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contents

Editorial	03
Martin Lodge and Andrea Mennicken	
Regulation across boundaries	06
Martin Lodge and Andrea Mennicken highlight why boundaries are essential to regulation	
Deficits in EU transboundary crisis management and how to address them	11
Lydie Cabane and Martin Lodge point to the agenda for the future of EU transboundary crisis management	
Political conditionalities in cohesion policy – a way to stop democratic backsliding?	14
András Bíró-Nagy advocates measures for the European Union to address member state violations	
Refugees, bureaucrats, and identity conflicts	16
Policy implementation when dealing with transboundary crises requires understanding of micro-level dynamics argues Katerina Glyniadaki	
Regulation in Crisis?	19
Catastrophic risk and equality of voice – learning from the Grenfell Tower disaster	20
Regulatory attention needs to shift from blame to learning argues Gill Kernick	
Redefining the boundaries of the regulatory state	24
Bruno Queiroz Cunha highlights the importance of interdependence in regulation	
Competition policy in troubled times?	27
Martin Lodge argues that competition as a policy objective requires renewed consideration	
Human factors in financial trading	30
Meghan Leaver highlights the importance of human factors in risk management	
Platform capitalism and regulation: a false opposition?	34
Jeremy Brice highlights the challenges of regulating new business models	
carrnews	40
carrpeople	42

editorial

We are delighted to introduce you to this latest edition of **carr**'s biannual *risk®ulation* magazine. The main emphasis of this issue is on 'boundaries' and transboundary regulation. The choice of this theme is informed by the completion of our three-year Horizon2020-funded project on 'transboundary crisis management' in the context of the European Union. However, questions of boundaries (and how to overcome them) are at the heart of many of **carr**'s activities – whether this relates to our research or the overcoming of boundaries in communicating our findings.

carr's work on 'transboundary crises' involved seven partner institutions. During the three-year duration of this EU-funded study, questions regarding 'transboundariness' were never far away from the political headlines, making our work ever more relevant. For one, the refugee crisis highlighted the challenges for the EU and its member states in dealing with large migration flows. The Brexit process illustrates on a daily basis the tricky choices that are involved when individual states seek to negotiate their role in a context of economic, political and social interdependence. The political crises surrounding Catalonia highlighted that territorial politics are not just reserved for the United Kingdom. Finally, our project partner, the Central European University, became the target of the Hungarian government's efforts at installing an 'illiberal democracy'. Such volatile, if not hostile circumstances make the kind of public-minded research that **carr** is committed to ever more relevant, but also challenging. The project's website (www.transcrisis.eu) offers insights into our work that spans the boundaries between research and policy advice, whether this relates to research findings, blogs, an e-module, or the White Paper containing policy recommendations. We also produced a series of animated films that introduce the key themes emerging from our collective research.

This issue contains two articles that draw on the TransCrisis project. Lydie Cabane and Martin Lodge introduce some key themes emerging from the project, whereas András Bíró-Nagy, a member of the

TransCrisis advisory board, discusses options for the EU in dealing with member states showing a distinct lack of enthusiasm for liberal democratic constitutional conventions.

Boundaries are also central to other articles in this issue. The article by Gill Kernick on the Grenfell Tower disaster in London highlights how diffuse responsibilities can set the context for the death of 72 people. Bruno Cunha and Martin Lodge's articles discuss the limits of existing regulatory approaches in the contexts of development regulation, and competition policy respectively. Meghan Leaver notes how the need to introduce the 'human factor' is essential in advancing risk management approaches in the financial services. Katerina Glyniadaki, in turn, considers the identity conflicts that arise when street-level bureaucrats deal with moral polylemma. Problems of regulatory systems dealing with new business models emerging from new technologies are at the heart of Jeremy Brice's contribution.

carr's activities are by design transboundary. **carr**'s role as the leading international venue for research and exchange on questions of risk and regulation demands that we explore socially relevant questions across disciplines, sectors and geographical locations. Innovation emerges from the interaction at the boundaries where disciplinary interests overlap rather than in the heartlands of 'pure' disciplinary concerns.

Yet, changing boundaries in the political and research policy landscapes can also represent an existential challenge to **carr**'s work and role. We are committed to continuing **carr**'s contribution to the worlds of inter- and transdisciplinary research and practice by maintaining our focus on public-minded research centred on fundamental questions of societal relevance, and we are grateful for your continued support in this endeavour.

Martin Lodge and Andrea Mennicken



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-

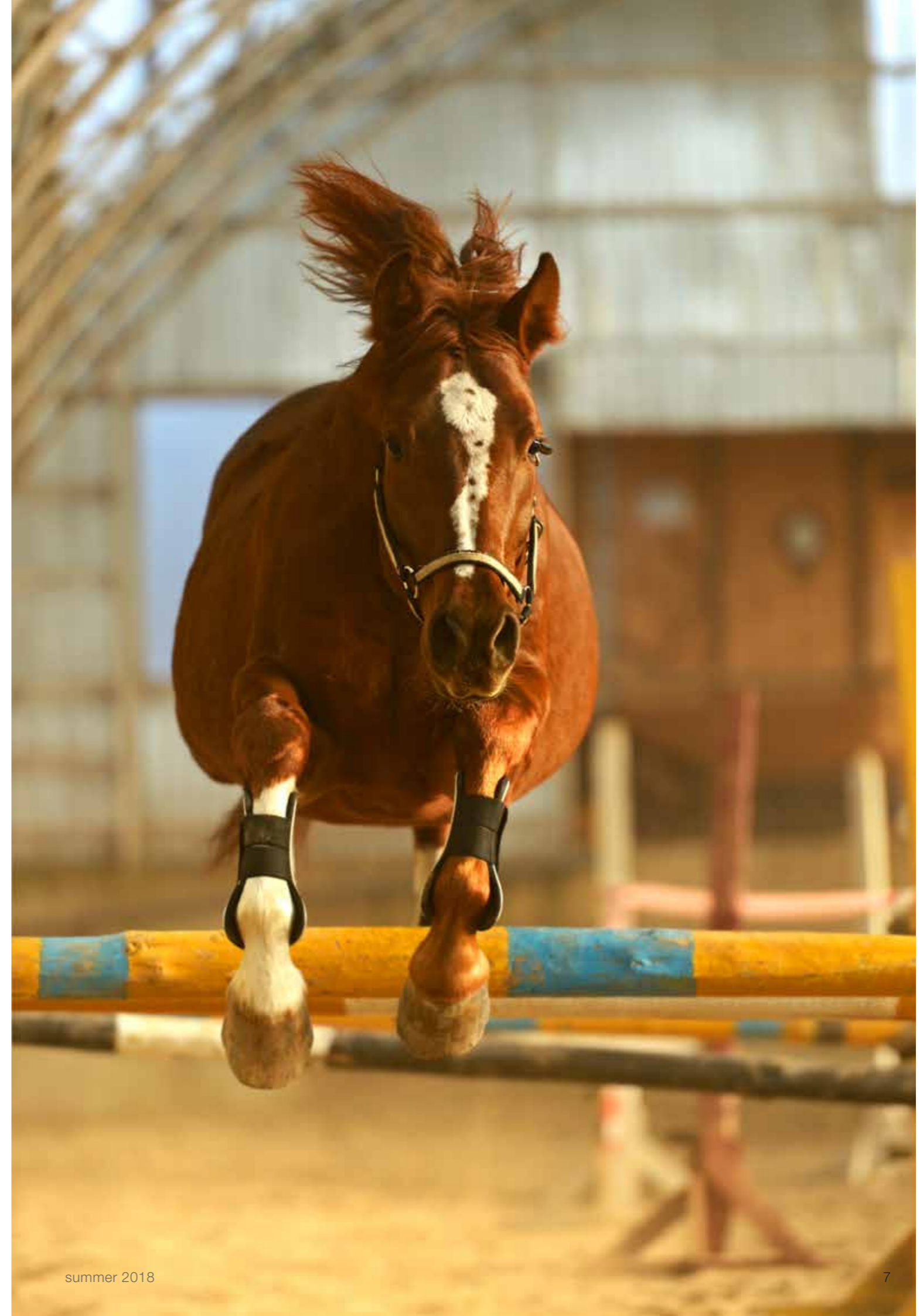
larly, 'more prescriptiveness' is a double-edged sword. On the one hand, consistency and reassurance through mutual adoption of requirements are seen as important (see here e.g. the adoption of EU Directives). On the other hand, such emphasis on prescriptive consistency might stand in the way of essential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

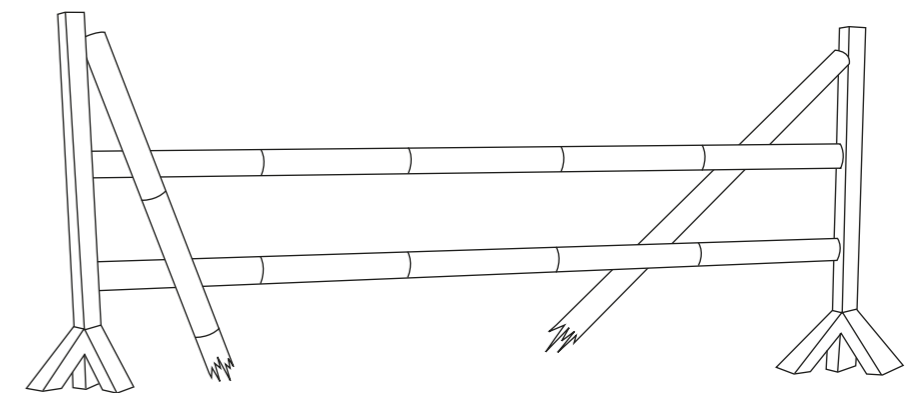
Regulating across boundaries will always be shaped by organizations and their identities, professional disciplines and jurisdictional boundaries. A first step towards dealing with the challenge of transboundary problems lies therefore in the development of a mutual, self- and other-reflecting understanding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

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Deficits in EU transboundary crisis management and how to address them

Lydie Cabane and Martin Lodge point to the agenda for the future of EU transboundary crisis management

Whether it is the financial meltdown or refugee flows, recent transboundary crises have highlighted the political and administrative limits of existing European Union (EU) crisis management arrangements. They have strained understandings of member state solidarity, given rise to debates over appropriate policy responses, and led to conflicts over the direction of future EU transboundary crisis management capacities within and across policy domains.

Transboundary crises pose problems for any regulatory system as they cut across jurisdictions, challenge disciplinary boundaries, and require coordination and shared understandings regarding causes and potential solutions. In the context of the TransCrisis consortium's work, transboundary crises were identified in a number of areas, ranging from the 'traditional' emergencies, such as terrorist attacks or natural disasters, the consequences of enhanced market liberalization and integration (such as banking crises) to the explicit rejection by member states of key liberal democratic commitments associated with EU membership, so-called backsliding. Based on TransCrisis research, we diagnosed four kinds of deficits across transboundary crises in the context of the EU; these translate into four corresponding strategies to address these deficits.

Diagnosing transboundary crisis management deficits

A central authority deficit: There is a diagnosed lack of oversight and leadership across EU domains that have experienced transboundary crises over the past decade. Central authority refers here both to a lack of overall leadership and a lack of administrative capacity at the EU-level. The financial crisis highlighted the need for a harmonized, if not common, banking regulatory and crisis management framework. A lack of central authority was evident in the decision-making gridlock created by deep cleavages across different member states and regions of the EU, placing northern creditor countries at odds with southern debtor countries (such patterns were also evident in the development of approaches dealing with youth unemployment). Similarly, concerns about the stability of electricity supplies have led to repeated calls (in particular from the European Commission) for the adoption of more centralized risk and crisis preparedness measures to reduce regional differences and enhance cooperation. In addition, across policy domains there have been concerns about the lack of (comparative) information about the state of play in terms of actual implementation in different member states (as for youth unemployment). This is especially in areas where

the lack of capacity to act might be a source of, or an extra factor in, aggravating transboundary crises (as in the case of invasive species).

A prescriptiveness deficit: There is a diagnosed lack of consistency in administrative context, especially in terms of member state requirements. Transboundary crises over the past few years have given rise to complaints about the discretionary ways in which member states have responded to crises and also the lack of detailed guidance from the centre, i.e. the European Commission, that would enable information exchange and other forms of coordination. One example here is the uncoordinated nature of policy responses across member states during the financial crisis or during the 2018 delay of electric clocks due to conflicts in the Serbia-Montenegro region and the lack of willingness of other transmission operators to compensate for that problem.

A flexibility deficit: EU transboundary crisis management regimes are also said to lack flexibility. The centralization of authority and one-size-fits-all frameworks fit uneasily with crises that are unevenly felt across member states (or where different regions are vulnerable in different ways), and where there are differences in administrative capacities to deal with transboundary crises. In some cases, more discretionary approaches may be more supportive of effective transboundary crisis management than demands for strict uniform rule adherence. For example, Italy has been calling for ad hoc measures to tackle its non-performing loans crisis. Elsewhere, as for example in the area of invasive alien species, there has been considerable criticism of a uniform list given the diverse ecologies across EU member states.

A subsidiarity deficit: One of the central debates across EU governance is the appropriate level of competence. On the one hand, demands for more EU capacity have traditionally focused on questions as to the supranational or intergovernmental character of particular arrangements. On the other hand, the criticism has been made that the EU lacks an effective appreciation of the capacity of arrangements that sit outside the EU. The Pentalateral Forum in energy is such an example of a multi-lateral intergovernmental arrangement. In other words, the EU needs to acknowledge the existence of European-level capacities that reside in member states and potential bilateral and multi-lateral levels that are however not governed by EU provisions.



The TransCrisis project (full name: *Enhancing the EU's Transboundary Crisis Management Capacities: Strategies for Multi-Level Leadership*) was a three-year project funded by the European Union under the Horizon2020 programme. **carr** was the co-ordination partner in this network of eight organizations. Other partners involved: Crisisplan (Arjen Boin), the University of Utrecht (Femke van Esch), Central European University (Nick Sitter), Institut Barcelona d'Estudis Internacionals (IBEL, Jacint Jordana), University of Catania (Fluvio Attina), University of Stockholm (Mark Rhinard) and ThinkTank Europa (Maja Dionigi). More information can be found at the project website: www.transcrisis.eu

Looking across these four deficits, it is evident that it is impossible to address all four at the same time. They are also case specific. These deficits further highlight the fundamental tensions between criticisms of EU transboundary leadership that attack ‘too much central leadership’, those that condemn ‘too much gridlock’, or those that complain about ‘too little consistency’. Moreover, different deficits are highlighted in view of the same transboundary crises as member states have diverging views and interests on how to best solve these crises.

Searching for solutions

Any discussion about transboundary crisis management needs to move towards the ‘where’ and ‘how’ (instead of focusing on the ‘who’). Four potential strategies towards supporting effective and legitimate EU transboundary crisis management can be illustrated (see Table 1). They are direct responses to the diagnosed deficits noted above, and they have distinct implications when it comes to the allocation of legal authority, organizational and financial resources. While each strategy has its own advantages, it is also associated with distinct pathologies. Thus, a reliance on ‘ad hoc’ responses may appear advantageous in that it avoids the set-up costs for crisis management regimes that may involve tricky redistributive conflicts among member states. However, a strategy that relies on summitry to deal with crises is unlikely to provide for anticipatory approaches that may reduce the cost of transboundary crises. Similarly, a reliance on strengthening consistency among national administrations reflects the inherent diversity of administrative arrangements across the EU, and it requires some form of monitoring of the ways in which member states actually prepare for transboundary crises. Strengthening multi-level governance approaches by relying on ‘networks’ of administrative and political actors comes at the expense of dispersed responsibilities and potential problems in ensuring coordination and overall leadership. Finally, calling for ‘central leadership’ by EU institutions may appear promising in placing responsibility in one place; however, it is not at all evident that all transboundary crises require such centralized and uniform responses across member states, and it is not evident how such an approach can easily interact with diverse national and local administrative systems.

Particular strategies are unlikely to represent appropriate responses to every transboundary crisis. When focusing on questions such as civil protection in response to terrorist attacks, then centralized arrangements might offer enhanced information exchange and central crisis rooms can be a key facility to build and mobilize leadership. However, such a centralized response would at the same time attract considerable concerns in the face of the high political profile of such activities and would require acceptance by national administrations. A reliance on ad hoc responses might work in the

face of one-off events that largely affect one member state, but is unlikely to support long term enhanced information exchange among national databases. A reliance on ‘Europeanized’ national standardization might support member states’ capacities to deal with such attacks, but is unlikely to mitigate against organizational boundary conflicts.

Conflicts arising from organizational fragmentation are prominent when considering the kind of transboundary crises that stem from critical infrastructure failure, such as electricity transmission networks. A disruption in one part of the European-wide network can have severe implications (i.e. black-outs) in other EU member states. Energy shortfalls in view of repair programmes, cold spells or heatwaves are therefore issues that require transboundary responses. However, while ensuring member state cooperation with risk and crises preparedness through centralized measures at the EU level might appear attractive, they cannot do away with questions about national energy politics (will national politicians wish to authorize the responsibility to switch off parts of their population to supranational actors?). Strengthening the nexus of multi-level governance would build on existing operator and regulator networks, but these cannot deal with wider political crises that might impact on the supply of energy across national boundaries. The same applies also to debates about the banking union. Even when leaving aside current debates about adding a financial backstop and a deposit insurance scheme, the banking union relies not just on centralized oversight by the European Central Bank (ECB), but also on the contribution of national oversight agencies in ‘joint supervisory teams’ and ‘internal resolution teams’. As revealed by the failure of Latvian bank ABLV, such authority does not extend to money laundering. In the case of less significant banks (regional savings banks, such as Sparkassen), the ECB is highly dependent on the oversight activities of national authorities. In the case of actual bank failure, resolution, despite being a centralized decision to be taken by the Single Resolution Board (SRB), still depends on national insolvency laws (as in the case of Italian banks) and national resolution authorities also preferred strategies as well as capacities to contribute to resolution planning.

The EU in crisis

The problem with potential political opposition to centralized authority is most pronounced among the kind of transboundary crises that are related to ‘democratic backsliding’. As illustrated by the politics surrounding the Hungarian government’s activities to restrict the scope for academic freedom and NGO activities, and the initiation of proceedings by EU institutions against actions of the Polish government (under Art 7 of the Treaty that threatens to suspend voting rights if there is an agreed sustained violation of liberal democratic conventions), there is neither the political will among all EU

**TABLE 1:
STRATEGIES FOR ENHANCING EFFECTIVE AND LEGITIMATE EU TRANSBOUNDARY CRISIS MANAGEMENT**

<p>Strengthen mechanisms to enhance consistency among member states</p> <p><i>Advantages:</i> Adjusts to diversity across member states and encourages consistency in goals, but not necessarily means</p> <p><i>Pathologies:</i> Limited interest among member states to report and mitigate according to set benchmarks and guidance, given also member state diversity.</p>	<p>Strengthen EU level capacities</p> <p><i>Advantages:</i> Establishes leadership responsibilities through formal authority</p> <p><i>Pathologies:</i> Information asymmetry, problems in dealing with diversity and potential lack of implementation at the national/sub-national level; legitimacy concerns</p>
<p>Rely on ad hoc responses and ‘naming and shaming’</p> <p><i>Advantages:</i> Limited requirements for building crisis management capacity outside times of crisis</p> <p><i>Pathologies:</i> Problems with coordination and development of timely responses; likely source of further ambiguity and conflict during times of crisis</p>	<p>Strengthen EU-national multi-level governance</p> <p><i>Advantages:</i> Joint working among EU-level and national administrative actors allows for adjustment according to diverse circumstances</p> <p><i>Pathologies:</i> Lack of oversight and co-ordination</p>

member states to confront member states nor are such measures likely to be effective as they are likely to attract an even more sustained national political backlash.

Transboundary crises therefore pose a central problem for the European Union. The nature of such crises means that they cannot just be dealt with by setting up crisis rooms inside EU institutions, associated with some legal emergency power or another. Transboundary crisis management instead has to deal with two fundamental issues. One is the central importance of national and local administrative resources to give effect to anticipatory and actual EU crisis management activities. At present, there is little benchmarking of national administrative capacities to deal with transboundary crises across domains. Furthermore, backsliding poses a fundamental transboundary crisis for the EU. It undermines both the normative power of the EU in terms of commitment to ideals of liberal democracy, and the basis of authority for transboundary organization of transboundary crisis management. This is therefore very much a time of crisis in EU transboundary crisis management.

At the same time, those celebrating this EU crisis should take little comfort from the challenges arising from transboundary crises. Those hoping for the demise of the EU have, as yet, failed to develop any response to the basic condition of interdependence: invasive species, volcanic ash clouds and energy

networks do not recognise national border posts. Those suggesting that the crisis of the EU opens the proverbial policy window for a ‘different’ EU need to recognize the dependence on nationally diverse economic and administrative systems. Debating transboundary crisis management in the context of the EU is ultimately about debating the future shape of the EU itself.

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Political conditionalities in cohesion policy – a way to stop democratic backsliding?

András Bíró-Nagy advocates measures for the European Union to address member state violations

Democratic backsliding has become a top issue in European politics in the last few years, not just among leaders who have started to realize recently that inaction might undermine the credibility of the European Union, but also in the international media as for now it seems evident that the construction of illiberal regimes in Hungary and Poland is fuelled by EU money. Fidesz and PiS are not only ‘accused’ of the systematic disassembling of the rule of law and hollowing out the democratic institutions, but also that they are boosting the economy through contracts to favoured insiders, thus they largely finance their anti-democratic rule from EU funds.

In terms of going back on the commitments to the fundamental values of the EU, it has already turned out that the EU institutions lack the necessary legal instruments to tackle systemic threats to democracy. Infringement proceedings can target specific legal issues but they are not an appropriate tool to address challenges to the wider democratic framework.

At the same time, the EU’s Rule of Law mechanism – the so-called Article 7 TEU procedure which allows for the (unanimously supported) suspension of voting rights of member states for the ‘serious and persistent breach’ of EU values – is most likely leading nowhere in the case of Poland, since the governing PiS party can feel safe that invoking Article 7 will not lead to sanctions due to Hungary’s veto. While Poland ignores the European Commission’s Rule of Law procedure, there has not been similar action against Viktor Orbán’s government in Budapest. This means that the EU tries to sanction the follower, but not the trendsetter. The Orbán government started to move towards a soft autocracy five years earlier; in other words, the Hungarian ‘situation’ is in a much more advanced state, and the tools applied by the Hungarian government have been also more diverse. The main reason behind the inaction against Hungary is a party political one: Orbán’s Fidesz is a valuable member of the leading centre-right party family, the European People’s Party (Fidesz contributes 12 mandates to the EPP group in the European Parliament), while PiS is not, and their main domestic rival (PO) is. This fact in itself ensures that Fidesz avoids the same treatment that PiS receives. Based on the EU level responses to backsliding in these two countries, the limits of the EU’s legal capacity are obvious – and leaders in Hungary and Poland are well aware of them.

Therefore, it is hardly surprising that the brainstorming has intensified in Brussels and other European capitals about finding new and more efficient instruments to deal with current

and future backsliding. The ideas floating around are formulated in a language that illiberal leaders also understand: the language of money. There are two major developments at the EU level that favour such debates: Brexit and the planning of the next Multiannual Financial Framework, the EU’s budget. From a budgetary point of view, Brexit means that the EU loses a net contributing country. This either leads to a smaller EU budget or the member states need to be persuaded to increase their payments. Since the latter seems to be the likelier scenario during the EU budget negotiations, it is vital that all European leaders, from Germany to Cyprus can explain to their electorates that their money is delivering public goods rather than serving private interests.

As a consequence, new tools to eradicate waste and abuse will be important. In this context, the widely reported stories about István Tiborcz, Viktor Orbán’s son-in-law, and Lőrinc Mészáros, the prime minister’s friend and mayor of Felcsút, the village where Orbán was born, make it all the more likely that new political conditionalities in cohesion policy will be introduced. In the Tiborcz case, the EU’s anti-fraud office, OLAF, called on Brussels to recoup €40m¹ after it found ‘serious irregularities’ and a ‘conflict of interest’ following a two-year investigation into EU-funded street-lighting contracts. A former gas fitter, Mészáros now owns hundreds of companies, in construction, real estate, media, wine, farming and beyond. According to estimates by the Hungarian transparency website Átlátszó, 83 per cent of Mészáros family companies’ earnings comes from EU sources.² At the same time, the Hungarian government has attacked Brussels for years, and it even launched a ‘Stop Brussels’ billboard campaign last year.³

It is unlikely that net contributors will continue tolerating this kind of behaviour in the next budgetary cycle. The wish of several member states to link EU funds to the Community’s fundamental values is understandable. However, it is far from evident how a direct link between EU money and rule of law can be established in practice. It can be seen from the debates over the last few years that it is a huge challenge and may take several years to decide what exactly is the point at which a country crosses the red line in terms of the quality of democracy. Even if there was agreement on what ‘quality of democracy’ means, expect endless debates in each individual case should this link between democracy and finance be applied in the future EU budget.

What seems to be more feasible is the establishment of an EU prosecutor with powers beyond OLAF, and linking the EU

funds to joining the European Public Prosecutor’s Office for all EU member states. Another potential way to prevent the abuse of EU funds would be a more active role of the European Commission in the allocation of structural funds. More direct management by the Commission would mean that EU funds would be distributed without the involvement of local networks in cases where suspicion of corruption is strong. According to the current rules, the Commission can suspend programmes when it finds irregularities, but the member state does not lose the resources. The combination of the threat of losing funds and transferring them to the European Commission’s direct management, and an EU prosecutor who would investigate fraud and corruption cases involving cohesion and agricultural funds, has the potential to become a powerful policy mix. These two instruments could contribute to stopping financing the oligarchs of illiberal democracies, and increase the probability of reaching the original goal of cohesion policy: to help poorer regions and countries catching up.

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Refugees, bureaucrats, and identity conflicts

Policy implementation when dealing with transboundary crises requires understanding of micro-level dynamics argues **Katerina Glyniadaki**

Imagine you are a case worker deciding on asylum applications. You have the situation of a young Syrian man who comes from a region that is a recognized war zone, but who is giving you obviously false information on the specific conditions for fleeing. Do you give asylum or do you reject him?

Imagine you are a feminist social worker dealing with domestic violence in refugee shelters. A victim of domestic violence speaks to you about her case, but is unwilling to make an official report, and asks you for confidentiality. Do you report it anyway, or do you follow her wish?

Imagine you are a volunteer guardian of an unaccompanied minor. One day he tells you he is going to travel outside the legally permitted area. Do you report this to his shelter, or do you advise him informally against it?

The multiplicity of dilemmas facing those working on the front line and the importance of human judgement have long played a central role in the study of policy implementation (Lipsky, 1980). Such dynamics have also been central to the current migration crisis, and their effects are even more salient given the social cleavages involved. In light of an unprecedented migration influx in the EU, an unprecedented response was needed to manage the 'crisis' situation. In this new arrangement where both migrants and migration service providers rapidly increased in number and heterogeneity, the micro-level interactions among them also increased in complexity, and so did the dilemmas of the workers at the street level. In this changing and challenging environment, it is worth turning our attention to three pressing questions: Who are the new street-level bureaucrats? How do they affect policy implementation? And, what are the new identity-related dilemmas they face?

Firstly, the 'welcome culture' at the peak of the EU migrant crisis, as well as the continuing engagement of the civil society in the effort to integrate the newcomers, call for revisiting the very definition of 'street-level-bureaucrats'. Apart from the traditional public servants, there is now a plurality of social actors working at the street level with asylum seekers, refugees and immigrants, including NGOs and for-profit company employees, as well as volunteers and activists. Think of an asylum seeker, who lives at a shelter run by a for-profit company, receives legal advice from a volunteer lawyer at an international organization, and attends language and recreation classes by an NGO that uses state-funds and is run by activists. As these different types of organizations work so closely to-

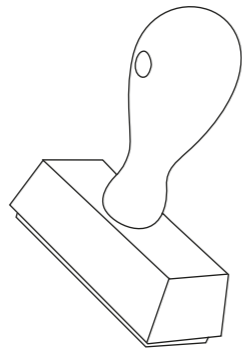
gether, it becomes increasingly difficult to draw lines between public, private and voluntary service providers. Therefore, there is a new amalgam of street-service providers which is larger, more complex, and more diverse than before.

Secondly, the high proportion of service providers who have self-selected into their roles has important implications for policy implementation, especially against the background of increasingly restrictive asylum policies. As many of these additional actors often have long-standing commitments towards supporting and promoting the rights of migrants, one would expect to see greater effort towards meeting the migrants' needs, such as asylum applications or integration, than if the same tasks were left in the hands of public servants alone. In an imaginary spectrum of attitudes towards migrants, where 0 stands for 'they should all be allowed to come and stay without any restriction' and 10 stands for 'no foreigner should come in and they should all be deported', most of today's service providers are likely to position themselves on the 0-5 side of the spectrum. Especially in 'grey zone' situations as the ones described above, this general predisposition matters the most, as discretionary behaviour is more likely to translate to bending the rules in a way that supports the rights of migrants.

Thirdly, along with the service providers, the population of newcomers is also more diverse than ever before. Indeed, the asylum seekers coming to the EU today are far from a homogenous group, in terms of nationality, race, ethnicity, religion, socio-economic status or educational attainment. Thus, at the street level where micro-interactions take place, any 'one-size fits all' policy represents a tricky balancing act for anyone expected to enact it. Here, the individual values and beliefs of the service providers, as well as the social groups they identify with, and their occupational role expectations, may lead to a number of internal conflicts, or conflicts with their colleagues, their supervisors, or the migrants themselves. More specifically, three sources of such identity-related conflicts may arise:

Ideological orientation may refer to political, religious or humanitarian values an individual holds, and which, in their perception, set them apart from others. According to this self-view, an individual may decide for instance whether and to what extent they should help those in need. In the context of street-level service provision, for instance, a passionate left-wing supporter who advocates for 'no borders', would be puzzled when the organization they volunteer for offers more and more immediate opportunities for integration to those





who have high chances for asylum recognition, versus those who come from the so-called 'safe countries'.

Social group identity, generally referring to the sense of self deriving from the membership in a particular social group (see Tajfel and Turner, 1979: 33-7), could translate to a range of potential conflicts for today's service providers. Think of a feminist activist who is called to serve a family whose sons enjoy more rights than their daughters, a Jewish NGO's employee seeing their services being rejected by Palestinian asylum seekers, or a homosexual lawyer who finds out that their client has highly homophobic attitudes.

Occupational identity, describing the particular role specifications and expectations, also comes with a number of potential dilemmas. How would a judge, who is expected to make fair decisions, deal with the case of an applicant who claims to having a mental health disorder but not enough time to prove it due to the new accelerated procedures directive? Or, what about a social worker caring for minors, some of whom exhibit delinquent tendencies, but if reported they could be jailed or deported?

As shown here, each of these categories of identity conflicts incubates a wide range of dilemmas, and an even wider range of coping strategies one may employ to resolve them. Needless to say, these categories are not mutually exclusive but exist in conjunction. That is, there could be a politically conservative, of migrant-background judge, a humanitarian, homosexual case worker, or an anarchist, upper-class volunteer. Not only are the grey areas facing each individual increasing, so is the array of dilemmas.

For the study and practice of transboundary crisis management, thus, it would be useful to enhance our understanding of the diverse nature of street-level service providers and the

multiple dilemmas occurring in their day-to-day practices. Through their responses to such challenging situations, they substantially determine policy implementation, as well as the overall policy 'success' or 'failure'. Navigating the range of dilemmas is of course not just reserved for the workers at the street level, but it deserves wider recognition and debate.

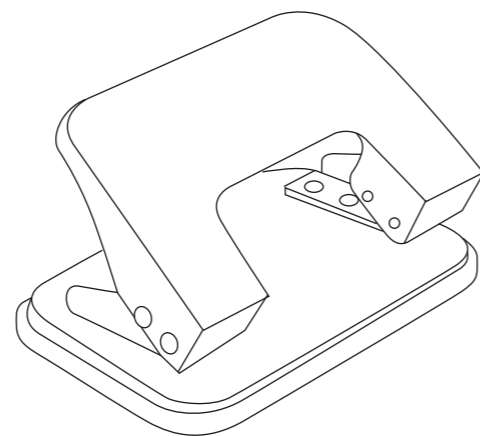
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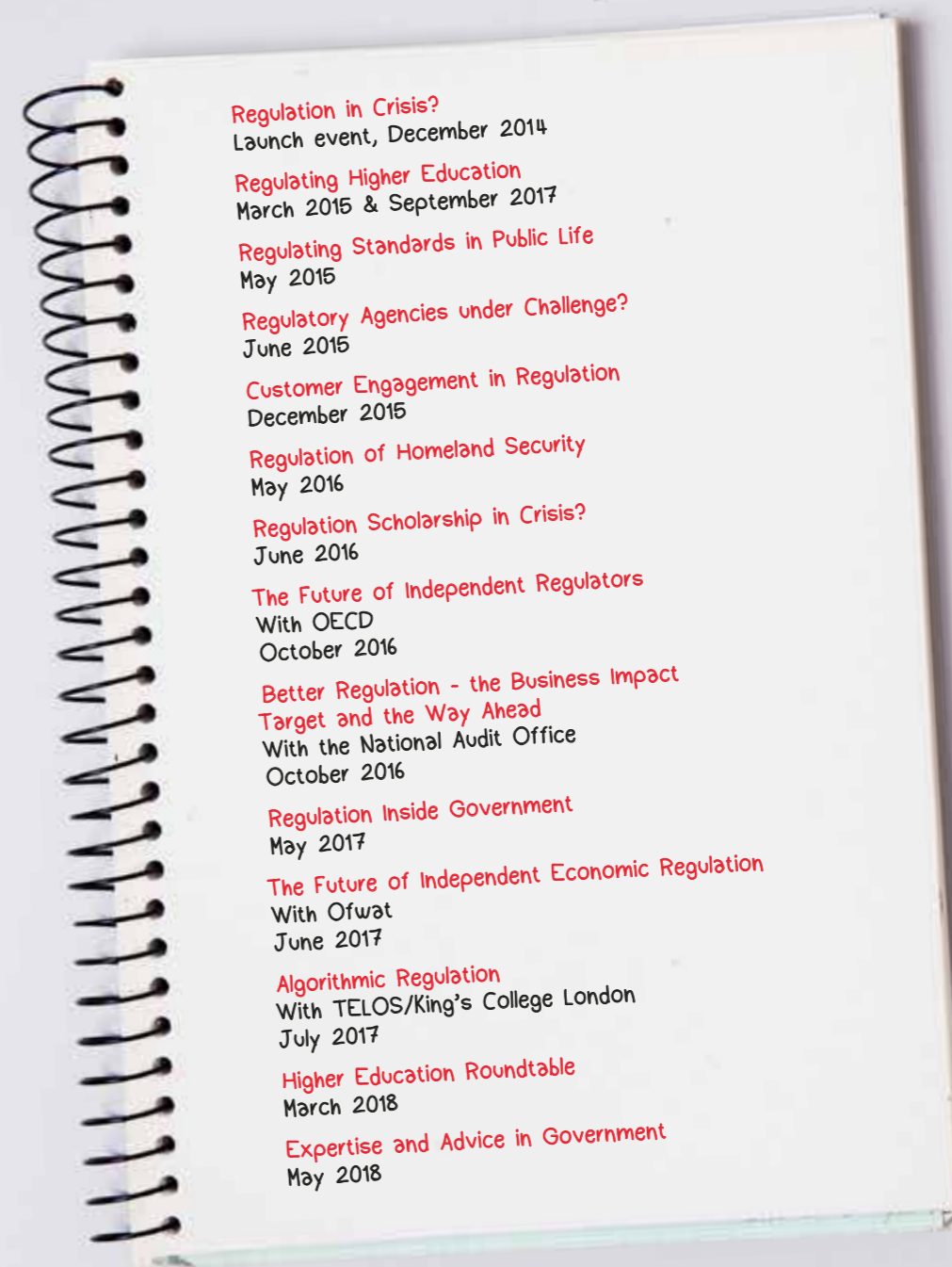
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Regulation in Crisis?

carr's fundamental mission is to provide a venue for international, leading research and exchange over cutting edge debates in the fields of risk and regulation. In the course of the past three years, **carr** benefitted from funding by the ESRC, to bring together international researchers and practitioners to explore different aspects of regulation in crisis in a series of seminars and workshops, 2014-2018 (with the ESRC-based funding running out in 2017).

The particular focus of these events was on three central questions: (i) regulation in sectors of crisis, (ii) regulation as a source of crisis, and (iii) regulation scholarship in crisis. This involved research workshops, practitioner-led panel discussions and lectures. The seminar series provided the opportunity to collaborate with regulatory bodies and provided the springboard for new research projects, especially in the area of customer engagement.



Catastrophic risk and equality of voice – learning from the Grenfell Tower disaster

Regulatory attention needs to shift from blame to learning
argues **Gill Kernick**

Major accidents create imperative for change. The Piper Alpha explosion (167 deaths) and the Macondo well blowout (11 deaths and the industry's largest marine oil spill) were seminal events leading to lasting change in the oil and gas industry. The Grenfell Tower fire (72 deaths) offers the same opportunity. Yet, to be a catalyst for meaningful change, the current narrative needs to shift from a pre-occupation with blame allocation or avoidance to learning, and from a compulsion with providing quick, ready-made solutions to in-depth inquiry.

My interest in Grenfell is both personal and professional. I partner organizations in high hazard industries in building the leadership capability and culture to prevent catastrophic events. From 2011 to 2014 I lived on the 21st floor of Grenfell Tower. I watched it burn. Recently I sat with a survivor as she spoke of calls following the fire telling her the police had found another part of her brother's skull. He lived on my floor.

I have become increasingly disturbed at the nature of the post-Grenfell narrative – it tends to focus on blaming or offering over-hasty conclusions. Neither of which will lead to systemic change.

A fixation on blame, which invokes the need to defend and protect, runs counter to learning. That does not mean that those found culpable should not be held to account. But if we stop at human error, the complex systemic causes of tragedies, such as the Grenfell Tower disaster, will not be understood and tackled, and opportunities for lasting regulatory change will be lost. The individuals and organizations found culpable will be replaced by others in an unchanged context and system. In similar circumstances they will likely make similar decisions. Hence, we need to better understand who and what contributed to the creation of a system that enabled decisions to be made that ultimately allowed Grenfell fire to happen. That will take courage and a safe forum in which to engage in such analyses and likely discomfiting dialogues.

In other words, we need to move from over-hasty conclusions and quick fixes to proper inquiry. The current narrative is scattered with individuals and organizations offering their immediate analysis and solutions. Such reactive solutions will not solve deeper systemic issues. The sage advice 'if I had an hour to solve a problem, I would spend 55 minutes defining the problem' is pertinent here. The Grenfell fire is the output of a complex, dynamic system, and we need to invest time and resources to comprehend that intricacy, so that we can act on it.

Such a shift in focus will raise challenging questions about who we are and what we value as a society. Shifting the context to inquiry and learning may enable the Grenfell fire to be a seminal event leading to lasting systemic change. In this context, the following three lines of inquiry will be pertinent.

What prevents regulatory and legislative systems from learning?

Many argue that you cannot prevent catastrophic (low probability, high consequence) events because they are so rare. Andrew Hopkins (2009: 4, 72) dispels this myth revealing instead their 'depressing sameness', including a chronic inability to learn.

For example, on 11 June 1999, Alexander Linton died in a fire prompting a House of Commons Environment subcommittee investigation into the potential risk of fire spread in buildings via external cladding systems. Evidence given said 'the primary risk ... is that of providing a vehicle for assisting uncontrolled fire spread up the outer face of the building, with the strong possibility of the fire re-entering the building at higher levels' (Select Committee Report, 1998–99: 2; Inside Housing). The subcommittee concluded that 'all external cladding systems should be required either to be entirely non-combustible, or to be proven through full-scale testing not to pose an unacceptable level of risk in terms of fire spread' (Select Committee Report, 2010: point 19). Add to this the failure to learn from the tower block fire in Lakanal House in 2009 in London with six deaths (Guardian, 2017) and there is compelling evidence to suggest we suffer from an inability to learn. What stifled learning in these cases?

One issue relates to the nature of the public inquiries themselves that ensued from these events, the way they were conducted, and their subsequent recommendations implemented. Public inquiries make recommendations to ensure we learn from such disasters and prevent similar events from happening in the future. Yet, a recent report by the Institute for Government found that the formal checks and procedures in place to ensure that such inquiries lead to change are inadequate (Norris and Shephard, 2017: 3, 4). Since 1990, there have been 68 public inquiries in the UK, and only 6 of these had full scrutiny to hold the government to account for what it did with the recommendations.

How can we ensure the effective implementation of public inquiry recommendations? How can we move beyond understanding what happened to affect change? What factors

hinder regulatory change and learning? What role might siloed regulatory thinking and organization play here? Whose interests are served by not learning? And what can be done to promote regulatory conversation and capacity building across sectoral boundaries and hierarchies?

Regulation and the nature of catastrophic risk

There has been little debate about catastrophic risk and its specific nature after the Grenfell fire, and I would argue this is a critical area to engage with. Recent catastrophic events have occurred in high performing organizations, including BP's Macondo blowout (Dekker, 2014: 351). One lesson from such events is the need to view them distinctly from higher frequency, lower consequence events (e.g. slips, trips and falls). A major accident is not caused by a single event, it is a systemic outcome resulting from several latent (pre-existing and often hidden) conditions, often triggered by an active failure (e.g. an ignition source).

Maintaining a state of chronic unease – imagining and mitigating against the worst thing that could go wrong – is key to preventing these kinds of events. This includes consideration of the unintended consequences of decisions and regulatory actions. Prescriptive regulation and an increased bureaucratization and measurement of safety may have the unintended consequence of suggesting that risk is under control, of encouraging a sense of invulnerability, and, thereby, leaving us blind to catastrophic risk (Dekker, 2014: 351).

We need to create a culture of vulnerability, focused on making the right decisions regarding safety, rather than relying on regulations to keep us safe. How can regulation and regulators add to a sense of invulnerability? Regulations should never replace the accountability of those in power for making de-

isions that ensure people's safety. The Grenfell accident is, I believe, ultimately a failure of leadership and duty of care.

Ensuring equality of voice

In safe cultures all lives matter and they matter equally. And all voices count. Those in power work to ensure the voices of those with less power are both heard and count. Yet, investigations into major accidents often reveal cultures where people's voices are not heard. This appears to have been the case in the Grenfell fire. Those at the frontline of safety have a unique and tacit knowledge (Dekker, 2014: 352; Kernick, 2017), which regulators need to tap into. What biases, prejudices, and blind spots do regulators hold that prevent equality of voice and tapping into the tacit knowledge of those they regulate, e.g. residents?

The Grenfell accident provides a unique opportunity for change. Engendering such change will require rigorous, creative intellectual effort and courage. We must shift the context of the narrative to one of learning and inquiry. For the problems of today will not be solved by the same level of thinking that created them.

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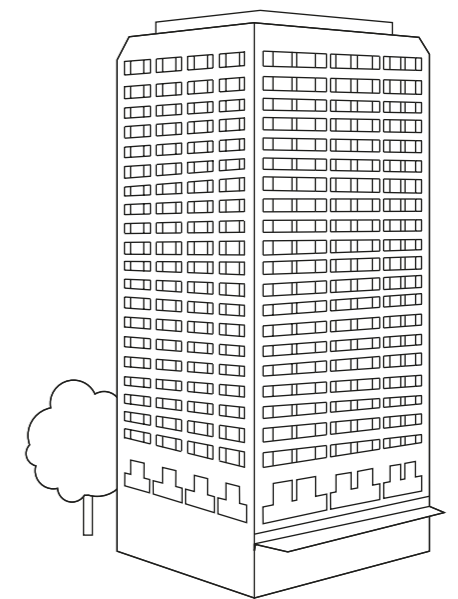
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Redefining the boundaries of the regulatory state

Bruno Queiroz Cunha highlights the importance of interdependence in regulation

Boundaries are at the heart of two of the most central problems in regulation: the problem of 'commitment' and the problem of 'politicization'. In the former case, boundaries are supposed to prevent regulators from becoming too exposed to the effects of political, social or economic instability; in the case of the latter, boundaries are supposed to prevent political executives from interfering in the day-to-day decision-making of these agencies. The mantra of 'independence' has been used to create a myth of technocratic and modern decision-making that is far removed from the days of informal bargaining between (often state-owned) regulated industries and election-seeking politicians.

Discourses about the importance of 'independence' resonated with the diagnosed problems of state-industry relationships in various jurisdictions as well. However, the continued insistence on 'independence' runs the risk of becoming self-defeating. Enthusiasts of regulatory 'independence' seem so keen on maintaining boundaries, seeing any engagement with political and industry processes as an example of impending doom that will inevitably lead to a return to what, for them, represents outdated, cosy informal network-based policy approaches.

Independence is, in the eyes of these formal independence enthusiasts, primarily about separation from politics. Whether it relates to removing the dead hand of the finance ministry from the agency's budget or about dealing with political interests, the view is that 'regulators play a key role in ensuring that projects are attractive for investors, yet they play only a limited role in guiding policy formulation' (OECD, 2017: 1). This reference to the age old 'politics-administration' dichotomy resonates with those who see regulation and bureaucracy as technocratic solutions to be separated from the political machinations.

However, increasingly, evidence suggests that such a view of independence is hardly supportive of developing regulatory capacity. As regulatory regimes and their underlying understandings mature, there comes an acknowledgment that regulation and, therefore, regulators do play a central part in setting the policy framework, that they need to engage pro-actively with politics and with industry instead of sitting behind formal statutory boundaries.

Indeed, there is plenty of empirical evidence that active engagement enhances rather than reduces the autonomy of regulators. Regulatory agencies in a number of national and sec-

toral contexts had to go through periods of criticism, industry fiasco and collapse, and budgetary restraint. Those that navigated these periods pro-actively – in co-operation with regulatees and in dialogue with political principals – succeeded in developing their reputation and therefore also their autonomy, even though, formally, one might say that their independence was threatened by 'undue influence'.

So what does active boundary management look like? One is a clear understanding of the ways in which agencies can shape agendas and formulate policies in their spheres of influence: 'few students of regulation would deny that agencies, in their area of competence, are important participants in the agenda-setting process' (Majone, 2006; similarly Ossege, 2016). Examples exist of how regulators enhance their reputation by actively engaging with their national political executives. One case in point is the Norwegian oil regulator, the Norwegian Petroleum Directorate (NPD), that regards itself as an 'advisor' and 'knowledge broker'. Active engagement enhances state effectiveness and regulatory capacity as the regulator gains better knowledge of the industry it is overseeing and accepts sharing it upwards and sideways. In the UK, Ofgem, the energy regulator, has also sought to enhance its autonomy by seeking to create a more flexible way of operating, including sharing information and being more open about dealing with different stakeholders, including government.

The same applies to transition contexts. Parrado and Salvador (2011) have highlighted in some political systems regulators are much better resourced than ministerial departments and therefore influence their policy sector considerably. Parrado and Salvador's work in this area applies especially to Latin America. In cases where mutual suspicions run high, regulators are afraid of dealing with ministries, and ministries want to flex their superior muscle to regulators. Nevertheless, what is needed in these circumstances is not a rigid regulatory mandate, but one that encourages regulators to assume broader functions and to contribute with their expertise to decision-making.

Of course, advocates of more fluid boundaries in the regulatory state will be accused of inviting capture and political control, and adding uncertainty. Yet, after over a quarter of a century of experience with regulatory agencies, such criticisms run somewhat hollow. We do know more about boundary lines and where such lines need to be drawn so as to preserve an agency's reputation. However, that does not mean that regulators can hide behind their understanding of



Competition policy in troubled times?

Martin Lodge argues that competition as a policy objective requires renewed consideration

formal statutory provisions. In other words, regulators should see themselves through the lens of 'complementarity' not 'independence' (see for instance Svava, 2001). In doing so, they need to become part of policy formulation processes, to develop relationships with their industry that is both advisory and supervisory, and they need to understand that engaging with stakeholders does not imply reputation or legitimacy losses. There is no other way for regulators – they need 'to get their hands dirty' if they want to regulate successfully.

However, such a view of complementarity does require an elected government that does grant regulators this legitimate space; it also requires stakeholders to engage with regulators rather than regard them as inconvenient actors that can be sidelined through exclusive political access or drawn-out judicial review channels.

In sum, it is time to move away from stale debates about independence. They do not reflect the real world of regulation, and thereby run the risk of impeding actual regulatory capacity building. It is time to reconsider redrawing the boundaries of the regulatory state.

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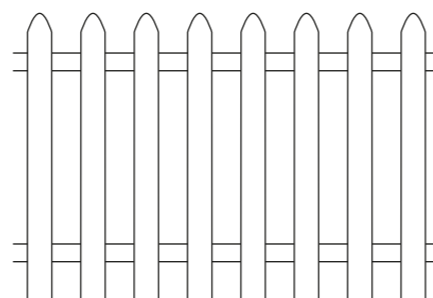
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Over the past three decades, the primacy of competition and market-based ideas has been at the heart of public policy. More recently, this unquestioned status of competition has been shaken. For some, the c-word evokes images of a misplaced trust in market-type mechanisms. Whether it is questions over private finance initiatives, incomprehensible contractual arrangements, highly diffused responsibility (avoidance), or the emergence of new technological giants, the world of competition and regulation is widely seen as requiring a different approach. For others, the c-word's successful dominance is under threat, putting major achievements in policy since the 1970s at risk. Accordingly, great apprehension is being expressed about the potential dangers lurking outside the competition policy community.

What can explain this change in policy mood? It is, after all, certainly the case that sophisticated and embedded transnational competition policy-mechanisms and communities exist. Processes of reasoning and appeal bear witness to its well established status.

However, once we start looking more closely at competition policy as a technology and as an overall policy programme, certain strains appear that indicate why the c-word may indeed be living in troubled times. Leaving Brexit-related questions aside, one question is what competition as a set of instruments actually intends to achieve. The institutional case-by-case approach shaping UK policy could be accused of lacking an overall 'philosophy'. Highlighting that competition policy seeks to enhance 'consumer welfare' might be an appealing economic concept, but it is not clear what the moral purpose of 'consumer welfare' is. Going back to ordo-liberal roots might offer some support. Accordingly, competition policy was about market fairness: to protect individuals from economic and political power concentrations so as to enable them to flourish socially and economically. It is not clear whether contemporary competition policy visualizes such a moral purpose, especially when 'fairness' is regarded as an inappropriate policy objective and needs to be 're-translated' into concerns about 'vulnerable consumers' so as to attract the attention of competition watchdogs.

Similarly, there are also questions about the role of institutions in competition policy. For some, strong and authoritative institutions are critical for policing markets, whereas others are less interested in state-based institutions overseeing markets.

Markets are also changing, requiring readjustment in understandings of vertical and horizontal mergers. Debates are ongoing whether competition law and policy has the appropriate tools (and interest) to deal with the rise of digital platforms and vertically integrated companies whose concentrated market power is difficult to assess in orthodox ways. The same applies to questions as to whether competition policy has taken the eye off the ball in view of debates regarding growing market concentration and industry profitability. These issues are disputed. However, they feed into much wider debates about the lack of responsiveness in both political and economic systems to the experience of the median citizen. It is arguably this wider dissatisfaction with the lack of responsiveness of political and economic systems that is fuelling the discontent with the c-word.

Focusing on competition policy as a programme highlights many of the sources of discontent. It suggests that the c-word spread widely without much reflection about the prerequisites of marketization and its limits. The health system in England with its emphasis on market-based mechanisms offers a case in point. Designed to incentivize organizations to compete against each other in (assumed) times of plenty, these supposedly market-type mechanisms fit poorly in times of resource constraint and capacity stretch and stand in the way of collaboration. Even in imagined times of plenty, demands for local autonomy and entrepreneurial 'innovation' would clash with principles of central government-based regulation and control. More fundamentally, competition-based mechanisms are largely seen as increasing transaction costs to the benefit of rent-seeking consultancies without actually incurring risks to private providers. The need to sustain services means that failure does not (and arguably cannot) mean 'exit'; leaving the taxpayer as ultimate lender of last resort. Similarly, there are also questions as to whether markets deliver – in view of declining service quality and lack of responsiveness to consumer needs. The idea of price 'comparison' also becomes increasingly problematic as algorithms maximize 'bespoke' differentiation and obfuscation. If the experience of the 'market' is inherently poor, competition policy enthusiasts cannot then side-step such criticism by pointing to 'competition' and 'consumer choice' while turning up their noses at (for them) sub-optimal ('irrational') consumer choices.

Furthermore, there are also signs of the over-extended application of the c-word. Public services are allegedly run as a 'market' where consumers are supposed to reign sovereign



through the exercise of 'choice'. Such abstract ideals might have some appeal for some, but fail to acknowledge differences when it comes to the type of goods that individuals are supposed to 'choose'. It also raises questions as to how 'goods' and 'services' are supposed to be evaluated, especially in areas where assessment of questions of 'price' and 'quality' is highly complex. There are differences in markets for a tin of baked beans, a package holiday, a heart valve replacement, toilet paper, or the 'purchase' of a specific education towards a degree qualification. A lack of sophistication and differentiation of understanding what kind of markets and goods one is talking about further undermines competition as an overarching policy principle.

Finally, competition as a programmatic idea also has a rather limited view of organizations. It assumes unitary actors that might be steered to behave in ways that enhance efficiency and innovative practices. However, organizations are usually oriented towards liability management. In other words, demands for more 'competition' and consumer 'choice' by providing information are usually met with blame-and-liability-avoiding responses. Such responses usually result in exactly the opposite outcomes than those intended by advocates of decentralized markets where 'discovery mechanisms' rule supreme.

Over five decades ago, Albert Hirschman noted that public policy usually moved in pendulum swings. Periods of market-based provision were replaced by more collective forms of provision – in view of the negative side-effects generated by such market-based mechanisms. Equally, a period of more collective forms of public service provision would inevitably give rise to calls for more individualized (market-based) forms of provision. We might be living in a period of a Hirschman-esque pendulum swing. In view of widespread concern about the rising power of certain types of corporations, criticism of the failings in market-based provision of public services, and

greater awareness of the transaction costs of 'choice', these are indeed troubled times for competition law and policy. Debates are not just about the appropriateness of existing approaches in view of the different kinds of companies, types of mergers and demands for state aid.

More fundamentally, what is at stake is a more thorough probing as to what kind of choice should be at the heart of different kinds of markets, about the kind of information that should govern 'choice' by individuals and what the limits of 'choice' and 'discovery' should be in economic and social life. It is about understanding what the c-word is supposed to achieve. Such probing cannot be conducted by raising the drawbridges to prevent the spread of 'mortally dangerous' ideas, but it requires an open engagement about more appropriate means of understanding the ways in which individual citizens can be supported in fully and confidently participating in economic and social life.

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Human factors in financial trading

Meghan Leaver highlights the importance of human factors in risk management

The recent financial crisis was economically and socially destabilizing: millions of jobs and billions of pounds of household income were lost, resulting in pervasive unemployment, inequality and destabilizing global economies (Barr et al., 2012). The financial failure exhibited complex organizational properties, such as tight coupling (e.g. the bankruptcy of Lehman Brothers triggering the collapse of other key organizations), the prioritization of production over safety (e.g. profit over the welfare of stakeholders) and a collective inaction to heed early warning signs (e.g. credit derivative swaps and mortgage-backed securities).

Following the crisis, regulatory reactions generated various interventions aimed at improving risk management such as the mining of large amounts of trade data (e.g. for portfolio compression and reconciliation); third-party trade matching (e.g. a third party matches the trades between two counterparts to ensure all trades are booked into the individual organization's portfolios); the emergence of targeted corporate governance codes (e.g. the Bank of England Senior Management Regime, SMR); new areas of work driven by legislation such as Basel II, MFID and EMIR (e.g. operational compliance teams); and a more central role for the Financial Conduct Authority (UK). While the aims of increasing regulation of the financial services (e.g. promoting transparency, predictability and a reduction in acts of misconduct) may lead to a short-term adjustment of organizational behaviours and practices (e.g. new operating procedures, creation of oversight teams and dedicated whistle-blower posts), the solutions are superficial and do not target the deeper-held beliefs and organizational factors that support and promote the behaviours and practices that lead to error.

Recent research in the financial sector has adopted human factors approaches to extract and synthesize critical information on how the behaviours and practices (e.g. systemic rate rigging) within the industry eroded risk management processes. Such research has generated meaningful insight into how risk is managed and produced concrete findings on the nature and consequence of human factors problems in financial trading (e.g. errors, skill gaps, resources) that underpin them (Power et al., 2013; Ring et al., 2016; Leaver and Reader, 2015; 2016). In the scope of this research, human factors are considered aspects of human performance and system design that contribute to problems in managing risk in financial trading. The development and application of a novel tool for collecting and analysing operational incidents in financial

trading – the Financial Incident Analysis Systems (FINANS) – has led to a deeper understanding of the skills (e.g. gather and codify complex sets of data) and competencies (e.g. ability to maintain situation awareness during this complex activity) that underpin error in the financial services. For instance, findings from the application of FINANS identifies the rate of error in trading (approximately 1 per cent), reveals a broad description of the skills that underpin error (e.g. slip/lapse, human computer interaction) and reveals that the skills that help the organization overcome error are rooted in the social system (e.g. teamwork and situation awareness) (Leaver and Reader, 2016). This research importantly serves to challenge current conceptualizations of financial trading as 'individualized' and counters narratives focusing on traders who are unethical 'rule breakers'. Instead, it emphasizes the value of a systemic approach, whereby human factors approaches are used to explain why risky behaviours in financial trading occur. A systems-based approach acknowledges that failures are not necessarily down to one individual but reflect broader social and cognitive problems (e.g. lapses in human vigilance due to working conditions) and poorly designed systems. This approach has been successfully applied in other high risk domains such as aviation, military, rail and increasingly in the provision of healthcare. A systemic approach seeks to identify situations or factors that give rise to human error, and design and implement changes to the underlying system in order to reduce the occurrence of errors or minimize their impact on risk and safety outcomes. The application of a systems approach has important implications of the future risk management and regulation of financial trading.

The application of FINANS more broadly has important implications for the future regulation of the financial services. For example, the wider application of FINANS could be used to facilitate the benchmarking and assessment of other financial services firms industry-wide, similarly to how incident collection is done across other high risk industries such as aviation and healthcare. As it stands, we currently do not have a good understanding of how the cultures within these firms differ, and we cannot empirically evidence what good or bad performance looks like relative to performance and activity. Expanding the application of FINANS would help to establish what is 'normal' across the industry and to describe the profiles of what goes wrong within and across firms. For example, rolling out the system to assess other firms of generalizable size and structure would help to determine a typology of error within the financial services more broadly. Additionally, the use of



FINANS over time within participating organizations could lead to the establishment of longitudinal trends, which could then be triangulated with other data (such as market volatility and other market data) to ascertain whether the risk profile of the organization fluctuates in sync with the market. Moreover, we could analyse if there is a relationship between, and the impact of, risk profile changes (e.g. an increase or decrease in risky behaviours and perceptions of risk) as a result of specific organizational changes, such as management turnover.

Furthermore, future regulation might assess how the offending organizations would perform using FINANS. Following the previous point about extending the use of FINANS across the industry in order to generate meaningful benchmarking abilities and the sharing of lessons learned, FINANS outcomes in these organizations could be triangulated with data from safety culture measurement. Safety culture theory is used to examine how the organizational environment shapes the way people behave and think in relation to risk and provides a rich understanding of how social environments directly influence risk practices and problems in safety culture often underlie mishaps within other high risk domains (e.g. aviation, health-care, energy). Recent literature demonstrates that safety culture shapes how operators behave and think in relation to risk, and this is central to understanding the conditions under which risk in financial trading can be effectively managed. Although financial trading is not a safety-critical industry, mishaps are hugely damaging for organizations and economies, and their causes (e.g. managerial pressure to show profit, out-of-date procedures) are similar to those in other high risk industries (Leaver and Reader, 2017).

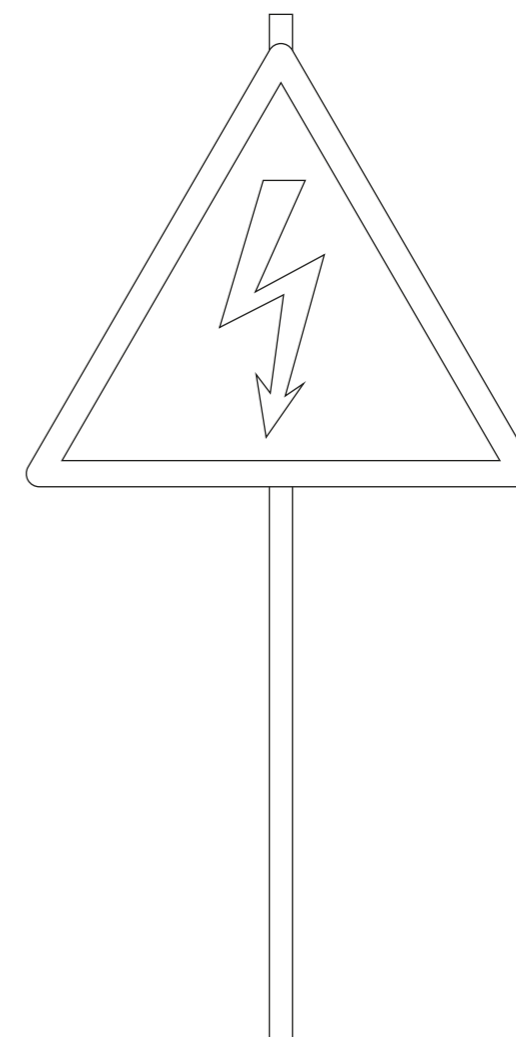
Safety culture research would aim to answer questions such as: do organizations with a more positive safety culture report less critical incidents (e.g. failures)? Do they report more near-misses? What do the features of the incidents look like within these organizations (e.g. broad descriptions of human factors)? Are these features shared across the industry? At a practical level, this research would provide a holistic description of the state of safety across the industry, detailing granular details of the skills needed to ensure safety as well as the environmental factors (e.g. management commitment to safety, the ability to speak up) that support ethical behaviours. At the theoretical level, this research would be informative for future iterations of error research and regulatory frameworks (e.g. industry-wide frameworks, benchmarking).

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Platform capitalism and regulation: a false opposition?

Jeremy Brice highlights the challenges of regulating new business models

If the newspaper headlines of recent years are to be believed then digital marketplaces for goods and services do not mix well with regulation. Not only do such platforms often disrupt traditional business practices and the regulatory protections configured around them, but many appear determined to evade regulatory oversight. Stories abound of taxi platform Uber, recently stripped of its licenses to operate in London and York over passenger safety and data protection concerns, launching its services in defiance of local regulations and deploying specialist software to impede regulatory investigation. City authorities in Barcelona have fined accommodation rental service Airbnb €600,000 for facilitating the letting of unlicensed and untaxed holiday apartments. Meanwhile, takeaway delivery platform Deliveroo remains embroiled in seemingly endless legal disputes against couriers contesting its employment practices.

That convoluted regulatory proceedings against companies less than a decade old now qualify regularly as front-page news underlines how rapidly these new digital intermediaries have infiltrated everyday activities from hailing a taxi to purchasing groceries. The mundane business of food shopping, the focus of my own research, aptly illustrates their growing reach. Many London residents now purchase their groceries through Amazon Fresh, or eat lunches delivered by Uber EATS. Meanwhile, with roughly half of all takeaway meals in the UK now being ordered via an online marketplace, the recent merger between leading takeaway order aggregation platforms Just Eat and Hungryhouse has attracted extensive scrutiny from competition regulators concerned by its potentially anti-competitive effects (CMA, 2017). Yet if these online intermediaries are becoming increasingly vital to the business of food, they nevertheless bear little resemblance to conventional food businesses. They do not produce, package or prepare food. Nor do they buy food from its producers before selling it on to customers, as would a traditional food distributor or retailer.

Instead, companies such as Uber, eBay and Deliveroo provide a digital infrastructure or 'platform' which two or more groups – typically vendors eager to advertise and sell goods, and buyers seeking to purchase them – use to interact and transact with one another. For instance, online takeaway ordering platforms such as Just Eat or Deliveroo enable restaurants to advertise their meals to many consumers and, simultaneously, allow those consumers to compare and choose between a wide range of restaurants. Unlike suppliers to traditional

retailers, these restaurants use the interface provided by the platform operator to sell their own wares to consumers – typically managing their own product range, maintaining ownership over their inventory and setting their own prices. By gathering numerous different buyers and sellers of takeaway meals in a single location, and by facilitating the exchange of payments for goods, such platforms create an online marketplace in which users may trade with one another. In exchange, the platform operator typically extracts a monetary rent (such as a sales commission or administration fee) from each transaction between users – a business model which Nick Srnicek (2017) has termed 'platform capitalism'.

Political economists such as Srnicek argue that ownership over the infrastructures of digital commerce offers such firms unparalleled discretion to shape the design of online marketplaces, and thus to define the terms on which much contemporary economic activity takes place. This, they contend, has created an innovative apparatus of commercial surveillance and control which displays powerful tendencies towards monopoly. These tendencies reflect that in order to be effective (and profitable), marketplace platforms must attract, and facilitate wisely chosen exchanges between, at least two distinct user populations: namely vendors and buyers. Just as a marketplace shunned by shoppers would generate few sales for vendors, so one with no vendors would be unattractive to consumers seeking a wide selection of goods or services. Therefore, as Srnicek (2017: 45) observes: 'the more numerous the users who use a platform, the more valuable the platform becomes ... more users beget more users, which leads to platforms having a natural tendency towards monopolisation.'

This cycle can generate pronounced power asymmetries between operators of dominant platforms and users who rely on a platform's services to do business with one another, particularly in highly fragmented markets such as that for takeaway meals. Events such as the recent Competition and Markets Authority investigation into the merger between Just Eat and Hungryhouse signal that regulators are increasingly alert to this danger. Regulation scholars, too, are increasingly examining how leading online marketplace platforms' tendencies to accumulate disproportionate market share and commercial influence might be restrained (e.g. Ranchordas, 2015). Yet even as regulators confront these challenges, other platforms are emerging which pose somewhat different regulatory issues.

Take, for instance, emerging online marketplaces for home-cooked food such as VizEat and HomeFood. These platforms



enable private individuals to sell takeaway meals prepared in their domestic kitchen or tickets to a pop-up restaurant operating within their home and, in so doing, promise to enhance their enterprise's visibility to potential customers and thus its commercial viability. Such relatively informal home food preparation operations sometimes fit awkwardly within, or conform only intermittently to, regulators' established definitions of what constitutes a food business – creating uncertainty about whether their activities should be subject to regulatory oversight and enforcement. Online marketplaces for home-cooked food thus threaten to open up new zones of regulatory underlap in which unconventional vendors fall beyond the reach of state food regulators, meaning that the risks to food safety which they represent go unattended. It is therefore tempting to assume, as might commentators such as Evgeny Morozov (2015) who attribute to platform capitalism a particular antipathy towards regulation, that such emerging online marketplace platforms will become ungoverned spaces rife with substandard goods, suspect traders and illegal practices. Yet as economists Kevin Boudreau and Andrei Hagiu (2009: 169) note, the same characteristics which endow marketplace platforms with monopolistic propensities arguably also provide platform operators themselves with uniquely effective means of governing the behaviour of their users and shaping the rules of online commerce, should they choose to do so: 'control over the platform also conveys the power to exclude from the ecosystem as a whole. The power to exclude also naturally implies the power to set the terms of access ... and thus to play a role somewhat analogous to the public regulator.'

Ownership of the infrastructures of online commerce thus enables platform operators not only to determine the rules of interaction between buyers and vendors, but also to decide who should be permitted to trade within their marketplaces. It confers on them the authority to define minimum standards of conduct and product quality for vendors, the ability to monitor the behaviour of platform users and the commercial power required to enforce compliance with those standards – whether through economic incentives or by expelling substandard vendors from the marketplace. As such it seems possible that in marketplaces where vendors escape the jurisdiction of state regulators, or in which the role of regulators is unclear, much of the work of assuring food safety and quality might fall to marketplace platform operators' own private standards and

compliance systems. Indeed, cases such as Uber's specifications regarding minimum driver qualifications and vehicle standards illustrate that platform operators already play a growing role in governing vendors' ability to access – and the risks posed by their behaviour within – at least some markets. This raises the tantalizing prospect that state regulators might capitalize on platform operators' capacity to select, scrutinize and influence their marketplace's vendors by enlisting their assistance in gathering information about compliance among vendors or in enforcing sanctions prohibiting non-compliant vendors from trading.

Yet if online marketplace platforms provide powerful tools with which to shape and govern the conduct of users, to what extent – and under which circumstances – do their operators choose to fulfil this quasi-regulatory role? Indeed, should they choose (or be encouraged) to do so? And if so, how effective are their efforts to exert their authority likely to be? Such questions are as yet little examined, and even less understood. But while much remains to be learned about the rapidly evolving and often secretive world of online marketplace platforms, two things are becoming clear. First, while academics and regulators have begun grappling with the question of how the growing powers of digital marketplace platforms should be regulated, an effective response to the challenges posed by platform capitalism will also require investigation and understanding of platform operators' own emerging roles in the regulation of online economic activities. In particular, such actors' efforts to identify non-compliant traders and to exclude them from online marketplaces seem likely to inform the governance of commercial activity in increasingly consequential ways in the future. It may even catalyse the invention of new accommodations, or novel forms of partnership, between platform operators and state regulators. For instance, regulators might come to rely on the assistance of platform operators in monitoring the activities of unconventional online vendors with which they may otherwise struggle to engage, or discover that prohibiting non-compliant vendors from trading requires the cooperation of platform operators. Second, therefore, accounts which depict platform capitalism as being simply inimical to regulation are likely at best to prove overly simplistic and, at worst, to encourage counterproductive policy choices. In short, the opposition between platform capitalism and regulation may well be a false one.

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carr news

We congratulate **carr** research associate **Flavia Donadelli** to her appointment as Lecturer in Public Policy at the School of Government, Victoria University Wellington, New Zealand.

We also congratulate **carr** research associate **Will Jennings** (Southampton University) for being made Fellow of the Academy of the Social Sciences.

We were deeply saddened to learn about the untimely passing of **Michael Moran** (Manchester University). He was part of the advisory committee during the initial years of **carr** in the early 2000s and continued to generously support and advise **carr** over the years.

carr publications

Accounting for blind spots

Martin Lodge, in T. Bach and K. Wegrich (eds) *The blind spots of public bureaucracy and the politics of non-coordination*, Palgrave, pp. 29-48.

Creativity, risk and the research impact agenda in the United Kingdom

Michael Power (2018), *European Review* 26 (S1): S25-34.

Near misses in financial trading: skills for capturing and averting error

Alex Griffiths, Meghan Leaver and Tom Reader, *Human Factors*, <https://doi.org/10.1177/0018720818769598>

Review symposium: Wendy Espeland and Michael Sauder, Engines of Anxiety: Academic Rankings, Reputation, and Accountability. New York, Russell Sage Foundation, 2016

Andrea Mennicken, Christine Musselin, Marion Fourcade, 2018, *Socio-Economic Review* 16 (1): 207-18.

The Foucault effect in organization studies

Sverre Raffnsøe, Andrea Mennicken and Peter Miller, *Organization Studies*, doi.org/10.1177/0170840617745110

Welfare through regulatory means: eviction and repossession policies in Singapore

Hanan Haber, Nir Kosti and David Levi-Faur, *Journal of Housing Studies*, doi.org/10.1080/02673037.2018.1447095

carr events

After three years of intensive work, the Horizon2020-funded **TransCrisis** project came to a close in March. The concluding events involved specific workshops and conferences. One workshop on 'Are European institutions ready for crisis?' was held in Brussels at the Centre for European Policy Studies (CEPS) in Brussels. Speakers included Lydie Cabane and Martin Lodge, James Moran (CEPS), Björn Christian Paterok (State of Thuringia), Mark Rhinard (Stockholm) and Kathrin Schick (VOICE).

carr also held a specific event at the LSE on 'Transboundary crises and the future of the European Union'. Chaired by Niamh Moloney (LSE), this seminar featured presentations by Nicolas Veron (Bruegel), Jacob Kringen (Norwegian Directorate for Civil Protection), Lydie Cabane and Martin Lodge.

Finally, **TransCrisis** and a fellow Horizon2020 consortium, ENLIGHTEN, held a joint event in Brussels involving researchers from both projects. In addition, Lydie Cabane and Martin Lodge presented their research at the OECD, SciencesPo Paris, and at the Hertie School of Governance.

As part of the joint research programme on 'Regulatory Capitalism and Development in Latin America', **carr** and its partner organization CIDE convened a number of events both in Mexico City and London. In November, Martin Lodge participated in a range of academic and knowledge exchange workshops in Mexico City. In December, Mauricio Dussage-Laguna and his colleagues Judith Mariscal and Alejandra Elizondo visited **carr** and presented papers during a joint workshop. Other presentations involved Lydie Cabane (**carr**), Bruno Cunha (IPEA), Rita Samiolo (KCL) and Afshin Mehrpouya (HEC Paris).

The QUAD group met for its international consortium meeting at the Helmut-Schmidt-University in Hamburg in October 2017.

In March 2018, **carr** launched its 'Higher Education Roundtable', a biannual informal discussion series about themes in the regulation and governance of contemporary higher education. Keynote speaker at the first event was Sir Michael Barber, chair of the new Office for Students.

carr activities

In winter 2017, **Jeremy Brice** presented papers on 'Regulating food in the platform economy' at the Food Standards Agency Social Science Symposium and on 'Tending the unanticipated: strategic ignorance, risk management and the boundaries of the reasonably foreseeable' at the Anticipation 2017 conference.

Lydie Cabane presented a paper on 'Penser les catastrophes en Afrique : des crises aux changements environnementaux' at the Journées du Réseau de Recherche sur l'Innovation, Les enjeux environnementaux in Paris in November 2017.

Alex Griffiths presented research on 'Intelligent monitoring' at the International Society for Quality in Health Care's 2017 International Conference.

In March 2018, **Bridget Hutter** was a visitor at Melbourne University's Law Department and presented at a seminar of the Melbourne School of Government on 'Regulatory crises: the exploitation or remediation of public troubles?'. She also presented her research at the Food Standards Agency of Australia and New Zealand. In November 2017, she was appointed as FSANZ Fellow to provide the Food Standards Agency of Australia and New Zealand with expert advice and review. In February, Hutter presented research on resilience and flooding to the UK Environment Agency's long term investment scenarios development group.

Martin Lodge contributed to a roundtable at City University's Centre for Competition and Regulatory Policy on 'Competition policy in troubled times' (February 2018). He presented papers on 'The limits of regulatory accountability mechanisms' (with Eva Heims) and on 'The tide vs Canute? Brexit, the permanent crisis of the British regulatory state and the new divided politics' (with Will Jennings) at the Political Studies Association annual conference in Cardiff in March 2018.

Andrea Mennicken delivered a keynote speech on 'Accounting as active text' at the Finnish Doctoral Colloquium in Accounting at the University of Jyväskylä in January 2018. In the same month, she also presented research on the governing of failure in the NHS (co-authored with Liisa Kurunmäki and Peter Miller) at the RWTH Aachen and the University of Innsbruck.

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