

ASERS

Journal of **Advanced Research**
in **Law and Economics**

Biannually

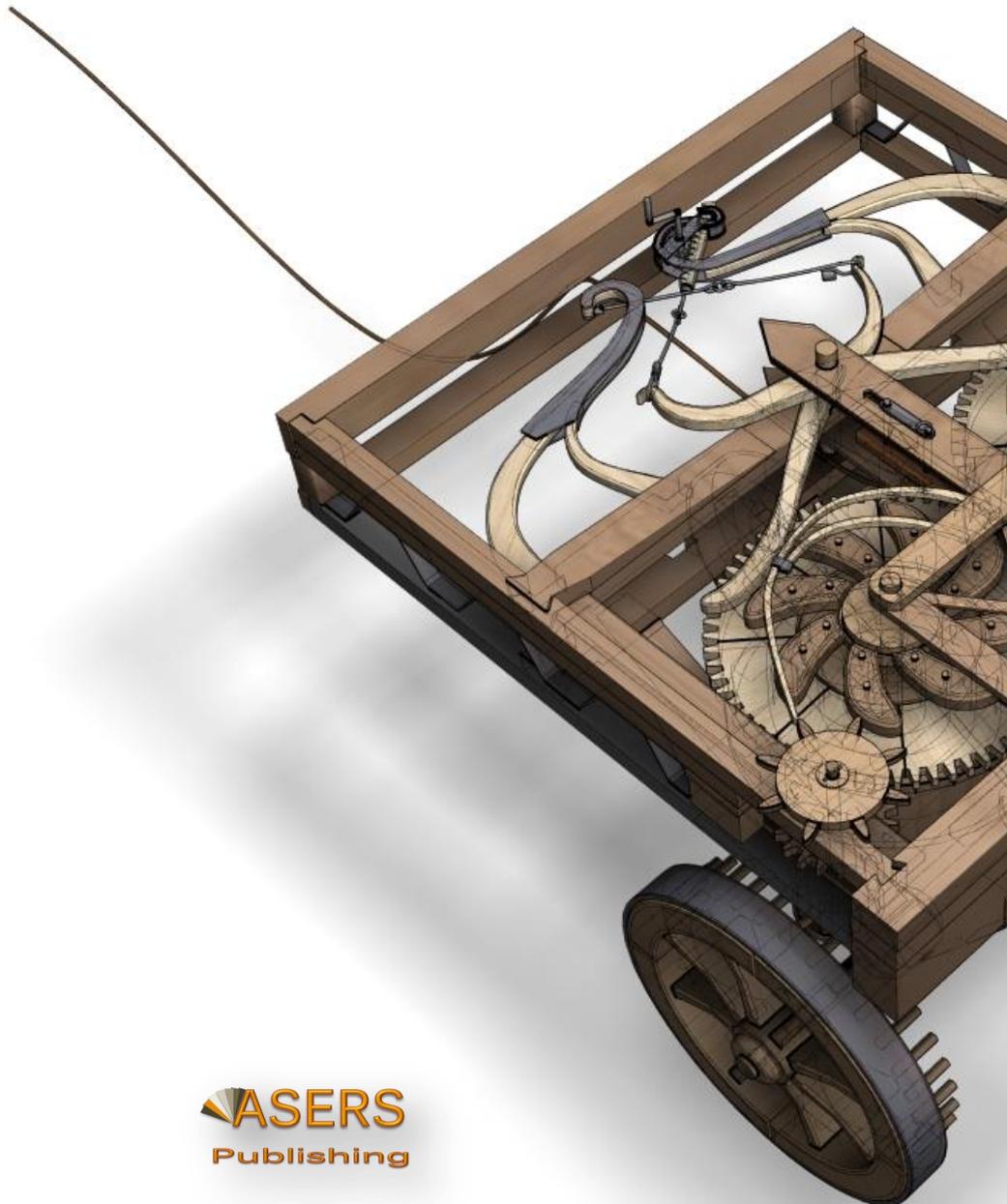
Volume IV

Issue 1 (7)

Summer 2013

ISSN 2068-696X

 **ASERS**
Publishing



Editor in Chief

Madalina Constantinescu
Association for Sustainable
Education Research and Science,
Romania, **Romania**

Co-Editors

Russell Pittman
International Technical Assistance
Economic Analysis Group Antitrust
Division, **USA**

Eric Langlais
EconomiX CNRS and Université
Paris Ouest-Nanterre, **France**

Editorial Advisory Board

Huseyin Arasli
Eastern Mediterranean University,
North Cyprus

Jean-Paul Gaertner
Ecole de Management de
Strasbourg, **France**

Shankar Gargh
Editor in Chief of Advanced in
Management, **India**

Arvi Kuura
Pärnu College, University of Tartu,
Estonia

Piotr Misztal
Technical University of Radom,
Economic Department, **Poland**

Peter Sturm
Université de Grenoble 1 Joseph
Fourier, **France**

Rajesh K. Pillania
Management Development
Institute, **India**

Rachel Price-Kreitz
Ecole de Management de
Strasbourg, **France**

Andy Stefanescu
University of Craiova, **Romania**

Laura Ungureanu
Association for Sustainable
Education Research and Science,
Romania, **Romania**

Hans-Jürgen Weißbach,
University of Applied Sciences -
Frankfurt am Main, **Germany**

Contents:

- 1** **Management Strategies for Conservation of Natural Resources in Agriculture**
Hrabrin Bachev
Institute of Agricultural Economics,
Bulgaria ... 4
- 2** **Understanding 'The Problem of Social Cost'**
Enrico Baffi
Marconi University, **Italy** ... 46
- 3** **Decentralizing Environmental Administration: A Common Law Approach**
Philip P. De Paula
Clarence Skylarke LLC, Greater New
Orleans Area, **USA** ... 53
- 4** **Hans Werner Sinn and Timo Wollmershaeuser's Target Loans, Current Account Balances and Capital Flows: The ECB's Rescue Facility. A Comment**
Daniele Schilirò
DESMaS, 'V.Pareto', University of
Messina, **Italy** ... 66

Call for Papers

Volume IV, Issue 2(7), Winter 2013

Journal of Advanced Research in Law and Economics

Journal of Advanced Research in Law and Economics is designed to provide an outlet for theoretical and empirical research on the interface between economics and law. The Journal explores the various understandings that economic approaches shed on legal institutions.

Journal of Advanced Research in Law and Economics publishes theoretical and empirical peer-reviewed research in law and economics-related subjects. Referees are chosen with one criterion in mind: simultaneously, one should be a lawyer and the other an economist. The journal is edited for readability both lawyers and economists scholars and specialized practitioners count among its readers.

To explore the various understandings that economic approaches shed on legal institutions, the Review applies to legal issues the insights developed in economic disciplines such as microeconomics and game theory, finance, econometrics, and decision theory, as well as in related disciplines such as political economy and public choice, behavioural economics and social psychology. Also, *Journal of Advanced Research in Law and Economics* publishes research on a broad range of topics including the economic analysis of regulation and the behaviour of regulated firms, the political economy of legislation and legislative processes, law and finance, corporate finance and governance, and industrial organization.

Its approach is broad-ranging with respect both to methodology and to subject matter. It embraces interrelationships between economics and procedural or substantive law (including international and European Community law) and also legal institutions, jurisprudence, and legal and politico – legal theory.

The quarterly journal reaches an international community of scholars in law and economics.

Submissions to *Journal of Advanced Research in Law and Economics* are welcome. The paper must be an original unpublished work written in English (consistent British or American), not under consideration by other journals.

Journal of Advanced Research in Law and Economics is currently indexed in EconLit, RePec, CEEOL, EBSCO, ProQuest and Cabell Directory.

Invited manuscripts will be due till October 15th, 2013, and shall go through the usual, albeit somewhat expedited, refereeing process.

Deadline for submission of proposals:	1 st November 2013
Expected Publication Date:	December 2013
Web:	http://www.asers.eu/journals/jarle.html
E-mail:	jarle@asers.eu

Full author's guidelines are available from: <http://www.asers.eu/journals/jarle/instructions-for-authors>

Management Strategies for Conservation of Natural Resources in Agriculture

Hrabrin **BACHEV**
Institute of Agricultural Economics, Bulgaria
hbachev@yahoo.com

Abstract

This paper suggests a holistic framework for assessment and improvement of management strategies for conservation of natural resources in agriculture. First, it incorporates an interdisciplinary approach (combining Economics, Organization, Law, Sociology, Ecology, Technology, Behavioural and Political Sciences) and presents a modern framework for assessing environmental management and strategies in agriculture including: specification of specific 'managerial needs' and spectrum of feasible governance modes (institutional environment; private, collective, market, and public modes) of natural resources conservation at different level of decision-making (individual, farm, eco-system, local, regional, national, transnational, and global); specification of critical socio-economic, natural, technological, behavioural etc. factors of managerial choice, and feasible spectrum of (private, collective, public, international) managerial strategies; assessment of efficiency of diverse management strategies in terms of their potential to protect diverse eco-rights and investments, assure socially desirable level of environmental protection and improvement, minimize overall (implementing, third-party, transaction etc.) costs, coordinate and stimulate eco-activities, meet preferences and reconcile conflicts of individuals etc. Second, it presents evolution and assesses the efficiency of diverse management forms and strategies for conservation of natural resources in Bulgarian agriculture during post-communist transformation and EU integration (institutional, market, private, and public), and evaluates the impacts of EU CAP on environmental sustainability of farms of different juridical type, size, specialization and location. Finally, it suggests recommendations for improvement of public policies, strategies and modes of intervention, and private and collective strategies and actions for effective environmental protection.

Keywords: environmental management, strategies in agriculture, conservation of natural resources, environmental protection, European Union integration, European Union Common Agricultural Policy.

JEL Classification: Q12, Q15, Q26, F15

Introduction

A significant amount of natural resources (lands, waters, biodiversity, ecosystem services etc.) are part of agricultural systems. Modern agriculture significantly affects the state and sustainable exploitation of natural resources being a major factor for environmental degradation (pollution, destruction, extortion) as well an important contributor for conservation and improvement of natural resources. Therefore, the issues associated with the effective governance and strategies for sustainable exploitation and conservation of natural resources in agriculture are among the most topical in public, political, business and academic debates around the globe (Baba *et al.* 2011; COST 2009; Dobbs and Pretty 2008; Ducos and Dupraz 2006; Defrancesco *et al.* 2008; EC 2005; Farmer 2007; Hagedorn 2002; Hart and Latacz-Lohmann 2004; McCanna *et al.* 2005; Peerlingsa and Polman 2009; Reed 2008; Scozzari and Mansouri 2011; UN 2012).

Despite its importance, the research on governance mechanisms and strategies for natural resources conservation in agriculture is at the beginning stage due to the 'newness' of the problem, and the emerging new challenges and risks in recent years (inter-sectors competition for natural resources, global climate change, depletion of non-renewable environmental resources etc.), and the fundamental development of economic theory in the last two and a half decades, and the 'lack' of long-term experiences and relevant data for the process and efficiency etc.

Most studies are focused on the specific aspects of natural resource management and strategies (soils, waters, biodiversity, agro-ecosystems services) without studying their relations, complementarities and contradictions. What is more, they are typically restricted to a certain form of governance (eco-product, eco-contract, eco-cooperative, industry eco-initiative, public eco-program), or specific type of farm (family, agri-firm, cooperative), or management level (farm, ecosystem, national), or a particular location (region, ecosystem). Usually they are focused on pure and formal management forms, mechanisms and strategies, while various (and often more efficient) informal and complex forms (integral, interlinked, multilateral, multilevel) are ignored.

Besides, uni-sectorial analyses are broadly used which separate the governance of farming from the management of overall households and rural activities. Moreover, 'normative' (to some 'ideal model' or 'model in another country') rather than a comparative institutional approach between feasible alternatives in the specific socio-economic and natural environment of a certain farm, region, sector, or country is employed. Likewise, the significant social costs associated with the governance, known as transaction costs, are not (or only partially) taken into consideration.

Furthermore, uni-disciplinary approaches dominate, and efforts of researchers in economics, organization, law, sociology, agronomy, ecology, technology, and behavioural and political sciences are rarely united to deal with that complex matter. Lastly, there are few studies on specific institutional, economic, ideological, cultural, natural, etc. factors responsible for the big variation among countries, regions, industries, and organizations of agricultural activity.

Consequently, our understanding on the institutional, behavioural, technological, ecological, international, etc. factors of the management and strategies of natural resources conservation in agriculture is impeded. Neither the spectrum of feasible formal, informal, market, private, public, integral, multilateral, transnational, etc. modes of governance can be properly identified, nor their efficiency (potential and limits), complementarities, conflicts, and prospects of development correctly assessed. All these restrict our capability to assist improvement of public policies, strategies, and modes of intervention, and to support individual, business and collective strategies and actions for effective natural resources conservation.

This paper suggests a holistic framework for assessment and improvement of management strategies for conservation of natural resources in agriculture.

First, it incorporates an interdisciplinary approach and presents a modern framework for assessing environmental management and strategies in agriculture.

Second, it presents evolution and assesses the efficiency of diverse management forms and strategies for conservation of natural resources in Bulgarian agriculture during post-communist transformation and European Union (EU) integration, and evaluates the impacts of EU Common Agricultural Policy (CAP) on environmental sustainability of farms of different juridical type, size, specialization and location.

Finally, it suggests recommendations for improvement of public policies, strategies and modes of intervention, and private and collective strategies and actions for effective environmental protection.

Conclusion and policy recommendations

Our analysis has demonstrated that suggested new framework let better understand, assess and improve natural resources conservation management and strategies in the specific market, institutional and natural environment of individual farms, ecosystems, regions, sub-sectors and countries.

We have showed that post-communist transition and EU integration has brought about significant changes in environmental management in Bulgarian agriculture. Newly evolved market, private and public governance has led to a significant improvement of eco-management and eco-impacts of agriculture introducing modern eco-standards and public support, enhancing environmental stewardship, dis-intensifying production, recovering landscape and traditional productions, and diversifying quality, eco-products and services.

Agrarian transition and integration has been also associated with some new challenges such as unsustainable exploitation of natural resources, lost biodiversity, land degradation, water and air contamination etc.

Furthermore, implementation of the 'common' EU policies has been having unlike results in the specific 'Bulgarian' conditions. Up to date (and likely in a short and medium term) it enlarges income, technological, and eco-discrepancy between different farms, sub-sectors, and regions. In a longer-term eco-hazard(s) caused by agriculture will likely expand unless effective public and private measures are taken to mitigate existing eco-problems and risks. Moreover, the specific structures for management of farming activity (small commercial, semi-market, and subsistence farms, production cooperatives, large business firms) will continue to dominate in years to come and have to incorporate the eco-management needs.

Therefore, a significant improvement of public (Government, EU) interventions in agrarian and eco-management is needed to enhance sustainability of prospective farms and sustainable agrarian and rural development. Implementation of the EU common (agricultural, environmental, regional etc.) policies would have no desired impacts on environmental conservation and improvement unless special measures are taken to improve eco-information and assessments; modernize the system of property rights, public regulations and enforcement; perfect management of public organizations, programs and services; and extend public support to and partnerships with dominating farming (including small-scale and subsistence) structures etc.

Our analysis has identified that the major problems, challenges and risks in eco-management of Bulgarian agriculture at the current state of development are:

- inadequate and/or badly coordinated and funded management strategies for natural resources conservation,
- lack of appropriate information and assessments on eco-pressures, states, impacts and risks available for all farmers and other agents related with natural environment,
- ineffective system of formal property rights (rules) and public enforcement of laws, contracts and official standards,
- farmland degradation (exhaustion, erosion, contamination, compression),
- ineffective water utilization and waters contamination,
- air pollution,
- adverse effect on natural biodiversity,
- poor waste management (burning fields, illegal garbage dumping and yards, ineffective storing and disposal of old chemicals),
- not-motivated, incapable and/or unsustainable farming structures,
- lack of effective eco-organizations able to mitigate existing and emerging eco-conflicts and risks,
- lack of sufficient eco-education in farmers and other stakeholders,
- lack of effective system of eco-innovations,
- ineffective forms of public involvement – inadequate, under or over-intervention; gaps in planning, coordination and regulations; high controversy, unpredictability and costs; insufficient capability and funding; large-scale mismanagement; lack of participation of and partnership with other stakeholders etc.

Therefore, further improvement of institutional environment, public policies and modes of public intervention is necessary to modernize the system of eco-management in agriculture. More particularly public policies and strategies are to be directed to:

First, better integration of environmental (including neglected eco-system services, ground water etc.) policy in agrarian and development policies as effective design and enforcement of long-term eco-measures get a high priority. Up to date most public efforts have been put on addressing urgent socio-economic (e.g. financial) problems while improvement of eco-management is perceived as unimportant. Accordingly, no measures are taken to mitigate or prevent various eco-risks (e.g. impacts of climate change, constant practicing of monoculture, re-intensification etc.). Furthermore, it is to be stability and certainty in eco-policy (long-term public commitment rather than frequent changes) in order to induce effective private and collective actions. For instance, a major reason for low investments in otherwise efficient agricultural green energy (energy crops; manure, biomass and wind energy production) has been the big uncertainty about the long-term policy in the area.

Second, complete application of integral approach of soil, water and biodiversity management in planning, funding, management, monitoring, controlling and assessment at all levels with stakeholders' involvement in decision-making. Moreover, eco-system services, life-cycle, eco-, energy and water accounts and footprints, and other modern approaches are to be incorporated into program design and management at all levels.

Third, improving coordination and efficiency of actions of various public and private agents involved in eco-management. Individual elements and responsibilities in public eco-management are usually divided between various agents and organizations with poor coordination, conflicting interests, and inconsistency, controversies, gaps and inefficiency of actions.

Forth, better defining, regulating and further privatizing (collectivizing) property, user, management, trading, discharge etc. rights and assets related to eco-resources, eco-system services, renewable energy supply, (N, GHG) emissions, waste discharges etc.

Five, employing a greater range of economic instruments including appropriate pricing, quotas, public funding and insurance, taxing, interlinking etc. to improve eco-resources use efficiency and risk-sharing, prevent over-intensification and pressure on natural resources, and support farms adaptation to changing market, institutional and natural environment.

Six, organizationally and financially securing adequate eco-data collection, monitoring, and independent assessment, including agricultural linkages with the state of environment: soil, water and air contamination;

impacts on biodiversity; waste production and decomposition; total social costs, energy intensity, eco- (water) foot-print, benefits from farming; effect on eco-conservation and improvement; renewable energy production; impacts of climate change; existing and likely risks etc. What is more, adequate mechanisms to assure timely disclosure and effective communication of available information to decision-makers, stakeholders and public at large are to be put in place.

Seven, better adapting EU CAP and national instruments to the specific Bulgarian conditions through greater support to farm modernization and adaptation, eco-innovations, and prospective business and non-for profit modes; relaxing the EU criteria for semi-market and young farmers; directing funds to prospective (Farm modernization and adaptation, Young farmers, environmental), and unsupported (Organic livestock, restoration of abandoned farmland) measures and organizations (livestock, public academic centres); and better implementing planned eco- measures.

Nine, improving eco-education and training of farmers, administrators, other stakeholders and public at large through modernization of agrarian education and Agricultural Education and Advisory Service. The latter are to reach all agents via effective methods of education, advice, and information (TV, radio, on line information; demonstration) suited to their specific needs; set up a system of continues training and sharing experiences; include eco-, water, waste management, climate change and rural development issues; cooperate with other (public and private) academic institutions and private organizations; involve farmers and stakeholders in programs management, implementation and assessment at all levels.

Eight, employing more hybrid (public-private, public-collective) modes given their coordination, incentives, and control advantages. Public organization and enforcement of most eco-standards is very difficult (especially in huge informal sectors and remote areas). Public support to voluntary initiatives of professional, community and non-governmental organizations (informing, training, assisting, funding, risk-sharing), and assistance in cooperation at grass-root, eco-system, watershed, trans-regional, trans-border levels is much more efficient. Accordingly, real participation of farmers and stakeholders in priority setting, management, and assessment of public programs and regulations at all levels is to be institutionalized.

Ten, improving the overall institutional environment and public governance perfecting property rights protection, laws and contracts enforcement, combating against mismanagement and corruption in public sector, removing restrictions for market, private and collective initiatives etc.

Eleven, giving more public support to multidisciplinary and interdisciplinary research on all aspects and impacts of eco-management, including factors and forms of eco-management, and their impact on individual and collective eco-behaviour and environmental preservation. Up to date efforts of Ecologists, Technologists, Economists, Law, Sociologists, Behavioural and Political Scientists have been rarely united; most studies focus on individual aspect(s) of sustainability, or certain form(s) of management, or management level, or geographical location. What is more, the governance of farming is usually separated from the management of households and rural activities; and 'normative' (to some 'ideal' or 'model in a foreign country') rather than comparative (between feasible alternatives) approach is broadly employed; and significant social (third-party, recovery, transaction etc.) costs largely ignored. Consequently, institutional, behavioural, economic, ecological, international etc. factors of environmental sustainability are not properly understood, spectrum of feasible management modes properly identified, and efficiency, complementarities, and prospects of development adequately assessed.

References

- [1] Alexandrov, V. 2008. *Adaptation of Irrigation under climate change in Bulgaria*. www.adagioeu.org/documents/meeting_jojs/21_V_Alexandrov_bulgarian_irrigation_adaptation.pdf.
- [2] Baba, A. et al. 2011. *Climate Change and its Effects on Water Resources, Issues of National and Global Security*, Springer Dordrecht.
- [3] Bachev, H. 2004. Efficiency of Agrarian Organizations, *Farm Management and Rural Planning No 5*, Fukuoka: Kyushu University Press, pp. 135 – 150.
- [4] Bachev, H. 2008. Management of Environmental Challenges and Sustainability of Bulgarian Agriculture, in *Environmental Challenges and Human Security: Recognizing and Acting on Hazard Impacts*, Editors P.H. Liotta et al., Springer, pp. 117–142.
- [5] Bachev, H. 2010a. *Governance of Agrarian Sustainability*. New York: Nova Science Publisher.

- [6] Bachev, H. 2010b. Water Governance in Bulgarian Agriculture, in *Climate Change and its Effect on Water Recourses – Issues of National and Global Security*. Editors A.Baba, G.Tayfur and I.Sahin, Amsterdam: Springer.
- [7] Bachev, H. 2011a. Management of Agro-Ecosystem Services: Framework of Analysis, Case of Bulgaria, in *Advances in Environmental Research*. Vol. 17. Editor J. Daniels. New York: Nova Science, 119 – 164
- [8] Bachev, H. 2011b. Efficiency of Economic Organizations and Public Policy Interventions in Agriculture, in *Agricultural Policies: New Developments*, Editor L.Contreras, New York: Nova Science, 55 – 86.
- [9] Bachev, H. and Labonne, M. 2000. *About Organization of Agrarian Innovations*, Montpellier: INRA.
- [10] Coase, R. 1960. The Problem of Social Costs, *Journal of Law and Economics* 3: 1 – 44.
- [11] COST. 2009. COST Foresight 2030. Benefiting from the Digital Revolution, COST Workshop on Food Security, June 30- July 2, 2009, Gent, Belgium.
- [12] Defrancesco E., P. Gatto, F. Runge, S. Trestini 2008. Factors Affecting Farmers' Participation in Agri-environmental Measures, *Journal of Agricultural Economics*, 59(1): 114 – 131.
- [13] Dobbs, T. and Pretty, J. 2008. Case study of agri-environmental payments: The United Kingdom, *Ecological Economics*, 65(4): 765 – 775.
- [14] Ducos, G. and Dupraz, P. 2006. *Private Provision of Environmental Services and Transaction Costs, Agri-environmental Contracts in France*, paper presented at the 3d World Congress of Environmental and Resource Economics, 3-7 July, 2006, Kyoto.
- [15] Dupraz, P., Latouch, K. and Bonnieux, F. 2004. Economic Implications of Scale and Threshold Effects in Agri-environmental Processes, paper presented at the 90 EAAE Seminar, 27-29 October 2004, Rennes.
- [16] EC. 2005. *Strategy on the Sustainable Use of Natural Resources*, Brussels: European Commission.
- [17] EEA. 2010. *State of Environment Report*, Sofia: Executive Environment Agency.
- [18] EEA. 2011. *National Inventory Report for Greenhouse Gas Emissions*. Sofia: Executive Environment Agency.
- [19] EUROSTAT. 2011. *Organic Farming, Agricultural Statistics*, Brussels: Eurostat.
- [20] Farmer, M. 2007. *The Possible Impacts of Cross Compliance on Farm Costs and Competitiveness*, Institute for European Environmental Policy, KVL.
- [21] FAO. 2010a. *Pressure-State-Response Framework and Environmental Indicators*, Rome: Food and Agriculture Organization.
- [22] FAO. 2010b. *AQUASTAT*. Rome: Food and Agriculture Organization.
- [23] Furuboth, E. and Richter, R. 1998. *Institutions and Economic Theory. Contribution of New Institutional Economics*, Ann Arbor: University of Michigan Press.
- [24] Hagedorn K. (editor). 2002. *Environmental Co-operation and Institutional Change: Theories and Policies for European Agriculture*, Edward Elgar Publishing.
- [25] Hart, R. and Latacz-Lohmann, U. 2004. Combating moral hazard in agri-environmental schemes: a multiple-agent approach, *European Review of Agricultural Economics*, 32(1): 75 – 91.
- [26] McCanna, L. et al. 2005. Transaction cost measurement for evaluating environmental policies, *Ecological Economics*, 52(4)(1): 527 – 542.
- [27] MEA. 2005. *Millennium Ecosystem Assessment. Ecosystems and Human Well-Being: Synthesis*, Washington: Island Press.
- [28] MAF. 2009. *Annual report*, Ministry of Agriculture and Food, Sofia.
- [29] MEW. 2007. *Annual report*, Sofia: Ministry of Environment and Water.
- [30] Mori T. 1991. The History of Japanese Agriculture, in *Agricultural Policy in Japan*, XXI IAAE Conference, Tokyo.
- [31] NSI. 2011. *Statistical Book*, Sofia: National Statistical Institute.
- [32] North D. 1990. *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.
- [33] Peerlingsa, J. and Polman, N. 2009. Farm choice between agri-environmental contracts in the European Union, *Journal of Environmental Planning and Management*, 52(5): 593 – 612.

- [34] Reed, M. 2008. Stakeholder participation for environmental management: A literature review, *Biological Conservation*, 141(10): 2417 – 2431.
- [35] Scozzari, A. and Mansouri, B. (editors). 2011. *Water Security in the Mediterranean Region, An International Evaluation of Management, Control, and Governance Approaches*, Springer.
- [36] UN. 2012. *Report of the United Nations Conference on Sustainable Development*, Rio de Janeiro, 20 – 22 June 2012, UN.
- [37] Williamson, O. 1996. *Mechanisms of Governance*, New York: Oxford University Press.

Understanding 'The Problem of Social Cost'

Enrico BAFFI
Marconi University, Italy
baffienrico@hotmail.com

Abstract

This paper examines the positions of Coase and Pigou in regard to the problem of external effects (externalities). Assessing their two most important works, it appears that Coase has a more relevant preference for an evaluation of total efficiency, while Pigou, with some exceptions, is convinced that it is almost always socially desirable to reach marginal efficiency through taxes or liability. It is interesting that the economist of Chicago, who has elaborated on the renowned theorem, thinks that is not desirable to reach efficiency at the margin every time, and that it is often preferable to evaluate the total, which indicates the solution that is more welfare enhancing. Certain confusion in the work of Coase is noticeable. On one hand he criticizes Pigou for statements regarding the social desirability of relocating some industries away from the towns, and on the other hand, he suggests solutions that give an absolute right for an activity that is incompatible with the activity of another subject. In this way he eliminates the possibility of having a solution that is in accordance with Coase's idea, which stresses that any external effect is reciprocal: The adjective 'reciprocal' means that a damage to Y is the consequence of limiting the activity of Y in order to allow the activity of X, and the opposite is also true: A benefit for Y causes a damage to X.

Beyond this criticism, Coase's arguments against Pigou's tools are represented by the famous theorem, according to which a public intervention is not necessary in order to obtain efficiency when transaction costs are low. However, the theorem is not an idea that can be used to say that Pigou's methods are useless when transaction costs are high. Indeed, when transaction costs are high, efficiency cannot be reached through negotiations. Coase, nonetheless, rejects Pigou's tools for every situation. Through a deep examination of the paragraphs of 'The Problem of Social Costs,' it is understandable why Coase opposes Pigou's tools. First of all, he considers that the remedy consisting in the compensation of the victim. To Pigou's way of thinking, this is a strict liability rule. Coase states that the damage is caused by both parties, and, moreover, the amount of the damage depends on both parties. He understands that the compensation method described by Pigou can bring about moral hazards and, therefore, brings about new social costs.

Since the article was written in 1960, Coase's theory has been developed and has become a pillar of tort law and economics.

Pigou proposed a tax as an alternative remedy for external effects, which does not bring about behaviour of moral hazard, because the victim bears the expected costs. However, Coase is diffident in regard to the tax. His idea was not developed by other scholars in the subsequent years. Coase understands that efficiency should require a tax on the victim, so that the victim considers the increase of the costs of precaution for the injurer due to creating the nuisance. In other words, Coase understands that the tax does not produce the socially optimal activity level of the parties if the costs of precaution of the other party are not considered as a component of the tax. Therefore, Coase's belief is that the tools of Pigou create so many problems as to make them inefficient.

Keywords: external effects (externalities), The Problem of Social Cost, Coase theorem, Pigou's tools, Pigouvian tax, moral hazard, Economics of Welfare.

JEL Classifications: D62, H23, I38

Introduction

Ronald Coase and Arthur Pigou have contributed considerably to the development of the vast field of economic science. Indeed, without their contributions, transaction cost economics, the economic analysis of law, and the new welfare economics might never have been developed.

Pigou published his last edition of *The Economics of Welfare* in 1932. Three decades later, Coase sent his article on the problem of social cost to the press in 1960¹. Although the two economists agreed on many aspects, such as the problem of the maximization of welfare and the proper functioning of market competition (Coase 1988, 95), Coase's article comes across as a strong criticism of Pigou's stance and the tradition that had

¹ Coase, R. 1960. The Problem of Social Cost, *Journal of Law and Economics*, Vol. 3: 1 – 44, now published in Coase, R., *The Firm, the Market, and the Law*, The University of Chicago Press, Chicago (1988). All quotes from Coase are from this publication.

developed around his writings. In fact, Coase strived to highlight a number of deficiencies in Pigou's arguments. He directed many critical comments at Pigou, one of which has subsequently been termed 'Coase's Theorem'.

Conclusion

In his renowned article Coase criticizes the Pigouvian tradition. Many ideas are convincing, but his pessimism toward Pigouvian tools and their efficiency seems sometimes the consequence of a bias against Pigou. He considers some of Pigou's statements regarding some industries that could be antisocial, and states that the external effect is reciprocal. For this reason an activity cannot be said to be antisocial. However, in the course of his reasoning Coase becomes more prone to make evaluations based on the total than Pigou, and making evaluations on the total means that the condition of efficiency at the margin is not respected and so an activity can be banned or fully allowed. In other words the principle of the reciprocal nature of external effect is abandoned many times by Coase.

Coase determined that the well-known theorem makes Pigouvian tools useless in reaching efficiency. Indeed efficiency is reached through negotiations. However, the theorem is not an argument against Pigou's methods when transaction costs are high. Indeed in these situations parties cannot negotiate.

Nonetheless Coase rejects Pigou methods. He discovers two problems with Pigouvian methods. In regard to compensation, the Chicagoan economist understands that a problem of moral hazard emerges. With this possibility of social loss, the compensation method does not bring efficiency. With respect to the tax, Coase needs to find other reasons against this method, because using this method does not compensate the victim.

Coase is of the belief that the Pigouvian tax is not sufficient if a legal system wants to promote efficiency. Indeed, with a single tax on the injurer the victim does not consider the cost of precautions that the injurer must bear. It is possible that the cost of precaution is larger than the cost of giving up the activity by the victim. So Coase understands that two taxes are necessary. More generally we can say that efficiency is obtained if parties also internalize the costs of precaution of the other party. The single Pigouvian tax does not promote efficiency.

There are fields that could be subject of important research in the future. It would be interesting to study if, theoretically, a tax really must be asked to victims of a negative externality in order to control their level of activity and, practically, if this solution is possible. Second, it's important to see if inefficiency asks for a tax on the injured that is not only equal to expected damage but of the sum of the expected cost as well as the victim's cost of precaution. So the same reasoning should be valid for both injurers and victims. Law and economics scholars, until now, do not have answers to these questions.

Reference

- [1] Coase, Ronald Harry. 1960. The Problem of Social Cost, *Journal of Law and Economics*, 3: 1 – 44.
- [2] Coase, Ronald Harry. 1988. *The Market. The Firm. The Law*. The University of Chicago Press.
- [3] Pigou, Arthur Cecil. 1914. Some Aspects of the Housing Problem, in DB. Rownstree and A. Pigou editors, *Lectures on Housing*, Manchester, University Press.
- [4] Pigou, Arthur Cecil. 1932. *The Economics of Welfare*, 4th edition, Macmillan and Co Ltd, London.
- [5] Shavell, Steven. 1984. Liability for Harm versus Regulation of Safety. *Journal of Legal Studies*, 13: 357-374.

Decentralizing Environmental Administration: A Common Law Approach

Philip P. DE PAULA

Clarence Skylarke LLC, Greater New Orleans Area, USA

depaula.philip@gmail.com

Abstract

This paper intends to explore whether government regulation hinders rather than serves the goals of environmentalism by inhibiting possible free market mechanisms. The primary focus will be upon the tort aspects of environmental law, and whether these might be expanded to allow for litigation to serve as both the arbiter and the primary deterrent mechanism for environmental torts. In order to accomplish such a system, the viability of two current facets of environmental regulation will be examined.

First, the imposition of environmental standards by centralized federal agencies will be examined to the extent that they limit efficiency and local responsiveness. The intention is to explore whether allowing state courts and local governments to administer environmental law will have the effect of opening up litigation and producing more reactive local results. Second, the institution of limiting standing to government actors, especially with regard to the Lujan decision will be examined as a mechanism that provides polluters a potential escape where government resources fail. Further, creating a generalized property right in environmental interests will be presented as a solution to the standing question. The aim is to determine the effect of centralized administration in preventing pollution control as well as presenting decentralization as a more effective and efficient means of pursuing this goal. Finally, the paper will present four suggestions for addressing some of the faults of the current regulatory system: empowering state courts to litigate environmental disputes to replace the federal regulatory system; loosening restrictions of standing; imposing a private damages regime; and applying strict liability to environmental claims.

The paper will draw from United States jurisprudence on environmental law as well as drawing heavily from scholarly writing on environmental law and the economics of environmentalism.²

Keywords: environmental law, environmental regulation, economics of environmentalism, decentralizing of environmental administration, common law, free market environmentalism.

JEL Classifications: K23, K32

The Current Regulatory System

To more completely contrast the free market transaction system discussed below with the current environmental law regime in the United States, an explanation of the current regime and its drawbacks are necessary. In general, the current regulatory regime is administered by the United States Federal government through administrative agencies including the Environmental Protection Agency, which governs air and water pollution solid waste, radiation, pesticides, noise pollution, and other toxic substances³; the Department of Health and Human Services, which governs health concerns relating to pollution⁴; the Department of Interior, which handles public lands, energy production, mineral extraction and national parks⁵; the Department of Agriculture, which handles concerns relating to forests⁶, soil and conservation⁷; the Department of Defence, which handles any dredging and filling in water through the Army Corps of Engineers⁸; the Nuclear Regulatory Commission,

² The author wants to thank Professor Jeanne M. Woods, Henry F. Bonura, Jr. Distinguished Professor of Law at Loyola University New Orleans College of Law for her guidance, accommodation and input throughout the process of writing this paper. Also, the author wants to thank Dr. Walter E. Block for his mentorship and inspiration. Without these two fine academics this paper would not exist.

³ Reorganization Plan No.3 of 1970, 35 Fed. Reg. 15,623. (Jul. 9, 1970).

⁴ Comprehensive Environmental Response, Compensation, and Liability Act, 94 Stat. 2797; 42 U.S.C. § 9601 *et seq.* (Dec. 11, 1980)

⁵ Federal Oil and Gas Royalty Management Act, 96 Stat. 2447; 30 USC § 1701 *et seq.* (Jan. 11, 1983)

⁶ Transfer Act of 1905, 33 Stat. 628; 16 U.S.C. § 472, 524, 554. (Feb. 1, 1905).

⁷ Federal Crop Insurance Reform and Department of Agriculture Reorganization Act, 108 Stat. 3223. (Oct. 13, 1994).

⁸ Rivers and Harbors Act, 30 Stat. 1151; 33 U.S.C. § 407. (Mar. 2, 1899) and Federal Water Pollution Control Amendments of 1972, 86 Stat. 816; 33 U.S.C. § 1251. (Oct. 18, 1972).

which regulates nuclear power⁹; the Department of Commerce, which handles oceanic and atmospheric monitoring and research¹⁰; the Department of Transportation, which handles oil and petroleum pollution (Mineta 2004); The United States Fish and Wildlife Service and National Oceanic and Atmospheric Administration, which administer the Endangered Species Act¹¹; and the Tennessee Valley Authority, which administers power-generating facilities excluding nuclear facilities, among others¹². The executive branch agencies are coordinated by the Council on Environmental Quality under the Executive Office of the President¹³.

Additionally, both branches of the legislative branch, the Senate and House have various committees and sub-committees which handle independent aspects of environmental policy including, but not limited to, the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriation, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, the Committee on Labour and Human Resources, the Committee on Small Business, the Committee on Oversight and Government Reform, the Committee on Interior and Insular Affairs, the Committee on Energy and Commerce, the Committee on Natural Resources, the Committee on Transportation and Infrastructure, and the Committee on Science and Technology. Each of the committees supra administers several sub-committees¹⁴.

Administering environmental policy within a system so multi-faceted may prove at-best very difficult and likely impossible. Environmental policy becomes a fragmented patchwork of policies, often politically motivated, resulting in individual policies characterized by enormous inertia (Meiners and Yandle 1999). The cause of the intransigence might be obvious from the illustration of the expansive regulatory agencies; nevertheless, passing any environmental regulation requires navigating sub-committees, committees, both houses of Congress, Presidential approval, and implementation within the purview of one of the agencies. The central problem with the current system is these large and diverse administering bodies present a significant hurdle to correct mistakes in environmental policy (Anderson and Leal 2001, 59). The bureaucratic nature of the system presents particular difficulty in cases of over-regulation, or changing standards due to emerging science (Butler 2008).

This fault of the current regulatory system has long been recognized and one response to the problem was implementing certain market mechanisms to allow for a measure of de-centralization of environmental regulation (Butler 2008, 733). These market mechanisms are distinct from a free market approach insofar as they maintain a centralized approach. An example of such is trading schemes such as cap and trade, a program which is characterized by a central authority establishing a limit on a particular pollutant and then providing permits to pollute a fixed amount in exchange for a pollution tax (Meiners and Yandle 1999, 926). These permits may be bought and sold on an open market. Cap-and-trade in this form, although referred to as a market mechanism, does not constitute a free market approach because the amount of pollution is still determined by a central authority setting the amount. In addition to the previously mentioned drawbacks of a centralized system, a cap and trade system is characterized by self-perpetuating flaws:

This approach limits the cost of environmental protection, but makes environmental results somewhat unpredictable. Results will depend on voluntary responses by polluters to the tax. On the other hand, taxes place a cost on each unit of emissions, thereby creating a continuous incentive to reduce pollution. Also, taxes raise revenue, which can be used to subsidize environmental improvements or for other societal goals. Such taxes can be revenue neutral, if other taxes are reduced when a pollution tax is enacted. Unfortunately though, pollution taxes create a conflict between the goal of providing reliable finance to government and encouraging pollution abatement. Pollution abatement implies foregone tax revenue; significant tax revenue implies foregone emission reductions (Driesen 2009, 2).

Thus, does an alternative method claiming to differ from the current system prove to be deceptively named and suffer from the same fundamental flaw of the command and control system?

Having examined the more holistic and philosophical drawbacks of the current command and control

⁹ Energy Reorganization Act, 88 Stat. 1233; 42 U.S.C.A § 5801. (October 11, 1974).

¹⁰ Reorganization Plan No.4 of 1970, 35 Fed. Reg. 15,623. (Jul. 9, 1970).

¹¹ Endangered Species Act, 87 Stat. 884; 16 U.S.C. § 1531. (Dec. 28, 1973).

¹² Tennessee Valley Authority Act, 48 Stat. 58; 16 U.S.C. § 831. (May 18, 1933).

¹³ National Environmental Policy Act, 83 Stat. 852; 42 U.S.C. §4321. (Jan. 1, 1970) and Environmental Quality Improvement Act, 83 Stat. 854; 42 U.S.C. 4371-4. (Apr. 3, 1970).

¹⁴ United States Senate, *Committees*, available at http://www.senate.gov/pagelayout/committees/d_three_sections_with_teasers/committees_home.htm. (last visited May 10, 2013) and United States House of Representatives, *Committees*, available at <http://www.house.gov/committees/>. (last visited May 10, 2013).

system, a further and more acute examination of the particular legal issues arising from the contrast in common law environmental regulation and the current command and control system would prove edifying.

Environmental regulation provides a worthy example of the doctrine of pre-emption, which becomes relevant wherever federal and state laws overlap and a conflict arises. Under the Supremacy Clause of the Constitution:

(T)he laws of the United States which shall be made in pursuance (of the Constitution); and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding¹⁵.

Therefore, any state or local statute concerning environmental regulation is subordinate to federal regulations insofar as they conflict¹⁶. Throughout federal jurisprudence, the power of pre-emption has been recognized and the judiciary has sought to impose restrictions on pre-emption such that the presumption in the case of a conflict be against pre-emption. The Supreme Court expressed this recently, maintaining tradition, that, 'When the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption'.¹⁷ Stronger language in favour of presumption against pre-emption established the following guidelines in *Lorillard v. Reilly*, that, 'Because 'federal law is said to bar state action in (a) field of traditional state regulation, ... we 'work on the assumption that the historic police powers of the States (a)re not to be superseded by the Federal Act unless that (is) the *clear and manifest purpose of Congress*'.¹⁸ In concordance with this philosophy, President Clinton enacted an order governing all federal agencies to consider pre-emption and attempt to maintain deference to state laws in creating policy²⁰. Based upon this seemingly solid foundation of favouring states with regards to pre-emption, jurisprudence provides three means by which pre-emption may occur: express, conflict, and field pre-emption. Express pre-emption is a doctrine that follows from the straightforward application of the above-mentioned principles, which holds that not only is the presumption against pre-emption, but also in the case 'a federal law contains an express preemption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains'²¹, i.e., what portions of the state law and to what extent does the federal law pre-empt. Conflict pre-emption occurs one of two ways: first, when abiding by both state and federal laws is impossible, and second where the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'.²² Field pre-emption is an entirely different doctrine, seemingly contrary to the aforementioned approach that all pre-emption ought to carry a strong presumption against it as well as be limited in scope. Field pre-emption follows the philosophy that the existence of a body of federal law that intends to occupy, exclusively, an entire realm of law, such an existence shall pre-empt state laws on this matter. The existence of this type of federal law requires, 'a manifestation of congressional intent to occupy an entire field such that, even without a federal rule on some particular matter within the field, state regulation on that matter is

¹⁵ U.S. Const. art. VI, clause 2.

¹⁶ *Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

¹⁷ *Altria Group v. Good*, 555 U.S. 70, 77 (2008).

¹⁸ [emphasis added]

¹⁹ 533 U. S., at 541–542 (2001).

²⁰ It provides in pertinent part: Agencies, in taking action that preempts State law, shall act in strict accordance with governing law. (a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. (b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law. (c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated. (d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict. (e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings. Exec. Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 10, 1999).

²¹ 555 U.S. 70, at 75.

²² *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)

pre-empted, leaving it untouched by either state or federal law.²³ This doctrine of field pre-emption is scantily applied, except in cases of environmental regulation.

Pre-emption in the field of environmental law manifests in one particularly negative manner: preventing state and local courts from applying tort laws to environmental disputes. Federal pre-emption of state law, as well as state pre-emption of local law interferes with local environmental protection efforts²⁴. In deference to the higher authority, under the philosophy that uniformity in enforcement is preferred, courts overwhelmingly favour striking down local efforts where conflict arises with state or federal regulations (Weiland 2000, 240). The courts ideally examine the laws for legislative intent, but lacking a clear pre-emptive intent does not prevent pre-emption as courts regularly imply pre-emption in environmental cases²⁵. This practice has led to courts' default approach to an environmental conflict of laws being pre-emption, therefore, '(b)oth express preemption (*sic*) and implied preemption (*sic*) may operate to invalidate local environmental protection efforts even though it is the case that neither the legislature nor the judiciary has considered the policy implications of such action. Thus, preemption (*sic*) doctrine...may be good law but not good policy' (Weiland 2000, 238). State courts have begun to recognize the flaws of allowing implied pre-emption and the Supreme Courts of Montana and Ohio have eliminated implied pre-emption entirely with regards to state laws pre-empting local ordinances; i.e., those states now require the court to focus on the text of the statutes and find expressed intent by the legislature to pre-empt before applying the doctrine. Justice Scalia has also supported this approach, holding textual evidence to be the only legitimate means of triggering federal pre-emption, which would limit judges applying pre-emption to further their personal policy preferences with the aid of ambiguous legislative intent not enumerated within the text (Scalia 1997).

Given the difficulty with which states or localities may enact their own environmental regulations due to the prevalence of the implied pre-emption doctrine, there should be little surprise that entities outside federal and state agencies face immense difficulty in enforcing federal regulations. When enacted, most federal environmental protection regimes were intended to be based on a system of collective enforcement in which states serve as the primary enforcers of the federal laws through litigation. Federal agencies were meant to support state efforts and only occasionally pursue litigation as the primary plaintiff (Dougherty et. al. 2010, 7). In addition to the role of the states, nearly every environmental protection regime included 'citizen suit' provisions, which allow for private citizens to prosecute violators of environmental regulations in cases where federal and state governments could not or would not do so. The purpose of including citizen suit provisions was providing a supplementary means of enforcement where over-abundance of violations and/or deficit in funding to prosecute such violations led to an inability of government entities to ensure compliance (Dougherty et. al. 2010, 7).

The citizens suit doctrine might have been conceived to advance a decentralizing environmental policy in either of two ways, first as a delegation of the federal authority to individual citizens, or second as an empowerment of the courts in administering environmental law in the form of allowing judges to hear cases from citizens without a state actor and thereby legitimizing claims. These aims have been largely hampered, and arguably revoked in their entirety by subsequent decisions by the Supreme Court. In *Lujan v. Defenders of Wildlife*²⁶, the Court all but eliminated any delusion that a private citizen could pursue litigation of an environmental in the government's stead by applying a strict standing requirement for a claim. Justice Scalia writes for the majority that:

Vindicating the public interest is the function of the Congress and the Chief Executive. To allow that interest to be converted into an individual right by a statute denominating it as such and permitting all citizens to sue, regardless of whether they suffered any concrete injury, would authorize Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed'²⁷

The central tenet of law arising from the *Lujan* decision essentially refuted the principle that the citizens suit could be used to support state enforcement where resources are lacking. The decision established that an 'injury in fact' was required, namely, that to have standing in an environmental case, a non-state entity is required to meet the same standard as in any other federal matter.^{28,29} From the perspective of this paper, *Lujan* operates

²³ *Gade v. National Solid Wastes Management Assn.*, 505 U.S. 88, 115 (1992).

²⁴ See *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88 (1992); *Engine Mfrs. Ass'n v. S. coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004); *Exxon Corp. v. Hunt*, 475 U.S. 355 (1986).

²⁵ See *Fellner v. Tri-Union Seafoods*, 539 F.3d 237 (3d Cir. 2008); *American Meat Institute v. Leeman*, 102 Cal. Rptr. 3d 759 (Cal. Ct. App. 2009).

²⁶ 504 U.S. 555 (1992)

²⁷ *Id.* at 557.

²⁸ *Id.* at 563.

to place environmental regulation where the free market and libertarian philosophies would have these disputes settled: in state common law court.

Conclusion

This analysis attempted to introduce the basic fundamentals of free market environmentalism and present some of the more moderate aspects of the philosophy as bedrock upon which to argue for a new regime of environmental administration. In pointing out the primary flaws of the current command and control system, namely inefficiency caused by excessive bureaucracy and inadaptability due to political and systemic forces, the goal was to present a problem for which juxtaposition with the common law approach would present some solutions. The common law approach provides a more adaptive, locally administered, and less politically vulnerable system to administer environmental issues. By creating a generalized property right for all citizens in various environmental interests, these citizens could pursue actions based on the violation of these rights.

Four fundamental recommendations for improving the current environmental administration regime arose from the ideas presented in this thesis. These recommendations were both generalized and specific, including decentralizing power of administration from the federal level to the state and local level, loosening the legal standards for establishing standing in environmental cases to allow suits based on general grievances, implementing a damages regime that pays local government entities to remedy damages rather than penalties paid to a federal body in terms of fines, and imposing strict liability for environmental offenses.

The approach presented above seeks to improve and supplement the current system and admittedly some aspects of environmental law require federal agency supervision, including upper atmospheric pollution and dumping or pollution in international waters or the outer continental shelf, as well as issues relating to endangered species. Notwithstanding, a common law approach would provide a vast improvement to the federal command and control approach with regards to efficiency, responsiveness to new science and respecting and strengthening property rights.

References

- [1] Anderson, Terry L., and Leal, Donald R. 2001. *Free Market Environmentalism*. Palgrave, New York.
- [2] Bastiat, Frederic. 2007. *The Bastiat Collection*, Ludwig von Mises Institute.
- [3] Baumol, William J. 1972. On Taxation and the Control of Externalities. *The American Economic Review*, 62(3): 307 – 322.
- [4] Birnhack, Michael. 2004. *Private Ordering Principles*. Working Group of Private Ordering of Israeli Internet Association. 2-3 (February 2004).
- [5] Block, Walter. 1972. *Defending the Undefendable*, Fox and Wilkes, New York.
- [6] Butler Henry N. 2008. A Defense of Common Law Environmentalism: The Discovery of Better Environmental Policy. George Mason University School of Law. *Case Western Reserve Law Review*. Vol. 58, No. 3: 705 – 752, Spring 2008
- [7] Coase, Ronald H. 1960. The Problem of Social Cost. *Journal of Law and Economics*, 3: 1 – 44.
- [8] Cordato, Roy E. 1980. The Austrian Theory of Efficiency and the Role of Government, *The Journal of Libertarian Studies* Vol. IV(4): 393 – 403.
- [9] Dougherty, Will *et al.* 2010. Environmental Enforcement and the Limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick up the Slack? 1-62, 7.
- [10] Driesen, David M. 2010. *Alternatives to Regulation? Market Mechanisms and the Environment*, In: Robert Baldwin *et al.* (Editor) *The Oxford Handbook on Regulation*. Oxford University Press.
- [11] Hayek, Friedrich A. 1944. *The Road to Serfdom*. London and Henley, Routledge and Kegan Paul, (1976).

²⁹ The court subsequently relaxed the standard of 'injury in fact' or particularized injury in instances of environmental cases, but only insofar as the plaintiff lacking a particularized injury was a state that had a legitimate interest in pursuing an environmental claim. See *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

- [12] Hylton, Keith N. 2002. When Should We Prefer Tort Law to Environmental Regulation. *Washburn Law Journal*, 41: 515 – 534.
- [13] Kanner, Allan. 2002. Toxic Tort Litigation in a Regulatory World. *Washburn Law Journal*, 41: 535 – 548.
- [14] Meiners, Roger, and Yandle, Bruce. 1998. Common law and the conceit of modern environmental policy. *George Mason Law Review*, 7: 923.
- [15] Mineta, Norman Y. 2004. *Research and Special Programs Improvement Act of 2004*, Pub. L. No. 108-426. (Nov. 30, 2004).
- [16] National Park Service, Mississippi River Facts, available at <http://www.nps.gov/miss/riverfacts.htm>. (last visited Apr. 11, 2013).
- [17] Ricardo, David. 1817. *On the Principles of Economy and Taxation*, John Murray, London.
- [18] Robbins, Lionel. 1932. *An Essay on the Nature and Significance of Economic Science*.
- [19] Rothbard, Murray N. 1990. Law, Property Rights, and Pollution. *The Cato Journal*, Vol. 2 No. 1 (Spring 1982). Reprinted in Ed.: Walter E. Block, *Economics and the Environment: A Reconciliation*. 233-265, 236 (1990).
- [20] Rothbard, Murray Newton. 1962. *Man, economy, and state*. Vol. 2. New York: D. van Nostrand.
- [21] Rothbard, Murray. 1998. *The Ethics of Liberty*, New York University Press.
- [22] Scalia, Antonin. 1998. *A Matter of Interpretation: Federal Courts and the Law: Federal Courts and the Law*. Princeton University Press.
- [23] United States House of Representatives, Committees, available at <http://www.house.gov/committees/>. (last visited May 10, 2013).
- [24] United States Senate, Committees, available at http://www.senate.gov/pagelayout/committees/d_three_sections_with_teasers/committees_home.htm. (last visited May 10, 2013).
- [25] von Mises, Ludwig. 1945. *Bureaucracy*, Yale University Press.
- [26] Weiland, Paul S. 2000. Federal and State Preemption of Environmental Law: A Critical Analysis. *The Harvard Environmental Law Review*, 24: 237 – 286, 240.

Hans Werner Sinn and Timo Wollmershaeuser's Target Loans, Current Account Balances and Capital Flows: The ECB's Rescue Facility. A Comment

Daniele SCHILIRÒ

DESMaS, 'V.Pareto', University of Messina, Italy
schi.unime@katamail.com

Abstract

The present paper firstly examines and comments the arguments proposed by Werner Sinn and Wollmershaeuser in their paper: 'Target loans, current account balances and capital flows: the ECB's rescue facility'. Secondly, this contribution suggests an alternative view for solving the crisis in the Eurozone adopting a competitive strategy and also regarding the role of the European Central Bank.

Keywords: target loans, current account balances, capital flow, ECB' rescue facilities, ECB's role, cooperation

JEL Classification: E58, E63, F32, F34, F50

Introduction

Werner Sinn and Wollmershaeuser's (WS.&W.) paper³⁰ is an insightful contribution that sheds light into the Euro-system which has proved to be an imperfect, baroque, asymmetric and little transparent institutional architecture. The member countries of the euro area, in fact, do not have the necessary degree of homogeneity in their market institutions and policy attitudes to become a complete and coherent monetary union, despite the path towards integration imposed by EMU governance and by the EU. The Euro-system has a common currency, the euro, but it does not have a significant federal budget and a form of integrated financial supervision (Schilirò 2012). In addition, the monetary policy is managed by the European Central Bank within a multi-level governance context and is equal for all countries in the euro area, while fiscal policy is fragmented and managed by individual states, although the member countries of Eurozone are constrained by the Stability and Growth Pact, and more recently (March 2012), by the more stringent Fiscal Compact, which shall enter into force from 1 January 2013.

Moreover, the ECB is managing the monetary policy without being an official and true lender of last resort. Even if, at the end of 2011, ECB has engaged in unconventional measures beyond standard monetary tools, as, for instance, the longer-term refinancing operations (LTROs) providing large amounts of liquidity at very low interest rates to Eurozone banks with the aim of helping a dysfunctional inter-bank market.

The present paper examines the arguments proposed by Werner Sinn and Wollmershaeuser in their paper on target loans, current account balances and capital flows, and it suggests an alternative view for solving the crisis in the Eurozone and also regarding the role of the European Central Bank.

Conclusion

In this contribution I have tried to examine and comment the arguments proposed by Werner Sinn and Wollmershaeuser in their paper on target loans, current account balances and capital flows. I would like to highlight two final points. First, regarding the role of the European Central Bank, the question is whether it can be correct the recall to the US Federal Reserve System as an empirical model to overcome the problem of Target balances. But, at this point, why the ECB cannot be a lender of last resort like the FED?

The second point concerns the current account imbalances. I believe that external adjustment is crucial, maybe more important than fiscal austerity. In fact, the crisis has worsened the balance of payments of the PIIGS countries, while Germany improved his position and, despite the Target claims, it has profited most in terms of growth and of surplus. All this reveals a disequilibrium situation that must somehow be resolved. During the crisis, German banks were unwilling to send their money abroad, but they preferred lending it to other Germans instead, so the latter could use the money to buy German goods, in particular investment goods. This helps to explain why Germany has been booming after the crisis.

³⁰ 'Target loans, current account balances and capital flows: the ECB's rescue facility', NBER Working Paper 17626, November 2011.

In conclusion, if we think, that the euro area must become a more integrated and balanced area, why a re-equilibrium of the balance of payments of the deficit countries should not imply a less surplus for Germany?

References

- [1] Carfi D., and Schilirò D. 2011. Crisis in the Euro Area. Coepetitive Game Solutions As New Policy Tools, *Journal Theoretical and Practical Research in Economic Fields*, II(1): 23 – 36.
- [2] Carfi D., and Schilirò D. 2012. A Framework of Coepetitive Games: Applications to the Greek Crisis, *AAPP | Classe di Scienze Fisiche, Matematiche e Naturali*, 90(1): 1 – 32.
- [3] Eichengreen B., von Hagen J. 1996. Federalism, fiscal restraints, and European monetary union. *American Economic Review*, 86: 134 – 138, May.
- [4] Feldstein M. S. 2011. The euro and European economic conditions, *NBER Working Paper* No. 17617, November.
- [5] Giavazzi F., and Spaventa L. 2010. Why the current account may matter in a monetary union: Lessons from the financial crisis in the Euro area, *CEPR Discussion Papers* 8008, December.
- [6] Pisani-Ferry J., and Wolff G. B. 2012. Propping up Europe? *Bruegel Policy Contribution*, issue 2012/07, April.
- [7] Schilirò, D. 2012. A new governance for EMU and the economic policy framework, *MPRA Paper* 47454, University Library of Munich.
- [8] Werner Sinn H., and Wollmershaeuser T. 2011. Target loans, current account balances and capital flows: the ECB's rescue facility, *NBER Working Paper* 17626, November.



ASERS Publishing is an advanced e-publisher struggling to bring further the worldwide learning, knowledge and research. This transformative mission is realized through our commitment to innovation and enterprise, placing us at the cutting-edge of electronic delivery in a world that increasingly considers the digital content and networked access not only to books and journals but to a whole range of other pedagogic services.

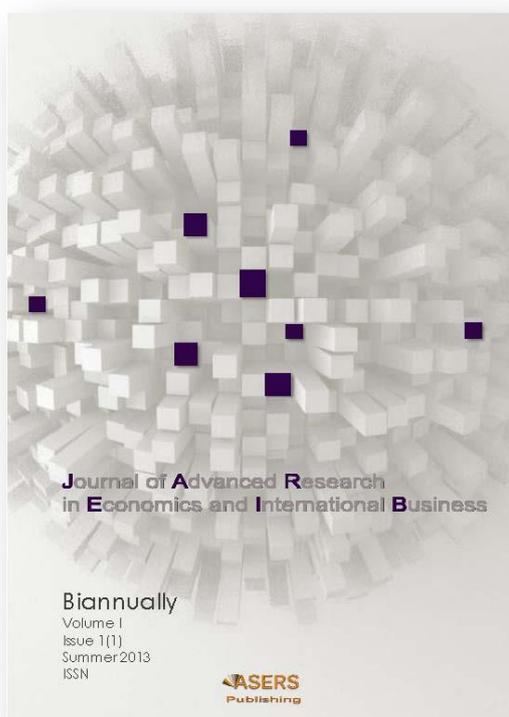
In both books and journals, **ASERS Publishing** is a hallmark of the finest scholarly publishing and cutting-edge research, maintained through commitment to the rigorous peer-review process.

Using pioneer developing technologies, **ASERS Publishing** keeps pace with the rapid changes in the e-publishing market.

ASERS Publishing is committed to providing customers with the information they want, when they want and how they want it. To serve this purpose ASERS offerings digital Higher Education from its journals, courses and scientific books, in a proven way in order to engage academic society from the entire world.

Journals ...

Journal of Advanced Research in Economics and International Business



Editor in Chief:

PhD Mădălina CONSTANTINESCU

Co-Editor:

PhD Daniele SCHILIRÒ

Journal of Advanced Research in Economics and International Business provides a forum where academics and professionals can share the latest developments and advances in the knowledge and practice of Economics and International Business. It aims to foster the exchange of ideas on a range of important international subjects, to provide stimulus for research and the further development of international perspectives, and to publish empirical and applied research on issues relating to Economics and International Business.

Journal of Advanced Research in Economics and International Business, starting with its first issue, will be indexed in [RePEC](#), [CEEOL](#) databases.

Web: <http://www.asers.eu/journals/jareib.html>

E-mail: jareib.asers@gmail.com

Journal of Advanced Research in Law and Economics



Editor in Chief:

PhD Mădălina CONSTANTINESCU

Co-Editors:

PhD Russell PITTMAN

PhD Eric LANGLAIS

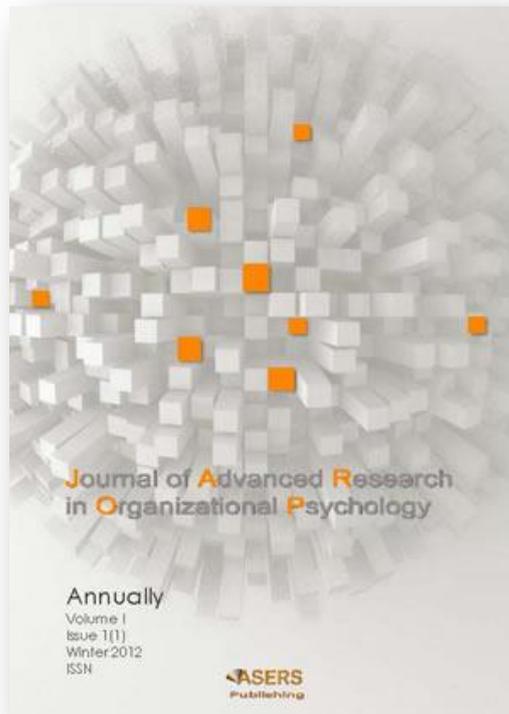
Journal of Advanced Research in Law and Economics provides readers with high quality and empirical research in law and economics. The *Journal* publishes analytical studies on the impact of legal interventions into economic processes by legislators, courts and regulatory agencies. Finally, important developments and topics in the analysis of law and economics will be documented and examined in special issues dedicated to that subject. The *Journal* is edited for readability; lawyers and economists, scholars and specialized practitioners count among its readers.

Journal of Advanced Research in Law and Economics, starting with its first issue, will be indexed in [RePEC](#), [EconLit](#), [CEEOL](#), [ProQuest](#), [EBSCO](#) and [Cabell Directory](#) databases.

Web: <http://www.asers.eu/Journals/jarle.html>

E-mail: jarle@asers.eu

Journal of Advanced Research in Organizational Psychology



Editor in Chief:

PhD Pompiliu CONSTANTINESCU

Co-Editor:

Andra Mihaela PALOȘ

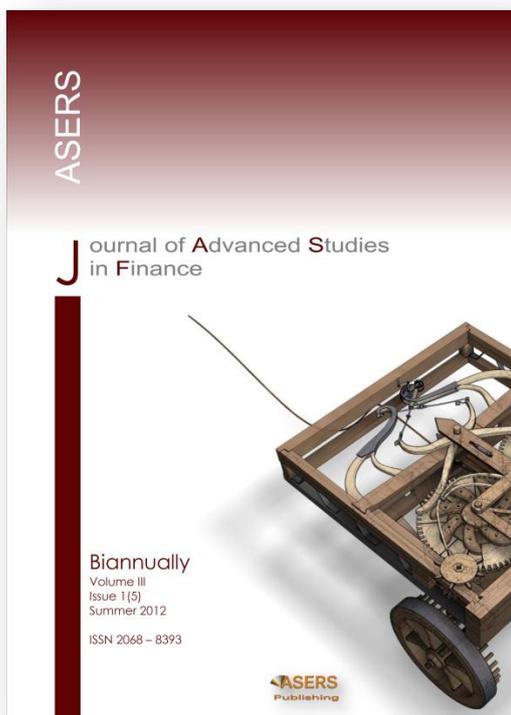
The aims and scope of the *Journal of Advanced Research in Organizational Psychology* is to provide its readers with up-to-date studies and current trends in the field of organizational psychology. The *Journal* will host articles dedicated to the study of inner-group psychology and the social dynamics existing in the organization today. The contents of the *Journal* can be useful to students and practitioners alike, as they will provide insight to new theories, thoughts and perspectives with regards to the field of organizational psychology.

Journal of Advanced Research in Organizational Psychology, starting with its first issue, will be indexed in [RePEC](#), [CEEOL](#) databases.

Web: <http://www.asers.eu/Journals/jarop.html>

E-mail: jarop@gmail.com

Journal of Advanced Studies in Finance



Editor in Chief:
PhD. Laura ȘTEFĂNESCU

Co-Editor:
PhD Rajmund MIRDALA

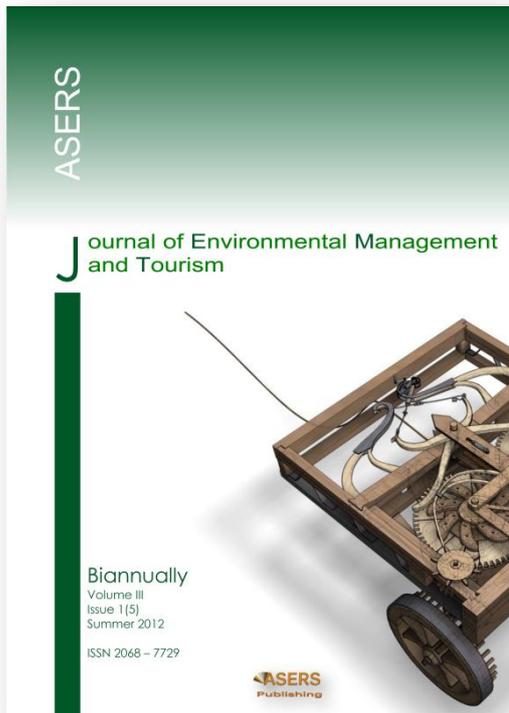
The *Journal* aims to publish empirical and theoretical articles which make significant contributions in all areas of finance, such as: asset pricing, corporate finance, banking and market microstructure, but also newly developing fields such as law and finance, behavioral finance, and experimental finance. The *Journal* serves as a focal point for communication and debates for its contributors for the better dissemination of information and knowledge on a global scale.

Journal of Advanced Studies in Finance is indexed in [EconLit](#), [RePEC](#), [CEEOL](#), [ProQuest](#) and [EBSCO](#) databases.

Web: <http://www.asers.eu/Journals/jasf.html>

E-mail: jasf@asers.eu

Journal of Environmental Management and Tourism



Editor in Chief:
PhD Ramona PÎRVU

Journal of Environmental Management and Tourism will publish original research and seeks to cover a wide range of topics regarding environmental management and engineering, environmental management and health, environmental chemistry, environmental protection technologies (water, air, soil), at-source pollution reduction and waste minimization, energy and environment, modeling, simulation and optimization for environmental protection; environmental biotechnology, environmental education and sustainable development, environmental strategies and policies, etc.

Journal of Environmental Management and Tourism is indexed in [RePEC](#), [CEEOL](#), [ProQuest](#), [EBSCO](#) and [Cabell Directory](#) databases.

Web: <http://www.asers.eu/Journals/jemt.html>

E-mail: jemt@asers.eu

Journal of Research in Educational Sciences



Editor in Chief:
PhD Laura **UNGUREANU**

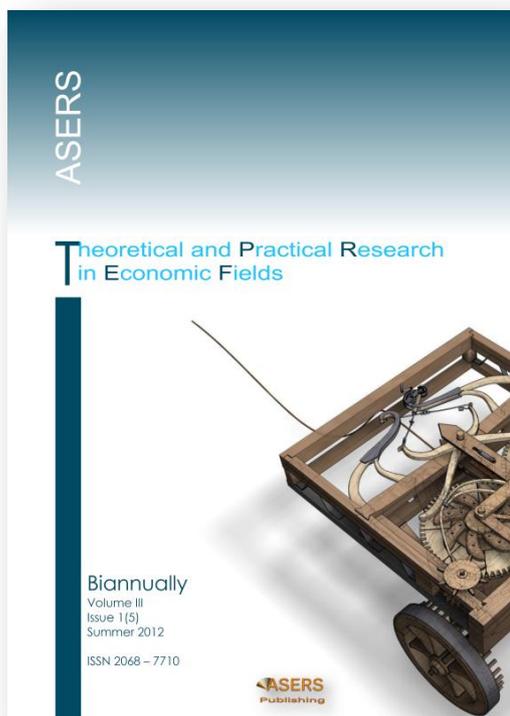
The *Journal* is designed to promote scholarly thought in the field of education with the clearly mission to provide an interdisciplinary forum for discussions and debates about education's most vital issues. We intend to publish papers that contribute to the expanding boundaries of knowledge in education and are focusing on research, theory, current issues and applied practice in this area.

Journal of Research in Educational Sciences is indexed in [RePEC](#), [CEEOL](#), [ProQuest](#) and [EBSCO](#) databases.

Web: <http://www.asers.eu/Journals/jres.html>

E-mail: jres@asers.eu

Theoretical and Practical Research in Economic Fields



Editor in Chief:
PhD Laura UNGUREANU

Co-Editor:
PhD Ivan KITOV

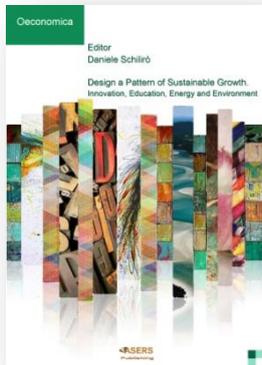
Theoretical and Practical Research in Economic Fields publishes original articles in all branches of economics - theoretical and empirical, abstract and applied, providing wide-ranging coverage across the subject area. The *Journal* promotes research that aims to unify the theoretical-quantitative and the empirical-quantitative approach to the economic problems that can be solved through constructive and rigorous thinking.

Theoretical and Practical Research in Economic Fields is indexed in [RePEC](#), [EconLit](#), [CEEOL](#), [ProQuest](#) and [EBSCO](#) databases.

Web: <http://www.asers.eu/Journals/tpref.html>

E-mail: tpref@asers.eu

Active Calls for Book Chapters Contributions!



Innovation, Education, Energy, Environment. Design a Pattern of Sustainable Growth

A book edited by: Professor PhD Daniele SCHILIRÒ

Department of Economics, Business, Environment and Quantitative Methods (SEAM), University of Messina, Italy dschiliro@unime.it

To be published by ASERS Publishing in CD-ROM format with ISBN.

Submission: OPEN until September 30th, 2013 [Download Call for Book Chapters:](#)

<http://www.asers.eu/asers-publishing/books.html>



Economic Development and the Environment

A book edited by Professor George HALKOS (PhD)

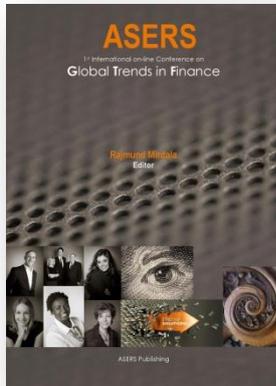
Laboratory of Operations Research, Department of Economics, University of Thessaly, halkos@uth.gr

To be published by ASERS Publishing in CD-ROM format with ISBN.

Submission: OPEN until June 30th, 2013 [Download Call for Book Chapters](#)

<http://www.asers.eu/asers-publishing/books.html>

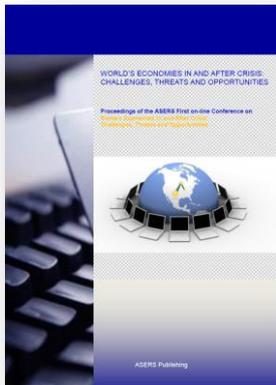
Conferences Proceedings ...



Proceedings of the ASERS First on-line Conference on *Global Trends in Finance*

Coordinator: PhD. Rajmund MIRDALA

Format: 17cm x 24cm
ISBN: 978-606-92386-8-4



Proceedings of the ASERS First on-line Conference on *World's Economies in and after Crisis: Challenges, Threats and Opportunities*

Coordinator: PhD. Laura ȘTEFĂNESCU

Format: 17cm x 24cm
ISBN: 978-606-92386-0-8

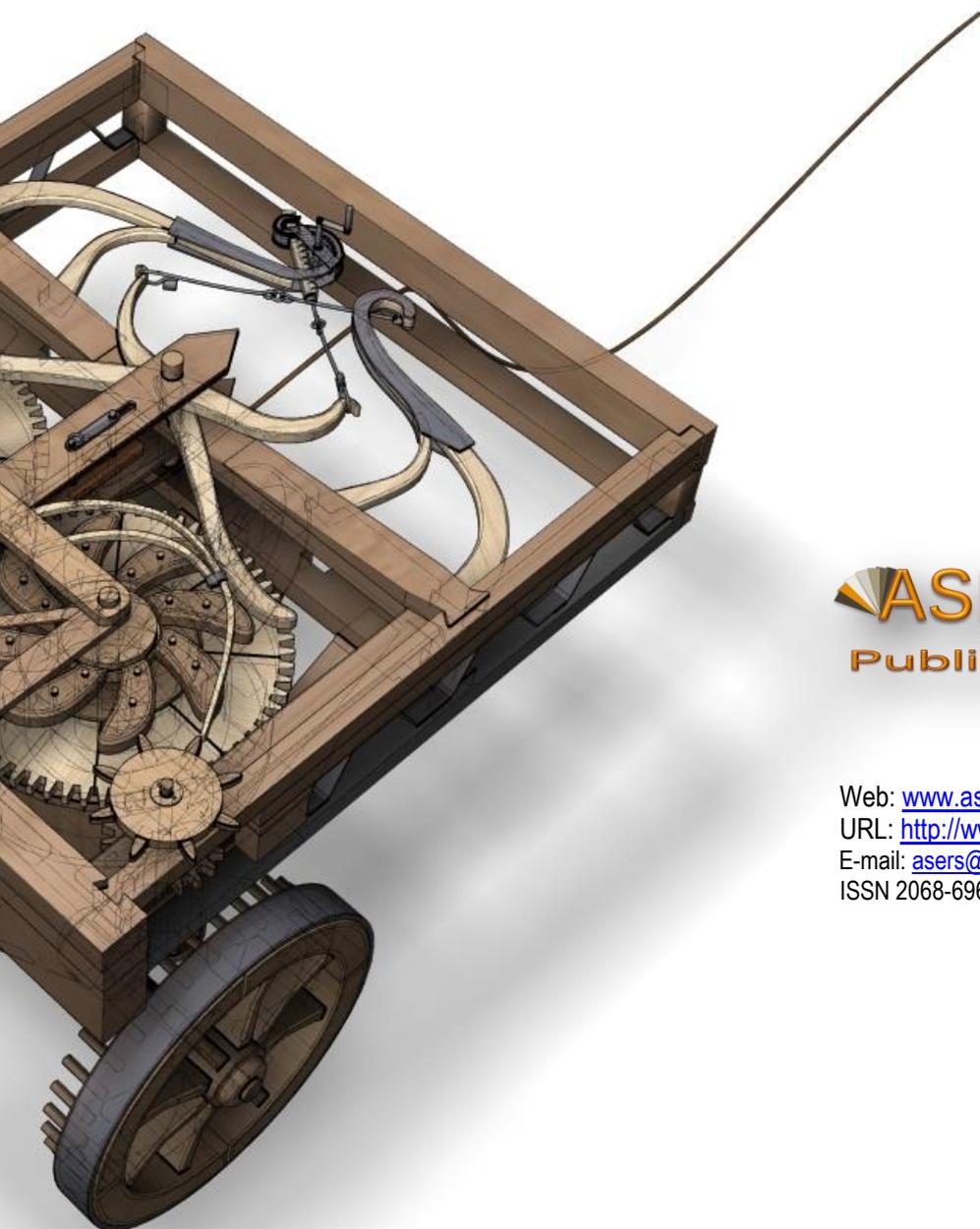


Proceedings of the ASERS First on-line Conference on *Competitiveness and Economic Development: Challenges, Goals and Means in a Knowledge based Society*

Coordinator: PhD. Andy ȘTEFĂNESCU

Format: 17cm x 24cm
ISBN: 978-606-92386-4-6

ASERS



 **ASERS**
Publishing

Web: www.asers.eu

URL: <http://www.asers.eu/asers-publishing>

E-mail: asers@asers.eu

ISSN 2068-696X