essentially certifies the 'appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer'. Contrast that requirement with a provision in section 401 that specifies the 'annual and quarterly financial report . . . shall disclose all material off-balance sheet transactions' and 'other relationships' with entities that can materially have an impact on the financial condition of the issuer. The latter is an explicit instruction seeking a behavioural change, while the former is at best an indirect attempt to foster a more responsible approach to the way corporate executives do their jobs.

Of course, that type of distinction is often blurred by the fact that the two regimes overlap in the overall scheme of governance. Recently imposed provisions to control compensation received by executives in US banks that received 'bailout' funding from the TARP can be regarded as driven by both regulatory and accountability drivers. The regulatory aspects stress a combination of both standard setting and behaviour modification by the subject firms, but implied in the action is the message that those executives who are assumed to have played a role in the policy-precipitating crisis need to learn their lesson and act more responsibly in the future.[46]

With the core components of the accountability regime established, and continuing in the attempt to emulate the HRB approach, we now turn to those factors that lead to variations in accountability regimes across and within policy domains. As reflected in Figure 5, there are three likely sources that determine such variation: content, context and conditions.

Regarding content, as conceptualised here, accountability regimes are primarily about the management of expectations, thus making variations of expectations extremely important in the description, assessment and design (and reform) of domain governance.

	Performative	Managerial	Regulative	Constitutive
Content				
Context				
Conditions				

Figure 5. Framing the accountability regime.

[45] For an examination of the role of accountability in provisions of Sarbanes-Oxley, see MJ Dubnick, 'Sarbanes-Oxley and the Search for Accountable Corporate Governance' in J O'Brien (ed), *Private Equity, Corporate Governance and the Dynamics of Capital Market Regulation* (London, Imperial College Press, 2007).

[46] There is a sense of collective indignation and retribution also associated with those efforts.

Approaching expectations analytically is no simple task,[47] given its sometimes implicit nature. For example, while it might be possible to articulate some legal requirements and general standards of behaviour that we expect from domain actors (eg that they perform their tasks with 'due diligence'), there is also a more general, often unarticulated sense of 'responsible' and 'appropriate' behaviour that plays an important role in accountability regimes.[48] For present purposes, those more amorphous standards can be shifted to the 'context' factor category, leaving 'content' to reflect expectations that have an explicit presence in the regime.

Having put aside the unarticulated expectations, getting a useful analytic handle on the expectations content of accountability regimes is still quite challenging. Expectations can vary from very specific requirements, often laid out in laws and regulations, to those such as due diligence and fiduciary that involve very general standards (with real consequences for actions) applied from case to case. Beyond their specificity, other dimensions of expectations that come into consideration include (in no particular order):

— the scope of their coverage: for example, does the expectation for transparency apply to all behaviour within the domain or are some (for example, proprietary information) exempted?
— the distribution of expectations within the domain: does it apply to the entire population of targeted actors in a domain (eg all commercial banks) or only to those that are 'too big to fail'?
— the salience of a given expectation or set of expectations within the domain: just how important is the standard among the range of expectations applied in the domain?
— the stability of the expectation over time: is the standard expressed in an expectation going to endure over time, or does it shift from circumstance to circumstance—and, if so, is there a pattern to that 'shifting'?
— the source(s) of the expectation or standard: does it emerge from within the domain or is it imposed from outside, etc?
— the purpose or intended function of the expectation: is it regarded as a means for promoting integrity and trust among domain actors or is it focused on enhancing the efficiency or fairness of domain actor actions?

While not exhaustive, this list of content factors indicates how complicated accountability regimes can be—and how challenging the design task is likely to be as well. The situation is complicated further by the fact that context matters as much as content when it comes to accountability. For present purposes, we will differentiate between the more general (that is, background) context from the immediate circumstances having an impact on the operations of the regime (see the discussion of 'conditions' that follows).

There are a number of relevant analytic approaches to the context of accountability regimes that can be applied for this framing project. The 'group-grid matrix' typology developed initially by Mary Douglas and extended by Aaron Wildavsky and

[47] Eg MJ Dubnick and BS Romzek, 'Accountability and the Centrality of Expectations in American Public Administration' in JL Perry (ed) *Research in Public Administration* (Greenwich, CT, JAI Press, 1993).

[48] The 'logic of appropriateness' factor in choice is likely to play a significant role in the further development of this scheme; see JG March and JP Olsen, 'The Logic of Appropriateness', ARENA Working Papers WP 04/September (2004) 28, reprinted in M Moran, M Rein and RE Goodin (eds), *Oxford Handbook of Public Policy* (Oxford, Oxford University Press, 2006); JG March and JP Olsen, *Democratic Governance* (New York, Free Press, 1995).

others[49] highlights the variation in expectations that emerges from five cultural orientations that emerge from differences along two dimensions: the extent to which one perceives the world from a vantage point that stresses a collective (high group) or individual (low group) approach to problems, and the extent to which one regards oneself as constrained (high grid) or allowed discretion to act (low grid) by the demands of society. The four major types of actors that emerge from this framework relate to expectations differently, ranging from the egalitarian, whose expectations are shaped by a strong identity with group values and a high sense of efficacy, to the fatalist, whose expectations are neither coherently organised nor actively pursued. Between the two extremes are the cultures of the market (individualist) and the organisation (hierarchist).

Alternatively, Pierre Boudieu's view of social contexts as 'fields' of often competing 'forces' can provide significant insights into the factors that shape expectations and shape/drive the accountability regime. In his examination of economic markets, for example, he attributes the decisions of various actors to their 'positions' within the fields as well as their 'dispositions' (which he often terms 'tastes', but which can be treated as expectations) related to the choices and options before them.[50]

Which of these (or other)[51] models of context variations will prove most useful within this regime framework awaits further exploration. What needs to be emphasised is that any framework for designing financial market reforms must take into account the variability of accountability regimes across different cultures.

The same holds true for 'conditional' factors—the more immediate political, economic and social circumstances—in which reforms would be implemented. The HRB framing of regulatory regime context is relevant here. Among the factors they highlight are three major sources of 'pressure' at work within risk regulation regimes: market-failure pressures, which generate demands for pre-emptive or corrective policies; opinion-response pressures emanating from the general public; and interest-driven pressures, which reflect stakeholder demands.[52] In addition, the current forms and styles of policy-making styles in different countries are an essential set of factors that require attention.[53]

Of course, what is provided here is merely a preliminary framing that requires further

[49] M Douglas, *Risk and Blame: Essays in Cultural Theory* (London, Routledge, 1992); M Douglas, 'Four Cultures: The Evolution of a Parsimonious Model' (1999) 47 *Geojournal* 411; RJ Ellis and M Thompson (eds), *Culture Matters: Essays in Honor of Aaron Wildavsky* (Boulder CO, Westview Press, 1997); A Wildavsky, 'Cultural Theory of Responsibility' in J-E Lane (ed), *Bureaucracy and Public Choice* (London, Sage, 1987); A Wildavsky, 'A Cultural Theory of Budgeting' (1988) 11 *International Journal of Public Administration* 651; A Wildavsky, 'A Cultural Theory of Leadership' in B Swedlow (ed), *Cultural Analysis. Volume 1. Politics, Public Law and Administration* (New Brunswick NJ, Transaction, 2006); see also C Hood, *The Art of the State: Culture, Rhetoric, and Public Management* (Oxford, Clarendon Press, 1998). For an excellent overview, see V Mamadouh, 'Grid-group Cultural Theory: An Introduction' (1999) 47 *Geojournal* 395.

[50] P Bourdieu, *Outline of a Theory of Practice* (Cambridge, Cambridge University Press, 1977); Bourdieu, above n 41; P Bourdieu, *The Logic of Practice* (Stanford CA, Stanford University Press, 1990); Bourdieu, above n 13.

[51] Eg Y Wiener, 'Forms of Value Systems: A Focus on Organizational Effectiveness and Cultural Change and Maintenance' (1988) 13 *Academy of Management Review* 534; G Hofstede, 'The Cultural Relativity of Organizational Practices and Theories' (1983) 14(2) *Journal of International Business Studies* 75; G Hofstede, 'Cultural Constraints in Management Theories' (1993) 7 *Academy of Management Executive* 81; G Hofstede, 'Attitudes, Values and Organizational Culture: Disentangling the Concepts' (1998) 19 *Organization Studies* 477; MJ Dubnick, 'Public Service Ethics and the Cultures of Blame', Fifth International Conference of Ethics in the Public Service, Brisbane, Australia (1996).

[52] Hood et al, above n 25, 61–67.

[53] RE Löfstedtand and D Vogel, 'The Changing Character of Regulation: A Comparison of Europe and the United States' (2001) 21 *Risk Analysis* 399, especially the contribution by Renn.

elaboration and application to current accountability regimes. Only through enhancing our capacity to describe the elements of accountability regimes can the design of effective reforms progress to the next stage.

F. Working on Design Principles

That 'next stage' is a critical one, for, having established the conceptual foundations for understanding the design of governance and its associated regimes, we face the task of articulating design principles that can guide the policy reform effort. Some of those principles are already implied in the governance approach and regime frameworks themselves, but others require further articulation and testing before they can prove useful.

The very idea of 'design' used here is both analogical and metaphorical. Analogically, we are engaged in a process not unlike that undertaken by designers in a number of fields—from the artist and craftsperson to the architect and engineer. For them, as for us, the task is to develop a plan for putting the material and nonmaterial elements at our disposal to work to achieve some preconceived 'notion' in the form of a sculpture, product, house or bridge. Our notions take the form of public policies.

'Policies are the first expressions and guiding images of normative thinking and action,' noted Eric Jantsch. 'In other words, they are the spiritual agents of change—change not only in the ways and means by which bureaucracies and technocracies operate, but change in the very institutions and norms which form their homes and castles.'[54] In that sense, design is an appropriate metaphor for the creative act—the development of 'spiritual agents of change'—that the process involves. This is captured by the very concept of policy analysis as a 'design science',[55] which seems oxymoronic at first. What bridges the art and science are those principles that guide the design project.

For present purposes, design principles are of three types: logical, conceptual and strategic. The principles related to the logic of policy reform are reflected in the governance perspective offered earlier in this chapter. Reform of a policy domain such as the financial markets can be approached through a variety of logics, each reflecting a general theoretical perspective that might be regarded as little more than a particular (albeit more structured and formalised) view of some participants in the blame game.[56] From economists we have a plethora of such logics (for example, drawn from basic market failure[57] and rational expectation theories[58] to those stressing more popular insights regarding

[54] E Jantsch, 'From Forecasting and Planning to Policy Sciences' (1970) 1 *Policy Sciences* 31, 32.

[55] HD Lasswell, 'The Emerging Conception of the Policy Sciences' (1970) 1 *Policy Sciences* 3; Dror, above n 7.

[56] Cf PC Light, *The Tides of Reform: Making Government Work, 1945–1995* (New Haven, CT, Yale University Press, 1997).

[57] FM Bator, 'The Anatomy of Market Failure' (1958) 72 *The Quarterly Journal of Economics* 351; JR Davis and JR Hulett, *An Analysis of Market Failure: Externalities, Public Goods, and Mixed Goods* (Gainesville, FL, University Presses of Florida, 1977); however, see RO Zerbe Jr and HE McCurdy, 'The Failure of Market Failure' (1999) 18 *Journal of Policy Analysis and Management* 558; RO Zerbe Jr and H McCurdy, 'The End of Market Failure' (2000) 23(2) *Regulation* 10.

[58] JF Muth, 'Rational Expectations and the Theory of Price Movements' (1961) 29 *Econometrica* 315; G Corsetti, P Pesenti and N Roubini, 'Paper Tigers?: A Model of the Asian Crisis' (1999) 43 *European Economic Review* 1211.

'animal spirits'[59] and irrational exuberance[60]). From the world of political science emerges the logic of various 'regulatory capture' and other 'government failure' theories.[61] The perspective offered here focuses on the notions of governance (mostly drawn from the study of public management reform) and regimes (from the study of international organisations), but also relies on the work of economic sociologists and critical theorists who emphasise the importance of governmentality (from the work of Michel Foucault)[62] and embeddedness (initially articulated by Karl Polanyi).[63]

Although the logic of governance reform was generally touched upon here, much of this chapter has been explicitly devoted to dealing with the conceptual 'principles' that emerged from the framing of the regimes. By positing an alternative conceptualisation of accountability as a regime, I am (by implication) offering a normative reordering of what constitutes the operations of governance of (and through) responsible action within the policy domain.

Despite seeming more like firm directives, the strategic aspects of policy design principles are perhaps best regarded as working hypotheses—ideally in the form of testable assumptions—that attempt to apply the logic and conceptual elements of the reform effort to the problematic domain. Design principles applicable exclusively to the regulatory regime have been presented in a variety of forms depending on the goal of the presenter. For some it is a matter of designing policies that are more likely to pass muster with policymakers. The guidance they offer is addressed to the rule-designing staff of regulatory agencies and is typically more oriented to meeting political requirements than to developing effective solutions to governance problems. For them, the design principles include

— clarity and precision of legislation;
— adherence to the general objects and spirit of the empowering legislation;
— not unduly trespassing on personal rights and liberties;
— not reversing the onus of proof in criminal proceedings; and
— ensuring protection from self-incrimination.[64]

[59] GA Akerlof and RJ Shiller, *Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism* (Princeton, NJ, Princeton University Press, 2009).

[60] RJ Shiller, *Irrational Exhuberance*, 2nd edn (Princeton, NJ, Princeton University Press, 2005).

[61] BM Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms* (New York, Columbia University Press, 1980); J Le Grand, 'The Theory of Government Failure' (1991) 21 *British Journal of Political Science* 423; G Tullock, A Seldon and GL Brady, *Government Failure: A Primer in Public Choice* (Washington DC, Cato Institute, 2002).

[62] G Burchell, C Gordon and P Miller (eds), *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault* (Chicago, IL, University of Chicago Press, 1991); M Foucault, 'Governmentality' in G Burchell, C Gordon and P Miller (eds), *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault* (Chicago, IL, University of Chicago Press, 1991); M Bevir, 'Foucault, Power, and Institutions' (1999) 47 *Political Studies* 345; Rose (1999), above n 24; OJ Sending and IB Neumann, 'Governance to Governmentality: Analyzing NGOs, States, and Power' (2006) 50 *International Studies Quarterly* 651.

[63] K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston, MA, Beacon Press, 1944). A considerable body of work—some previously cited—has been constructed around the notion of embeddedness; see Granovetter (1986), above n 30; JK Frenzen and HL Davis, 'Purchasing Behaviour in Embedded Markets' (1990) 17 *Journal of Consumer Research* 1; Granovetter (1992), above n 30; J Lie, 'Sociology of Markets' (1997) 23 *Annual Review of Sociology* 341; GR Krippner, 'The Elusive Market: Embeddedness and the Paradigm of Economic Sociology' (2001) 30 *Theory and Society* 775; G Krippnerand et al, 'Polanyi Symposium: A Conversation on Embeddedness' (2004) 2 *Socio-Economic Review* 109.

[64] P Coghlan, 'The Principles of Good Regulation' in A Sidorenko and CC Findlay (eds), *Regulation and Market Access* (Canberra, Asia Pacific Press, 2003) 16.

Policy analysts who take a less politically sensitive approach to regulatory design typically work within some variation of the following principles:

— setting down different types of 'regulation';
— considering if and when governments should regulate;
— deciding what forms of government action might best be adopted; and
— examining features that characterise poor or ineffective regulation.[65]

More common among economists who approach the design problem as policy analysis but with a focus on what will work for the regulated (as opposed to the politicos) are principles similar to the following offered by Sappington for designing 'incentive'-based regulations:

1. Use incentive regulation to employ the firm's superior information better.
2. Prioritise regulatory goals and design incentive regulation to achieve stated goals.
3. Link the firm's compensation to sensitive measures of its unobserved activities.
4. Avoid basing the firm's compensation on performance measures with excessive variability.
5. Limit the firm's financial responsibility for factors beyond its control.
6. Adopt broad-based performance measures where possible, unless their variability is excessive.
7. Choose exogenous performance benchmarks.
8. Allow the firm to choose among regulatory options, while recognising the interdependencies among the regulatory options that are offered to the firm.
9. Promise only what can be delivered, and deliver whatever is promised.
10. Plan for the rare, unforeseen event, but minimise after-the-fact adjustments to the announced regulatory policy.[66]

Proffered as advice to policymakers, these design principles are stated in simple terms, but underlying them are difficult challenges reflecting the complex combination of logics, concepts and strategic norms. Some of these principles can be translated and transposed to the task of formulating policy options to change the accountability regime, but not without some conceptual and theoretical costs. Care must be taken in developing design principles relevant to the reform of accountability.

While this project is not at the stage where design principles can be summarised pithily in short bullet point statements or sentences, some basic points have emerged that are indicative of the kinds of principles which are likely to emerge. Here are offered three examples:

Example 1: Reforms of global financial markets must address problems of governance within and across relevant policy domains.

This principle can easily be transformed into a question: does the proposed policy address governance problems associated with the challenges of control and responsibility? The importance and necessity of this principle becomes obvious at a number of points. It is not uncommon for those engaged in the policy design process to find themselves enthralled with a particular policy approach or instrument to the point that he or she

[65] Ibid.
[66] DEM Sappington, 'Designing Incentive Regulation' (1992) 9 *Review of Industrial Organization* 245, 269.

might lose sight of the policy objective. It is also within the nature of the policy-making and policy-legitimation processes that compromises intended to guarantee passage can effectively divert or replace key elements of the reform proposal. A demand for greater discretion by the target population might be necessary for getting the policy adopted, but the policy should be designed to prevent that provision from emasculating the reform effort. Critics of both the recent bank bailouts and the economic stimulus packages have noted the conflicts and flaws that emerged over time with both policies, but that is to be expected of such emergency measures. However, in a highly fragmented policy-making system such as the US, where partisan divides remain strong, adhering to this design principle is likely to prove difficult at best.

Example 2: Governance involves two interrelated functions: establishing control and facilitating responsible action within the policy domain. The efforts made to fulfil both functions are manifest in governance regimes. The operations of the two regimes should be regarded as complementary.

This principle combines logical, conceptual and strategic guidance. The 'bottom line' is highlighting the complementarity of the two regimes. This point emerges from the lessons of more myopic governance reforms in financial markets over the past three decades which, in turn, can be related to the current crisis. From the early 1980s, banking reforms in the US and abroad have been characterised as 'deregulatory' when seen from the narrow perspective of the regulation regime side of governance. The term 'deregulation' is, in fact, a misnomer,[67] for what occurred was a reform of the governance arrangements under which banks operated. What took place has been more appropriately termed a 'liberalisation' and/or harmonisation of the regulatory regime that governed the financial sector.[68] The results were a slow but thorough loosening of the control features of domestic, transnational and international regulatory regimes.

Under the governance perspective offered here, one can argue that the lack of complementary adjustments in relevant accountability regimes has proven central to creating the current depression. Good governance does not necessarily require an optimal balance between control and responsibility, but too great a gap between the two regimes created by ill-advised reforms can certainly generate systematic dysfunctions similar to those we now endure.

Example 3: The values guiding the two regimes can differ. While regulatory control has primarily instrumental value, the facilitation of responsibility fostered by the accountability regime can have both instrumental and intrinsic value.

[67] Similarly, the term 're-regulation' would not suffice since it implies a deregulation effort preceding it.

[68] GRD Underhill, 'Markets Beyond Politics? The State and the Internationalisation of Financial Markets' (1991) 19 *European Journal of Political Research* 197; S Claessens, GRD Underhill and X Zhang, 'The Political Economy of Basle II: The Costs for Poor Countries' (2008) 31 *World Economy* 313; GRD Underhill and X Zhang, 'Setting the Rules: Private Power, Political Underpinnings, and Legitimacy in Global Monetary and Financial Governance' (2008) 84 *International Affairs* 535; BA Simmons, 'The International Politics of Harmonization: The Case of Capital Market Regulation' (2001) 55 *International Organization* 589; EJ Pan, 'Harmonization of US–EU Securities Regulation: The Case for a Single European Securities Regulator' (2003) 34 *Law and Policy in International Business* 499; G Majone, 'Liberalization, Re-regulation, and Mutual Recognition: Lessons from Three Decades of EU Experience', Second Biennial Conference of the European Consortium for Political Research, Standing Group on Regulatory Governance, Utrecht, 5–7 June 2008; A Abiad and A Mody, 'Financial Reform: What Shakes It? What Shapes It?' (2005) 95 *American Economic Review* 66; M Giannetti, 'Financial Liberalization and Banking Crises: The Role of Capital Inflows and Lack of Transparency' (2007) 16 *Journal of Financial Intermediation* 32.

There are cases where the exercise of control over the financial sector has been undertaken for purposes other than the need for more effective governance of that domain, but rarely is regulatory control assumed to hold some intrinsic value. Expropriation of banks for the purpose of fulfilling an ideological or nationalistic programme[69] notwithstanding, regulatory regime actions should be described and assessed according to their instrumental value.

In contrast, while accountability regimes serve instrumental purposes, their role in governance may be for intrinsic value. Thus, a policy that seemingly has no substantial instrumental value at all, such as the required restrictions on executive pay, plays a role in enhancing the public perception of a more accountable banking sector, and therefore indirectly achieves an objective of governance reform, such as increasing confidence in the banking sector. Or consider the value of policies insuring bank deposits, which play an instrumental role in the regulatory regime as a means for assuring bank solvency while being valued for enhancing accountability and an accompanying sense of bank security and integrity. While critics of the policy note moral hazards created by the insurance (and thus question its instrumental value),[70] their concerns are determined to be more than offset by the benefits generated by the assumed enhancement of integrity fostered by responsible behaviour of the insured bank.

G. Concluding Comments

The task that initiated this project was to address the current financial crisis as a policy design problem, and the intent was to develop some reasoned and reasonable paths to reform. 'What is to be done?' is the question of the hour, and most responses have unfortunately relied on the usual bag of policy tricks that many regard as merely spot repairs that will keep the system going for long enough to get to the next crisis. As noted earlier, it is a good example of the 'garbage can model' at work: streams of problems, policy solutions and political demands converge at some point and some form of policy emerges from the mix. At times we get lucky and the process works—producing policies that satisfy our needs for at least a short-term resolution. If we are really fortunate, that solution sticks for an extended period.

That seems to be the situation we face at the moment concerning reform of the financial services market. At present, policymakers are relying on the advice given by analysts who specialise in policy repairs and quick fixes rather than policy design. The reasons are many, but they certainly include significant time pressures as well as the dynamics of the blame game, which offers up all sorts of targets for so-called reform policies.

To engage in a more substantial policy design effort under crisis conditions might be regarded as a waste of time and energy. Significant policy design requires a critical rethinking of how we approach the collapse of the financial markets, the subsequent

[69] MC Lewis, 'International Bank Expropriations: The Need for a Level Playing Field' (1985) 4 *Annual Review of Banking Law* 237; L Trotsky, *The Transitional Program* (London, Workers' Revolutionary Party, 1938).

[70] DC Wheelock and SC Kumbhakar, 'Which Banks Choose Deposit Insurance? Evidence of Adverse Selection and Moral Hazard in a Voluntary Insurance System' (1995) 27 *Journal of Money, Credit & Banking* 186; GPJ O'Driscoll, 'Bank Failures: The Deposit Insurance Connection' (1988) 6(2) *Contemporary Policy Issues* 1.

damage it caused to economic stability and the possibility of economic growth. In the earliest stages of the design effort, description and theorising about the problem take priority over when the primary goal is to establish an understanding of the domain and its problems. At this point, it is difficult to pull back from the demands for more than mere analysis. Richard Posner, the polymath who combines his full-time position as a major American jurist with his work as a well-known public intellectual, published a careful and thoughtful examination of the crisis in the spring of 2009 and maintained an ongoing discussion of his views on a widely read blog.[71] Pushed to suggest long-term solutions, he steadfastly refused, noting that it is too early to make suggestions that match his assessment that there is something fundamentally wrong with the US economy. He is, in that sense, the model policy designer.

I approach the present project with a similar perspective, engaging in a critical (and time-consuming) rethinking of the way we approach the problems of the financial markets and attempting to construct a framework that might prove useful in developing a long-term strategy for reform of that sector. What I have provided here is a perspective emphasising the central role that governance plays in this policy domain, and an attempt to make the case for a more balanced approach to governance that encompasses the need for greater accountability as well as more regulatory control. Emulating the work of Hood, Rothstein and Baldwin on regulatory regimes, I have presented the basic framing for understanding accountability regimes. Although that part of the project remains to be completed, I have also addressed the need for policy design principles that reflect the complex nature of the governance arrangements that are in need of major reform.

More work remains to be done.

[71] Richard Posner; the blog is located at correspondents.theatlantic.com/richard_posner/.