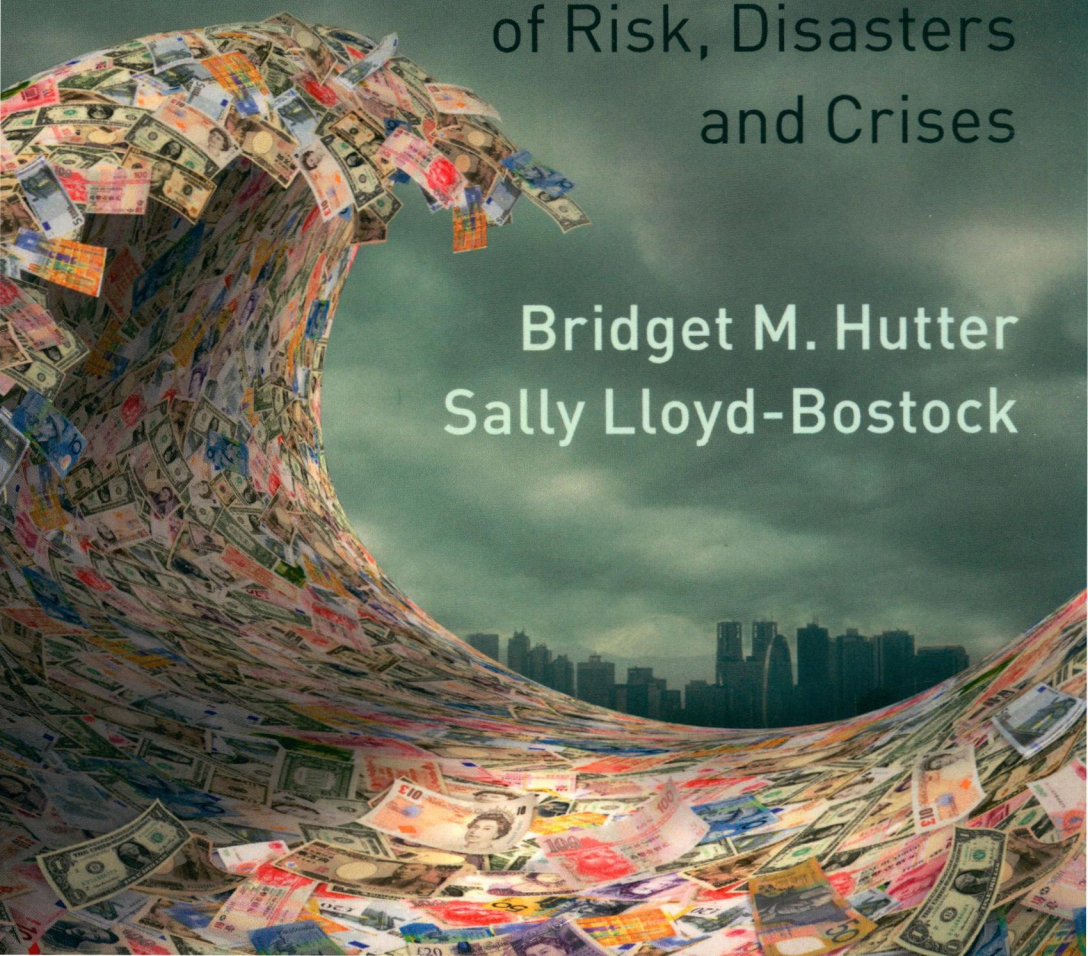


REGULATORY CRISIS

Negotiating the Consequences
of Risk, Disasters
and Crises

Bridget M. Hutter
Sally Lloyd-Bostock



'This is a careful and nuanced account of regulatory crisis that is both illuminating and surprising. Hutter and Lloyd-Bostock show how regulatory crises can emerge, fester or fade through the complex interplay of events, institutions and individuals. Their analysis eschews a bland narrative in favour of richness of detail that provides the reader with a depth and authority of insight.'

Fiona Haines, University of Melbourne

'All future scholars of disaster, natural or otherwise, will have to consult this wide-ranging comparative study of the complex and multiple forces that aim to ignore, remediate or exploit this crucial species of public troubles. I know of no work that matches it in terms of thorough documentation and range across so wide variety of cases.'

Harvey Molotch, New York University

'*Regulatory Crisis* breaks new ground in understanding risk and regulation by showing how disasters and crises can become a crisis for regulators. Comparing five high-profile cases, the authors' novel approach uncovers how heretofore invisible organizational and political outcomes of a crisis unfold, affecting the mundane routines and understanding of individual regulators and at the same time, threatening the regulatory organization's legitimacy. A major achievement, the book's analysis and implications are highly relevant for scholars in disaster studies, risk and regulation, regulatory bodies and policy specialists.'

Diane Vaughan, Columbia University

'As someone who lived through the volcanic ash crisis, I found this book fascinating in its separation of the regulatory challenge involved in managing a serious risk and the subsequent crisis that can arise around the legitimacy of the regulator itself. In particular, I found the analysis of the drivers that often lie behind regulatory reform following a crisis illuminating and helpful. This book provides much insight and challenge for all those who have an interest in regulation, including politicians, businesses, the public and regulators and is a thoughtful contribution to the understanding of regulation and regulatory pressures.'

Dame Deirdre Hutton, Chair, Civil Aviation Authority

Cover illustration: Hiroshi Watanabe

COVER DESIGNED BY ROB LOCK

CAMBRIDGE
UNIVERSITY PRESS
www.cambridge.org

ISBN 978-1-316-63222-2



9 781316 632222 >



REVOLUTIONARY CIVIL RIGHTS HUTCHINSON AND LOST STOCK

CAMBRIDGE

Regulatory Crisis

*Negotiating the Consequences of Risk, Disasters
and Crises*

Bridget M. Hutter

London School of Economics and Political Science

Sally Lloyd-Bostock

London School of Economics and Political Science



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi – 110002, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107180444

DOI: 10.1017/9781316848012

© Bridget Hutter and Sally Lloyd-Bostock 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Hutter, Bridget M., author. | Lloyd-Bostock, Sally M., author.

Title: Regulatory crisis : negotiating the consequences of risk, disasters and crises / Bridget Hutter, Sally Lloyd-Bostock.

Description: 1 Edition. | New York : Cambridge University Press, 2017. |

Includes bibliographical references and index.

Identifiers: LCCN 2016054368 | ISBN 9781107180444 (Hardback) |

ISBN 9781316632222 (Paperback)

Subjects: LCSH: Emergency management—Great Britain. | Political planning—Great Britain. | BISAC: POLITICAL SCIENCE / General.

Classification: LCC HV551.5.G7 H88 2017 | DDC 363.34/5610941—dc23

LC record available at <https://lccn.loc.gov/2016054368>

ISBN 978-1-107-18044-4 Hardback

ISBN 978-1-316-63222-2 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Regulatory Crisis

Using a new concept – ‘regulatory crisis’ – this book examines how major crises may or may not affect regulation. The authors provide a detailed analysis of selected well-known disasters, tracing multiple interwoven sources of influence and competing narratives shaping crises and their impact. Their findings challenge currently influential ideas about ‘regulatory failure’, ‘risk society’ and the process of learning from disasters. They argue that interpretations of and responses to disasters and crises are fluid, socially constructed and open to multiple influences. Official sense-making can be too readily taken at face value. Failure to manage risks may not be central or even necessary for a regulatory crisis to emerge from a disaster, and the impacts for the regulator can take on a life detached from the precipitating disaster or crisis.

Bridget M. Hutter is Professor of Risk Regulation, Department of Sociology, at the London School of Economics and Political Science. She is a leading authority on risk regulation, and her book publications include *Compliance, Regulation & Risk*, *Organizational Encounters with Risk* and *Anticipating Risks and Organizing Regulation*.

Sally Lloyd-Bostock is Visiting Professor in the Department of Sociology at the London School of Economics. She was Professor of Psychology and Law at the University of Birmingham and Director of the University’s Institute of Judicial Administration. She is widely known for her influential work in psychology and law.

To Richard, Corin, Esther, Kit and Alex; and the
beginning of a new generation: Aya, Bella and Sakura

Preface

High-profile disasters and crises regularly prompt debate about the adequacy of risk regulation and the need for regulatory reform – debate that often takes place through highly visible media coverage. At the time our ideas for this book were crystalizing, examples included the global financial crisis, the Deepwater Horizon oil spill in the Gulf of Mexico in 2010 and the damage to the Fukushima nuclear facility in 2011, all of which elicited criticisms of regulators and calls for changes to regulation. Repeatedly, events such as these throw regulators into crisis – but it seemed to us it was a peculiar form of crisis with a particular life history. We wanted to ask: What initiates and shapes the crisis for regulators? And when the disruption of disaster and crisis dies down, what does it leave behind for regulators and regulation? Have regulatory regimes in fact been redefined or reformed? Substantial bodies of social science literature had considered disasters and crises, their genesis and consequences, but very little attention had been paid specifically to how disaster and crisis interact with regulation. The regulation literature identified a relationship between disasters and regulation, but it was ill developed. Regulation was often seen to be a result of disasters, and there was some debate about this being a way of appeasing public outrage around accidents; but there was little work on the different patterns of response we were observing. We decided to start researching in much more depth the relationship between regulation and disasters, and in particular when and how these generated crises for regulation. We wanted to look at disasters and crises – not to understand how they happened or might have been prevented, but to understand their impact on regulation.

Anecdotally we found that our previous work often led us to predict and recognize recurring patterns following the recognition of a disaster or crisis. An early observation was that across various regulators, disasters reveal dilemmas embedded in modern approaches to regulation, dilemmas which are in turn reflective of dilemmas in modern societies. Regulators are charged with a delicate and difficult task, and this

becomes most evident at times of crisis. Increasingly we observed that in the aftermath of a disaster or crisis, the narratives that become current were the product of multifaceted social networks and processes. Blaming the regulator was embedded in a competition between opposing, and often powerful, interests. Our observations also raised questions for us about the role of government.

Building on our previous research, we began developing a project to examine these interactions and impacts. We were persuaded that they were much more intricate than had been recognized, and also that repeated patterns had not been fully considered because they fall between existing bodies of literature or because they are obscured by some of the conceptual models being adopted. We realized that prominent theoretical approaches within the various literatures did not readily allow us to frame the questions we wanted to ask. We did not only need to integrate literature from different disciplines and traditions. We needed to develop a new approach. This book is the outcome of our attempt to do so. At the heart of the approach we developed was our conviction that crises for regulators are best studied separately from the disaster or wider crisis that precipitated them. The book, therefore, explores the consequences of treating regulatory crisis as a phenomenon in its own right.

The processes we were interested in required consideration of empirical examples. We draw on five very different examples from the United Kingdom. Not everyone will agree that they are examples of crises; such is the nature of the way these events are constructed. We have taken examples which at some point have been perceived as crises for regulators, either by the regulatory organization itself or by outside commentators, often both. Some were long-lived; others were relatively short-lived. Some were resolved without drastic changes; in others the crisis proved fatal to the regulatory organization. We do not set out to offer a full account of each one. We faced the usual trade-off between the depth of a case study and the possibility of drawing conclusions across contexts. In the context of the book it is revealing and necessary to consider the patterns, commonalities and variations across a broader sample of examples. Indeed, it was this that led us to the surprising conclusion that failure to manage risks might not be central or even necessary for a regulatory crisis to emerge from a disaster.

The focus of the book is very much upon risk regulation, and bringing aspects of the rich disasters literature to bear to help us to make greater sense of the role of risk regulation in contemporary society. We integrate our own empirical work with aspects of these literatures in a critical appraisal of contemporary debates surrounding regulation and its

'failures'. We do hope that disaster researchers will also find this of interest. We have struggled with some of the difficulties they highlight in their work, not least the dangers of hindsight. We have also struggled with the dangers, on the one hand, of inferring inevitability of crisis given a set of preconditions and, on the other hand, understanding the scope for regulators to shape and manage a regulatory crisis. We have not normatively evaluated the cases we include, although there is much that could be said about them all. In some of our cases regulators clearly made major mistakes and in others they did so alongside other groups. But the organizational and political outcomes of the regulatory crises we studied were not always predictable. We identify a level of precariousness in some of the examples we use with opportunistic, strategic activities by some groups and leaders within and external to regulatory organizations, redirecting the course of events. This implies some flexibility is demanded in the anticipation of risks and the handling of crises; there are dangers in being too prescriptive.

Our primary audience is scholars interested in risk regulation, but we hope the book will have implications and interest for a much wider audience.

Acknowledgements

Much of the data for this research has been collected from documentary sources, but material about the volcanic ash crisis was collected first-hand. The British Academy provided a small grant to support a case study on 'Risk Regulation and Crisis: A case study of the impact of the 2010 volcanic ash cloud crisis on the UK Civil Aviation Authority'. We would also like to thank the CAA for generous help in providing materials, contacts and interviews with key personnel. We are indebted to all those who took time out of busy work schedules to help us with this project. A number of people have assisted with data queries, bibliographic and literature searches and the preparation of the manuscript for publication. We would like to thank Tracey Darian, Gregor Dickie, David Schnarch, Bayo Adelaja, Tory Mallett and Anna Phillips. Special thanks go to Judy Van der Graaf and Paz Concha who contributed a great deal at different stages of the research. We also would like to thank the anonymous reviewers of the first manuscript of the book, and those who responded to parts of the work we have presented in workshops and seminars, in the LSE, RegNet at ANU, the Freie Universitaet Berlin and the Rockefeller Foundation Bellagio Center. A residency at the Rockefeller Foundation's Bellagio Centre was invaluable to us, giving us the time, space and solitude to really get the research up and running. We are very grateful to have had this opportunity. Finally, we thank our families for their support and patience as we altered the work-life balance drafting and redrafting the manuscript.

Abbreviations

7/7	terrorist suicide bombings in London on 7 July 2005
9/11	September 11 terrorist attacks
BCCI	Bank of Credit and Commerce International
BIS	Department of Business, Innovation and Skills
BSE	Bovine Spongiform Encephalopathy
CAA	UK Civil Aviation Authority
CEO	Chief Executive Officer
CFMU	Eurocontrol's Central Flow Management Unit
COBR	Cabinet Office Briefing Room
DEFRA	Department for Environment, Food and Rural Affairs
EASA	European Aviation Safety Agency
EU	European Union
FSA	Financial Services Authority
GCHQ	Government Communications Headquarters
GMC	UK General Medical Council
GP	General Practitioner
HMT	Her Majesty's Treasury
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
IMF	International Monetary Fund
IRA	Irish Republican Army
ISC	The Parliamentary Intelligence and Security Committee
JTAC	Joint Terrorism Analysis Centre
MAFF	Ministry of Agriculture, Fisheries and Food
MI5	Security Service, UK Military Intelligence, Section 5
MI6	Secret Intelligence Service
NACME	National Airspace Crisis Management Executive
NATS	(NATS (En Route) Plc, formerly National Air Traffic Services Ltd.
NCC	London Underground's Network Control Centre
NEDCO	non-executive directors committee
NEDs	non-executive directors

NHS	National Health Service
NOTAM	Notice to Airmen
OSCT	Office for Security and Counter-Terrorism
RATE	Risk Assessment, Tools of Supervision and Evaluation
RBS	Royal Bank of Scotland
Rt Hon	The Right Honourable
SAGE	Scientific Advisory Groups in Emergencies
SARPS	Standards and Recommended Practices
SEAC	spongiform encephalopathy advisory committee
SIS	Secret Intelligence Service
SRR	Special Resolution Regime
TSC	Treasury Select Committee
UK	United Kingdom
US	United States of America
VAAC	Volcanic Ash Advisory Centre
vCJD	Variant Creutzfeldt-Jakob disease

Contents

<i>List of Tables</i>	<i>page</i> ix
<i>Preface</i>	xi
<i>Acknowledgements</i>	xiv
<i>List of Abbreviations</i>	xv
1 Risk Regulation and High-Profile Disasters: Regulatory Crisis as a Distinct Phenomenon	1
Overview	1
Use of Terms: Risk Regulation, Disasters, Crises and Regulatory Crises	2
Disasters and Regulation	5
Key Ideas Relevant to Regulatory Crisis and Our Research Questions	9
Our Approach	18
Methods	25
Structure of the Book	31
2 Regulatory Environments Preceding the Crisis	33
Introduction	33
Integration in Networks of Other Bodies	42
Political Environment: Deregulation and Better Regulation	44
Regulatory Approach	51
Openness, Transparency and Accountability	56
Discussion	58
3 Recognizing Disasters and Crises: Emergence and Crystallization	60
BSE and vCJD	61
The Volcanic Ash Crisis	64
The Financial Crisis	67
The Shipman Case	72
The 7/7 Bombings	76
Common Factors in the Initial Recognition of the Wider Disaster/Crisis and Regulatory Crisis	82
4 The Many Shapes of Regulatory Crisis	90
Introduction	90
BSE and vCJD	91

The FSA and the Financial Crisis	93
The CAA and the Volcanic Ash Crisis	101
Factors Shaping Regulatory Crisis across Our Cases	110
5 Official Sense-Making: Inquiries and Inquests	128
Setting up the Inquiries	134
Remits and Terms of Reference of the Selected Inquiries	137
The Composition and Conduct of Inquiries	142
Tensions, Controversies and Media Interest Surrounding the Inquiries	143
The Reports	149
Regulatory Networks	159
Recommendations	164
Discussion	170
6 Responses to Inquiry Findings: Reacting and Reorganizing	174
Reactions to Publication of Inquiry Reports	174
Regulatory Crisis after the Inquiry Reports	183
Political Sources of Change to the Legal Framework of Regulation	195
Discussion	198
7 Regulatory Crises: Recapitulation, Conclusions and Theoretical Implications	202
Characterizing Regulatory Crisis	203
Regulatory Failure: The Source of Regulatory Crisis?	209
Disaster, Crisis and Regulatory Crisis as Socially Constructed	213
Reorganizations and Their Consequences	219
Towards a New Concept of Regulatory Crisis	225
<i>References</i>	234
<i>Index</i>	256