

The Institutional Origins of Risk

Henry Rothstein

King's Centre for Risk Management, King's College London

Risk as an organising principle of regulation

- Risk used to be thought of as a matter for technocrats managing conventional health, safety and environmental threats to society
- Now risk is a central organising concept of public policy and corporate governance- e.g. risk-based regulation
- The regulation *of* risk is turning into regulation *by* risk

Diverse explanations

- Ulrich Beck: 'Risk Society' characterised by a new distribution of 'bads'.
- Frank Furedi: Risk Society is an illusory product of a 'climate of fear'.
- Government: Risk as a rational instrument for managing threats to society as well as improving the effectiveness of government and business.
- Mike Power: Risk is another 'ritual of verification' leading to the 'risk management of everything'.

Risk has become central to regulation in 2 ways

- *Societal risks* - threats to society, such as health and safety, climate change, financial products.
- *Institutional risks*— threats to regulatory interventions, such as reputational damage, legal challenge and delivery failure .
- *Risk colonisation* - Relationship between these two risks stems not from living in a world out of control, but rather because of the need to account for how we control the world.

The co-emergence of societal and institutional risks

- Relationship between societal and institutional risk is constituted within a general problem of control.
- Like any control system, regulation has to deal with failure because of the inevitable difficulties of governing.
- Such problems create institutional risks for regulatory organisations, threatening their legitimacy and practices.

The paradoxical emergence of institutional risks

- Regulatory failure is nothing new. But in weak governance structures, failures often go undetected or unmanaged.
- Tighter controls in public and private sector have amplified management of institutional risks by defining failures that have to be accounted for.
- Paradoxically, ‘better regulation’ is a source of ‘risk’ itself.

‘Risk’ as a reflexive governance concept

- Luhmann: modern societies frame decision-making in terms of risk in order to manage inherent uncertainties of rational decision-making.
- ‘Risk’ concept anticipates and legitimates possibility of failure by transforming decision-making into probabilities of success and failure.
- Objects of regulation are framed as risk dependent on the need of regulatory institutions to define the limits of acceptable failure.

Emergence of the 'regulatory state'

- In traditional government departments, decision-making is opaque and justified by elected ministers and blame can be diffused.
- But delegation of regulatory responsibilities to non-elected agencies has been accompanied by tighter scrutiny and accountability regimes to compensate for democratic deficits.
- Risk has proved attractive for rationalising the practical limits of what regulation can achieve.

Some Examples

- US NRC's 'redbook' on risk assessment prompted by Environmental Protection Agency's difficulties in justifying decision-making.
- HSE's risk-based model for regulatory action prompted by need to justify decision-making to the Sizewell 'B' Public Inquiry.
- Colonisation of regulation by risk is not driven by a *new distribution of ills in society*, but is instead driven by a *new distribution of ills in regulation*.

Some challenges to risk

- Epistemic problems: risk assessment is an inexact science
- Institutional problems: risk may be a *lingua franca* for decision-making while making little substantive impact
- Normative problems: aversion to risk may be asymmetrical with respect to probability and hazard; or public may not accept risk philosophy.

The management of institutional risk

- Such challenges may make institutional risk an object of management in its own right, e.g.
 - Risk communication
 - Blame shifting
- Formalised institutional risk management techniques

Conclusions

- Emergence of risk dependent on patterns of systems of control and accountability within regulation.
- Research needed on conditions of regulation that promote or hinder the emergence of risk and the character and consequence of risk practices.
- Can risk displace failure within governance?