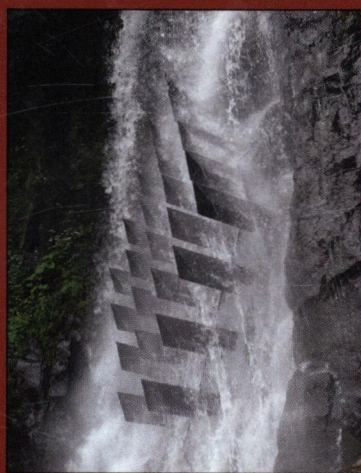


Innovation and the State

FINANCE, REGULATION, AND JUSTICE



CRISTIE FORD

"In *Innovation and the State: Finance, Regulation, and Justice* Cristie Ford provides a thorough analysis of the evolution of academic literature on 'flexible regulation' and couples this with an analysis of different forms of innovation to consider how regulation can fulfil progressive social goals whilst coping effectively with the risks and uncertainties that innovations within markets can pose. Elegantly written and perceptively observed, this is a timely analysis which reminds us that regulation is a political and social project as well as a technical one."

– Julia Black, London School of Economics and Political Science

"A tour de force of innovation and financial regulation. Cristie Ford is street smart, experienced on Wall Street. She explains how sedimentary innovation is bound to defeat inflexible rigid regulation. Yet sedimentary innovation also defeats flexible regulation, if it fails to fill the gaps that open within a scaffolding of regulatory principles. Ford's brilliant book teaches us to learn to see financial innovation. It cautions political wisdom in building loyalty to public values as regulators steer economic interests."

– John Braithwaite, Australian National University, Canberra

"Like the words 'growth' and 'progress,' 'innovation' is often taken for granted as a public good. Indeed, it can be. But Cristie Ford shows in this deep and thoughtful book the way this taken-for-grantedness has seduced regulators, academics and the public into a set of beliefs that undermines the necessary task of regulation itself. She points the way forward to a more sophisticated interaction between regulation and innovation in a more just, progressive society."

– Donald Langevoort, Georgetown University, Washington, DC

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FINANCE, REGULATION, AND JUSTICE

CRISTIE FORD

Peter A. Allard School of Law,
University of British Columbia



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INNOVATION AND THE STATE

From social media to subprime mortgage-backed securities, innovation carries both risk and opportunity. It also throws up profound regulatory challenges. As it evolves, innovation continually undermines, circumvents, and sidelines regulatory structures designed to accommodate it. Here, Cristie Ford investigates the relationships between contemporary regulatory approaches and private-sector innovation, and considers the implications of both for broader social welfare priorities including equality and voice.

Regulation is at the leading edge of politics and policy in ways not yet fully grasped. Seemingly innocuous regulatory design choices have clear and profound practical ramifications for many of our most cherished social commitments. Innovation is a complex phenomenon that needs to be understood not only in technical terms but also in human ones. Ford argues for a fresh approach to regulation that recognizes innovation for the regulatory challenge it is, and that binds our social values and our regulatory tools ever more tightly together.

Cristie Ford is Associate Professor and Director of the Centre for Business Law, Peter A. Allard School of Law, University of British Columbia. She is an internationally recognized scholar in the fields of financial regulation and regulatory theory. She has written, lectured, and consulted extensively on financial regulation and was previously editor of the journal *Regulation & Governance*. She is also a coauthor of the leading securities regulation text in Canada.

Dedicated with immeasurable love and gratitude to my family

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society. . . . All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions of life, and his relations with his kind.

Karl Marx and Friedrich Engels, *The Communist Manifesto*

The major impulses to successful financial innovations over the last twenty years have come, I am saddened to have to say, from regulations and taxes.

Merton Miller, 'Financial Innovation: The Last Twenty Years and the Next', *Journal of Financial and Quantitative Analysis*, 1986

In *Innovation and the State: Finance, Regulation, and Justice*, Cristie Ford provides a thorough analysis of the evolution of academic literature on 'flexible regulation' and couples this with an analysis of different forms of innovation to consider how regulation can fulfil progressive social goals whilst coping effectively with the risks and uncertainties that innovations within markets can pose. Elegantly written and perceptively observed, this is a timely analysis, which reminds us that regulation is a political and social project as well as a technical one.

Julia Black, Professor of Law, Pro Director for Research, and interim
Director, London School of Economics and Political Science

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John Braithwaite, School of Regulation and Global Governance
(RegNet), Australian National University

Like the words 'growth' and 'progress', 'innovation' is often taken for granted as a public good. Indeed, it can be. But Cristie Ford shows in this deep and thoughtful book the way this taken-for-grantedness has seduced regulators, academics and the public into a set of beliefs that undermines the necessary task of regulation itself. She points the way forward to a more sophisticated interaction between regulation and innovation in a more just, progressive society.

Donald Langevoort, Thomas Aquinas Reynolds
Professor of Law, Georgetown

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No book can be produced without enormous help from many quarters. A book such as this one, which aims to link legal sub-disciplines that do not always speak directly to each other, and which also aims for some level of interdisciplinarity, has perhaps drawn on (and drawn on the patience of) a wider group of readers than most. For their encouragement, engagement, and insightful feedback on previous drafts and portions of this book, I am very much indebted to Dan Awrey, Lawrence Baxter, Julia Black, John Braithwaite, Alex Burton, Cary Coglianese, Onnig Dombalagian, Adam Feibelman, Stavros Gadinis, Erik Gerding, Benjamin Goold, Fiona Haines, Douglas C. Harris, Carol Heimer, Camden Hutchison, Rony Kahan, Don Langevoort, David Levi-Faur, Emilio Marti, Saule Omarova, Christine Parker, Frank Partnoy, Nancy Reichman, Tanina Rostain, Chuck Sabel, Dan Schwarcz, Jodi Short, Susan Silbey, Steve Davidoff Solomon, Elen Stokes, Judith van Erp, Bill Wilhelm, and David Zaring.

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Abbreviations

ACBC	Asset-Backed Commercial Paper
CDO	collateralized debt obligation
CDS	credit default swap
CFPB	Consumer Financial Protection Bureau
CSE	Consolidated Supervised Entities
EMT	Efficient Market Theory
FASB	Financial Accounting Standards Board
FDA	Federal Drug Administration
FSA	Financial Services Authority (UK)
FSB	Financial Stability Board
FSOC	Financial Stability Oversight Council
GAAP	generally accepted accounting principles
HFT	high-frequency trading
IFRS	International Financial Reporting Standards
IOSCO	International Organization of Securities Commissions
ISDA	International Swaps and Derivatives Association
LTCM	Long-Term Capital Management
MMS	Minerals Management Service
NPM	New Public Management
NPR	National Program Review
OFR	Office of Financial Research
OMB	Office of Management and Budget
OTC	over-the-counter
PIG	public interest group
SEC	Securities and Exchange Commission
SPV	special-purpose vehicles
VaR	Value at Risk
WEF	World Economic Forum

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