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No 9 Summer 2005

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Risk&Deregulation

The relevance of CARR's work was highlighted in the build-up to the British General Election where the regulatory burdens upon industry became a key area of debate between the main political parties. In the last issue of *Risk&Regulation,* Clive Jones discussed the notion of 'regulatory creep', itself the topic of a roundtable co-hosted with the Better Regulation Task Force (which published its Report on the topic in 2004). Immediately preceding the announcement of the election the Chancellor of the Exchequer outlined his plans for cutting red-tape and increasing the efficiency of regulatory enforcement by publishing and endorsing a report by Sir Philip Hampton, *Reducing administrative burdens: effective inspection and enforcement*, and by proposing a new Better Regulation Executive to implement Hampton's proposals

The Report paid less attention to the academic literature on risk and regulation than one might have expected in an era of 'evidence-based policy', but it is interesting in a number of respects, not least in the detailed account it provides of the number and range of regulators in Britain. Hampton cites 62 national regulators within the scope of its Report and over 400 local authorities with regulatory responsibilities. And this excluded economic regulators, and tax, planning and employment regulation that fell outside the scope of the report. Two new regulators were created between Hampton's interim report in December 2004 and his final report in March 2005; one of these, the Gangmasters Licensing Authority, was created following the death of 21 Chinese cockle-pickers in Morecambe Bay in February 2004.

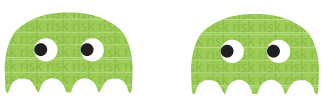
The details of these regulatory organisations and their scope confirm the extent and very real significance of CARR's work, which reaches beyond state-based regulation to incorporate the work of non-state regulatory actors. The importance of looking at risk regulation is further underlined by the central emphasis in Hampton's plans upon a risk-based approach to inspection and enforcement. CARR research has found that risk-based regulation embraces a very broad range of approaches. Some regulators regard risk-based regulation as if it represents an entire perspective or framework of governance; in other cases it is used much more loosely to refer to ad hoc scenario construction, involving the piecemeal adoption of risk-based tools and an uneven use of the language and rhetoric of risk. The research evidence also demonstrates that risk-based tools may be differently interpreted according to cultural and other factors. There may be variable understandings about how to implement risk management approaches in practice and what constitutes success.

There are of course distinct advantages to risk-based regulation. Risk approaches potentially offer a new template which can be used across agencies and help forge a common purpose, language and approach. This is important in a context where consolidation of agencies is occurring. They encourage a more serious and sustained focus on regulatory problems and have the potential to help governments, regulatory agencies and companies manage risks more effectively and prioritise actions and resources accordingly. Moreover risk-based regulation introduces a new 'politics of accountability' in which the focus is the detailed operational systems of regulatory bodies. What is often at issue are the parameters of blame: what risks should regulators prevent occurring, and which, often more contentiously, should they not.

The dangers of risk-based regulation mean that it is important that those using risk-based approaches fully understand their limitations. Should a regulator err on the side of assuming a firm does pose a risk when it does not, or should they assume that a firm does not pose a risk, when in fact it does? Much depends on the regulators' own appetite for risk. In a forthcoming article for *Public Law*, Julia Black discusses how risk-based regulation can be paradoxical. It holds out the promise that the challenges and complexities of regulation can be rationalised, ordered, managed, and controlled. The danger is that whilst it seeks to deal with uncertainty, in its very certainty, expressed in detailed rules and procedures, it runs the risk of failing to enable the regulator to respond to an unpredicted and unpredictable future. These are some of the very real issues which face the new Better Regulation Executive.

Bridget Hutter and **Michael Power**
CARR Co-Directors

The Attractions of Risk-based Regulation: accounting for the emergence of risk ideas in regulation, Bridget Hutter, CARR Discussion Paper 33, **www.lse.ac.uk/collections/CARR/documents/discussionPapers.htm**



Stereotypes of (de)regulation:

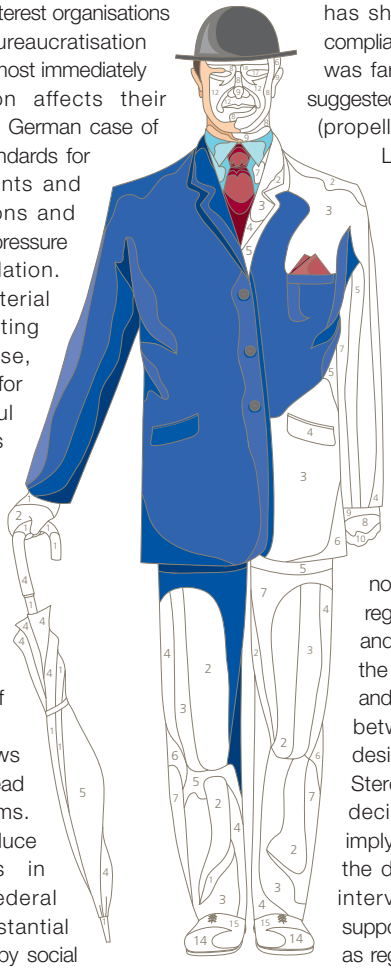
How easy answers to complex problems create poor policies

'Better Regulation', 'Administrative Simplification' and 'Deregulation' are on the agenda of many European countries. Governments everywhere are pronouncing similar-sounding objectives, namely the reduction of the perceived growth in administrative burdens placed, in particular, on business. Moreover, a similar set of tools is being put forward; in particular various forms of 'deregulation', using, for example, quantitative assessments or target-setting for individual ministerial departments. Another set of tools aims at the (ex ante) assessment of impacts and unintended consequences of regulations in the very process of designing the regulation (regulatory impact assessment). Such an apparently universal reform bandwagon should be expected to generate many lessons for policy diffusion. However, the mimicry involved in these processes of policy diffusion seems to go beyond objectives and tools and also includes assumptions about the severity of the perceived problem (namely, 'constantly rising') and 'implicit theories' about causes and solutions to that problem.

In a world of 'overcrowded' policy making, to place an issue on the political agenda requires attention seeking. Simplification – including a dramatisation of the problem and the attachment of a convincing solution to that problem – is a necessary ingredient of any agenda-setting strategy. However, attention seeking develops into a problem of its own when the simplification becomes part of a widespread belief system of policy actors. In the case of the boom of deregulation and better regulation initiatives – whether in the UK, continental Europe, or in other OECD countries – the balance seems to move towards oversimplified 'implicit theories' leading to 'stereotypes of deregulation'. These stereotypes create expectations that cannot be fulfilled by the proposed policy instruments. In Germany, where 'Entbürokratisierung' (de-bureaucratisation) is once again high on the agenda, at least two major stereotypes have been basic ingredients of the wider deregulation debate.

The first stereotype – blaming the bureaucracy – is widely used as an understanding about the origin of burdensome administrative procedures or regulations. The underlying assumption is that civil servants in ministerial departments are detached from the wider society, spending their whole professional lives busying themselves in the ever more detailed design of their 'pet regulation'. Frequently mentioned (but rarely empirically validated) examples range from the regulation of the shape of fishhooks to the size of toilets in day care facilities. This stereotype implies that regulations are invented in the minds of insulated bureaucrats and that these bureaucrats are subtly shaping the policy agenda and thereby pushing these issues through the decision-making process.

This stereotype usually is combined with a seriously flawed understanding of the role of social actors: while a number of interest organisations will happily join any de-bureaucratisation chorus, their support will almost immediately stop when deregulation affects their substantial interests. In the German case of regulating construction standards for day care facilities, parents and professional organisations and unions formed a powerful pressure group opposing deregulation. Together with ministerial departments supporting regulations (in this case, departments responsible for social services), powerful anti-deregulation coalitions exist. Given the prevalence of such 'advocacy coalitions' in different areas of state activity, the lack of attention paid to the role of social actors in support of regulation seems to be one of the most severe limitations of 'deregulation stereotypes'.



The German case shows how this stereotype can lead governments into problems. The recent attempt to reduce administrative burdens in Germany by the federal government placed substantial emphasis on submissions by social actors. In total, approximately 1,000 suggestions for 'de-bureaucratisation' emerged from these submissions. Once the substantial overlap of proposed measures had been taken into account and other suggestions had been eliminated because of either lack of federal competence, lack of detail or political feasibility, this list of 1,000 suggestions had boiled down to about 100 and, later, to 50 recommendations. These recommendations were put through a process of inter-departmental coordination with ministerial departments and organised interests routinely vetoing proposals for change. The final set of recommendations (29 in total) was largely designed to allow for the path of least resistance, causing minimal offence to well-established policy networks.

Another widespread stereotype – blaming the number of regulations – is concerned with the relationship between the number of regulations and the administrative burden that is placed on the affected target population. As in other countries, workplace safety regulations in Germany have regularly been criticised for being comprised of too many and too detailed regulations placing enormous burdens, in particular on small businesses. However, empirical analysis in Germany has shown that the actual burden of compliance, inspection and administration was far lower in small companies than suggested in the wider deregulation debate (propelled by business organisations). Larger companies were in favour of detailed standards in order to avoid uncertainty and risks related to lawsuits following accidents. Any reduction in regulatory detail or sheer number was therefore widely seen as potentially enhancing uncertainty, thereby outweighing the potential benefits from reducing the perceived administrative burden.

If war is too important to be left to the generals, then debates about administrative and regulatory burdens should not be left to the regulators and the regulated. It is time for a more realistic and more complex debate concerning the relationship between regulations and their burdens, and the interaction between state and social actors in designing and enforcing regulations. Stereotypes fail to acknowledge that decisions regarding 'de-regulation' imply substantial debates concerning the degree, level and scope of state intervention. A mere reliance on supposed 'better regulation' tools, such as regulatory impact assessments, may provide important insights, but they are far from providing the Philosopher's Stone of Better Regulation policy (in terms of offering a way to steer society without touching it). While the principles of better regulation and the thrust of the various tools, specifically assessing the potential impact of policies, could hardly be controversial, the 'better regulation' debate remains rather silent about how the adoption of tools and formal procedures could influence interest constellations and belief systems in policy networks. In fact, the time has come to assess whether these tools of 'better regulation' are in fact 'better regulation'.

Dr Kai Wegrich is member of the Faculty of Economics and Social Science at the University of Potsdam. Together with Professor Dr Werner Jann, he has recently completed a study on de-bureaucratisation in East Germany, www.uni-potsdam.de/u/ls_verwaltung/English/index.htm

Claudio Ciborra (1951-2005)

Professor Claudio Ciborra, convenor of the Department of Information Systems and PwC Chair in Risk Management, died on Sunday 13 February, aged 53, having suffered from cancer.

Claudio joined CARR in 2001 as PricewaterhouseCoopers chair in risk management, a position he held until June 2004. Within CARR he introduced glamour and high opera in addition to intellectual insight and fresh, multidiscipline approaches to risk and information systems. He led us into his academic 'labyrinths' and at a personal level we never knew what to expect next – cakes fresh in from Naples, photos from Sardinia, or a tour of his 'palazzo'. His knowledge and interests were informed by the renaissance and modern philosophy (a sustained interest in Heidegger), by music, night clubs, 'punk design', among other things.

In an exchange in his last month about Stromboli he declared yet another interest, signing off 'Love from your volcanologist and risk expert'. Sadly, what he referred to as his own personal 'system disaster management' didn't avert the disaster, but he leaves CARR a legacy of work on risk, philosophy, organisations and information on which others may build. One of his last publications was a CARR discussion paper, *Digital Technologies and the Duality of Risk*, examining how information and communication technologies create not only opportunities for improved efficiencies but also new risks.

'Grid technologies create new side effects and unexpected consequences that enlarges as well as reduces the regions of the unknown … Faced with such a runaway process, one must advocate the design and diffusion of 'forgiving technologies' which can tolerate a large range of human error or technical breakdown'

We enjoyed frequent exchanges about his next book until shortly before his death. Sadly that book will not be completed but he leaves behind ideas which will remain important reference points in risk regulation studies for the future. His colleagues at CARR will miss him greatly.

Bridget Hutter and **Mike Power**

Further tributes can be found at: http://is.lse.ac.uk/InMemoryOfClaudio/default.htm

Claudio's discussion paper is available online at: www.lse.ac.uk/collections/CARR/documents/discussionPapers.htm

CARRIMPACT

In December 2004 **Bridget Hutter** acted as rapporteur for a working group at the RSA by the Forum for Technology, Citizens and Markets on the Public Perception of Risk. The seminar, introduced by the government's Chief Scientific Adviser, Professor Sir David King, brought together leading figures from academia, business and government to explore the current understanding of key risk factors and provide input for the Treasury's consultation guidance on risk.

Christopher Hood and **Martin Lodge** appeared in front of the Public Administration Select Committee of the House of Commons in their enquiry on civil service effectiveness. Their contribution was based on their earlier work on civil service competency in Britain and Germany. A memorandum for the meeting can be found at: **www.lse.ac.uk/collections/CARR/documents/specialReports.htm**

Henry Rothstein was invited to present his research on the problems confronting the reform of food safety regulation to a closed session of the UK Food Standards Agency Board in January 2005.

Academics abroad

Colin Scott presented papers at three events held at the Australian National University in Canberra in March/April. Topics he covered included the problems of jurisdiction and regulatory control in consumer protection, regulation and legal pluralism, and agencies in regulatory governance – comparing Australia and the EU.

In February **Mike Power** gave a public lecture on the risk management of everything: rethinking the politics of uncertainty for the David Hume Institute/ESRC series at the Royal Society of Edinburgh.

Bridget Hutter delivered the closing remarks at a meeting organised by the European Economic and Social Committee, European Policy Forum and CARR on 'Governance and NGOs of the Future' in Brussels in January.

In April **Will Jennings** presented a paper at the Joint Sessions of the European Consortium of Political Research (ECPR) in Granada, Spain; entitled 'The Ritual Dimension of Blame Management: Iraq in Comparative Perspective'.

Henry Rothstein was invited to present his research on food safety regulation to an international workshop held at the University of Maastricht on 'Uncertain Risks Regulated: National, EU and International Regulatory Models Compared'.

In May, **Robert Kaye** presented research on bribery and conflict of interest law as competing regulatory strategies at an international conference on Corruption and the Quality of Governance, held in Lisbon, Portugal.

Staff News

Our congratulations to **Mark Thatcher** who will be promoted to the position of Reader in Public Administration and Public Policy in September.

We say farewell to **Yuval Millo** who moves to the University of Essex's Department of Accounting, Finance and Management. We also say goodbye to **Amy Eldon** who leaves CARR to take up a new post at Imperial College London.

Have you moved or changed jobs recently? Please keep us informed of any changes in your contact details so you can continue receiving *Risk&Regulation*. **Email: risk@lse.ac.uk or Tel: +44 (0)20 7955 6577**

Independent Regulatory

Independent regulatory agencies – IRAs – have become a central feature of regulation in Europe. **Mark Thatcher** asks: why have IRAs spread in Europe? With what consequences? And what problems have arisen?

Independent regulatory agencies (IRAs) have become a central feature of regulation in Europe. They wield significant powers, produce detailed regulation, prepare policy, collect information and capture media attention. They raise issues that are important for policy makers, companies and consumers, as well as academics. Why have IRAs spread in Europe? With what consequences? What problems have arisen? Above all, why have elected politicians – usually thought of as maximising their own powers – delegated authority to IRAs throughout Europe?

Although counting IRAs is tricky, since legal doctrines and definitions of an IRA differ across nations, and labels can be misleading, three requirements are set here for an IRA to be counted:

- its own powers and responsibilities given under public law;
- organisational separation from ministries;
- being neither directly elected nor managed by elected officials.

Table 1 sets out the creation of IRAs in key economic sectors in the four largest countries in Europe.

In the late 1970s they were rare, with the exception of general competition authorities in Germany and the UK. By the late 1990s, most countries had established general competition authorities and sectoral regulators in domains such as telecommunications, railways and energy. They formed an essential part of the 'regulatory state' at the national level. However, IRAs have not spread evenly across domains and countries: Germany has fewer IRAs than Britain; institutional features vary; the behaviour of IRAs can also differ.

Two broad schools of thought offer differing responses. Functionalist 'principal-agent' theories suggest this growth has occurred because IRAs perform useful functions for elected politicians – including dealing with increased technical complexity, taking blame for unpopular decisions, enhancing the credible commitments of policy makers (notably towards investors who seek long-term policies); dealing with international organisations. The second sees the spread of IRAs as a 'fashion', in which policy makers copy each other, both across nations and across sectors. Cross-national diffusion or 'snowball effects' mean more IRAs, irrespective of whether they are needed or appropriate. Until the 1980s, most IRAs were found in the United States. Yet suddenly they spread in European nations. Today IRAs have been established in many economic domains, although earlier and to a greater extent in the UK than in the three other countries.

Although IRAs are 'independent' from elected politicians, that independence is relative since the latter retain many controls over IRAs – such as nominating their heads, determining their budgets, setting their powers and duties and, ultimately, the possibility to reform or abolish them. Perhaps surprisingly, an analysis of appointments shows that governments have not chosen party political activists, with the partial exception of Italy, largely due to its communications regulator (see first column of the charts on p. 7). Nor have they forced out sitting IRA members – most serve their full terms, often lasting longer than most ministers (second column).

Having created IRAs, governments do not use their most visible formal powers to control them, with the exception of limiting IRAs' resources. IRAs remain small in terms of employees and numbers, suggesting a structural dependence on governments. This remains true even for general competition authorities, which are often the most prestigious IRAs and cover the entire economy. Even Italy's AGCM, the largest general competition regulator surveyed, had a budget of only €19.7million.

If IRAs have in practice enjoyed independence from ministers, they face an alternative threat from regulatees – so-called 'capture'. In the United

Table 1: IRAs for market competition in UK, France, Germany and Italy in selected domains in 2003

Domain	UK	France	Germany	Italy
General competition	Competition Commission 1998 – (1948) Office of Fair Trading 1973	Conseil de la Concurrence 1986 (1977)	Bundeskartellamt [Federal Cartel Office] 1957	AGCM – 1990
Tele-communications	Oftel (1984) Ofcom 2003	ART – Autorité de Régulation des Télé-communications 1996	RegTP – 1996	AGCOM 1996
Energy	(Ofgas 1986 Offer, 1989) Ofgem (Office of Gas and Electricity Markets) 2000	Commission de Régulation de l'Energie 2003 (2000)		AEEG – 1995
Water	Ofwat 1989			
Railways	Office of the Rail Regulator 1993 Strategic Rail Authority 1999			
Postal services	Postal Services Commission 1999		RegTP – see telecommunications	
Media	Ofcom 2003 (Independent Television Commission 1990, and predecessors – 1954)	Conseil Supérieur de l'Audiovisuel 1989 (1982)	No national body – Landesmedienanstalt for each state	AGCOM (see tele-communications)
Stock Exchange/ Shares	Financial Services Authority 1997 (1986)	AMF (Autorité des Marchés Financiers) 2003 (COB – Commission des operations de bourse 1967 and Conseil des Marchés de Valeurs 1996)	Bafin-Bundesantalt für Finanzdiensleistungen – 2002 (1995)	Consob – La Commissione per le società e la borsa 1974

Notes:
1 Dates in brackets – when an IRA first established in the domain; empty boxes – no sectoral IRA.
2 There are often several financial regulators – the most important regulator for stock exchanges is taken; for Germany, analysis relates to Bundesaufsichtsamt für Wertpapierhandel, which was absorbed into Bafin in 2002.

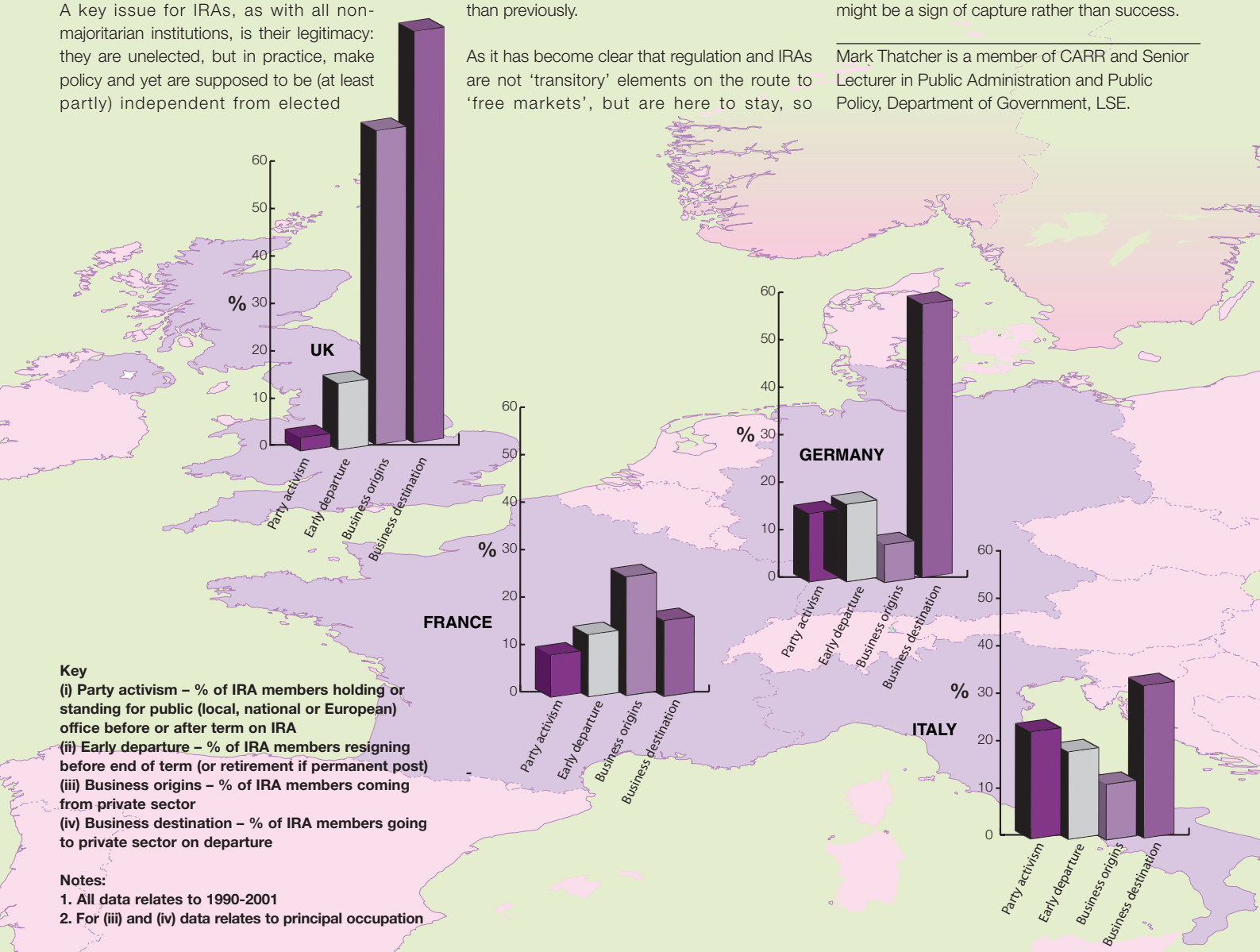
Agencies in Europe

States, the 'revolving door', in which regulators are drawn from regulated industries and/or then go to posts in those industries, is a major concern. However, in Europe, it would seem that the revolving door is rather closed: even if the entire private sector is considered, most regulators come from the public sector and a high proportion return to it. The major exception is Britain – due perhaps to a policy of encouraging private sector appointees and the lower status given to public sector experts (in contrast to France and Italy, where professors and other public sector employees move in and out of IRAs) (third and fourth columns).

A key issue for IRAs, as with all non-majoritarian institutions, is their legitimacy: they are unelected, but in practice, make policy and yet are supposed to be (at least partly) independent from elected politicians. One response is to seek 'output legitimacy' – to argue that IRAs are justifiable because they produce better results than decisions by elected politicians. However, showing that outcomes are due to IRAs is difficult, whilst people may differ over what is a 'better outcome', especially if there are issues of distribution of costs and benefits. A second, and more prominent method used by IRAs has been to seek 'input legitimacy' by showing that they publish more information, are more transparent and consult more than their predecessors – governments. Such IRA activity is relatively easy to demonstrate and indeed generally, it is clear that IRAs have made regulation much more open than previously.

As it has become clear that regulation and IRAs are not 'transitory' elements on the route to 'free markets', but are here to stay, so criticisms of IRAs have developed. They are accused of 'interfering' too much, being too remote from scrutiny and challenge, lacking clarity about their roles and being too 'independent' from elected politicians. However, IRAs inevitably involve trade-offs: for instance, between rapid effective decision making and ample opportunities for interested parties making their voices heard; between greater political oversight of IRAs and the independence of the latter; between strong IRAs and capture by regulatees. IRAs will inevitably displease different interests – governments, incumbents, new entrants, large users and residential consumers. However, if they were to become popular with one group, this might be a sign of capture rather than success.

Mark Thatcher is a member of CARR and Senior Lecturer in Public Administration and Public Policy, Department of Government, LSE.



Key
(i) Party activism – % of IRA members holding or standing for public (local, national or European) office before or after term on IRA
(ii) Early departure – % of IRA members resigning before end of term (or retirement if permanent post)
(iii) Business origins – % of IRA members coming from private sector
(iv) Business destination – % of IRA members going to private sector on departure

Notes:
1. All data relates to 1990-2001
2. For (iii) and (iv) data relates to principal occupation

Making Inquiries

Public inquiries have become a feature of modern government. But **Robert Kaye** argues that the government has missed an opportunity to give inquiries expertise, credibility and independence.

Public inquiries play a vital regulatory function. Very often they are the investigator of last resort, charged not only to investigate the substance of some or other crime, mistake or catastrophe, but, as with the recent inquiries into Foot and Mouth Disease and the Shipman murders, to establish why other regulatory structures failed.

In a recent article (*Parliamentary Affairs* 58 (1)) I argued that the experience of the Hutton inquiry into the death of David Kelly had brought into focus deficiencies in the current arrangements for holding inquiries when it is the conduct of government itself that is in question. Its publication coincided with the Government's release of its Inquiries Bill, designed to consolidate the various laws under which statutory inquiries were held. Rushed through both Houses of Parliament ahead of the general election, the bill became law only 134 days after being introduced. But publication of my article also coincided with the Budd inquiry which led to the resignation of the then Home Secretary David Blunkett.

Inquiries are not just the stuff of high politics, of Prime Ministers and Home Secretaries, although these are undoubtedly the most high-profile. A raft of recent inquiries overlap with CARR's work – including the Equitable Life, Maxwell and BCCI collapses; the Bristol Royal Infirmary and Liverpool Children's Hospital scandals; the Ladbroke Grove and Southall train crashes. Not only does the Inquiries Act replace the landmark 1921 Tribunals of Inquiry (Evidence) Act, it also replaces a series of sector specific inquiry processes. However, the Act does little to address the causes of concern that followed the Hutton report – a non-statutory inquiry which would, in any case, have been outside the new legislation.

Governments call independent inquiries for the same reason they create independent regulatory agencies: credibility, independence, and expertise. In the most serious cases, particularly where allegations of serious misconduct or criminal behaviour are involved, governments usually (but not always: the inquiry into events surrounding the Soham murders is a case in point) call on the judiciary. Judges offer 'symbolic reassurance', disinterested authority and dispassionate investigation. But, as the experience of Lord Hutton's inquiry shows, they place judges on the horns of a dilemma. Inquiries rarely turn on matters of strict civil or criminal liability – if the question before the inquiry were one of law then the courts would already provide an answer. The judge who sticks to a strict legalistic path will invariably miss the point, and lay himself open to charges of 'whitewash' – particularly if, as some commentators see it, judges are reluctant to be over-critical of politicians and institutions. If, however, a judge strays into policy considerations or moral judgement, then his conclusions become fair game for outside critics.

This problem is exacerbated by technological developments that have enabled the wealth of material that inquiries gather to be made instantly available to the public. Observers were impressed by the amount of material released onto the Hutton website. But this would have come as no surprise to those who had viewed the Shipman, Ladbroke Grove or Bloody Sunday inquiries' websites. The danger in releasing so much information is that when the public has full access to the papers and witnesses' testimony, members of the public have grounds to feel entitled to come to their own conclusions – which undermines one of the inquiry's main aims, to bring certainty where there is doubt. While the Hutton inquiry brought closure on a number of issues – the cause of Dr Kelly's death, errors in Andrew Gilligan's reporting – it did little to settle the broader issue of what the government did know, and should have known, about Iraq's weapons capabilities.

In contrast, parliamentary inquiries have the advantage of democratic legitimacy. Unfortunately, in a country where the government dominates the House of Commons, MPs are particularly ill-disposed towards investigating allegations of misconduct, even mere mismanagement, by the executive. Politicians are by their nature political animals – tribal, strategic and policy-oriented. It is unreasonable and unrealistic to expect them to ignore the wider political consequences of an investigation.

Nowhere is this more clear than the pre-Hutton inquiry into the case for war in Iraq by MPs on the Foreign Affairs Committee. The committee was hampered by government's refusal to cooperate with its inquiry. Without access to government papers, it divided on strict party lines on the question of Alistair Campbell's role in the infamous second dossier, which contained the claim that Saddam Hussein possessed chemical and biological weapons capable of being deployed within 45 minutes. And it concluded that David Kelly was not the source for Andrew Gilligan's infamous 'sexed-up' broadcast. It managed the twin achievement of being utterly partisan and utterly wrong.

Nonetheless it is striking that the new Act does not contain the requirement in the 1921 legislation for a resolution in Parliament. One of the chief functions of the legislature is to hold the executive to account. The 1921 Act allowed a fiction that inquiries into government conduct

were held on behalf of parliament. Under the new Act, public inquiries into government are conducted for government and report to government.

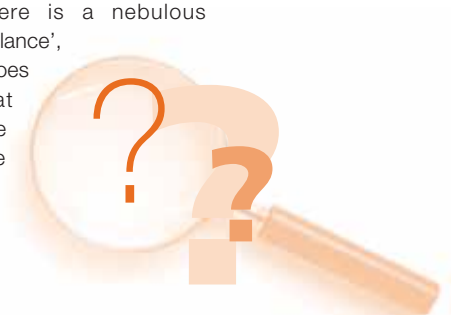
Instead, the Government had laid itself open to criticisms that the new bill gives far too much power to ministers – sharpened by the fact that the bill was passed in horse-trading ahead of the election, and provisions that would probably have been neutered in either the House of Commons or House of Lords have passed unamended. A key concern was to prevent costs from spiralling out of control – Lord Saville's ongoing inquiry into 'Bloody Sunday' is currently expected to cost £155million. However Lord Saville has indicated that he would not be prepared to serve on a tribunal under the new Act, claiming the new powers are 'likely to damage or destroy public confidence in the inquiry or its findings'. Under the Act, ministers may control the budget of the inquiry and the timing of publication, may block evidence or require that the inquiry be held in private, and may even dismiss members of the tribunal. Of course, governments may not actually use these powers (although one should bear in mind the example of Richard Nixon, who sacked the Special Prosecutor investigating Watergate). It may simply be a matter of perception – serious enough when one purpose of an inquiry is to provide public reassurance. Equally, however, one doesn't need to use a weapon to instil fear and acquiescence, mere possession will do.

That the government should have pushed a bill in which Ministers decide whether and when to call an inquiry, as well as who should chair it, would surprise few political scientists – or other cynics. It is unfortunate, however, that its arguments did not come in for more rigorous scrutiny. For instance, the government rejected the idea that professional organisations might have responsibility for setting up inquiries, since they 'are likely to have significant interest in the outcome'. It rejected parliamentary involvement (which was required under the 1921 Act) since 'it would introduce political and partisan elements into the inquiry process'. Both of these are, of course, criticisms which could equally be made of ministerial involvement. One possibility apparently not considered was a formal role for regulatory bodies in setting up inquiries – obviously, this would be problematic if the regulator's own conduct or performance was at stake – despite the relative autonomy and independence that such bodies enjoy.

A key difficulty is the lack of obvious criteria for appointing chairs of inquiries. Except in the case of judges, where – largely for practical reasons – ministers are required to consult with the Lord Chief Justice, there is very wide discretion for ministers to appoint whom they want to head inquiries and to sit on tribunals. Unlike most public appointments, the chairs of inquiries are not appointed under 'Nolan' principles of transparency, openness, merit and competition. (There is a nebulous requirement for 'balance', although the Act does not specify what needs to be balanced!). So while Sir Alan Budd, the ex-civil servant brought in to investigate the Blunkett allegations, had no obvious deficiencies, it is hard to say why he, out of the numerous possible investigators, should have been given the brief. This is likely to lead cynics to conclude, often unfairly, that ministerial 'flexibility' is really a ruse to allow the government to cherry pick investigators who will deliver the verdict required (a conclusion which is harder to sustain in the light of Budd's damaging findings in the Blunkett case). The Prime Minister has rejected a recommendation from the Committee on Standards in Public Life that to avoid this accusation he should nominate in advance two people who could be called upon to oversee inquiries into Ministers as they arose.

But if the Act was a missed opportunity, it might also be an irrelevance. Ministers can, and will, continue to commission inquiries – like Budd and Hutton – on an ad hoc basis; non-statutory inquiries that are unaffected by the new Act. Whether such inquiries will offer closure or merely a temporary respite from political heat is likely to depend as much on their findings – the public seem to prefer it when inquiries confirm their prejudices – as the way they come into being.

Robert Kaye is an ESRC Research Officer at CARR.



Responsive Risk Regulation? **Immigration and Asylum**

Will Jennings warns of the dangers when responsive risk regulation panders to the lowest common denominator.

No other domestic regulation issue has become as increasingly salient since May 1, 1997 than government policy on immigration and asylum. The events of September 11, 2001, transformed population flow and border security/control into a prominent risk regulation issue. Over the same period the newsprint media (and particularly the tabloid press) have dedicated an increasing quantity of coverage to this as a case of government failure and an area of public interest.

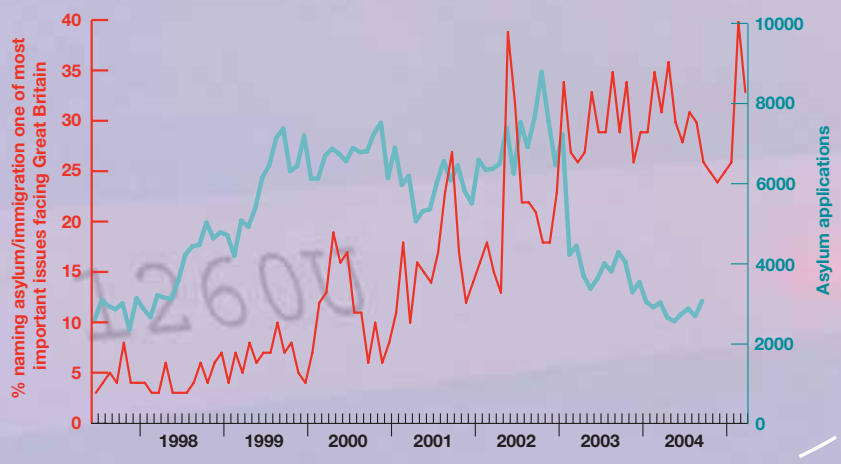
In formulation and implementation of regulatory policy, immigration and asylum are typically presented as interdependent issues, since it is often supposed that the asylum system is exploited by would-be economic migrants masquerading as asylum claimants. Reforms of the asylum system designed to tighten up border controls have been publicly promoted by the Home Office on this basis. This is a shared European regulatory problem because of the external desirability of the EU as a final destination and internal potential for 'asylum shopping' between member states (compounded by cross-border trade in human traffic).

Nonetheless, following the reduction in the number of applications for asylum in the period 2002-2003, the National Audit Office reported 'there is no clear statistical evidence that the reduction in the number of asylum applications has had any significant impact on other forms of migration'. Nor did this result in displacement of the applications to other Western European countries (where there was a common downward trend).

However, the regulation of immigration and asylum is ill-defined as a risk issue. It faces multiple dimensions of perceived and actual risks associated with population flows. Typically these include cultural, social and economic versions of risk. For example, arrival of migrant populations present potential dangers linked to an erosion of national or civic identity, increased use of public services and the existing welfare system, and spread of infectious illness and disease from the undeveloped to the developed world. Perceived cultural risk is most arbitrarily defined, in adherence to a static and non-historical view of 'national identity'. Indeed, a logical consequence of cultural risks that inform much political rhetoric on migration would require a restriction of outflows in addition to inflows. The risk of inaction on migration policy is by comparison less indeterminate, with a clear social and economic benefit of youthful migrant populations. These are required throughout the EU in order to offset demographic timebombs that countries face in the increasing strain placed upon existing welfare systems by an aging population. However, most policy debate and political rhetoric is oriented around regulation of external threats, not regulation of internal problems.

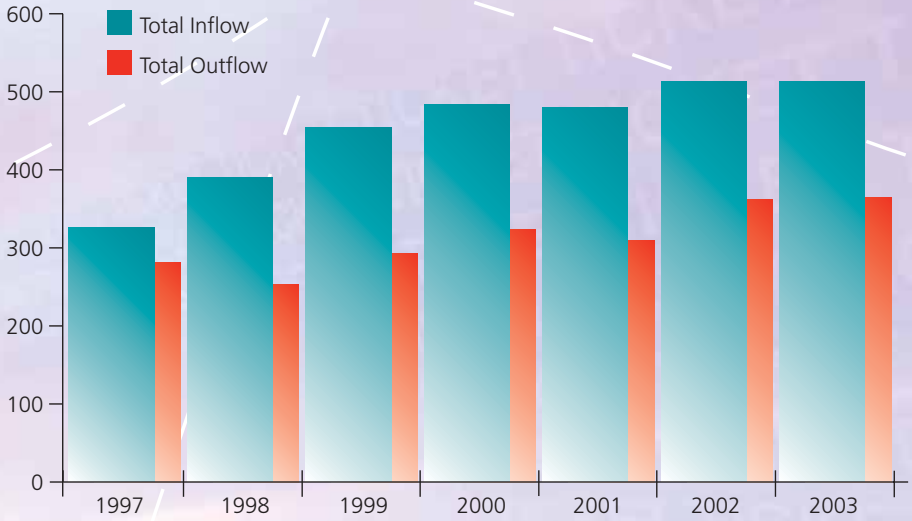
From the available evidence, it does appear that public opinion has been sensitive to the upward trends in immigration and asylum applications since 1997. In return, there is some evidence of 'opinion-responsive' risk regulation, in the reaction of the Labour Government to escalating issue importance between 1997 and 2004. Since October 2002, it has openly sought to alleviate identified public concern by reducing numbers of asylum applications through its introduction of a range of statutory and non-statutory measures. Prior to this, the Home Office cleared the administrative backlog of application decisions and removals that had

Asylum and Immigration: applications and issue importance



Source: MORI Political Monitor (www.mori.com/polls/trends/issues.shtml) and ONS

Migration Inflows and Outflows



Source: Immigration Research and Statistics Service and Office for National Statistics
Crown copyright

developed between 1998 and 2000. Government attentiveness to public opinion was reflected in the Cabinet Office's commissioning research as part of its 1999 Modernising Government agenda, which included surveys (conducted in 2004) of public attitudes towards the asylum and immigration system. However, despite a reduction in asylum applications after January 2003, public disquiet on immigration and asylum has persisted – receiving attention from Government and Opposition alike. Following the placement of a full page advertisement by the Conservative Party on its immigration and asylum policy in the *Sunday Telegraph* on January 23, 2005, Home Secretary Charles Clark responded with new proposals for immigration control.

Therefore, regulatory 'responsiveness' to public opinion has been openly promoted and pursued by policymakers in this domain. However, there are several problems associated with the popular notion of responsive regulation for the government of immigration/asylum risk. These result from a tension between the appearance of rational and reasoned public anxieties over immigration and asylum policy, and underlying attitudes that suggest uninformed and/or prejudiced beliefs about many of the specific objectives and details of policy.

First, public attitudes on immigration regulation exhibit what appears to be a racist dimension. The public favours immigrants of Anglo-Saxon and European origin over those of African/Caribbean and Asiatic origin. In order of preference, new immigrants are favoured (from a selection of stated options) to be Australians, Polish, West Indians, Black Africans, Romanians, Pakistanis and, lastly, Iraqis (YouGov/*The Economist*, 8-9 December 2004). It is ironic that the worst offending nation for overstaying (Australia) is perversely most tolerated by the public. It may be 'common sense' to policymakers that immigration 'risk' requires increased regulation, but public demand is seemingly informed by underlying and unrelated factors.

Second, public perception of risks associated with asylum and immigration are not always informed or consistent with the publicly stated policy objectives. For example, a YouGov poll in December 2004 found that 11% of the public agreed strongly (and 26% 'tended to agree') with the proposition that 'a significant proportion of people claiming asylum in Britain are terrorists'. Given that there is no evidence of exploitation of the asylum system by terrorists in the post-9/11 era, that level of response is disproportionate and without clear reason. Similarly, despite general policy consensus between major political parties on the economic necessity of immigration, there is majority public resistance to the economic argument for migration (YouGov/*Mail on Sunday*, 2-3 April 2004). It is problematic that the primary political rationale for immigration policy is not accepted by a substantial strand of public opinion. There is also public ambivalence over the UK's obligation to a human right of asylum under the UN's Universal Declaration of Human Rights.

Third, the available evidence reveals a 'perception gap' between official details of immigration and asylum policy and associated public beliefs. Although earlier discussion indicated a sensitivity of public opinion to aggregate shifts in policy on immigration and asylum (responding to upward trends since 1997), public awareness is often limited over specific details of policy. There exists a systematic public overestimation of the proportion of immigrants entering the country (MORI *The More Things Change...*, September 2004). Equivalently, the public believes that the UK takes 24% of the world's refugees, when in fact the whole EU takes only 3% (*The Guardian*, 11 April 2005). Polls by ICM and MORI during 2004 found that the public largely remains unaware of a reduction in the total number of asylum applications over both the previous twelve months (ICM 28 May – 6 June 2004; MORI 26-29 March 2004) and over the five years since 1999. On specific reforms aimed at responding to public concern, a relative majority (48% versus 15%) did not believe that asylum applications had decreased following the introduction of border controls by France at its Channel ports (YouGov/*The Sun*, Immigration and Asylum, 11-14 August 2003). These examples illustrate how the public is often uninformed on the regulation by government of immigration and asylum.

For asylum and immigration policy, the idea of 'responsive' risk regulation presents theoretical and practical difficulties. Firstly, despite the appearance of correlation between trends in policy issue importance and total asylum applications/immigration inflow, there continues to be a significant section of public opinion that is uninformed on either the policy risks associated with population inflows, details of the implementation of reforms to immigration and asylum systems or successes of regulatory solutions. The factual basis of public concern over immigration and asylum regulation is therefore limited.

Secondly, policy solutions and the accompanying political rhetoric aimed at responding to public concern can at the same time satisfy rather less salubrious strands of public opinion. For opinion-responsive risk regulation, the implications are problematic if reasoned policy reforms nonetheless pander to the lowest common denominator of public opinion. For example, if the formulation of immigration policy is informed by responsiveness to public opinion that overestimates the existing level of immigration and is prejudiced on the national origin of immigrants on a racial dimension, the importance of actual risk is demoted in development of regulatory solutions. Therefore, aims of opinion-responsiveness may distort regulatory outcomes if public opinion is mainly determined by unrelated factors.

We are left with a paradox. It is evident that public opinion is uninformed and ignorant about many details of immigration and asylum policy. Its risk assessment and also its prescription of policy solutions are unrealistic. Yet despite this, the rising importance of the issue does reflect a real sensitivity of public opinion to increasing population flows. It also suggests that the public have well-formed opinions about their basic preference for more or less inflow.

Even in an age of increasing sophistication in techniques of public opinion research, elected politicians must tread a careful path between responsiveness to public opinion and representation of the public interest. Opinion polls and focus groups are unlikely to produce solutions to policy problems while the public remain unclear on detailed facts.

Will Jennings is ESRC/BP Postdoctoral Fellow at CARR.

When International Standards Travel:

The Rise and Spread of International Auditing Standards in Post-Soviet Regulation

Andrea Mennicken examines how international standards have been transformed when transplanted into post-Soviet Russia.

Within the past 30 years or so, the governance of social and economic life has increasingly taken place through international and non-governmental forms of rule and regulation. A growing number and range of activities have come to be framed with reference to global standards of production, organisation and control. Worldwide models of government and organisation are more and more often employed to define and to legitimate agendas for local action. Within the field of auditing, international standards, in particular International Standards on Auditing (ISAs) have attracted increasing attention in the reform and regulation of professional conduct.

The first international auditing standard was issued by the International Federation of Accountants (IFAC) in 1979, but it is only since the 1990s that these standards have gained considerable attention. In the 1990s, organisations such as the International Monetary Fund (IMF), the World Bank, the OECD and large multinational audit firms began to promote international auditing standards against the backdrop of wider debates about global economic governance and international stability.

Events, such as the Mexican (1994-95) and South-East Asian (1998) financial crises and the collapse of the Barings bank, had led to serious doubts about the regulatory capacities of state-bound command-and-control regimes. International standards, including those for auditing, came to be put forward as a new source and technique of regulation that would help overcome the boundaries of state control and facilitate economic coordination and stabilisation on an international scale.

But what kind of discursive and practical phenomena exactly are global standardisation attempts? ISAs have become widely discussed, yet, so far, little research has been carried out on their dynamics and the effects set off by them.

Peripheral economies provide an interesting site from which we can start exploring the consequences of international audit standard setting. For it is particularly in peripheral and transitional market-oriented economies that international standards and world organisational models have gained influence.

In post-Soviet Russia much of the appeal of globalised audit models and international auditing standards is rooted in a desire to resemble, and to become accepted by, Western governments with their commitments to capital markets. Here, ISAs were called upon to reform and stabilise the transitional economy. The rules were viewed as a device that could help overcome the country's socialist past and contribute to the establishment of new forms of market-oriented regulation and control.

But to what extent could the rules actually be mobilised to build up, regulate and internationally integrate a new body of post-Soviet audit expertise?

The attractiveness of international auditing standards is often grounded in claims to their universal applicability and worldwide authority. But ISAs work and travel selectively. In the case of post-Soviet Russia, the actual reform potential of the standards proved to be very limited. Notions of universal audit practice to which the standards became attached were themselves particularised.

In post-Soviet Russia, the standards made audits internationally accepted only for a selective group of people and organisations, namely those firms who already enjoyed a secure standing on world audit markets, such as the current Big Four, or firms and professionals who managed to build up relations with globally operating audit networks. The standards became implicated in plays of power and exclusion, in the politics of recognition and struggles for intra-professional distinction, which, in turn, undermined their harmonising and unifying capability.

Different interests and objectives were mapped into the standards. What counted as 'working in accordance with standards' was contested. On the one hand, the Ministry of Finance and the Russian taxation authorities promoted auditing and international auditing standards as a means to enhance state control and stimulate compliance with Russian taxation and accounting laws.

On the other hand, there existed more capital market-oriented views, which regarded auditing as a control mechanism that was called upon to enhance the information content of financial statements for economic decision makers; in particular private shareholders. Such claims were especially articulated by Russia's relatively young profession of financial analysts; national companies which sought to raise finance on Western capital markets; big international accounting firms; multilateral agencies, such as the World Bank, IMF and OECD; as well as multinational companies which operated on the Russian market.

Many Russian audit firms translated the international auditing standards into standard forms of carrying out audit processes, but this did not result in the transmission of uniform, clearly identifiable audit ideas. The standards themselves as well as their attempted realisation in forms, rules and audit methodologies left the content of audits, especially with respect to audit objectives and output, largely undefined. International Standards on Auditing increased harmony in form and bureaucratic procedure, but they were far from being able to further convergence with respect to professional approaches, programmes and ethical attitudes to audit work.

What do we learn from the Russian experience? Rather than assuming that ISAs function as carriers of 'best practice', we need to question their translatability and international applicability. Although international auditing standards evoke ideas and dreams of similarity and comparability, at least on their own, they do not form an unproblematic, universal yardstick against which auditing practices can be measured, compared and regulated.

Andrea Mennicken recently completed her PhD in the LSE's Accounting and Finance Department, and was a CARR affiliated research student.

CARR hosts regular risk and regulation conferences.

The Regulation of Genetics Outside the State

Workshop in conjunction with the ESRC Centre for Genomics in Society (Egenis), University of Exeter
Egenis, March 2005

How effective are non-state actors in managing the challenges and risks posed by advances in genetics? The societal impacts of increasing genetic knowledge and technologies are of increasing significance, whether it be the social and psychological consequences of genetic testing, the development of so called 'dual use' technologies that are as applicable to biowarfare as to human well-being, or the 'privatisation' of genetic knowledges by bio-business. Yet in many of these cases the state has opted to take a regulatory back-seat, preferring to 'outsource' regulation to private actors in the form of civil society organisations, corporations and health care professionals and scientists.

A workshop jointly hosted by CARR and Egenis at Exeter University set out to explore the possibilities and limits for governance through non-state actors in this important domain. The workshop brought together 50 academics and practitioners to discuss these issues over two days and included presentations on the failure of self-regulation for dual-use biomedical technologies by Dr Filippa Corneliussen (LSE); the ethical, psychological and regulatory challenges of genetic testing by Dr Carlos Novas (LSE), Dr Paula Saukko (Egenis), and Stuart Hogarth (Cambridge); the factors shaping research agendas and funding in the biosciences by Dr Alf Game (BBSRC) and Dr Christophe Bonneuil (CNRS); and the disputed status of intellectual property rights over biotechnology products by Dr Jane Calvert (Egenis) and Dr Alain Pottage (LSE).

Governance and NGOs of the Future

in association with the European Policy Forum and the European Economic and Social Committee, Brussels, January 2005

This meeting brought together international organisations, academics and NGOs to discuss trends in governance and their implications for NGOs of the future. It explored the principles of a code of conduct that might help NGOs adapt to the changes in governance that are predicted.

The event was chaired by Lord Plant of Highfield, and speakers included Claudio Radaelli, Richard Fries and José Candela Castillo, Head of Unit Governance at the European Commission.

Taking Stock of Trust **LSE, 12 December 2005**

Hosted by the ESRC Social Contexts and Responses to Risk Network (SCARR) and the ESRC Centre for Analysis of Risk and Regulation (CARR)

Trust enables people to collaborate, negotiate and trade under conditions of uncertainty. The demands placed on trust in a more complex and globalised economy, where people live more flexible and diverse lives, are growing, at a time when trust in experts, public authorities and other institutions is increasingly questioned. This one-day conference will analyse developments and discuss future directions in trust research.

Speakers include

Professor Lord Layard, LSE: Trust and social progress

Professor John Urry, University of Lancaster: Trust, travel and proximity

Professor Richard Eiser, University of Sheffield and Dr Matthew White, University of Jena: A psychological approach to understanding how trust is built and lost

Discussants include Mike Power (CARR), Christopher Hood (CARR/Oxford) and Graham Loomes (UEA).

Places limited, see: www.kent.ac.uk/scarr/events/events.htm

More information on CARR events can be found on CARR's website, www.lse.ac.uk/Depts/carr

Call for Papers

Risk and Regulation 2005: Fourth Annual Research Student Conference 15-16 September 2005

We are organising a Fourth Conference for research students whose intended or current research focuses on a topic related to CARR's agenda. We would welcome both expressions of interest in attending the conference and proposals for papers to be considered for presentation.

In addition to students' presentations, the Conference will include keynote speeches and a series of 'Master Classes,' led by members of CARR. The aim of the 'Master Classes' is to explore in detail conceptual and methodological issues in researching risk and regulation.

We encourage students in all phases of their PhD research to present their 'work in progress' including conceptual issues and problems, empirical findings, methodological issues or research strategies. This is not intended to be a conference featuring completed research; rather it will be a forum for constructive discussion and debate between research students, and a contribution to the progress of their research.

Discretionary bursaries may be available towards travel and accommodation for those presenting.

'the best chance I've had to network with likeminded people at the same point in our academic careers'

'one of the best supporting opportunities for my PhD I could ever attend'

Apply online or send your title and a 200-word abstract of a paper (to be presented for no more than 20 minutes) to regulation@lse.ac.uk by 24 June 2005.

www.lse.ac.uk/collections/CARR/events/riskAndRegulationResearchStudentConference.htm

Full abstracts and details of seminars can be found on the CARR website: www.lse.ac.uk/Depts/carr

Corporate Governance, Labour Regulation and Legal Origin: a case of institutional complementarity?

Professor Simon Deakin, University of Cambridge
18 January 2005

According to the influential work of La Porta et al, persistent divergences between national-level systems of corporate governance can be explained by reference to their legal origin, that is to say, their roots in one of the principal legal families. The contrast here is drawn between systems of the common law and those of the civil law, with the civilian world further subdivided into French-influenced, Germanic and Scandinavian groupings. The seminar examined the legal origin hypothesis with reference to one of its more recent applications, namely the regulation of labour. Professor Deakin argued that legal origin may well be associated with the persistence of diversity across the 'varieties of capitalism', but not for the reasons offered by La Porta et al. which rest on an inaccurate characterisation of the common law/ civil law divide.

Securities Analysts as Frame-Makers

Daniel Buenza, Universidad Pompeu i Fabra, Barcelona
1 February 2005

As Wall Street specialists in valuation, securities analysts offer a privileged opportunity to understand how investors grapple with extreme uncertainty. However, the academic literature on analysts is characterised by a puzzling discrepancy between theory and practice: while the theory provides a highly critical account of analysts, this professional category has survived and expanded for almost a century. In this seminar Daniel Beunza offered a possible explanation for this puzzle with an examination of the intermediary function performed by analysts, concentrating on the effect of analysts in creating the Internet bubble and the related regulatory debate. He found that the controversies among analysts during these years can be characterised as internally consistent networks of associations between categorisations, key metrics and analogies. The findings suggest that analysts should be regarded as frame makers, specialised intermediaries that help investors attach numerical measures of value to stocks even in situations of extreme uncertainty.

Risk Transformation: a new era for chemicals regulation in the US and Europe?

Dr Arthur Daemmrich, Chemical Heritage Foundation
15 February 2005

In the past decade, environmental risk management has undergone significant transformations in the US and Europe. Regulation of the risks posed by chemicals and their manufacturing sites has shifted from a focus on emissions to products, and from surveying the environment for known toxins to mapping the 'body burdens' posed by uncharacterised compounds. Based on case studies of the high production volume (HPV) testing program and biomonitoring research, this talk argued that changes in the relationship among the chemical industry, environmental NGOs, and government regulators were instrumental to these shifts. As a consequence of increasingly collaborative frameworks in the US, the ways in which risks are identified, defined and managed have undergone a transition from command-and-control regulation to a more collaborative model. In Europe, on the other hand, the programme for registration, evaluation, and authorisation of chemicals (REACH) is evidence of an emerging regulatory state that is replacing historically collaborative approaches with centralised controls and oversight. The talk concluded with observations on the future of international regulatory harmonisation and an assessment of the increasing role played by environmental groups in both the US and Europe.

What is Law in the EU? The Implementation of the EU Directive on Integrated Pollution Prevention and Control

Dr Bettina Lange, Keele University
1 March 2005

The formal law in the books and official legal actors, such as the EU Commission and Courts, have been a major focus for lawyers' and political scientists' conceptualisations and explanations of the role of law in EU integration. In this seminar, Dr Lange analysed the significance of the law in action and technical staff in harmonising limits to emissions to air, water and land under the IPPC Directive. She critically examined whether normativity really generates integration and how it can be conceptualised. She suggested that the law in action - in particular the key obligation for mainly industrial operators to employ 'the best available techniques' in their plants – draws on subtle shifts and exchanges between frequently renegotiated and reconstructed notions of a social and a legal sphere. The seminar traced how behavioural and discursive resources are mobilised for this law job.

The Relationship Between European Financial Regulation and National Regulators

Professor Marie-Anne Frison-Roche, Sciences Po, Paris
15 March 2005

At the European level financial regulation is moving towards the creation of a new integrated European financial market. In contrast to the network sectors, financial regulation was nationally-based before becoming European. However, there is a distortion between the substantive rules (elaborated at the EU level) and the institutional rules, because the regulators are still national. The specific issue for the regulatory system's efficiency is: must this distortion be only temporary? Should the next step be to set up a European financial regulator, in application of a sort of general method which leads to adopting the same level for substantive rules and for institutions in charge of applying them. Or is this distortion efficient in itself, maybe more efficient than an articulation between European substantial rules and a European regulatory body?

The Politics of Small Things: nanotechnology, risk and democracy

James Wilsdon, Demos
26 April 2005

For their proponents, nanotechnologies offer so much – unlimited energy, targeted pharmaceuticals, intelligent materials and self-organising molecular machines. Bottom-up or top-down, the promises of 'nano' are revolutionary. Yet in both the US and Europe, debates about the potential risks of nanotech, with their origins in dystopian fears of 'grey goo', have rapidly taken on a sharper focus around issues of nanoparticle toxicity and the need for tighter regulation. Allied to this are concerns about the lack of accountability and public scrutiny of key research trajectories within nanoscience. Nanotech may be a new field,

but already it is bristling with tensions and uncertainties. Will it inevitably become 'the next GM'? Can new forms of public engagement take place 'upstream', at an early stage in research and development processes? How can we strengthen the reflective capacity of nanoscientists to address social, ethical and political questions?

Food Fights: who shapes international food safety standards and who uses them?

Dr Diahanna Post, Brookings Institution and the University of California, Berkeley
3 May 2005

Conflicts over food safety standards have emerged as one of the most controversial international trade issues in recent years. The World Trade Organization has encouraged countries to adopt food safety standards passed by the international Codex Alimentarius Commission in order to facilitate the removal of non-tariff barriers to trade. How have these international standards affected domestic regulations? This talk compared the successful influence of an international standard for processing safe food, called Hazard Analysis and Critical Control Point (HACCP), with the much more circumscribed influence of the Codex food additive standard. It examined the uptake of the two standards across four very different regulatory environments: the US, the EU, Argentina, and the Dominican Republic. The major finding was that the role of interest groups is of much less importance than theories of political economy would presume, and that in fact structural factors of regulatory legacies and participation in regional integration initiatives is a greater determinant of the observed outcomes.

The biopolitics of technological innovation: the case of GM agriculture in Europe

Bronislaw Szerszynski, Institute of Environmental and Public Policy, Lancaster University
24 May 2005

This seminar explored the idea that in the 21st century a key site of 'biopolitics' – of a politics oriented to the shaping and optimising of vital forces within society – might be technology itself. In the context of global economic competition, the principle source of economic value for advanced capitalist societies is increasingly lying neither in the physical labouring power of the human worker, nor in the use or exchange value of artefacts, but in the very temporal dynamism of technology – its vital capacity continuously to develop and evolve. The enhancing and shaping of technology's momentum thus becomes a key biopolitical project in itself, and the state has found a new role in relation to technology – not the stabilising of steady-state technology in the context of state-organised welfare capitalism, but the nurturing of spaces and networks which foster technology's liveliness, in the context of the 'far-from equilibrium' economics of global neo-liberalism. Using the case of GM agriculture in Europe, the seminar explored the pressures that this unruly biopolitics of technology is placing on the classical biopolitical 'compact' in which governments promise to protect the health and security of populations.

The New Transitional Public Law: the case of forest certification

Professor Errol Meidinger, University of Buffalo
31 May 2005

Plausible arguments can now be made that a new transnational public law is emerging and that it is not reducible to the activities of governmental and intergovernmental agencies. This paper took those propositions as a starting point and offered a preliminary description of the dynamics of the new transnational public law in the arena of forestry regulation. The most important development in the field has been the establishment of a set of competing forest certification programs. These are non-state based institutional systems for certifying to a putatively global public that forest based products have been produced in an environmentally sustainable and in some cases socially just manner. These programs involve formal standard setting and enforcement structures and produce the equivalent of social licences for forestry enterprises. This seminar outlined some emergent central principles and institutions in the field as well as central areas of contestation. It also described calculations and strategies used by transnational environmental organisations in trying to shape and establish the new public law, responses of industry based interests, and current dynamics of the process.

Regulating Contaminated Land: policy, sustainability and risk

Philip Catney, University of Sheffield
7 June 2005

The recycling of brownfield (and contaminated sites) has come to be viewed as a sine qua non of sustainable land use policy in the UK. Freeing up urban areas for re-development is central to the Labour government's objective of stimulating urban renaissance in Britain's cities and towns. Yet the redevelopment of seriously contaminated land poses special risks not encountered on many brownfield sites. This seminar analysed the emergence and development of the policy regime for dealing with contaminated land in England. Philip Catney explored the particular characteristics of the UK approach to remediating contaminated land, and offered a preliminary assessment of its strengths and weaknesses.

FORTHCOMING **LUNCHTIME** SEMINAR

A Technology to Produce Risk and Disease: a comparative analysis of genetic testing for breast cancer

Tuesday 21 June 2005
Dr Shobita Parthasarathy
University of California, Los Angeles

Part of ESRC Social Science Week 2005

The recent development of testing technologies that generate information about genetic susceptibility to diseases has led to considerable concern about the possible creation of a new category of at-risk individuals who will consequently be medically, socially, and economically disadvantaged. But what role does national context play in the way these risks are defined and for the new categories of at-risk individuals that might emerge? Through comparative case study of the development of genetic testing for breast cancer in the US and Britain, Dr Parthasarathy will demonstrate that political cultures, institutional structures, and regulatory frameworks play a very important role in the development of the new testing technology, which has important, nationally-specific consequences for the way at-risk individuals were defined and the types of management and therapeutic options that were available to them.

Seminars take place in the CARR Seminar Room H615, Connaught House 1-2.30pm. All welcome. For further information on forthcoming CARR seminars please contact risk@lse.ac.uk or call 020 7955 6577.

To receive the latest news on forthcoming CARR events sign up to our e-mail alert service: www.lse.ac.uk/collections/CARR/emailSignUpForm.htm

Sarbox, Hampton and auditability

The theme of regulatory overkill has been conspicuous in both the United States and the United Kingdom during spring 2005. In April the Securities and Exchange Commission (SEC) held the first roundtable consultation exercise to assess the implementation of the Sarbanes-Oxley Act ('Sarbox'), and the effects of section 404 in particular. In the same month Sir Philip Hampton published his report for the UK Treasury – *Reducing administrative burdens: effective inspection and enforcement*. In the US case, criticism has been predictable: even SEC registered companies well-disposed to Sarbox have complained about the first year costs of compliance and bemoan the needlessly detailed documentation required for minor controls over financial reporting. Many organisations have demanded that the SEC adopt a more risk-based approach to the assessment of internal control effectiveness. Similarly, the Hampton report makes much of the need for regulation to be more risk-based, a longstanding research interest for many colleagues in CARR (see editorial).

Echoing the corporate critics of the SEC, Hampton also focuses explicitly on the administrative burden involved in the forms and documentation demanded by regulators. Indeed, there seems to be a common enemy in both the UK and the USA: the 'tick-box' approach to regulation and compliance which has become synonymous with a thoughtless, mechanical compliance practice. At best it is useless and at worst it generates serious risky side effects of its own (anchoring; illusions of control) not to mention dubious benefits relative to cost. However, the universality of the criticism generates a striking puzzle: if the tick-box approach is so bad and recognised to be so, why does it so obviously persist? Is the widespread critique just hypocritical rhetoric?

The answer to the puzzle demands that we understand the cultural legitimacy that a formal and legalistic approach to regulatory compliance retains, even while it is criticised. This legitimacy reflects the institutionalisation of auditability as a fundamental regulatory and managerial value. In *The Audit Society*, I dealt with the theory of auditability only implicitly but two themes are of critical importance. First, specific transformations to organisations and individuals to make them auditable are distinct from actual audit and inspection practices. Making things auditable does not necessarily mean they will be formally audited or inspected. Rather, auditability is a condition of possibility for inspection and auditing practices, and is something that organisations impose on themselves. Second, the distinction between what is auditable and not auditable is culturally specific and varies over time. This distinction is also an implicitly normative one between what is valued and made visible for accountability purposes, and what is not. This means that organisational agents have incentives to represent and defend their performances in terms of preferred values of auditability.

Auditability often appears to be a matter of 'common sense' but this is only true when there is consensus within an 'epistemic community' about what counts as the legitimate self-presentation of a practice or activity, ie what constitutes 'sufficient evidence' about something. Even accountants, as a relatively close epistemic community, often have disagreements about the sufficiency of evidence for accounting items, such as contingencies. However, while such variation in ideas about auditability exists, in contemporary regulatory environments, epitomised by Sarbanes-Oxley 404, auditability values are visible as a demand that internal control processes are capable of representation in highly precise ways. This documentary precision, another label for the tick-box approach, is a feature of an institutional environment in which agents must develop strategies to avoid the possibility of blame.

The theory of auditability suggested here is only a sketch and must be developed further. However, the key implication should be clear: rather than merely dismissing the tick-box approach to compliance, it is necessary to understand how, despite criticism, it remains deeply constitutive of managing and organising as such, and not just of specific auditing and regulatory practices. As corporate regulation has increasingly sought to make the inner workings of organisations transparent, checkable and auditable, a preference for high degrees of defendable granularity in the documentation of processes has emerged. Counteracting this phenomenon will take more than SEC roundtables, reports by the UK Treasury and the restructuring of regulatory agencies since it is deeply rooted in cultures of practice in developed economies. And practitioners in large companies who complain of regulatory overkill and bemoan regulatory demands for boxes to be ticked must begin to understand their own local complicity in this systemic predicament.

Michael Power

This essay is based on my French preface to *La Société de l'Audit: l'Obsession du Contrôle*. Paris: La Découverte, 2005. Translated by Armelle Lebrun.

CARR Books

CARR Books and Special Journal Editions

Organisational Encounters with Risk
Bridget Hutter and Michael Power (Eds)
Cambridge University Press 2005

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Last year Ofcom handed its responsibility for regulating TV and radio advertising to the Advertising Standards Authority. We talk to **Claire Forbes**, Communications Director of the ASA about contracted-out regulation and the one-stop shop.

CARR: The idea of contracting out regulatory functions was floated by Ofcom in our last Meet the Regulator. Could you say a little about how this came about?

CF: To put it in context, the ASA began in 1962, but up until last year our remit was solely non-broadcast advertising. What we found was that thousands of people each year were coming to us to complain about TV and radio, and we were having to turn them away and pass them on to the relevant regulators. And the figures indicated that a lot of complaints were simply getting lost, they were dropping through the gaps.

Then last year Ofcom contracted out to us the responsibility for regulating TV and radio advertising content. So we were able to introduce a one-stop shop for regulation of advertising across all media. One letterbox. It's much simpler for the public.

CARR: How does this work in practice? You still have a distinction within ASA between broadcast and non-broadcast regulation.

CF: What the public sees is the one-stop shop. Behind the scenes, we have two parallel systems running together. Those two are kept very separate because Ofcom's responsibility – and our accountability to Ofcom – is purely on the broadcast side. Ofcom have absolutely no influence over the non-broadcast side. They act as a backstop regulator for broadcast regulation, but for non-broadcast advertising the backstop regulator is the Office of Fair Trading.

CARR: And are the rules you are enforcing the ASA's or Ofcom's?

CF: The codes we enforce on the broadcast side have come from the Independent Television Commission and the Radio Authority via Ofcom. They've now been taken over by the advertising industry, through the Broadcast Committee of Advertising Practice, which is updating and editing and amending those codes. But Ofcom has to approve any changes. So on the broadcast side it's co-regulation, whereas on the non-broadcast side we have self-regulation.

CARR: And can ASA act as a one-stop shop when UK consumers complain about foreign advertising?

CF: There's an organisation called the European Advertising Standards Alliance. We actively participate in that, especially for us if we're dealing with cross-border complaints. We work on a country of origin basis, so if people complain to us about an advertiser in Switzerland who's sending out direct mail to UK consumers, we will work through EASA to pass that onto the Swiss regulators and follow that up on their behalf.

CARR: How far is the ASA able to target its activities towards high-risk sectors of advertising?

CF: A lot of what we do is responding to complaints. But there's an awful lot of work that goes on behind the scenes ensuring that advertisers in certain sectors know what the rules are, and that the regulator expects them to comply with those rules to protect consumers and to maintain a level playing field. Through that sort of compliance we're able to target particular areas. One area we're looking at in particular at the moment is teleshopping. Other areas we've targeted in the past for our compliance work have been things like airlines advertising and the privatised utilities.

There can be a variety of different triggers for the compliance work. Obviously we're able to identify which areas are getting most complaints. Sometimes there's an ASA ruling which will set a precedent for that industry. And sometimes it's the result of changes in the market place.

CARR: Is it possible for the ASA to make contact with those various bits of the industry – not just the advertising industry – but the hundreds and thousands of firms and organisations who take out advertising. What sort of things does the ASA do to get its message out to them?

CF: We work very actively with trade press and with trade associations, and obviously it's in their interests for their members to be compliant with the advertising codes. For example, on travel advertising, we've recently worked with ABTA [Association of British Travel Agents] to help communicate the message that we need to get across.

CARR: What sort of measures do you have to ensure the ASA's independence from the advertising industry?

CF: First of all, all our judgements are made by our Council. We have an independent chairman, Lord Borrie. The majority of the Council are independent of the advertising industry. A proportion do have experience of the advertising industry but they're there in their own right as individuals. And we are funded by the advertising industry but that funding is collected at arm's length.

CARR: What are the priorities then for the ASA for the next few years now that you've got broadcast advertising?

CF: The key thing is that we're on probation for two years with Ofcom. We've got two years to get broadcast co-regulation up and running successfully.

Then there are particular public policy concerns about food and alcohol advertising. There has been a consultation about guidelines for alcohol ads and we know that Ofcom are conducting research into food advertising.

And also to continue work and promotion of self-regulation on the non-broadcast side as well. It's not all about broadcast these days. We're as active and as busy in relation to non-broadcast advertising regulation as we've ever been.

CARR: Finally, the ASA's been going since 1962, over 40 years, and you're expanding, not contracting. Is there a secret to being a successful self-regulator?

CF: You can't self-regulate unless you have the industry on board and committed. The key to self-regulation is that the advertising industry doesn't just write the rules; it enforces the rules and can take action against offenders, either by denying them advertising space, or by various other sanctions that can be brought to bear. Effective enforcement by the industry against its own has been key to successful self-regulation, regulation that works, and works for consumers.

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