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editorial

Quantification is the central theme of this issue of risk®ulation. Contemporary governance is increasingly undertaken with a calculator to hand. Debates about the extent and nature of quantification have featured prominently in the context of new public management reforms. Debates about quantification are often highly bifurcated. Some regard the drive for measurement and 'hard' quantitative information as critical for controlling, evaluating and achieving better performance. More critical observers point to the perversities of an over-reliance on quantification.

Such contrasting positions provide the starting point for **carr** research – quantification should, after all, not be regarded as inherently synonymous with economization, and we need more systematic comparative research as to how calls for quantification impact on the nature of public services and its oversight, as well as wider understandings about citizenship in a liberal democracy. Articles in this issue highlight some of the key debates surrounding quantification, for example, the way in which rankings and league tables are used to encourage 'access to medicine' (by Mehrpouya and Samiolo), differences in how practitioners actually implement new types of quantification standards (by Hall), the implications of quantification for public services (by Mennicken), challenges in assessing 'value for money' in regulation (by Lodge and Mennicken), and how new systems might lead to unwelcome side effects (by Hunter).

The centrality of our 'Regulation in Crisis?' agenda for contemporary debates has repeatedly come into view over the course of the past few months. As the recent refugee emergency has tragically illustrated, the European Union faces considerable challenges in managing transboundary crises of such a scale effectively and legitimately. These challenges are at the core of the research undertaken in the TransCrisis consortium. **carr** is leading this European Commission funded Horizon2020 project consortium. It involves eight institutions from seven EU member states. The project focuses on transboundary crisis management capacities in the European Union. As the article by Sitter and Lodge on 'backsliding' suggests, the EU's capacity to normatively constrain member states might have become increasingly limited. How transboundary crises of different forms and types can be addressed in times of political pressure for (re-)nationalised responses will shape the **carr** and TransCrisis agenda over the coming years. Readers can follow the ongoing activities of the consortium on its dedicated website www.transcrisis.eu.

In the context of our ESRC 'Regulation in Crisis?' seminar series, our international roundtable on the regulation of standards in public life offered fascinating insights into contrasting positions between those highlighting national difference and those emphasising processes of global homogenization and similarity. Some (mostly UK-based) observers suggested that the UK regime of governing government ethics was unlikely to move towards a US system that has often been criticized as highly dysfunctional and self-defeating (as illustrated in Cal Mackenzie's book title *Innocent until Nominated)*. In contrast, others suggested that the UK system was a laggard, which soon would be catching up with the US. The article on the regulatory implications of 'government by contract' by **carr** visiting fellow Charles Borden and colleagues continues this conversation. Much of regulation is said to emerge in the context of scandal and crisis. This applies to the area of government ethics as much as to other sectors. As the contribution by Angeletti suggests, such scandals are associated with particular key attributes.

This is the 30th issue of risk®ulation. Such anniversaries, especially the 30th, are usually viewed with a sense of pending mid-life crisis. The fields of risk and regulation may have reached a certain level of maturity, but they continue to raise important questions for research and practice. **carr** is committed to contributing to and participating in these debates. We hope that you will enjoy this issue and are looking forward to your comments and suggestions.

Martin Lodge & Andrea Mennicken

CONFIDENCE

TRUST

OPENNESS

PROXIMITY

LOYALTY

FULHAMFC

COMPASSION

DECENCY

RECEPTIVENESS

ATTENTION

AWARENESS

FAIRNESS

GENEROSITY

KINDNESS

DEPTH

HATE?

LOVE

SOLIDARITY

RESISTANCE

REFLECTION

BEAUTY

HONESTY

COURAGE

RELIABILITY

SINCERITY

HUMILITY

KNOWLEDGE

HUMOR

DIVERSITY

Quantification, administrative capacity and democracy

Andrea Mennicken and **Martin Lodge** consider the implications of 'governance by numbers' for public services

The business of government is increasingly run with a calculator to hand. Policymaking activities and administrative control are progressively structured around calculations such as cost-benefit analyses, estimates of social and financial returns, measurements of performance and risk, benchmarking, quantified impact assessments, ratings and rankings, all of which provide information in the form of a numerical representation. Through quantification, public services could be said to have experienced a fundamental transformation from 'government by rules' to 'governance by numbers', with the aim to produce a self-regulating human society (Miller and Rose 1990; Supiot 2015).

There are signs everywhere that this 'quantitative turn' is making a profound impact on the way essential public services are organized, controlled and delivered. This quantification has fundamental implications not just for our understanding of the nature of public service itself, but also for wider debates about the nature of citizenship, democracy and the state, as well as for understandings of public administration. Research associated with **carr** (see for example the works by **carr** research associates Yasmine Chahed, Matthew Hall, Silvia Jordan, Liisa Kurunmäki, Martin Lodge, Andrea Mennicken, Peter Miller, Yuval Millo, Tommaso Palermo, Michael Power, Rita Samiolo) charts and explores those implications across different policy sectors (such as health/hospitals, higher education/universities, criminal justice/prisons) and countries (including France, Germany, UK, US).

At the centre is a concern with the power of quantification in altering the governance, organization and delivery of public services. Numbers and tools of quantification are not only devices of rational rule and administration. They fundamentally alter understandings of what it means to govern, and they shape and change understandings of the role of public services. Tools of quantification are viewed as 'technologies of government' (Miller and Rose 1990) which alter the power relations that they are embedded within and enable new ways of acting upon and influencing the actions of individuals. In the following we outline some of the key questions inspiring our research.

Quantification and economization

We scrutinize linkages between quantification and economization (Miller and Power 2013). Firstly, we explore to what extent quantification is a mechanism by which the economization of organizational life becomes elaborated and institutionalized. Tools of quantification are used in the definition and determination of public service success and failure; decisions concerning the rationing of public services (e.g. rationing healthcare or limiting access to study programmes); and the realization of aims of 'economy, efficiency and effectiveness'. How are boundaries between the public and the private redrawn through processes of quantification and economization? How interlinked are quantification and economization, given that instruments of quantification (e.g. performance ratings) have also been called upon to mediate between conflicting values in the public services (e.g. objectives of economy and quality)?

Secondly, we investigate cross-sectoral and cross-national similarities and differences, i.e. the implication of quantification in different 'governmentalities'. Despite the spread and growing influence of calculative infrastructures across public services, relatively little systematic attention (in the form of cross-sectoral and cross-national comparative analysis) has been devoted to the ways in which tools and practices of quantification and calculation have travelled across different sectors and countries, and how they have altered modalities of governing in the organization and delivery of public services in this process. In doing so, we need to be less focused on 'constraints' of national context and more sensitive to the dynamics evolving between and across different states and public service sectors, triggered e.g. by the adoption of similar new public management instruments (such as benchmarking, performance measurement, quality management, rankings, ratings, and impact assessments). Research activities most often are either nationally focused or concentrated on one particular public sector (such as healthcare, higher education or the prison service). Scholars at **carr** bring together and confront different strands in the literature on public sector reform and the so-called New Public Management that have, as yet, mostly received siloed attention in the literatures in political science/public administration, accounting, sociology and law.

Instruments of quantification, such as the balanced scorecard, performance ratings and rankings, have travelled across the public sector (and the world) as standardized, universalized tool, yet their day-to-day operation, uses and effects depend on the institutional structures, administrative capacities (e.g. analytical capacities and enforcement capacities) and the cultural specificity of the contexts within which they are put to use. At the same time the quantification instruments themselves affect the contexts they pass through. New (accounting) entities are created via quantification (e.g. cost centres). New infrastructures are built around quantification instruments, which challenge and change existing organizational structures, working arrangements and political visions. New calculative expertise enters the public services (via accountants, financial advisers), which redefine existing working routines and understandings, including concepts of quality and associated notions of professionalism.

Distinct national public management styles are challenged by increasing cooperation among (public) management experts across national borders, and standardization at supra-national

level. Public sector governance can no longer be treated as a predominantly national affair. There has been a growing evolution of internationally operating private providers in the public services, especially in the area of prisons but also healthcare, and with mixed results. In higher education and the governance of science, national systems are said to be increasingly evolving into a European-wide, if not international competition for students, research staff and funding. Globalization, EU harmonization attempts, and international standardization (ISO quality standards; international public sector accounting standards; transnational corporate governance codes) have enabled and conditioned debates about, and practices of, public sector governance. This has been evident in particular in the rise of international ranking exercises (see also the article by Mehrpouya and Samiolo in this issue).

In addition, public services across Europe have witnessed considerable challenges over the past decade. One challenge has been the diagnosed trend towards 'post-NPM', namely the argument that there has been a growing emphasis on outcome rather than output measurement since the 2000s; and we have seen a growing emphasis on ethics and collaboration. Collaborative governance is often seen as adding to democratic legitimacy. Whether such changes have actually taken place has only rarely been explored. Importantly, the financial crisis has placed extensive, still ongoing and possibly even strengthening, financial pressure on states, and therefore also on how public services are governed.

Governing by numbers

There has been considerable debate about the shift towards governing by numbers. Although performance measurement, ratings, rankings and other devices of quantification can have undesirable effects on the governance of public services – see Espeland and Sauder (2007) on the effects of law school ratings – numbers can also be invested with hope. Espeland and Stevens (1998) have argued that quantification can offer 'a rigorous method for democratizing decisions and sharing power', particularly in situations 'characterized by disparate values, diverse forms of knowledge, and the wish to incorporate people's preferences'. This raises the question of the extent to which numbers, such as prison performance measures, university rankings, or quantified hospital assessments, can be called upon as a 'mediating instrument' (Miller and O'Leary 2007) where different, potentially conflicting values are at stake. To what extent can quantification be appealed to as a link connecting a multitude of actors and domains, mediating between disparate values and rationalities, such as those of security, economy, decency and rehabilitation in the case of prisons; economy, care and quality in the case of hospitals; or excellence, efficiency and innovativeness in the case of universities? This is a question that we cannot answer a priori; our empirical investigations will, however, help to answer it.

Quantification and democracy

Once it has been established how far quantification in the form of economization has penetrated the control over public services, fundamental challenges for the understanding of democracy (in terms of participation and citizenship) can be discussed: (i) the relationship between responsibility and accountability and the role of individual responsibility in quantified accountability regimes; (ii) questions about power and consequences of shifts in power and sovereignty through quantification; and (iii) questions about legitimacy and different sources of legitimation and their societal consequences. In addition, quantification represents a challenge for bureaucracy, namely (iv) how administrative capacities are enhanced through such instruments, and (v) what administrative capacities are presumed and required to make instruments of quantification operable. In so doing, **carr** seeks to produce sound input for debates on the mounting societal critique of neo-liberal government in Europe and on the critical consequences of societal reaction to what Michel Foucault termed 'politics of economization' (Linhardt and Muniesa 2011).

These concerns are explored through three core themes:

› How quantification travels. Whereas some authors have emphasized the universal and homogenizing force of quantification across sectors and countries, studies have also pointed to institutional differences in dynamics and trajectories of reform of control over public services (Hood et al. 2004). This project offers a focused exploration of how quantification has travelled across sectors, jurisdictions and time. It pays particular attention to changes since the mid-1980s and the impact of the 2008 financial crisis. One of the key arguments in the historical institutional literature has been that regardless of international, standardized reform language (facilitated by settings such as the OECD), actual reforms have continued to be shaped by distinct national/local/regional patterns. To what extent do different 'state traditions' matter due to the importance of particular legal doctrines, assumptions about the 'appropriate' role of public services, and the ability of reform-minded politicians and bureaucrats to execute change? It has been argued that contemporary reforms in the control over public services are largely characterized by the distinctiveness of particular sectors. The rise of international markets in education, for example, can be said to have had a greater homogenizing effect on how higher education is being controlled than other sectors. At the same time, the internationalization of service providers might similarly be said to provide for a source of diffusion of ways in which public services are being controlled.

› Quantification and administrative capacity. Changes to the control over public services have commonly been associated with a shift within government from production/delivery to more regulatory functions. Scholars at **carr** explore whether and how quantification has given rise to a shift in demands on administrative capacities (e.g. expectations regarding analytical skills, regulatory capabilities, legal, staff or financial resources) (Lodge and Wegrich 2014). To what extent do tools of quantification advance the capacities of public administrations across sectors and states in terms of being able to monitor and steer? What are the administrative prerequisites for such instruments to have their intended effects? How have instruments of quantification been adapted to depleting public budgets in the aftermath of the 2008 financial crisis? Has there been a trend towards (deepening) economization? Have there been signs of resistance to, and disappointment in, the tools of quantification, and are there signs of a wider crisis of instruments of control, given scandals and failures in the domains under investigation, or the regulation of public services more generally?

› Quantification and democracy. Instruments of quantification are integral to the ways in which democracy is justified and operationalized as a particular set of mechanisms of rule. What, then, is the relationship between tools of quantification and questions concerning democracy, especially in terms of issues of quality, societal equity and fairness in the delivery of public services? To what extent can instruments of quantification

(such as ratings, rankings and other performance measures) be called upon to mediate between conflicting values and rationalities engrained in public service governance (mediating between objectives of economy and values of fairness, equity, and public welfare)? What roles do they play in processes of inclusion and exclusion, political deliberation and participation?

By exploring these questions, our research responds to key claims, namely (a) whether quantification is a universal, converging trend, (b) whether quantification is leading to homogenizing pressure on public administration in the form of administrative capacities, and (c) whether quantification is associated with changes in understandings of subjectivities, personhood and citizenship. Questioning the (extent of the) transformative character of quantification in public service therefore offers the potential for contributing to debates about the future of public services in the context of competing reform doctrines, growing exposure to demographic and environmental change, and continued financial austerity in many OECD and non-OECD countries.

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Quantifying social value

Matthew Hall explains why practitioners develop different calculations

Social value typically refers to improvements in the lives of individuals and/or communities that go beyond or are indeed separate from economic exchanges. For example, the value from employment may not only reflect the economic value from income, but also include significant improvements in psychological wellbeing and family relationships. There has been an upsurge of interest in methods to try and quantify social value. For example, social impact measurement, social and environmental accounting, and triple-bottom line reporting attempt to expand the types of value that can be quantified and accounted for in evaluations of performance. Traditional financial accounting, with its prime focus on the financial value of organizations, often excludes or discounts social value, particularly where it is viewed as difficult to quantity, especially in financial terms. There are also often divergent views on how to quantify the social impact of organizational activities, a plethora of different methods with mixed success and varying support from different parties, compounded by a lack of systematic research. To address these issues, we undertook a detailed examination of the development of one prominent method used to quantify social value: Social Return on Investment (SROI) (Hall et al. 2015).

Social Return on Investment

SROI is a method to quantify the value of social purpose activities carried out by social enterprises, non-profit and also for-profit organizations. Calculating SROI typically involves identifying stakeholders influenced by the organization's activities, determining any benefits (or costs) for those stakeholders, assigning those benefits and costs a monetary value estimated over a specific time horizon (e.g. 5 years), and using discounted cash flow techniques to estimate their present value. A prime focus in SROI is the quantification of social impact in a ratio comparing the net present value of the monetized benefits created by the organization (or project) to the amount of monetary resources used. For example, a computed ratio of 4:1 signals that for every £1 invested in a project, £4 of value was generated.

We analysed how practitioners in the US and UK developed SROI so they could record and report on the social value being generated by the social purpose organizations they were working with. On the surface, the SROI methodologies in each setting were the same as it involved tracking financial and social outcomes of social projects, producing monetary estimates of those outcomes, and then computing the ratio of benefits to costs. However, closer inspection revealed the SROI methodologies quantified social value quite differently.

Quantifying social value in different ways

In the US setting, the SROI calculation only included social value where it could be quantified with reference to data on governmental cost savings. For example, if a client of a social enterprise gained employment, the SROI calculation would include an estimate of the monetary value of that employment flowing to public sector agencies (e.g. lower benefit payments and higher income tax). Other benefits, such as changes in the self-esteem of clients who had gained employment, were also tracked using detailed recording systems. But these benefits were not included in calculating SROI because they could not be readily monetized using references to government cost savings. Consequently, in the US setting, if certain types of benefits did not have governmental cost data available, they were not included in the calculation of SROI.

In the UK setting, the SROI method drew on a diverse mix of proxies to monetize social value, including revealed preferences, a WikiVOIS (a website where stakeholders can directly enter impacts from social projects), and direct consultation with stakeholders. As such, the measure of social value in the SROI calculation in the UK was broader. It included not only the cost savings for the government but also the direct impacts on clients, such as the changes in self-esteem, excluded in the US case.

Why did the SROI methods differ in how they quantified social value? Our research shows two factors were important: practitioners' epistemic beliefs, and the material conditions facing the practitioners in their organizational settings.

Epistemic beliefs

Epistemic beliefs refer to practitioners' views about what counts as valid and appropriate data. US practitioners believed that data is valid only when it is standardized, comparable, and collected consistently over time. In the words of one US practitioner, they wanted to be 'conservative' and only use 'quantifiable, monetizable data' already in place, and so 'ended up focused on savings to society as being the prime value' used to monetize social value in their SROI calculations.

The UK practitioners had different epistemic beliefs. They held the view that data is valid when it reflects and directly incorporates the (potentially) different experiences of a variety of stakeholders. They were interested in asking 'people directly how they value things' and, as one UK practitioner commented, they wanted to capture 'the voice of the stakeholder.' In this way, UK practitioners' were not as conservative as their US counterparts and used a variety of methods to monetize social value in their SROI calculations.

Material conditions

The material conditions facing the practitioners also played an important role. Material conditions refer to data collection and reporting systems, and access to financial resources, labour and expertise. In the US, practitioners had extensive financial resources, interns and consultants, and expertise in data analysis. This allowed them to develop comprehensive and sophisticated systems for gathering data about social impacts

even though they did not necessarily monetize all those social impacts due to their epistemic beliefs. In the UK, practitioners' efforts to capture the voices of stakeholders were constrained to a certain extent by their limited financial resources, labour and expertise. They developed more rudimentary systems to track social impacts and often used more inexpensive methods of data collection, such as the WikiVOIS.

Our research shows the important role of practitioners' epistemic beliefs – their views on the type of knowledge that is valid or acceptable to use in quantification practices – and the organization's material conditions – the amount and type of resources, technical and material, at their disposal – in the quantification of social value. These two factors had important implications for the range of social outcomes included in the calculation of SROI, and the perspective from which the social outcomes were valued, such as the government's perspective or the voice of a variety of stakeholders. As such, our study shows that although methods of quantification may look similar in design, they may work very differently in practice, depending on the epistemic beliefs of practitioners and the organizational context within which quantification takes place.

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Regulating by ranking? The access to medicine index and the 'will to perform'

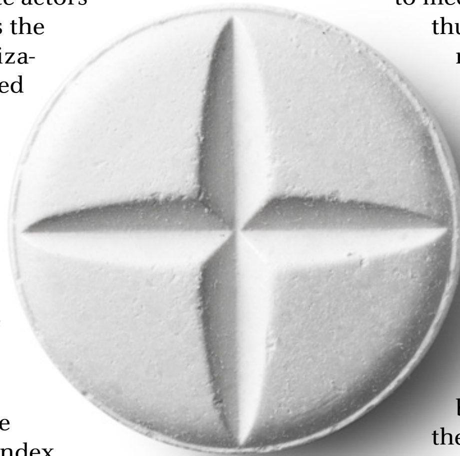
Afshin Mehrpouya and **Rita Samiolo** consider the implications of using rankings for facilitating access to medicine

The problem of improving access to medicine in the 'global south' has long been a concern of the World Health Organization (WHO). In 1975, the WHO introduced the concept of 'essential drugs', followed in 1977 by a model list of drugs considered essential to public health.

The year 1994 marked the beginning of a new era. The ratification of the Trade-Related aspects of Intellectual Property Rights (TRIPS) agreement by the World Trade Organization (WTO) forced member countries to institute regulatory platforms for the protection of intellectual property. This led to the enforcement of intellectual property rights for patented pharmaceutical products in emerging markets, where generic copies of on- and off-patent drugs had proliferated. The new regime is deemed to have resulted in significant price increases and decreased supply. While most 'essential medicines' are now off-patent, patented products are regarded as indispensable for diseases such as HIV/AIDS, as new formulations are needed to replace existing ones against which the virus has developed resistance. Furthermore, new formulations of existing medicines are required to reflect disease demographics and natural environments – e.g. heat-resistant vaccines for countries with hot climates and no cold-supply chain. Finally, new medicines for the so-called Neglected Tropical Diseases are, as a consequence of TRIPS, under patent once they enter the market.

A surge of civil society activism followed the introduction of TRIPS. This resulted in litigation between pharmaceutical companies on the one hand and various non-governmental organizations (NGOs), southern governments such as India, and generics manufacturers on the other. Pharmaceutical companies' role in researching Neglected Tropical Diseases (for which their markets are frequently deemed unviable), in providing affordable prices for medicines, as well as their marketing and lobbying ethics in low and medium-income countries have since then become part of the 'access to medicine' debate.

It is in this environment that a new initiative, the Access to Medicine Index, was launched in 2008. Developed by a Dutch NGO, the Access to Medicine Foundation, this is a bi-annual ranking of the 20 largest pharmaceutical companies in the world regarding their policies and practices related to access to medicine (www.accesstomedicineindex.org). This ranking, now in its fourth iteration, has become a central technology in the access to medicine governance space. It has been endorsed by some of the most legitimate actors in this space, such as the World Health Organization and senior United Nations officials. Since 2009, it has received multi-year financing from the Bill and Melinda Gates Foundation and state development agencies of the UK and the Netherlands.



Rankings, such as the Access to Medicine Index, have proliferated in global governance. They aspire to achieve regulatory goals by 'moving' the market. They aim at creating reputational pressures on companies and enticing their 'will to perform' – to borrow an expression from the founder of the Access to Medicine Foundation.

What does regulation by ranking, especially in such a controversial field, entail?

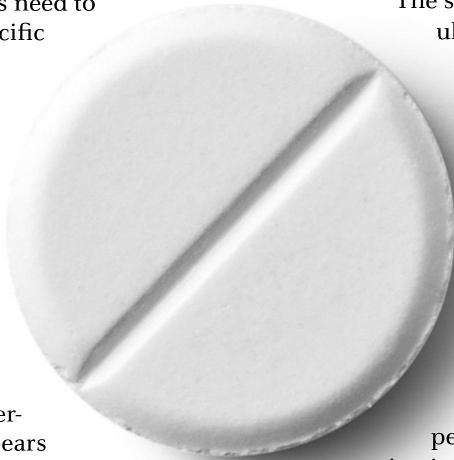
As a regulatory mechanism, rankings require the infrastructure to collect information about participating organizations. This usually involves a questionnaire and the development of a methodology for analysing such information, with the aim of turning non-standard quantitative and qualitative data into a set of comparable elements amenable to scoring and ranking. It is a complex technical task as participating organizations have different information systems, idiosyncratic business models and various degrees of enthusiasm and openness towards such exercises. More importantly, the choice of what to measure and, therefore, reward or punish, encompasses many possible ways of interpreting participating organizations' actions and policies.

In the case of the Access to Medicine Index, at stake in the definition of more than 100 indicators are wildly different interpretations of what access to medicine means, and thus different ways of representing what 'Big Pharma' ought to be doing to improve access. Indicators are defined in consultation with a stakeholder representative body, the Expert Review Committee, whose members are drawn from the pharmaceutical industry, generics companies, the WHO, NGOs, academia and investors. These represent opposing interests and can offer radically different perspectives on contested issues such as pricing, competition and patents. The Index methodology thus emerges as a difficult mediation effort in a highly contested space.

When a middle ground cannot be reached within the Expert Review Committee, the definition of measurement criteria is effectively handed over to the Access to Medicine Foundation and its analysts. The latter implicitly assume the role of mediators between the business case and the social case, seeking to act as neutral 'stakeholder collectors'. They are required to act scientifically – i.e. give substance to the Index's methodological aspirations

towards objectivity, reliability and replicability – but also to act neutrally – i.e. remain in the space of perceived stakeholder consensus. Having to walk the fine line between the technical and the political, analysts end up absorbing some of the conflicts and tensions at play. For the more controversial issues, the 'politics' of access to medicine is often shifted from an explicit space of confrontation and disagreement – the open fora of stakeholder consultation and expert review – to the more muted process of measurement.

What the collected data 'reveals' about companies is not self-evident. Analysts need to develop a specific professional vision – the ability to see meaningful events in the company data – so as to be able to score companies on a scale of 0 to 5. When most companies' performance appears too similar with respect to one indicator, variability – and thus the possibility to differentiate across companies – is introduced into the data by making the scoring criteria more and more detailed. The ability to develop a 'differential vision' provides the potential for 'moving the market' by incentivizing a race to the top. Analysts thus act as market makers by creating the conditions for companies to become comparable and, in principle, 'movable' along the ranks established by the Index methodology.



Regulating access to medicine by means of a ranking relies on two main factors. The first is the possibility of shifting some of the most controversial issues to the technical realm of analysis, where measurement choices can be sheltered from conflict and contestation. This, however, requires analysts to absorb the political conflict that cannot find resolution elsewhere. Such absorption takes the form of meetings during which analysts explore their attitudes towards access to medicine and learn to 'tame' possible sources of bias. Broken dialogue in the access to medicine forum thus is turned into an internal dialogue within the analyst professional self. The Access to Medicine Index emerges as a complex exercise in mediation, whereby political dialogue interrupted elsewhere can be resumed, but only in a muted way.

The second condition for regulating by ranking is the possibility of developing a differential vision of the market, i.e. of refining scoring criteria so as to create meaningful differentiation across companies that appear too similar. The conditions for enticing companies' 'will to perform' are thus maintained. However, especially for companies scoring in the middle of the ranking, this refinement of the scoring criteria results in the ranking capturing and amplifying differences that are at times quite marginal.

Far from being a simple representation of a market reality, ranking contributes to making such a market possible by means of its measurement choices. However, it also runs the risk of zooming in on marginal details at the expense of the bigger picture of what remains to be achieved in the field of access to medicine. Ranking has moved a market, once accused of being immobile, towards improving access. But this movement remains constrained by the need to reflect stakeholder consensus, and the often narrow margin separating companies from one another.

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Accounting for values in prison privatization

Andrea Mennicken examines challenges involved in the transformation of the prison into an 'accounting entity'

Since the 1980s, in the UK, market oriented, private sector-based management and accounting frameworks have been introduced into the public sector in an attempt to increase efficiency in the allocation of financial and human resources, to enhance managerial accountability, and to aid experimentation with mixed public–private organization. At present, the UK has Europe's most privatized criminal justice system. Of the current 119 prisons in England and Wales, the management of 14 has been contracted to private companies such as Sodexo Justice Services, Serco and G4S Justice Services (NOMS Annual Report 2014–15). The prison privatizations are part of wider processes of market oriented governmental reform. These reforms did not only affect private prison establishments, but also the public sector. They aimed at transforming the prison (public and private) from a rules-based, bureaucratic institution to a performance oriented, calculating organization.

This article is concerned with the challenges involved in the transformation of the prison into an 'accounting entity'. Numerous studies have shown that the profit orientation of contracted-out prison management can run the danger of losing sight of traditional prison values, such as rehabilitation, prisoners' decency, safety and security, prison staff morale and job satisfaction. Globally operating security corporations, like G4S Justice Services, Serco and Sodexo Justice Services, which run private prison establishments in England and Wales today, are interested in economic gains. They think about prisons in terms of organizations governed according to a market logic: competition, economic calculation and objectives of profit making. With the private security corporations, new stakeholders have entered the picture, including investors (for example banks) and shareholders. As James et al. (1997) wrote, punishing people has become 'a big business': a multinational industry involving not only security firms, but also catering companies, construction firms, suppliers of prison furniture and clothing, and many others with a commercial interest in incarceration. In such a context prison values concerning, for example, prisoners' safety, decency and rehabilitation, may be undermined by concerns of profitability and administrative efficiency. What roles can accounting, in particular instruments of prison rating and performance measurement, play in the organization and management of such value conflicts?

Coinciding with and stimulated by the first prison privatizations, since the early 1990s the government, the Prison Service in cooperation with the Home Office, and later the National Offender Management Service (NOMS) in cooperation with the Ministry of Justice, have been developing prison performance measures and ratings. This is not only to oversee contract fulfilment in private prisons, but also to enhance public sector prison accountability, to compare public and private prison performance, and to stimulate inter-organizational competitiveness and contestability. Formalized performance measurement systems were, on the one hand, aimed at bringing the economy of prison management to the fore, seeking to focus prison governors' attention on issues of cost management and efficient process management. On the other hand, the performance measurement systems were enrolled in attempts aimed at prison value balancing, by including alongside measures of cost and efficiency, measures of decency, dignity and rehabilitation (see Liebling 2004 and measurements of the quality of prison life – MQPL developed by Alison Liebling and her team at Cambridge University). According to Espeland and Stevens (1998), one virtue of quantification is that it offers standardized ways of constructing proxies for uncertain and elusive qualities. Another virtue is that it is useful for representing value (ibid.), as it condenses and reduces the amount of information people have to process and simplifies decision making processes.

The first set of standardized key performance indicators (KPIs) and targets was introduced into the Prison Service in 1992–93. The introduction of the KPIs and targets was not only initiated by the recommendations of the Woolf Report and the 1991 Home Office White Paper following a series of prisoner riots. It was also the result of the organizational restructuring of the Prison Service in April 1993 into an executive ('Next Steps') agency, that is a government agency that would act independently from day-to-day ministerial oversight and the foundation of private prison establishments whose performance needed to be regulated and accounted for. The introduction of quantified measures was closely connected to the general rise of New Public Management in public services and pressures to publicly demonstrate private and public prison performance. Also private prison contracts were (and still are) drawn up based on detailed performance specifications in an attempt to enhance their legitimacy, to aid commensuration between different prison establishments and to establish a 'common language' for making judgements about the success or failure of private versus public prison entities. But what prison values should be included in the measurement of prison performance? How should one prioritize between different KPIs and targets? And to what extent could different (public and private) prisons be treated as comparable entities, if they differ significantly in terms of size, prison population, age and regional location?

We know from the numerous performance measurement studies in the accounting literature that even seemingly straightforward accounting

measures, like cost, are far from unproblematic. Performance measurement – even if diversely set up – can lead to a narrowing of accountability, for example, by promoting a focus on managing the numbers rather than wider processes, issues and social relations. As many previous performance measurement studies have shown, performance measures often yield only very limited insight into 'what is going on' in the entity they seek to measure and represent. Furthermore, KPIs often do not exist on an equal plane. Initially introduced in an attempt to balance the different potentially conflicting prison values of 'custody, care and justice' (Home Office 1991), the KPIs soon came to be hierarchized. In the years after 1995, following the escapes of nine high security prisoners in 1994-5 from Whitemoor and Parkhurst (both public sector prisons), we observe a shift from 'value balancing' to an enhanced focus on security. This shift is also reflected in the performance measures. Particularly between 1992 (when the first private prison was opened) and 1999, the accounting instruments of performance measurement put issues of efficient and effective organizational management, instead of the individual prisoner, to the fore. Yet, from 1999 onwards attempts have been undertaken by the Home Office to reform the performance measurement system 'from within' through the development of measures aimed at capturing prisoner experience. The Home Office commissioned Professor Alison Liebling (2004), Director of the Prisons Research Centre at Cambridge University, to conduct a research project aimed at developing 'quantitative measures of qualitative dimensions of prison life' along two dimensions: relationships (respect, humanity, trust, staff-prisoner relationships and support) and regimes (fairness, order, safety, wellbeing, personal development, family contact and decency). It is beyond the scope of this article to provide a detailed assessment of the success of this undertaking in reshaping and rebalancing prison value configurations. However, what can be said is that the Prison Service's KPIs contributed not only to value hierarchization and the infusion of the Prison Service with market-oriented ideals of efficient, economic management. They also serve as a platform for debate about prison values and reform, not least because of the public attention and criticism they attract. To be sure, the effects of systems of quantification on value configurations are highly ambivalent. Performance measurement instruments, such as the prison KPIs discussed here, can easily lead to a narrowing of accountability and an increase in value hierarchization, for example by leading to a prioritization of issues of security and procedural correctness over values of rehabilitation and individual prisoners' dignity. But equally, we should not be too quick to dismiss the potential of performance measures to serve as an important catalyst of problematization animating and focusing debate (for example on the roles of prison and conditions of prison life), even though this might only be a secondary unintended effect.

This article is based on two of the author's publications (Mennicken 2013; 2014).

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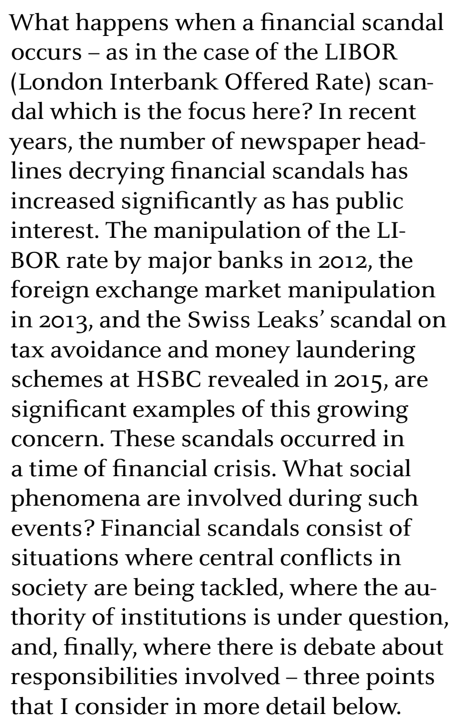
What's a financial scandal?

Thomas Angeletti argues that financial scandals are social phenomena with shared characteristics



What happens when a financial scandal occurs – as in the case of the LIBOR (London Interbank Offered Rate) scandal which is the focus here? In recent years, the number of newspaper headlines decrying financial scandals has increased significantly as has public interest. The manipulation of the LIBOR rate by major banks in 2012, the foreign exchange market manipulation in 2013, and the Swiss Leaks' scandal on tax avoidance and money laundering schemes at HSBC revealed in 2015, are significant examples of this growing concern. These scandals occurred in a time of financial crisis. What social phenomena are involved during such events? Financial scandals consist of situations where central conflicts in society are being tackled, where the authority of institutions is under question, and, finally, where there is debate about responsibilities involved – three points that I consider in more detail below.

Firstly, financial scandals occur when central societal conflicts are at stake, such as antagonism between social classes and, more broadly, inequalities. This is especially the case in finance, given that this sector has mainly contributed to rising inequalities in the last decades, especially in France (Godechot 2012) and the UK (Bell and Van Reenen 2010), as the research programme on the consequences of financialization has shown. These sources of inequalities have raised concern and public outrage. In 2011, the Occupy movement identified financial elites and financial places as sources of rising inequality. Debates of financial scandals regularly focus on the means available for elites to get rich – to express it in a trivial way – and the legitimate or illegitimate character of these means.

Secondly, scandals are specific situations where the authority of financial and regulatory institutions is questioned and put under the spotlight; their role is interrogated and this can lead to public controversies. For example, the scandal surrounding the LIBOR manipulation generated growing concerns about the definition and calculation of LIBOR, two processes supposed to be safeguarded by financial and regulatory institutions such as the British Bankers' Association. The LIBOR – as its name shows – is an interbank interest rate used in the financial markets and estimated on a daily basis in London. It was calculated for 10 different currencies (Euros, Dollars, Pounds, Yen, etc.) and for 15 different maturities (from one day to one year) at the time of the scandal. Considering the decisive role that LIBOR played in the financial markets, it is important to understand precisely how it is calculated. It is an estimated rate, not measured on past transactions, but made every day by several banks. The banks selected to present their evaluations are assumed to be 'major banks' in the currencies they are submitting. These banks send, daily, their estimation of the rate to the institution in charge of collecting them, Thompson-Reuters, which acts on behalf of the British Bankers' Association. In order to give their estimate, every submitter in the banks needs to answer the following question: *At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11 am?*. Take the example of the Yen rate. Every three months, a panel of 16 banks submitted their own estimated rate. Thompson-Reuters received the respective rates and made a daily calculation, discarding the top four submitted rates as well as the bottom four. A simple average is calculated on the eight remaining rates. That calculation method would not be so important if LIBOR had not been a key benchmark in the financial markets. The Wheatley Report estimated in 2012 that the total value of contracts using LIBOR as a benchmark amounted to US$300 trillion. This sum includes syndicated loans, floating rate notes, interest swap rates, exchange-traded interest rate futures and options, and forward rate agreements. In that way, LIBOR is linked to both commercial and personal consum-

er loans, including home mortgages and student loans. When a manipulation of a rate of such significance occurs or is being suspected, it is likely that there will be a decline in confidence in the ability of those institutions tasked with guaranteeing the functioning of financial markets.

Thirdly, there is a tension between an individualization and collectivization of responsibilities. The recent trial of Thomas Hayes, a trader convicted in the UK for his role in the manipulation of LIBOR, made this paradox explicit. Charged with eight counts of conspiracy to defraud, this trader was jailed for 14 years in August 2015. Through his particular case – it was the first case connected to the LIBOR manipulations that occurred in the UK – the financial system as a whole was questioned. Representatives of the British Bankers' Association as well as financial experts were called as witnesses to explain the regular functioning of financial markets. Over the course of the 11-week long hearings, the trial exposed different interpretations of this trader's actions by the prosecutor, the defence lawyers, the judge, several witnesses and the trader himself. In particular, there was a variety of views as to who was responsible for the LIBOR manipulation. On one hand, there were those that attributed responsibility to a single individual, the trader. The trader was seen as a lone individual and as the 'epicentre' of the LIBOR manipulation. The actions that led to the scandal were described in such a way that they could be attributed to this single person.

On the other hand, there were those that suggested that responsibility is collectively distributed and can be ascribed in that regard to much larger entities than individuals: a social group (the traders), a common culture (sustained by the regular contacts between the submitters of LIBOR and the traders), a bank (UBS, Citigroup), or even the financial system in itself. Such tensions between an individualization and collectivization of responsibilities can be observed in several court cases involving traders in the recent years – such as the affair of Jérôme Kerviel and Société Générale in France in 2008. This tension between individual and collective responsibility is even more significant if we consider that this trial took place after several banks had already paid fines, including the employer of this condemned trader. Of course, in the logic of criminal law, individual responsibility is the primary dimension to focus on, and all the references that are being made to another level must be formally discarded. But if we consider traders as individuals in positions that can lead to collective risk-taking, the division between criminal condemnation of mid-level traders and the payment of fines by banks appears especially inadequate.

These three distinct dimensions – conflicts in society, challenges to the authority of institutions, and conflict over the allocation of responsibilities – are not always combined in the same way in different financial scandals. It is only by studying these scandals and the interplay of these different dimensions that we can gain a better understanding of the place of finance in contemporary societies, as well as the expectations and critiques of citizens among elites.

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Value for money in regulation?

Justifying regulatory interventions is plagued with many obstacles argue **Martin Lodge** and **Andrea Mennicken**

Governments of all stripes have a tendency to announce bonfires of red tape and reviews of regulatory bodies. This tendency has become ever more pronounced in the current age of austerity. To respond to this potentially existential threat, regulators are under pressure to display their 'value for money' to politicians and better regulation watchers alike. Calling for value for money might appear universally agreeable and it has been a commanding theme in the context of national audit office activities, especially in the UK. However, establishing whether the costs of regulatory interventions are outweighed by wider social benefits is plagued by a number of obstacles.

Firstly, one key obstacle consists in the problem of quantification. As with all instruments in the 'better regulation' toolkit (such as impact assessments), there is a tendency to call for 'hard numbers'. However, this raises issues about what actually can be reliably measured. Few regulatory activities can be associated with easily measurable outputs, let alone outcomes. It might be possible to measure complaint handling response times, number of inspection visits and other running costs, but it is far more problematic to calculate the quality of complaint handling activities, the quality and impact of inspections, or the efficacy of regulatory interventions aimed at preventing (counterfactual) undesirable outcomes.

Furthermore, calls for hard numbers run the risk of biasing decisions towards the immediate, rather than the long-term, future where any calculations will be associated with increased degrees of uncertainty. Even where running costs might be compared, these results have to be seen in the context of wider trade-offs and regulatory objectives. For example, 'economies of scale' might be found to matter: larger regulatory bodies can rely on standardization of business processes, for example in the granting of licenses. However, this has to be seen in the light of other objectives such as calls for specialist bodies that pay undivided attention to a particular activity or profession.

Any attempt aimed at measuring 'value' is faced with a range of complications. Many regulators use surveys of customers and businesses to establish satisfaction levels. However, such surveys are limited in a number of ways. First of all, measuring customer satisfaction might be very good in establishing the transactional quality of the customer-regulated industry interaction. Satisfaction surveys are likely to focus on the immediate interaction between customers and regulated industry rather than on long-term outcomes. However, it is questionable whether customer experience with the process of being given financial advice (i.e. the friendly character of financial advice) should be measured when ultimately the intention of the regulatory regime is to protect consumers and to prevent the purchasing of ill-suited financial products. Such patterns become even more problematic when seeking to measure satisfaction and subjective experiences in areas where customer preferences are highly volatile.

Secondly, not all customers' experiences as expressed through satisfaction surveys offer insights into compliance. Individuals will seek positive decisions rather than being turned down, even if the latter is done in appropriate ways. Even more problematic are attempts aimed at measuring satisfaction among those vulnerable stakeholders who may not be in a position to easily contribute to such exercises (take for example immigrants, prisoners, or citizens with dementia).

The limited nature of regulatory bodies' direct influence on regulated entities represents a further obstacle in establishing value for money. Regulated entities, such as banks, supermarkets or entities operating in the utilities sector, are exposed to multiple regulatory regimes; they are vulnerable to the ups and downs of consumer markets and technological changes; and they are exposed to demands from insurance and capital markets. A particular regulatory agency might produce value for money with respect to one particular area of business conduct, for example in relation to consumer complaints handling, but such impact might be far less relevant when it comes to questions of shaping overall business conduct.

An additional obstacle relates to the basis on which value for money is being established. Any comparison or benchmarking exercise will always be contested. Within a national context, variations across regulatory agencies range from their financial basis, political salience, and differences in the capacities and motivations of regulated entities. Inter-organizational and cross-national benchmarking will always be affected by constitutional and other institutional factors. As a consequence, comparisons will tend to be made with reference to some fictional account of what constitutes 'good practice' rather than being rooted in extensive cost-benefit or performance-based analyses. Linked to the aforementioned constraints on measuring outcomes and outputs, this means that evaluating regulators' value for money will tend to emphasize a focus on process (operational procedures and 'best practice' in this regard) rather than on output or outcome.

Finally, there is the cost of establishing 'value for money'. What value for money lies in value-for-money assessments? At what point do they become too costly to be justified in value-for-money terms? Even where there might be agreement on the type of activities that should be assessed, value-for-money assessments are costly. Such costs arise in a number of ways. One is the cost of gathering and reporting information. Another is the cost of analysing the information and establishing meaningful analysis. The costs connected to generating 'hard numbers' in meaningful value-for-money analyses may prove prohibitive, requiring regulatory bodies to find alternatives, often resulting in reliance on more qualitative forms of evaluation and assessment.

None of these objections are intended to imply that regulators and regulatory interventions should not be held accountable and be required to justify themselves. But attention should not just be paid to the value for money of certain regulatory interventions; instead, focus should also be placed on efficacy and effectiveness of the regulatory system as a whole (namely the management of regulatory interfaces across dispersed administrative and political landscapes), and, last but not least, the 'value for money' of the armies of better regulation czars themselves.

The need to justify and consider regulatory interventions has certainly become more salient in an age of political interest in 'deregulation' and austerity in government finances. However, value for money assessments on their own are unlikely to resolve issues of over-regulation or ineffective regulation. And we need to be careful not to lose sight of the 'value-for-money' of the 'value-for-money' assessments themselves.

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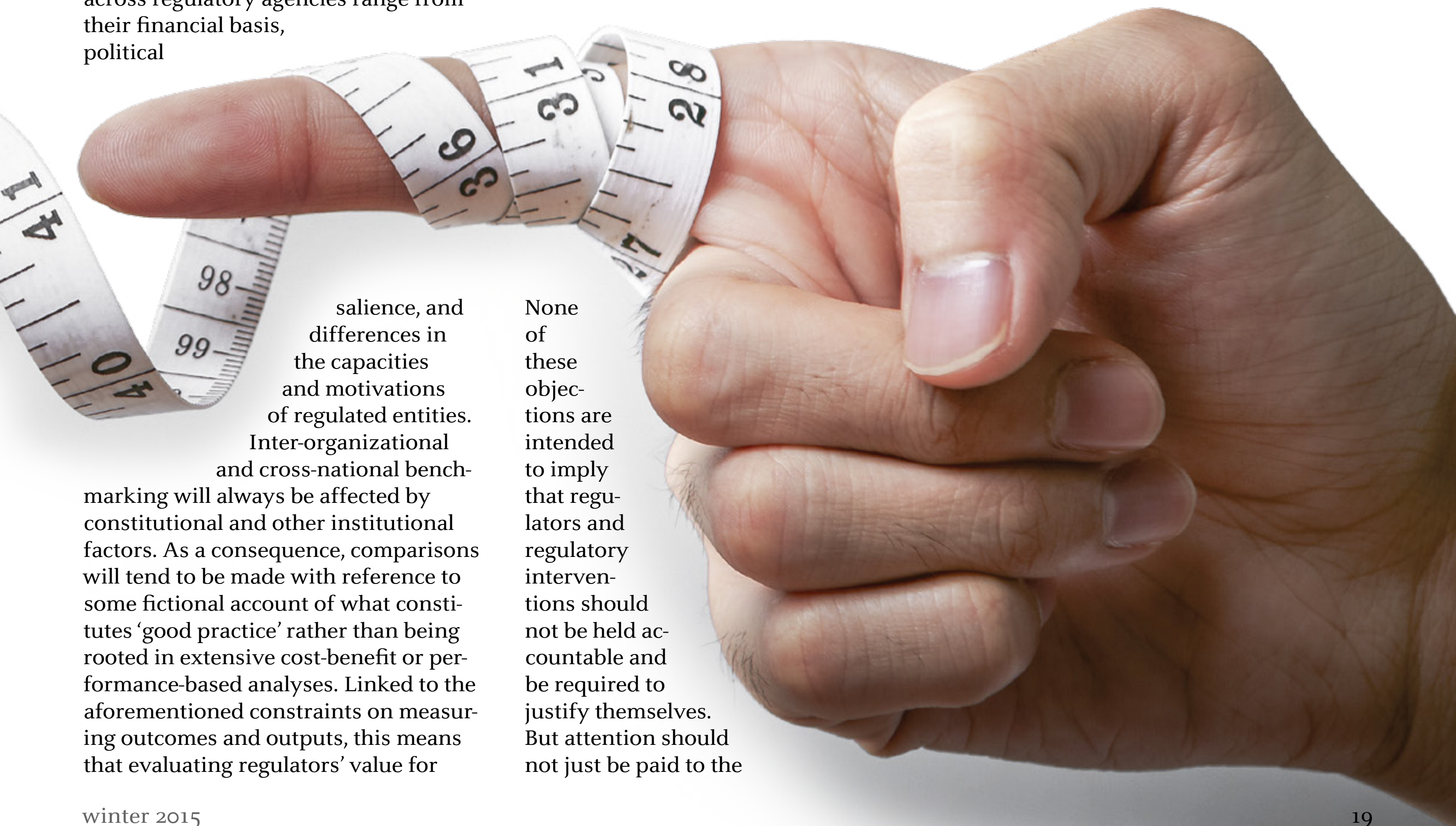

Illusions of safety

Robert Hunter highlights potential implications of a growing reliance on a systems approach towards risk

One of the most significant changes in the management of risk in the aviation industry is the increasing reliance on safety management systems (SMS). These 'systems' consist of a tailored risk assessment undertaken by the airline that generates the risk. The level of safety to be achieved can be determined in three ways – it may be at the airlines' discretion; it may be defined by the regulator; or, as is increasingly the case, it may be ostensibly 'defined' by the regulator but so loosely that in practice the level of safety is determined by the airline. It seems that regulators may be fearful of producing rules that leave airlines hamstrung for years, yet otherwise regulators have to regulate; writing rules that place a firm requirement to actively do something nebulous can seem like a good compromise. Moreover, regulators stand to gain from the SMS approach because it transfers responsibility from the regulator to the airlines. Regulators that mandate an explicit quantifiable level of safety are potentially liable if that level proves insufficient to prevent an accident; SMS puts regulators at arm's length from accidents.

In principle, the SMS method is sound, in so far that the system has the ambition of identifying and managing all hazards appropriately. However, in practice, SMS does not generally consider that the SMS itself could be a hazard. The factors that may turn an SMS into a house of cards generally arise from conflicting interests in the human designer/s and enablers of the SMS.

An individual, such as an accountable manager, can contrive the design of the system to serve their own interest. At the organisational level, the fundamental conflict is between productivity and safety. Statements such as 'safety is our number one priority' and 'if you think safety is expensive try having an accident' encourage us to think that this conflict is unlikely to be anything more than a theoretical possibility. However, 'trying to have an accident' when it can mean running a greater risk of having an accident, has a different meaning to 'having an accident'. Currently, a small UK airline may not see a fatal accident for 80 years or so. Hence, if the airline CEO does think that safety is expensive and that, by reducing the airline's spend on safety to 'try having an accident', the CEO could well find that, by halving the safety budget, the airline would still not see the attributable accident for decades. If a business is on the rocks safety is expensive.

In the aviation industry, today, so-called prescriptive regulation, based on clear rules, is frequently portrayed as being an antiquated form of safety assurance and that the 'new' systems of safety management are a superior evolution. However, the shift in regulatory strategy towards SMS is much more experimental than is commonly portrayed. Indeed, there are many cases in which originally existing forms of self-managed risk, an SMS by another name, catastrophically failed to be then replaced by prescriptive regulation. Prior to the 1876 Merchant Shipping Act, ship owners were judged to be best placed to determine how heavily loaded their ships would be. Seamen and ship's captains that attempted to refuse to go to sea in overloaded ships were coerced into doing so. It was argued that safety was the paramount interest of ship owners and, on this basis, regulation was unwarranted interference. It was the combination of the sustained efforts of Plimsoll, the continuing loss of merchant seamen's lives at sea, and the political pressure of public sentiment that led to the load line position being determined by an independent body. The expression 'You've got to draw the line somewhere' was coined during the Plimsoll parliamentary debates that were extensively covered in the media of the day.

SMS have a component of Board level accountability and this can be a good thing. The Board are seen as the owners of the risk because they generate the risk and have some jeopardy for the risk. However, the problem with having the risk owner (the airline Board) as being someone different from the person that has the substantive jeopardy for the risk (the crew and passengers) is that it facilitates the creation of a system which is, in effect, not an SMS but a 'BMS' – a blame management system. This is because the principal risk for a Board is not that they are killed in one of their aircraft, but that they are blamed for someone else being killed in their aircraft.

The SMS method is also vulnerable to the problem of 'owned science'. In situations where organizations are commissioning science to support an industrial practice of high commercial value, because they own this data, they can conceal or choose not to study what is not in their interest to expose and promote what is in their interest. This interest may act in other coercive ways. Airlines may dissuade pilots from submitting fatigue reports by subjecting the reporting pilots to quasi-disciplinary procedures. In the UK it is likely that a pilot involuntarily falls asleep on the flight deck at least every day, yet there have been just two formal reports of this in 30 years.

SMS may reasonably allow operators to take into account their 'operational experience' to support new safety practices or amend old safety practices of no proven value. However, 'operational experience', where it is allowed to be relied upon in regulation, is generally not defined, Rather than having some firm statistical basis, it may be a feeling that something has been gotten away with so far, so it must be safe, or worse still, a feeling that something has been got away with so far, so it must be too safe.

The uncertainty of interpretation of regulation and the complexity of the 'system' part of SMS can belie the common sense of what an SMS really is and turn it into something of such impenetrable techno-bureaucratic complexity that it becomes an area of specialization that requires an expert. Airlines can outsource this expertise to an SMS commercial consultancy. In this regard marketable features of such a product, such as the protection of the Board (the

customer) from blame and claims of greater productivity for a given level of safety compliance, become potentially biasing factors that undermine the intent of the SMS.

Because the effectiveness of an SMS depends so much on the will of the operator, SMS may make safe operators safer and other operators less safe. Conflicting interest is a fly in the ointment of SMS. The control of such conflicts is too often assumed to be sufficiently safeguarded by vague, easily coerced, aspirational factors such as 'trust' and 'safety culture'.

In general, not only might trust-based SMS not work if there are conflicting interests, they might make things much worse. If instead of policing traffic speeds, we relied on drivers' self-reports of their speeding violations, not only might we expect drivers to not report their speeding but also that they might speed more often. SMS, if not sufficiently safeguarded against conflicting interests, particularly regulatory interest, can be a naïve approach that may undermine flight safety.

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Consumers on tap?

Eva Heims and **Martin Lodge** consider the remarkable rise of consumer engagement processes in utility regulation in the UK

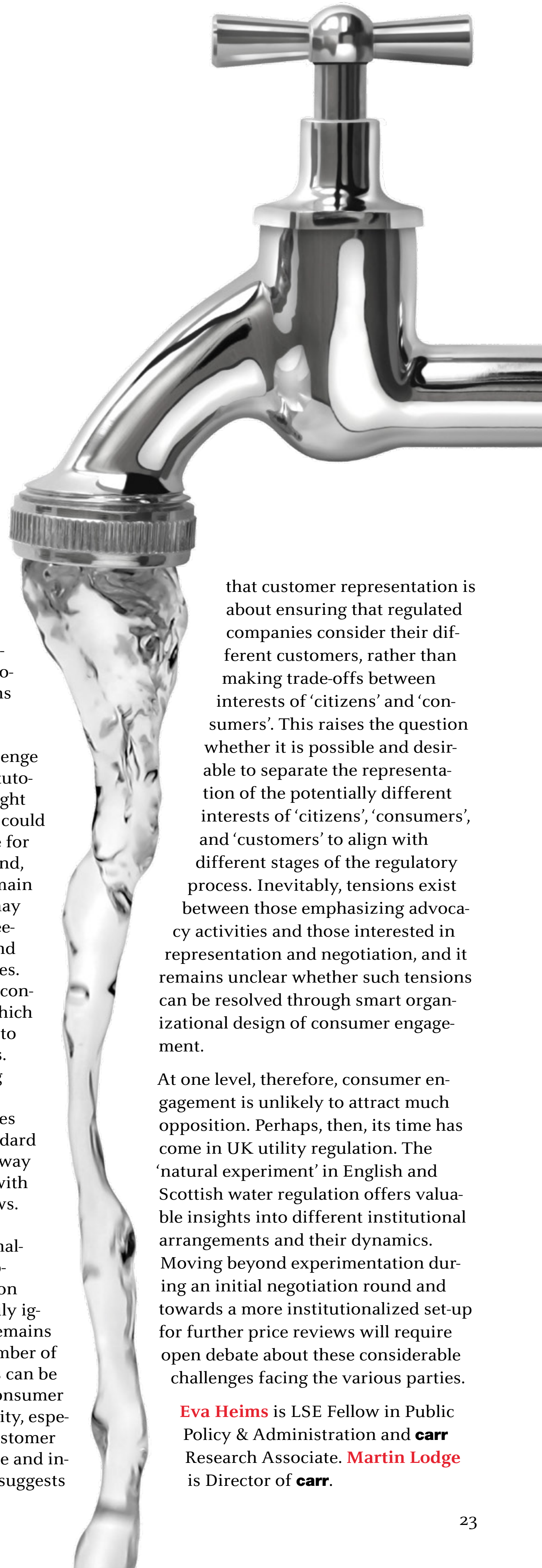
Putting the consumer at the heart of regulation has become one of the central themes in contemporary UK utility regulation. In particular, the water sector has witnessed considerable attention, with Scotland and England having experimented with rather different mechanisms. So where does the idea for consumer engagement come from? Does consumer engagement challenge or complement the synoptic controls of technocratic (RIP-X) price-setting regulatory agencies that were supposed to be at the heart of UK utility regulation? And what can we learn from the Scottish and English experiences?

Ideas of consumer engagement and negotiated settlements in regulation are far from novel. These ideas offer considerable variations in terms of who is involved and what is being negotiated. Alternative forms of rule making, relying on direct negotiations between regulators and select parties, have been a long-standing feature in planning and environmental regulation. Indeed, the US Negotiated Rulemaking Act of 1990 created its own brief cottage industry of academic reflections, most of them with somewhat mixed results. In the area of North American utilities regulation, negotiated settlements have featured among some state regulators, and it is this experience that has received considerable attention, in the UK context, by Stephen Littlechild. Littlechild established the intellectual blueprint for the UK's utility reforms in the 1980s and 1990s, and he has been at the centre of prompting the use of innovative consumer engagement processes in UK utility regulation.

The idea of consumer representation in UK utility regulation is, of course, not particularly new either. The 'old' age of publicly owned utilities was characterised by a range of consumer representative bodies. While some managed to survive into the age of privatisation, the key emphasis has been on relying on regulatory bodies themselves to play a consumer representation function since the 2000s. Since the late noughties, the emphasis has turned to focusing on consumer representation being moved towards direct interaction with the regulated firm. The water sector across the UK has been prominent in this regard.

What explains this shift towards consumer engagement in utility regulation, especially at a time when wider consumer representation issues in UK regulation are arguably witnessing pushback in respect of organisations and finances? One of the main triggers for the growing attraction of consumer engagement strategies is the exhaustion of existing regulatory instruments. Increasingly, questions have been asked as to whether price reviews offer a valuable regulatory strategy as industries have adapted to regulatory requirements, regulators have become overwhelmed by methodological demands, regulatory relationships have hardened, and the value of benchmarking information has become exhausted. Introducing novel ways of challenging companies to stretch themselves further when devising their business plans is said to encourage different, less institutionalized discovery processes that might provide new insights. Being able to legitimize decisions by relying on 'consumer engagement' might also reduce the vulnerability of regulators and regulated industries to political and public pressure.

The UK water sector has witnessed an emphasis on consumer engagement since the late 2000s – with Scotland and England offering interesting differences in their approach. The Scottish experience – involving the publicly owned Scottish Water – was characterised by a substantial delegation of authority to the 'Customer Forum' under a tripartite agreement between the regulator (WICS), the consumer representative body (Consumer Focus) and the regulated company (Scottish Water). During the process, the Customer Forum and Scottish Water effectively negotiated an agreement on the company's business plan, and the regulator largely accepted this agreement. In England, 'customer challenge groups' were established at the level of each private regulated company, with an additional consumer representative panel engaging with the water regulator, Ofwat. The English regulator was less willing to delegate decision making to the various customer groups. In the end, Ofwat made only very timid use of the possibility to 'fast-track' the price review for companies that presented business plans based on extensive customer engagement. It is difficult to assess the outcome of these different approaches. However, participants of the Scottish experiences regard their agreement as a general success in terms of substance and process. It is suggested that England could potentially learn



from this 'best practice'. Others point to key differences, most of all regarding ownership structures.

Whatever the merits of these different approaches, before extending the scope for negotiated settlements more generally, a number of questions need to be confronted:

One question is about the institutional status of consumer engagement. As noted, the English version placed consumer engagement at the level of the regulated firm in contrast to Scotland's tripartite agreement. The latter potentially offers greater commitment on behalf of all interested parties in supporting the process and eventual agreement, but may be seen as uncomfortable for those interested in consumer advocacy rather than negotiation. It also requires institutional resource commitments across all parties that may not always be available, as occurred in the case of the now disbanded Consumer Focus in Scotland.

For regulated firms, there are concerns about biases in decision making (short-term over long-term horizons, domestic over business consumers), which will always be present in negotiated settlements. Decision making led by detached econocratic regulators has often been seen as a solution to these problems in the past. There are also differences as to whether private institutional investors welcome negotiations with customer representatives, or whether they prefer the comfort of dealing with technocrats in regulatory offices. In addition, firms require safety nets as agreements work themselves out in practice. Such mechanisms may require careful specification, might call for independent monitoring and automated review provisions to avoid gridlock.

For regulators, the challenge is one of delegating statutory functions. Cynics might suggest that delegation could be a convenient avenue for blame-shifting. In the end, however, regulators remain still in charge as they may or may not 'accept' agreements between firms and customer representatives. Yet, differences remain concerning the extent to which regulators are 'minded' to accept such agreements. Furthermore, providing bespoke intelligence to customer representatives requires change in standard operating procedures away from those associated with 'traditional' price reviews.

Finally, there are also challenges for customer representation. The question of legitimacy is not easily ignored as it inevitably remains questionable how a number of high profile individuals can be said to represent 'the consumer interest' in all its diversity, especially in areas where customer preferences are unstable and information sparse. This suggests that customer representation is about ensuring that regulated companies consider their different customers, rather than making trade-offs between interests of 'citizens' and 'consumers'. This raises the question whether it is possible and desirable to separate the representation of the potentially different interests of 'citizens', 'consumers', and 'customers' to align with different stages of the regulatory process. Inevitably, tensions exist between those emphasizing advocacy activities and those interested in representation and negotiation, and it remains unclear whether such tensions can be resolved through smart organizational design of consumer engagement.

At one level, therefore, consumer engagement is unlikely to attract much opposition. Perhaps, then, its time has come in UK utility regulation. The 'natural experiment' in English and Scottish water regulation offers valuable insights into different institutional arrangements and their dynamics. Moving beyond experimentation during an initial negotiation round and towards a more institutionalized set-up for further price reviews will require open debate about these considerable challenges facing the various parties.

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Ethics regulation of government contractors

Does extending existing ethics rules to cover government contracts solve the problem ask **Robert Rizzi**, **Charles Borden** and **Daniel Holman**

The regulation of government contractors presents a dilemma for the evolution of public ethics regimes. While the value and variety of government activities performed by contractors have grown substantially over recent decades,[1] rules governing financial conflicts of interests and other ethics concerns have yet to adapt this new state of affairs. As a result, contractors may increasingly be found in roles traditionally performed by civil servants without being subject to the same ethics safeguards.[2] While especially pronounced in the US, this mismatch in the regulation of government contractors and public servants is also an issue in the UK and in other jurisdictions.[3]

As highlighted below, many of the very reasons that drive governments to outsource to contractors – added flexibility, reduced costs achieved by competitive bidding, the temporary nature of the work, and the ability to adapt the structures and incentives to suit the task at hand – make it difficult to extend the existing public ethics framework to these individuals. This article reviews the current state of government contractor ethics regulations in the US, highlights certain problems inherent in the design of these rules, and suggests areas for further investigation. In doing so, we also suggest that the extension of the US federal ethics rules to government contractors may speak to the need for more fundamental changes in public ethics architecture so as to reflect the dynamic nature of the modern public workforce.

Current US ethics regulation of government employees and contractors

In the US, federal executive branch ethics regulation of individuals is based principally on their status as employees, whether full-time or part-time.[4] Full-time employees of the federal government are required to make periodic financial disclosures[5] and are subject to prohibitions or limitations with the possibility of criminal sanctions[6] for conflicts of interest,[7] earning outside income,[8] the receipt of gifts,[9] and the use of non-public information,[10] among others. The basic rules are tailored for special cases, for example, certain political appointees and other designated office-holders are subject to additional limitations, including a one- to two-year 'cooling off' period restricting post-employment conduct in the private sector,[11] while part-time Special Government Employees (SGEs) are more lightly regulated, notably by being permitted to hold outside employment.[12] However, all employees of the government are otherwise still subject to many ethics restrictions, including a prohibition on direct conflicts of interest and acting on non-public information.

In contrast, government contractors fall entirely outside of most executive branch ethics rules, with certain limited and targeted exceptions. The general provisions of the Ethics in Government Act of 1978, as amended,[13] the cornerstone of federal ethics regulation, do not apply to contractors because they are not 'federal employees'.[14] There are certain executive branch departments and agencies where the distinction is not so stark – for example, a statute specially applies executive branch ethics laws to contractors of the Federal Deposit Insurance Corporation (FDIC).[15] In addition, a conflict of interest rule contained in the Federal Acquisition Regulations (FAR) prohibits 'organizational conflicts' by contractors involved in the procurement process.[16] On the whole, however, a large number of government contractor employees are not actually covered by government ethics rules, including contractors whose work responsibilities make them at times indistinguishable from government employees within the same agencies.[17]

US law attempts to draw a sharp line by prohibiting the outsourcing of 'inherently governmental functions' (IGFs) to contractors.18 However, the demand for expert personnel and the difficulty of precisely defining an IGF[19] have diluted this distinction in practice. As a consequence of this state of affairs, individuals in a position to influence key decisions have been later revealed to have had conflicts of interest that would have disqualified their participation were it not for their contractor status. For example, Treasury Department contractor Dan Jester acted as a key negotiator in the 2008 bailout of AIG despite having substantial holdings in Goldman Sachs exposed to AIG's potential default.20 Similarly, retired Admiral Dennis Blair was president of the federally-financed defence think tank that recommended continuation of the F-22 jet fighter programme while simultaneously a board member of a major subcontractor to the F-22 programme.21

Spurred by these and other controversies, some commentators advocate expanding existing ethics rules to cover contractors, or at least to those contractors that perform IGFs or are 'personal services' contractors employed within federal agencies.[22] Other proposals would integrate ethics in the procurement process, using a mix of contractual and regulatory tools to induce compliance. In 2011, the Administrative Conference of the United States (ACUS), an independent federal agency dedicated to regulatory reform, proposed that model language prohibiting conflicts of interest and misuse of non-public information be added to the Federal Acquisition Regulation (FAR) for procurement officers to adopt on a voluntary basis.[23] In a similar vein, in 2014 the UK Committee for Standards in Public Life (CSPL) recommended that providers of public services be required to undertake to uphold public ethics principles as part of the contracting process, that the adequacy of contractor ethics controls be covered in certain public audits, and that identification and management of contractor ethics be made a core

element in government procurement personnel training.[24]

Obstacles in the design of contractor ethics and possible solutions

Extending existing ethics rules to cover government contracts would seem to be the most straightforward solution to the problem. However, certain features of government contracting make it more difficult to apply the basic principles of government ethics regulation to contractors than to traditional executive branch employees. Firstly, there is the inherent 'two masters' problem that US ethics rules were originally created to address.[25] Because contractors work for a private employer at the same time they are providing service to the federal government by definition, conflict of interest and outside employment rules cannot be applied to contractors without significant carve-outs. Secondly, there is challenge of creating meaningful, administrable distinctions that can be adapted to the diverse and changing worker roles, contract structures, and provider types that engage in government contracting, from custodial services firms to individuals advising high level policymakers. In other words, because the category of government contractors encompasses a variety of arrangements, from quasi-employees to one-off consultants, a single set of ethics rules is unlikely to be successful. Thirdly, the reliance on status-based categories defined by traditional employment law factors of 'control' means that a contractor's ethics obligations do not change regardless of the substance or nature of the work. The focus on control may perversely create incentives to insulate contract work from agency management, even where ethics risk factors such as the worker's responsibility, access, or discretionary authority would dictate closer supervision. Collectively, these issues make the regulation of government contractor ethics resistant to an easy solution.

Developing a regulatory structure that might address these problems requires that policymakers first agree on what the chief aim and method of regulating contractor ethics ought to be. On the one hand, ethics rules seek to prevent distortions in government decisions that could result if contractors act in furtherance of their own interests, or that of their employer's, instead of the public interest. At the same time, these rules aim to preserve government legitimacy by avoiding the appearance of conflict that could lead to the perception of self-dealing or other violations of norms, even if no actual conflict exists. In the design of the system, policymakers need to consider whether to prioritize substantive equality between the ethics standards applied to public employees and contractors, or instead to focus on outcome efficacy, if not equality. Those concerned more about avoiding an 'appearance' of substantial conflicts and therefore indirectly concerned with public perception of legitimacy might favour the former; contractor rules need to be equally tough to avoid the perception that contracting offers a public ethics loophole. Those concerned more about preventing policy distortion might opt for a set of controls on contractors

that, while they may look and operate differently from the rules for public servants, have a similar effect in deterring abuse.

Inspiration for new models may be found in restructuring within the professional services sector, as firms in consulting, accounting, and other industries that have lessened the emphasis on hierarchy to focus on the types of services that each worker provides to clients. Contractor ethics might also feature a shift towards activity-based compliance requirements, such as are common in securities regulation.[26] Under this approach, ethical standards would attach to certain functions and contractual obligations – for example, involvement in procurement or providing advice to a decisionmaker – regardless of whether the work is executed by a contractor or an employee.

While this may be most logical from an ethics standpoint, designing and applying activity-based definitions with respect to the wide range of government functions would present a daunting administrative burden, and new offices or agencies would then need to be created that would have the resources and authority needed to monitor compliance and sanction failures.

Regardless of the approach taken, there is a need to assemble more comprehensive data about the number of workers employed as government contractors, the roles that they occupy within agencies, the limits placed on their activities, and the specific conflict issues that arise in those circumstances. For those agencies that have adopted ethics certifications, it would be also valuable to examine the resulting contractor policies and practices to assess what the burdens and benefits of these compliance practices have been, if any. Finally, the regulatory community as a whole may take this problem as an opportunity to consider whether the distinctions between categories of service providers that have driven government ethics rules in the past need to be re-imagined to better match the reality of the modern public sector.

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1 US federal contract spending grew at 12 per cent annually between 2000 and 2008 until reaching over $500 billion in FY 2009, although spending has declined some thereafter. See 'Obama Administration succeeds in reducing contract spending for first time in 13 years', https://www.whitehouse.gov/sites/default/files/contracting_reform.pdf; 'Overview of awards by fiscal year', USASpending.gov, https://www.usaspending.gov/transparency/Pages/OverviewOfAwards.aspx Although comprehensive information on the number of personnel employed through government contracts is lacking, the size is understood to be significant. For example, the Brookings Institution's 2002 'True size of government' study estimated 5.168 million workers employed under federal contracts, in comparison with 1.756 million civil servants. See Paul C. Light (2003), 'Fact sheet on the new true size of government', https://wagner.nyu.edu/files/faculty/publications/lightFactTrueSize.pdf

2 E.g. Administrative Conference Recommendation 2011–13: Compliance Standards for Government Contractors Employees – Personal Conflicts of Interest and Use of Certain Non-Public Information, Administrative Conference of the United States, pp. 3–6. 'Contractor integrity: stronger safeguards needed for contractor access to sensitive information', US Government Accountability Office, September 2010.

3 Committee on Standards in Public Life (2014), 'Ethical standards for providers of public services', London: Committee on Standards in Public Life, pp. 14–16, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336942/CSPL_EthicalStandards_web.pdf

4 The distinction between government employees and government contractors in the ethics context borrows from common law employment tests, see Office of Government Ethics DAEOGram 00 x 7: 'Extent to which ethics laws and regulation apply to Federal government-private sector exchange programs' (22 August 2000), http://www.oge.gov/OGE-Advisories/Legal-Advisories/00x7–Extent-to-Which-Ethics-Laws-and-Regulations-Apply-to-Federal-Government-Private-Sector-Exchange-Programs/ ('[The Office of Government Ethics] is not the arbiter of whether an individual is an employee, but certain factors have been developed in the context of the application of the conflict of interest statutes to aid in analyzing the issue. ... These factors address whether an individual has been appointed into the Federal service, [ ] is engaged in the authorized performance of a Federal function, and is subject to the supervision of a Federal officer or employee while engaged in the duties of his or her position.'). Whether these borrowed tests, and the unintended results they may produce, are appropriate for the ethics regulatory context is a distinct question worthy of further research.

5 5 USC (United States Code) app §§101–111.

6 5 USC § 216.

7 18 USC § 208.

8 5 USC app §§501–505.

9 5 USC § 7353.

10 41 USC § 2101 et seq.

11 See 18 USC §§ 207(c)(3), 207(d).

12 See 18 USC § 202(a) (defining 'special government employee'); see also 18 USC §§ 203(c) and 205(c) (providing more narrow outside employment and representation rules for SGEs); § 207(c)(2) (limiting the application of post-employment bans to SGEs serving over 60 days); § 208(b) (1) and (3) (allowing conflict of interest waivers for SGEs on advisory committees); § 209(c) (exempting SGEs from the ban on outside employment).

13 PL (Public Law) 95–521, 92 Stat. 1824.

14 See USC app. 4 § 101.

15 12 USC § 1822(f); 12 CFR. Part 366. As further examples, USAID prohibits contractors from making certain investments in the country where they work (48 CFR [Code of Federal Regulations] 752.7027), the Treasury Department prohibits conflicts for TARP contractor personnel (31 CFR 31.200), and the Department of Health and Human Services maintains a conflict of interest policy for contractors in its Medicaid Integrity Audit Program (42 CFR 455.238). For a fuller discussion of agencies' contractor ethics policies, see Kathleen Clark (2011), 'Ethics for an outsourced government', St Louis MO: Washington University in St Louis, Legal Research Paper Series 11-05-03, pp. 23–31.

16 48 CFR 2.101. These organizational conflicts encompass situations in which a contractor is advising with respect to some aspect of a procurement decision in which an affiliate entity is a participant.

17 This may include 'contractors involved in the acquisition function', in which a contractor is hired to assist in the design of procurement standards and strategies or occasionally in the selection of other contractors. See 'Defense contracting: army case study delineates concerns with use of contractors as contract specialists', Government Accountability Office (2008), pp. 45–6, http://www.gao.gov/assets/280/274007.pdf

18 See 105 PL 270, § 5(2)(A); 112 Stat. 2382; see also 48 CFR 2.101, defining inherently governmental functions in the context of the Federal Acquisition Regulations Act (FARA).

19 See Kate M. Manuel (2014), 'Definitions of 'inherently governmental function' in the Federal procurement law and guidance', Washington DC: Congressional Research Service.

20 Clark, supra note 14, 3; see also Mark Landler and Edmund L. Andrews, 'For Treasury dept., now comes hard part of bailout', New York Times, 4 October 2008; Louise Story and Gretchen Morgenson, 'In U.S. bailout of A.I.G., forgiveness for big banks', New York Times, 29 June 2010.

21 See, e.g. R. Jeffrey Smith and Renae Merle, 'Leader of panel that endorsed jet program has ties to contractor', Washington Post, 25 July 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/07/24/AR2006072401232.html

22 See, e.g. Clark, supra note 14; Collin D. Swan (2012), 'Dead letter prohibitions and policy failures: applying government ethics standards to personal services contractors', George Washington Law Review 80(2): 668–702.

23 Administrative Conference Recommendation (2011–3): 'Compliance standards for government contractors employees – personal conflicts of interest and use of certain non-public information', Washington DC: Administrative Conference of the United States. https://www.acus.gov/recommendation/compliance-standards-government-contractor-employees-personal-conflicts-interest-and

24 Committee on Standards in Public Life (2014), 'Ethical standards for providers of public services', London: Committee on Standards in Public Life, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336942/CSPL_EthicalStandards_web.pdf

25 See United States v. Mississippi Valley Generating Co., 364 US 549 (1961), ('The moral principle upon which the [federal employee criminal conflict of interest] statute is based has its foundation in the Biblical admonition that no man may serve two masters, Matt. 6:24, a maxim which is especially pertinent if one of the masters happens to be economic self-interest.')

26 See, e.g. the SEC's Municipal Adviser Rule (17 CFR § 240.15Ba1-1 et seq.) (regulating municipal advisers through a definition of 'advice'); see also the SEC's proposed rule for regulating cross-border security-based swap arrangements, 80 Fed. R. 27444 (13 May 2015), http://www.sec.gov/news/pressrelease/2015-77.html

Regulation in transition: agency transparency in Serbia and Macedonia

Calls for greater transparency are widespread, but the actual application is more limited argues **Slobodan Tomic**

Transparency is one of the central pillars in the canon of good governance advice. Transition economies in particular are said to require transparency as new institutions are created whose modes of operation, it is maintained, clash with established, more informal ways of conducting economic and political relationships. While there has been much emphasis on the need for transparency, less attention has been paid to the ways in which agencies seek to be transparent, let alone trying to explain why agencies might vary in their understandings of what it means to be transparent.

The Western Balkans offers a fascinating context in which to explore transparency among recently established regulators. In particular, the study of regulatory agencies in Serbia and Macedonia offers insights into emerging regulatory bodies in two countries that can be classified as EU-aspirants. Table 1 provides an overview of these agencies.

How, then, can a degree of transparency among regulatory bodies be established? Transparency is defined here as exposure to external scrutiny, usually linked with disclosure and other publicity requirements. One way to study such activities is, therefore, to explore the kind of information that regulators place on their websites. Furthermore, following Lodge and Stirton (2001; Stirton and Lodge 2010), transparency can be differentiated in a number of dimensions, namely:

1. Transparency of decisions and decision making process
2. Transparency of rules and procedures
3. Transparency of regulatees' conduct
4. Transparency of regulators' conduct (in exercising control)
5. Transparency of feedback

A study looking at a random sample of 20 per cent of the agencies' official website content published during 2013 and 2014 pointed to a variety of ways in which the agencies sought to exercise transparency. Media regulators, for example, scored most highly across all five dimensions. Energy regulators and competition authorities were, in contrast, far more limited. Their approach towards transparency focused primarily on their decision making process, their rules and procedures, and, to a lesser extent, information on their regulatees. Table 2 provides an overview of the study. The asterik (*) sign indicates where a particular dimension is only partially present.

Table 2: Regulators and Transparency

Agency	Serbian agency
RATEL	1 *, 2, 3 *, 5 *
AEC	2, 3, 5 *
CfPC (S)	1, 2, 3, 4
CfPC (M)	1, 2, 3 *
REM	1 *, 2, 3, 4, 5 *
AVMS	1, 2, 3, 4, 5
EA	1, 2, 3 *
ERC	1, 2, 3 *
SEPA	1, 2, 3, 4, 5
DE	1, 2, 3 *, 4 *, 5

What explains these variations? Three potential explanations exist: (i) a focus on agency-specific features, (ii) a focus on sector-specific characteristics, and (iii) a focus on country-specific characteristics. Even with the proviso that the study only includes a small num-

Table 1: Regulators in Serbia and Macedonia

Sector	Serbian agency	Macedonian agency	Risks and problems
Telecommunications and IT	Republican Agency for Electronic Communications and Postal Services (RATEL)	Agency for Electronic Communications (AEC)	Regulatory agencies
Energy	Energy Agency (EA)	Energy Regulatory Commission (ERC)	Regulatory agencies
Media	Regulatory Authority for Electronic Media (REM)	Agency for Audio and Audio-Visual Media Services (AVMS)	Regulatory agencies
Market competition	Commission for Protection of Competition (CfPC (S))	Commission for Protection of Competition (CfPC (M))	Controlling agencies
Environmental protection	Environmental Protection Agency (SEPA)	Directorate for Environment (DE)	Executive agencies, under ministerial hierarchy

ber of agencies, certain findings do stand out.

Firstly, a focus on agency-specific characteristics, such as agency age, resources, media exposure, and de jure independence, does not explain the extent to which agencies are making their activities transparent in practice. Agencies do, however, follow mandatory requirements when it comes to the provision of transparency. In other words, agencies follow legal requirements ('de jure transparency'), but they do not move beyond that mandatory level. There is hardly any 'voluntary transparency' (Koop 2014).

Secondly, a focus on sector-specific characteristics, such as the degree of sector liberalization offers a mixed picture. Against expectations, the degree of market liberalization did not generate more transparency. Regulators in the most liberalized sectors, i.e. telecommunications, did not display higher degrees of transparency. However, once telecommunications are excluded, regulators overseeing a higher degree of market liberalization are associated with higher degrees of transparency. The two national environmental regulators also stand out as they provide more information than required by their specific statutory provisions. However, their higher score is a result of constitutional provisions and international conventions that tie these agencies to wider agendas advancing citizens' access to information.

Thirdly, national characteristics are also present. Macedonian regulatory agencies display a lower degree of transparency than their Serbian counterparts. Whether the one-party dominance in Macedonia (since 2006) has a constraining impact on agencies' exercise of transparency and, if so, how, requires further analysis.

In general, the results paint a rather sobering picture of transparency – with wider implications for wider aspirations regarding accountability and public sector governance. Agencies do not deviate much from minimal mandatory (legal) requirements. It might be that such an approach reflects a general risk aversion in systems witnessing economic and political transition. However, this has two further implications for countries in transition and international and national governance support programmes. The first is that calls for transparency should be accompanied by clearer understanding as to what transparency actually means. And secondly, for agencies to establish and enhance their legitimacy, they need to move beyond minimalist understanding of transparency and become more pro-active in the ways they make information publicly available.

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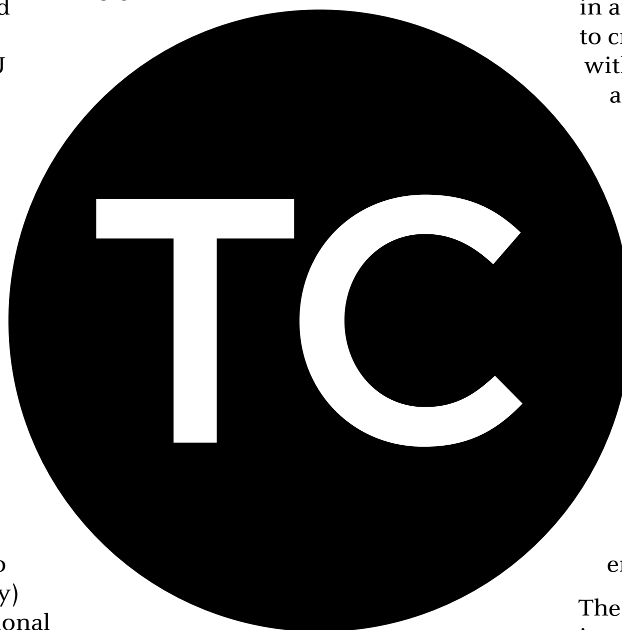
Backsliding as new transboundary crisis for the European Union

Martin Lodge and **Nick Sitter** introduce one of the key themes of the TransCrisis project

Crisis management is usually associated with urgency – immediate actions are called for to respond to fast-moving and escalating problems. However, recent years have given rise to a new type of crisis for the European Union (EU). This new, more chronic, type of crisis that goes to the heart of the EU is that of backsliding.

Backsliding defines the noticeable tendency among EU member states to challenge common institutions and Treaty-based commitments. These attempts at 'cheating' on earlier EU commitments are of a different quality to the long diagnosed transposition deficits that are said to have stifled the Single Market. It is also different from the grandstanding in Council meetings or calls for Treaty opt-outs and/or opt-ins. Backsliding represents a direct challenge to the normative commitments of EU membership, especially in areas of human and political rights as well as principles of good governance. Backsliding is about the perception that some member states' policy measures designed to address (potentially transboundary) crises run counter to the constitutional and legal commitments they signed up to when joining the EU. This matters as membership to the European Union was more than just signing up to a free trade area, it was about committing to principles of liberal democracy.

The last half decade has offered a sufficiently large number of cases of backsliding to suggest that this phenomenon is becoming increasingly prominent. States have attracted serious criticism because their laws, policies or executive actions (usually adopted in the name of coping with an acute crisis) are said to counteract the intentions of earlier EU-related commitments. Particular examples that have attracted prominent media coverage and strong words from the European Commission includes France's 'voluntary return' of Roma in 2010, Italy's subsequent proposal to expel EU citizens from other countries if they could not support themselves, and Romania's Prime Ministers Victor Ponta's (2012) and Viktor Orbán's (since 2010, ongoing) backsliding on democratic institutions. Other recurrent issues include corruption and the credibility of neighbours and applicant states' commitments to EU rules and values. The refugee crisis has seen member states trade accusations of backsliding on human rights and commitments arising from the Dublin Convention.



Backsliding has two major characteristics, which often, but not always, combine to exacerbate the problem. Firstly, in a number cases, national responses to crises – and these are often crises with a transboundary dimension, such as migration or economic crises – involve policy tools and initiatives that are in some way incompatible with the EU's rules and values. Secondly, these measures are explicitly formulated as a deliberate challenge to the EU regime, brought forward by parties and governments that see an assertion of sovereignty and an opportunity to stand up against 'Brussels' as a value in and of itself. Consequently, backsliding produces a new form of institutional crisis in that it involves the purposeful erosion of EU institutions.

The first central question for the EU is whether recent years have seen an actual increase in backsliding across member states. It is an open question whether the series of recent EU crises – the global economic crisis, the economic crisis in the EU, the Grexit and Brexit debates, migration and refugee flows – have weakened the overall normative commitment to the EU among the 28 governments and promoted increased

The TransCrisis project (full name: Enhancing the EU's Trans-boundary Crisis Management Capacities: Strategies for Multi-Level Leadership) is a three-year project funded by the European Union under the Horizon2020 programme.

carr is the co-ordination partner in this network of eight organizations. Other partners involve: Crisisplan (Arjen Boin), the University of Utrecht (Femke van Esch), Central European University (Nick Sitter), Institut Barcelona d'Estudis Internacionals (IBEI, Jacint Jordana), University of Catania (Fluvio Attina), University of Stockholm (Mark Rhinard) and ThinkTank Europa (Maja Rasmussen).

More information can be found under the project website www.transcrisis.eu.

popular and party-based Euroscepticism. To the extent that this is the case, backsliding does not merely constitute a threat to the EU regime; it might also be a symptom of deeper institutional erosion in which the increasing re-nationalisation of politics represents an electorally attractive option to deal with the kind of transboundary problems that are inherent to the EU.

The second central question for the EU is what can and should be done about backsliding. The easy answer – which the German, Dutch, Danish and Finnish foreign ministers called for in a 2013 letter to Commission President José Manuel Barroso – is to consider new measures at the EU level. These measures would allow for more differentiated responses to evidence of member-state backsliding. At present, potential options are limited to the rather 'light touch' infringement procedures or the 'nuclear option' of suspension of membership. Gradual and escalating sanctioning regimes might offer a more comprehensive toolset for dealing with member state backsliding. However, such a belief in a more extensive toolkit to deal with backsliding needs to acknowledge two much bigger problems.

The first big problem is that of political will as European leaders appear reluctant to engage with backsliding. For example, the reason the Swedish foreign minister Carl Bildt did not join his four liberal counterparts in signing that 2013 letter was that as a conservative he was reluctant to criticise, even implicitly, fellow European People's Party member Viktor Orbán.

The second big problem is that any sanctioning regime needs to take into account the potential consequences of any action against backsliding. When states like Hungary challenge basic EU principles such as 'liberal democracy', they do so in the hope of exploiting wider geopolitical dynamics. Any rule- or principle-based approach towards containing backsliding might easily come unstuck in the light of broader geopolitical forces that represent even bigger existential threats to the EU's raison d'être. At the same time, tolerating backsliding could lead to further fragmentation among EU member states because of these wider geo-political dynamics.

Backsliding represents a novel kind of crisis for the European Union. It is transboundary in nature, it goes to the core of the institutional norms characterising the EU, and it plays out in the national politics of member states. It is unlikely that there will be any magic solution to the problems associated with backsliding. Instead, the answer lies in seeking to manage and contain backsliding. Such EU-wide containment might be feasible in times of economic growth and healthy government finances, but becomes trickier in times of redistributive battles and depleted public finances. Although it has become fashionable again to resort to the old wartime advice of 'keep calm and carry on', that advice should not be seen as an invitation for complacency.

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carr news

carr news

We say farewell to **Julien Etienne.** We are grateful for his many contributions to **carr**'s intellectual life.

We welcome **Lydie Cabane** who is joining **carr** as post-doctoral researcher on the TransCrisis project.

Peter Miller was awarded an Honorary Doctorate at the University of Paris-Dauphine on Thursday 4 June 2015. In his presentation at the Ceremony, Professor Berland paid tribute to Professor Miller's distinctive contribution to the institutional analysis of accounting, and his many influential studies of the links among accounting, organizing and economizing in both the private and public sector.

He also noted the impact his work has had on the French academic community. In his response, Professor Miller thanked the University of Paris-Dauphine for the personal honour, and also for the recognition it gives to the institutional and organizational analysis of accounting. He also noted the debt he owes to his colleague and friend Ted O'Leary, who passed away almost exactly one year ago.

Over the past few months, we welcomed a number of visitors: Thomas Angeletti (Max Planck Institute for the Study of Societies), Martijn Groenleer (Tilburg) and Manuel Angel Santana Turegano (La Laguna).

carr publications

The reputational basis of public accountability
Madalina Busuioc and Martin Lodge
Governance, DOI: 10.1111/gove.12161

What is regulation? An interdisciplinary concept analysis
Christel Koop and Martin Lodge
Regulation & Governance,
DOI: 10.1111/rego.12094

Julien Etienne has co-authored a post-implementation study of Remedial Action Notices, an enforcement tool that food hygiene inspectors have been granted to address risks to food safety in food businesses. The report has been published on the Food Standards Agency's website, and is entitled 'Remedial Action Notices and the enforcement of food hygiene regulations: a post-implementation study'.

Julien has initiated and overseen three studies on the theme of consistency in the delivery of regulatory controls, with a focus on food hygiene inspections performed by Local Authority inspectors in the UK. The reports from these three studies have been published on the Food Standards Agency's website, alongside an introductory paper by Julien entitled 'Consistency in regulatory work: concepts and options'.

carr discussion papers

Limits of insurance as risk governance
Kristian Krieger and David Demeritt

Making sense of inter-organizational 'safe spaces' in business regulation
Julien Etienne

The reputational basis of public accountability
Madalina Busuioc and Martin Lodge

The regulation of higher education
Julia Black, Andrew Boggs, Heather Fry, Nick Hillman, Stephen Jackson, Roger King, Martin Lodge and Simeon Underwood.

carr seat

What is the future for independent regulators?
Frank Vibert

Food labelling and its consequences
Christine Parker

Engaging with stakeholders
Andrea Mennicken

Regulating standards in public life
Charles Borden

carr events

As part of the ESRC-sponsored seminar series on 'Regulation in Crisis?', **carr** organised a series of events. In May, **carr** organised an international roundtable on the 'Regulation of Standards in Public Life'. The roundtable featured international academics and practitioners to consider regulatory dynamics. Speakers included Lord Paul Bew (Parliamentary Commissioner for Standards), Richard Painter (University of Minnesota), Gillian Peele (Oxford), Denis Saint Martin (University of Montreal) and Walt Shaub (Director, US Office of Government Ethics).

Furthermore, in June, **carr** held a workshop on 'Regulatory Agencies under Challenge'. Panel discussions focused on different debates involving regulatory agencies. One theme was on regulatory agencies in contexts of transition. Speakers included Jacint Jordana (IBEI, Barcelona), Işik Özel (Sabanci), Jan Meyer-Sahling (Nottingham), Slobodan Tomic (LSE) and Slagjana

Taseva (Transparency International Macedonia). A second panel focused on debates surrounding independence, involving contributions from David Lewis (Vanderbilt), Kutsal Yesilkagit (Leiden), Sharon Gilad (Jerusalem), Frank Vibert (LSE), and Ed Richards (former Ofcom chief executive). A third panel focused on co-ordination and jurisdictional boundaries. Speakers included Martin Stanley (Manchester), Eva Heims (LSE), Madalina Busuioc (Exeter) and Marta Simoncini (Antwerp). Finally, the discussion turned to questions of agencies and expertise with contributions by Suzanne McCarthy (Immigration Services Commissioner), Christel Koop (KCL) and Susan Moffitt (Boston).

In June, Julien Etienne and Bridget Hutter organized an international workshop on 'Whither Inspection? The Changing Face of Regulatory Enforcement'. Speakers included Christine Parker (Monash), Jodi Short (UC Hastings), Julien Etienne (ICF International), Jacob Kringen (Norwegian Directorate for Civil Protection/ Stavanger University), Paul Almond (Reading), Kevin Myers (Health and Safety Executive) and John Barnes (Food Standards Agency).

The TransCrisis consortium had its launch meeting at **carr** in April. Its second meeting, organized by the consortium partner Crisisplan in Leiden (Netherlands) in September, focused on transboundary crisis management capacity and the development of a codebook for the study of transboundary crisis management.

carr talks

Bridget Hutter participated in a roundtable on 'Food Markets and Cultures of Consumption – are we being served' organized by the University of Monash Prato (July). She was also Visiting Professor at RegNet, Australian National University during September and October.

Martin Lodge gave a talk on regulation in the context of higher education at the Higher Education Funding Council (Hefce) in September and on 'Exit or loyalty: regulatory competition in business inspections' (with Chris van Stolk, RAND) in October at the University of Lausanne.

Andrea Mennicken spoke on the effects of accounting reforms, privatization and economization in the correctional services at the Stockholm School of Economics in an open event for policymakers and public service managers entitled 'Beyond the planned market economy'. The event was organized by the Swedish think tank Leading Health Care. Present at the event was also the Swedish Minister of Public Administration, Ardalan Shekarabi, who is in the process of setting up a White Paper Inquiry looking into reforming the governance of the public services in Sweden following debates about the problems connected to recent New Public Management reforms and marketization initiatives. Mennicken talked on the same topic also at the Annual Meeting of the European Group of Organization Studies (EGOS) in Athens in July. She co-organized the Emerging Scholars Colloquium of the 11th Interdisciplinary Perspectives on Accounting Conference (with Martin Messner, University of Innsbruck) at Stockholm University, and she served as member of the Scientific Committee of the European Accounting Association's 2015 Annual Congress in Glasgow.

Mike Power gave a talk on 'How accounting begins' at University College Dublin in June, presented a paper on 'Organizations and audit trails' during a workshop in infrastructures at the Copenhagen Business School in October, where he also gave the plenary address on 'Governing infrastructures'. He was co-organizer of the Risk Management stream for the European Group of Organization Studies workshop in Athens, Greece, in June. He also visited the Department of Sociology at Northwestern University in Chicago during May 2015.

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