



Regulation across boundaries

Martin Lodge and **Andrea Mennicken** highlight why boundaries are essential to regulation

Transboundary issues are at the heart of almost all regulatory action, whether it relates to regulation's aims, scope, reach or effects (be they intended or unintended). Take the example of International Financial Reporting Standards (IFRS), the building of transboundary crisis management capacities (see the article by Cabane and Lodge in this issue), or online platform regulation (see here the article by Brice in this issue). Similarly, the handling of invasive alien species, financial crises, ash clouds, youth unemployment or migration reaches beyond geographical, sectoral, and jurisdictional boundaries.

Furthermore, it is not just the 'targets' of regulatory action that refuse to stop at national borders, the regulatory effects in one jurisdiction can easily have considerable effects on regulatory systems elsewhere as well. Transboundary issues are therefore central for understanding and developing regulatory capacity. Indeed, the generic nature of bureaucracy is about simplification and categorization processes. Any form of bureaucratic organization will necessarily and inevitably accentuate problems of a transboundary nature; transboundary issues do not fit neatly into particular regulatory frameworks, they cut across regulatory jurisdictions (vertically and horizontally) and are associated with uncertainty and disagreement over appropriate diagnoses and solutions.

In the face of the ubiquitous nature of transboundary problems, it is unsurprising that we regularly hear criticisms regarding regulatory silo-building and fragmentation. Equally, we hear calls for 'better coordination' across boundaries. However, if political incentives stand in the way of coordination, then the best attempts at working together will stall. But even if the political wind is blowing in the right direction, once the memoranda of understandings are signed, usually little attention is devoted to the problematization of, and investment in, the building of transboundary coordination infrastructures and capacities.

Generating coordination capacities is, of course, not easy. It involves relationship-building at transnational and regional levels, including the European Union and other international levels; the managing of interactions with other national regulatory bodies; the handling of relationships and regulatory conversations within devolved national administrations, such as a devolved UK or the federal states of Germany; and the managing of relations between regulatory bodies and local authorities. Indeed, at the heart of such attempts at coordinating across organizations are questions of hierarchy (at what level should the decision be taken to do something?) and of prescriptiveness (how limited should the set room for discretionary manoeuvre be?). Questions about which level of government should take decisions, or which organization should 'hold the pen' in leading policy developments and responses often go to the heart of understandings of national sovereignty, and infringe on what are seen as core state powers. Simi-

larly, 'more prescriptiveness' is a double-edged sword. On the one hand, consistency and reassurance through mutual adoption of requirements are seen as important (see here e.g. the adoption of EU Directives). On the other hand, such emphasis on prescriptive consistency might stand in the way of essential flexibility to deal with diverse local circumstances.

Debates about coordination usually focus on questions of over- and underlap, namely those situations where either there is overall confusion due to shared responsibilities and disputes between organizations over turf, or those situations where there seems to be nobody in charge at all. Such questions of over- and underlap usually concentrate at different levels of governance (local, national, regional, inter- and transnational) and sectors (e.g. finance, health, unemployment and housing). The rise of the so-called regulatory state with its plethora of agencies has arguably accentuated these coordination issues. Specialization, one might suggest, has come at the expense of increased problems in coordination. Hence we observe attempts at 'coordinating' fragmented administrative arrangements through prescriptive 'good governance' guidelines or other procedural devices, such as regulatory impact assessment requirements.

Others would suggest that such fragmentation merely brings to light the kind of conflicts that any oversight would have to address. In the English healthcare system, for instance, the regulation of quality and financial matters has been assigned to two different regulatory bodies (the Care Quality Commission, on the one hand, and Monitor, now NHS Improvement, on the other). What mechanisms are in place to ensure communication, collaboration and coordination between these bodies? What instruments do regulators have to mitigate against the problem of mutual externality creation? As the failings at the Mid Staffordshire NHS Foundation Trust have shown (Francis, 2013), a focus on financial discipline, pushed for by the regulator (e.g. Monitor), can promote undue risk-taking in the area of quality assurance, patient safety and care.

Regulators are often tasked with multiple, conflicting objectives (quality, safety, economy, efficiency); and they are financially constrained, particularly in times of austerity. A successful pursuit of such different goals involves multiple sets of expertise e.g. medical, financial, administrative, which, in turn, might make regulatory agencies prone to internal divisional empire-building and boundary creation, precipitating fragmentation and miscommunication.

How can such issues be overcome? Star and Griesemer (1989) developed the notion of boundary-object to 'conceptualize collaboration among diverse "social worlds" by tracing how a knowledge object [such as standards, risk maps, or performance measurement systems, added] structures co-ordination



among divergent stakeholders' (Dar, 2018: 565). Such tools are often developed with the aim of aligning actors' interests and perceptions and involve them in an interpretive process that can lead to new ways of learning or working collaboratively (Dar, *ibid.*; Star, 2010).

But under what conditions can such boundary-objects work? How should such instruments be appealed to as a link connecting a multitude of actors and domains, including disparate values and rationalities, such as those of security, decency and economy in the prison service? What are the accompanying risks?

Firstly, there is the risk of new boundary creation and the production of blind spots. A risk map or balanced performance measurement system may make visible, more salient and actionable, those risks, objectives or values that are put onto them. Yet, what about those risks, issues and values that are excluded? Here, it is crucial that the boundaries of a risk map or performance measurement system are kept flexible, that decisions as to what is to be included and excluded are frequently revisited, questioned and reflected upon.

Secondly, there is the issue of equity and democracy. Under what conditions can the above-mentioned boundary objects engender equitable collaboration? Who decides whose voice is heard when risk maps or performance measurement systems are created? How are the voices of patients, prisoners, students or frontline staff accounted for (see here also the article by Kernick in this issue)?

Thirdly, we should not be too quick in assuming that boundaries are always and necessarily bad, and something that needs to be overcome as the notion of transboundary, seems to suggest. The creation of boundaries is not only risky, it is also essential. Any form of organization requires boundaries; allocating and managing responsibilities is central to organizing and therefore also determines understandings of accountability. Boundary creation – the delimiting of regulatory tasks, functions, and objectives – is essential in the creation of a regulator's identity, reputation and legitimacy, and, hence, capacity to act.

Finally, it is worth taking a closer look at the notion of boundary itself. As Abbott (1995: 857) argues, 'it is wrong to look for

boundaries between pre-existing social entities. Rather we should start with boundaries and investigate how people create entities by linking those boundaries into units. We should not look for boundaries of things but for things of boundaries.' Put differently, we need to be wary and not presume that boundaries can easily be identified and specified. And we need to be careful not to take for granted the 'acting bodies' (and the very notion thereof) involved in the creation and contestation of such boundaries (as illustrated by turf wars between different professional bodies, such as medics and accountants in health care) (Abbott, 1995: 858).

It is these boundaries – and the blurring of boundaries – that have become central concerns in the study of experts and frontline staff in public services. Hybridization of roles such as those of doctors and accountants (Kurunmäki, 2004) or sectors and practices can lead to identity conflicts (see here for instance the amalgamation of different sets of expertise in risk management in Miller et al., 2008; but see also the articles by Leaver and Glynadiaki in this issue). Hybridization and 'reducing' boundaries across boundaries are hardly recipes for addressing transboundary problems; rather reconfigured boundaries are established, often accompanied by considerable tension between different identities.

To conclude, regulating across boundaries is not just about dealing with questions of interdependence across jurisdictions. And it is not about disbanding boundaries. For boundaries are central to any form of organization and regulation. They are at the heart of individual and organizational identities. They are also central to regulatory agencies' identities. Such identities need to be reconsidered in view of diagnosed shifts towards so-called populist politics. More generally, regulating across boundaries is central to questions about who and what is deemed critical to require a response.

Regulating across boundaries will always be shaped by organizations and their identities, professional disciplines and jurisdictional boundaries. A first step towards dealing with the challenge of transboundary problems lies therefore in the development of a mutual, self- and other-reflecting understanding of what is at stake for the individuals and publics concerned, the regulating organizations, politicians and other governing bodies involved.

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