

Regulation in Crisis?

It is time to advance the debate about regulation, argue

Martin Lodge and **Andrea Mennicken**

Regulation has been at the forefront of much contemporary policy debate, whether it is because of the meltdown of financial markets, healthcare scandals (take for example the Stafford hospital scandal), regular food-related scandals, the risks posed by climate change, or concerns about the safety of large-scale industrial installations. In view of such crises, failures and global regulatory challenges, it is time to reconsider the regulatory agenda. **carr** has a long-standing and recognized history in the study of risk and regulation. Over the coming three years, **carr** will advance the debate about the future of risk and regulation research and practice through an ESRC-sponsored seminar series on the theme of 'Regulation in Crisis'. The seminar series' central focus will be on whether, and, if so, how regulation is itself in crisis. This questioning takes place in the context of the observed failures over the past decade which have given rise to debates as to how regulation needs to be reshaped in order to deal with crisis. Furthermore, such a context also gives rise to the question as to whether regulation as a field of study is in crisis.

It is certainly not the case that the worlds of research and practice have been unaware that policy sectors have been in crisis. We also do not lack analyses of individual regulatory regimes and their shortcomings. Instead, what has been missing in much of the contemporary academic and policy debates is a view that looks across different sectors. We need a perspective that moves beyond a focus on single regulators (or regulatory agencies) towards an emphasis on acknowledging the highly diverse sets of actors that shape regulation and their interdependencies. Such an approach also offers a new perspective on the role of risk in regulation.

carr's agenda for a forward-looking conversation about 'Regulation in Crisis' is organized around three key themes:

› Regulation in (cases of) Crisis. The financial crisis exemplifies the wider challenges of how regulation is both a source of resilience and prevention, and of vulnerability. Regulation continues to be a site of high politics, whether this is in the area of environmental, financial or utilities regulation. Important lessons can be gleaned from the ways in which different political systems have responded to crises; how they have responded to risks emerging from old and new technologies; and how they have adjusted (or not) to less acute, but therefore not less important issues, such as climate change. There is also growing awareness, for example, by the OECD, of the need to understand better the governance of high-level risks (i.e. those risks that constitute a direct threat to the viability of large numbers of individuals; see also the ar-

title on Existential Risk in this issue). One particular controversial theme in this context has been the extent to which regulatory regimes dealing with risk should be precautionary, or whether they should rely more on 'trial and error'.

› Regulation (itself is) in Crisis. The regulatory failings of the past decade have shown that regulatory practice is often based on overly narrow perspectives, which centre on organizational jurisdiction rather than wider systemic and inter-systemic aspects. More systemic, if not cross- and inter-systemic perspectives are required to consider the cascading and other effects that emerge from often little appreciated regulatory interdependencies and complexities. Current regulatory regimes are characterized by considerable over- and underlaps; they are accused of lacking sufficient technical expertise, of being over-responsive to political and economic interests, and of being unable to deal with unintended consequences and surprise. The

financial crises, nuclear incidents (such as the one in Fukushima following the deadly Tsunami),

and food safety incidents (such as the horsemeat scandal) have highlighted how contemporary orthodoxies towards regulation have come under increased challenge, whether this relates to standard setting, enforcement, or information gathering aspects – for example limited analytical capacity of regulators to detect and assess capabilities and motivations of regulatees. Technological change and internationalized production chains add a further regulatory challenge, as existing regulatory regimes can be seen as both a source of support and a barrier towards innovation and development. In other words, regulation is said to suffer an effectiveness crisis in the sense of failing to produce intended outputs and outcomes. In addition, it is said to suffer an efficiency crisis as regulation is accused of generating unintended burdens on citizens, NGOs, business, and taxpayers. Finally, regulation is also suffering a futility crisis in being accused of not being powerful enough to tackle undesired behaviours.

› Regulation (as a field of study) is in Crisis. One of the key challenges for the worlds of practice and research is to adapt towards changing political, economic, social and administrative contexts. This adaptation requires a re-consideration of the dominant theories in which regulation has been approached. We need to scrutinize the understandings that have underpinned studies of regulation including notions, such as 'independence', 'interests' and 'capture'. We need to find new ways for scholarship and practice to engage with each other. And we need to develop tools and theories that enable investigations of regulatory interdependencies, transboundary regulatory challenges, and inter-systemic effects.

Regulation has become a central battlefield for political ideas and different



programmes of governing, especially in the US, as conflicts over the Dodd-Frank financial reform act regarding financial regulation have highlighted. But it has also been an area of considerable political sensitivity in the UK.

The study of regulation needs to adjust to this changing context and consider its theories and methods to accommodate the changing political, administrative and socio-economic context. In the UK and wider Europe, regulatory scholarship lacks a central initiative to reflect on 'regulation in crisis' unlike in the US where the high-level Tobin Initiative has been set up to offer an academically informed contribution to the highly partisan US debate about regulation. However, that initiative is solely US-focused; we want to provide a genuinely international platform for debate and regulation theory advancement. In the US, debates in regulation are largely focused around issues of 'capture', assuming a clear division between state and non-state spheres. In contrast, European approaches to regulation have a far longer tradition of considering regulatory authority as being shared between state and non-state actors. Over the coming years, **carr** will consider implications of these continued transatlantic differences for research and practice.

carr's interest in *Regulation in Crisis* is not to score political points, to criticize particular (parties in) governments, or to condemn certain regulatory approaches. Instead, we are interested in publicly-minded interdisciplinary research by advancing conversation and dialogue amongst academics and practitioners from different fields of regulation research

and practice. To generate new knowledge, we build on **carr**'s established strengths and reputation, namely a commitment towards multi-disciplinary insights and approaches, a tolerance towards different methodological approaches, and a commitment to cross-sectoral and cross-national perspectives. In addition, **carr**'s activities will continue to emphasize the importance of an informed and constructive dialogue between the worlds of practice and research.

Specific themes that the **carr** ESRC seminar series will address include: the regulation for sustainability; the governing of critical infrastructures and resilience; transboundary regulatory challenges; relationships between regulation and risk management; the roles of private organizations and civil society in risk regulation; and the roles of calculative devices, including accounting instruments.

Regulation, risk and governance will always be contested and prone to unintended consequences and failure. Tensions will always exist between those that seek greater flexibility and discretion, and those that demand greater consistency and predictability. There will always be boundary issues between the worlds of politics, regulation and corporate power. The theme 'Regulation in Crisis' acknowledges these inherent dynamics and tensions; what we will develop is a platform for debate that scrutinizes existing practices and conceptualizations of regulation, that moves beyond siloed and outdated understandings and approaches.

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