

Risk regulation

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RISK REGULATION

- Risk theory of regulation: regulation is a deliberate intervention in social actors' behaviour to control public 'bads'
- *Hood et al: risk regulation is governmental interference with market and social processes to control potential adverse consequences to health*
- CONTRAST WITH:
- Economic regulation: to secure the efficiency of markets in delivery of public & private goods and services
- Public interest regulation: a deliberate intervention in social actors' behaviour to deliver public 'goods'
- The contestability of risk regulation compared to alternative accounts of regulation depends on the contestability of risk

- INVESTIGATION INTO THE NATURE OF RISK

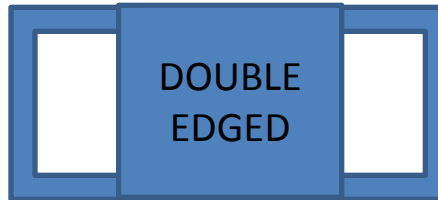
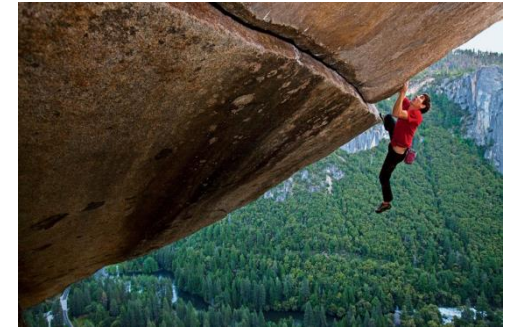


The risk society: society geared towards responding to the future negative consequences of its own choices

RISK REGULATION – RISK AS OBJECT OF REGULATION



RISK = PROBABILITY X MAGNITUDE
OF (ADVERSE) EVENTS



*Risk denotes the distinction
between reality and possibility*



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Risk as:

- Regulatory object
- Justification
- Organisational framework
- Accountability framework

The LSE logo is a red square with the letters 'LSE' in a white, bold, sans-serif font.

Professor Julia Black
Interim Director of LSE

RISK CONSTRUCTION AND THE ROLE OF PERCEPTION

- RISK AS AN OBJECTIVE PROPERTY OF AN EVENT OR ACTIVITY AND MEASURED AS THE PROBABILITY OF WELL-DEFINED ADVERSE EFFECTS



- RISK AS CONSTRUCT, FORMED BY PERCEPTION, SOCIAL NORMS AND CULTURE



RISK AS A REGULATORY OBJECT IS GENERALLY UNDERSTOOD TO BE SITUATED SOMEWHERE BETWEEN THESE EXTREMES



RISK RANKING



Rate and rank:

1. As you would

2. As you think your grandparents might

3. As a group of government regulators might



MAYBE JUST ONE MORE



Renn's classification of risk

| RISK PERSPECTIVES | KEY FEATURES | STRENGTHS AND WEAKNESSES |
|---------------------|--|--------------------------|
| TECHNICAL | Probabilistic, chiefly focused on physical impacts | |
| ECONOMIC | Dual reading of risk as potential cost and opportunity, reduction to common denominator, tradeoffs | |
| PSYCHOLOGICAL | Magnitude-focused, behavioural economics | |
| <i>SOCIOLOGICAL</i> | <i>Multitude of perspectives, including systems-orientated</i> | |
| <i>CULTURAL</i> | <i>Focus on shared values</i> | |

Risk cultures

Fatalist

The future is unpredictable; we need to build up resilience



Hierarchist

Risks are a question for experts; we need good science to make socially desirable decisions



Individualist

It's your health – you take care of it; make sure you're well informed



Egalitarian

We're all in this together; we need to make fair choices together



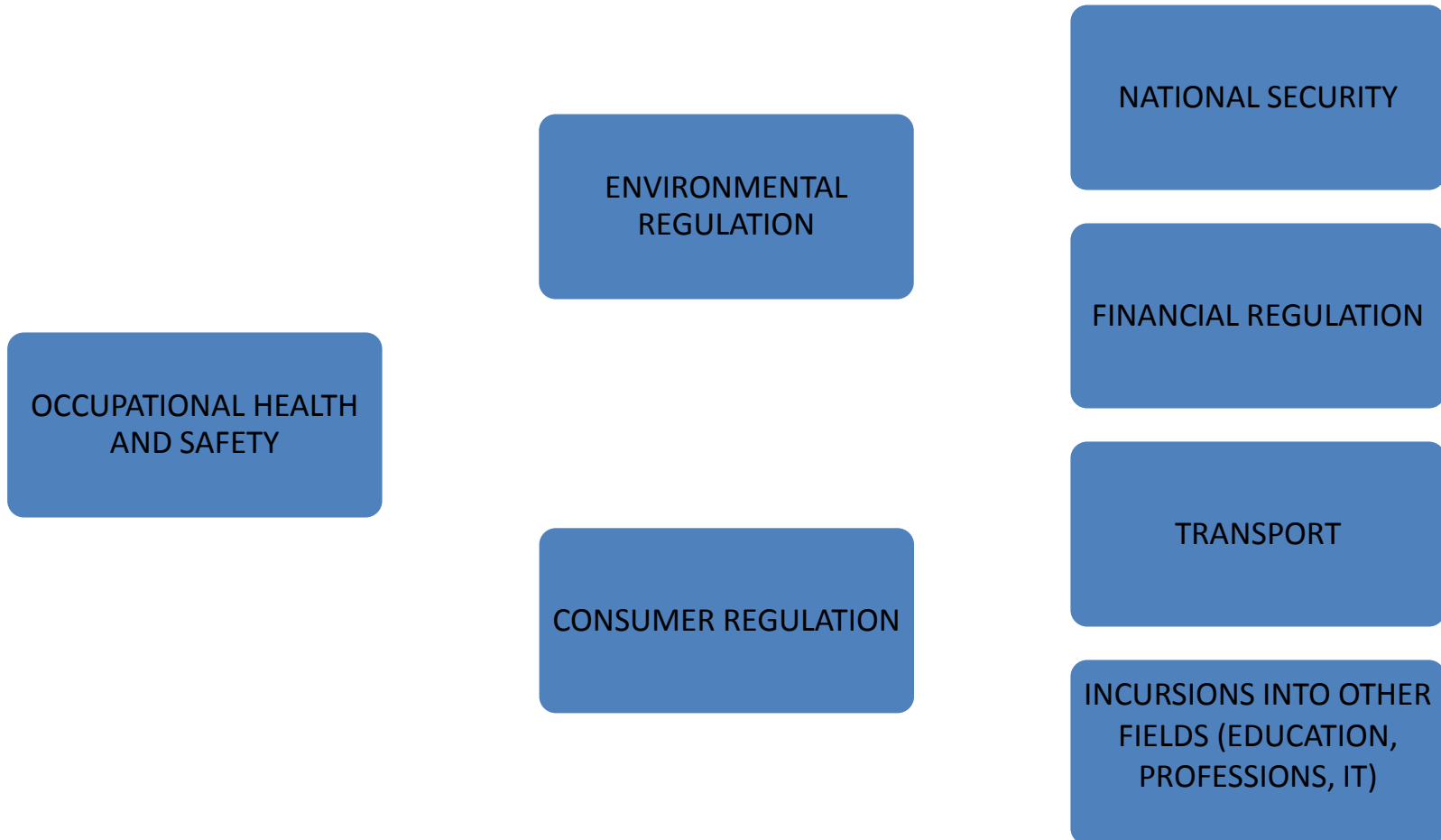
Discuss

- ‘Confining undesirable consequences to physical harm excludes consequences that people may also regard as undesirable, but physical harm may be the only consequence that (almost) all social groups and cultures agree is undesirable’ (Renn, *Concepts of Risk: A Classification*, p. 61)



RISK REGULATION

FIELDS OF APPLICATION



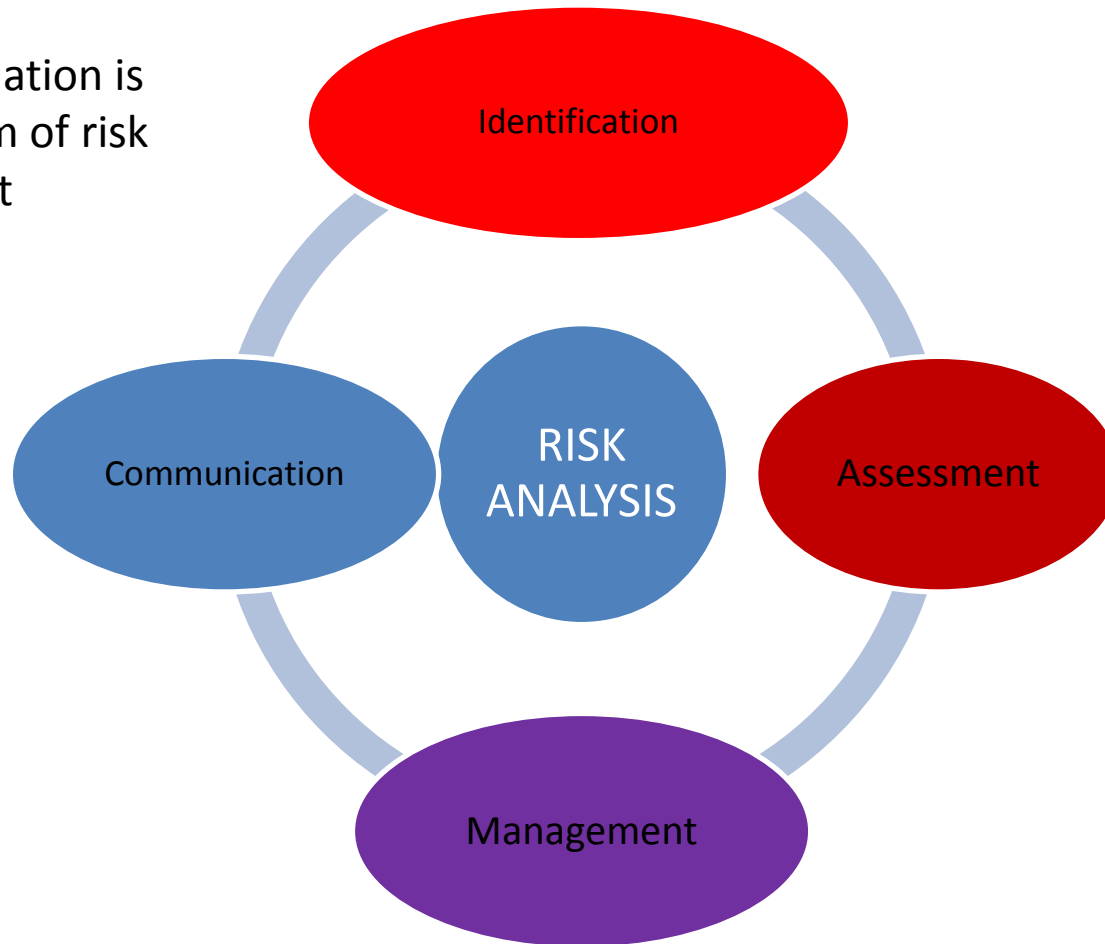
APPEAL OF USING RISK AS REGULATORY OBJECT

- **Rationality:** risk appears as an achievement of modernity; an empowering technique allowing for rational decision making in the face of an uncertain future (*Weimer*).
- **Optimistic:** reflects a belief that harm can be averted (ico technical risk approaches: averted without necessary experience of harm)
- **Permissive:** directs the regulatory gaze towards the side effects of choices rather than judging the choices themselves
- **Flexible:** regulators can justify not achieving zero risk
- **Responsive to context:** there is scope to take into account personal perceptions and cultural preferences

- **Mary Douglas:** risk as a political weapon used by a society poised between the cultures of individualism and egalitarianism, to blame those who wield power in the state and big corporations (*risk creators*) for what happens to the rest of us

A Risk-based approach to regulation

Hutter: regulation is simply a form of risk management



RISK REGULATION STRATEGIES

| | Hazard-oriented approaches | Risk-oriented approaches |
|-----------------------------|---|---|
| Identification & assessment | 'Zero risk' / negligible risk | Acceptable risk / reasonable risk |
| Management | Hazard-based selection / Conservative safety factors | Exposure-based selection Balancing Prioritisation 'Risk trees' |
| Communication | Binary: Allow / disallow | Multiple: Mitigation, adaptation, resilience building |
| Organisation of feedback | Inspection | Inspection Monitoring |
| Response | 'zero tolerance' | Risk-based (selective) |

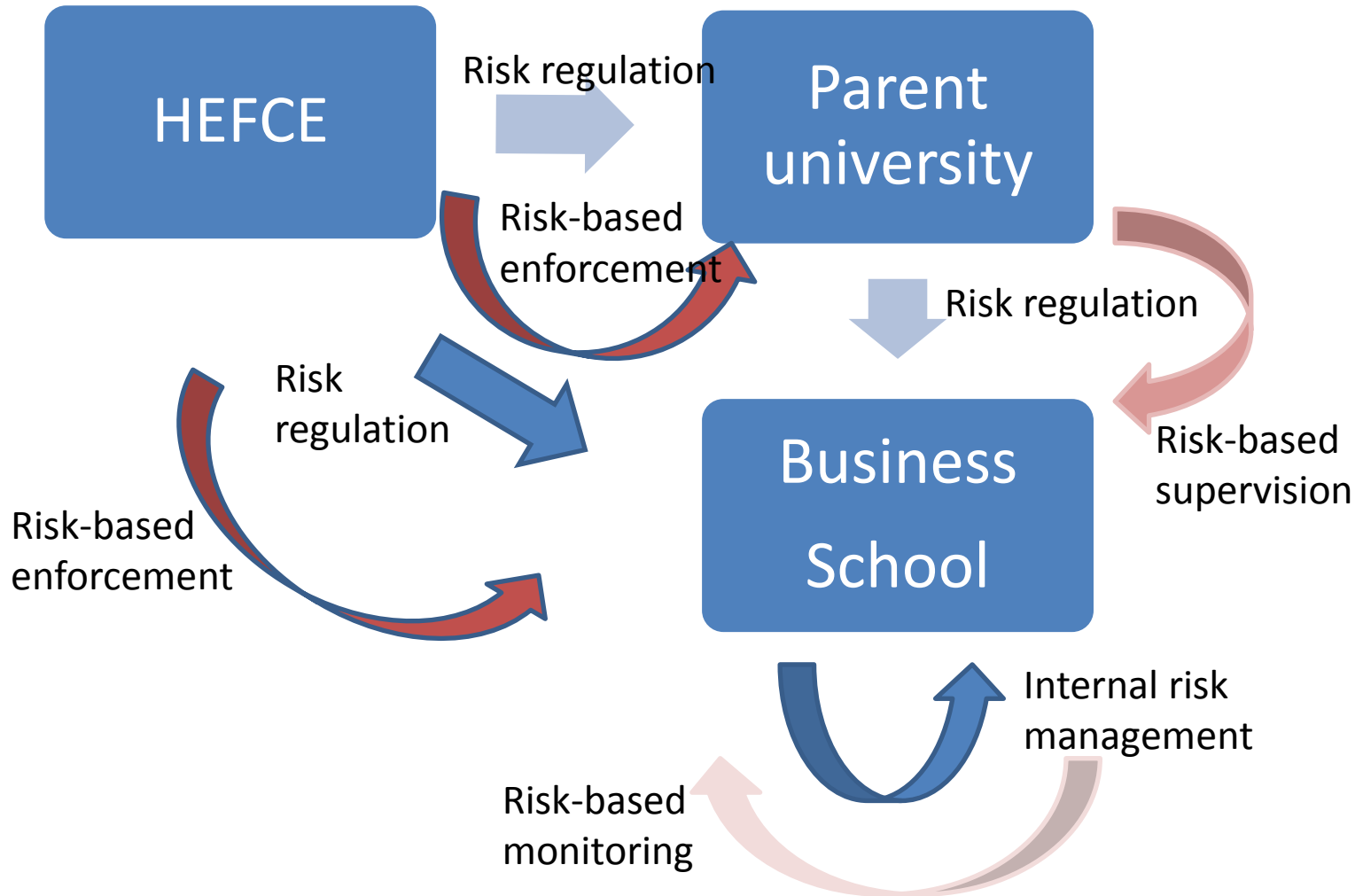
Discuss: what are the risks of risk-based responses to compliance with risk regulation?

RISKS OF RISK-BASED STRATEGIES

- Certain cohorts of regulatory addressees escape scrutiny, which may affect their (risk taking) behaviour.
- Risk ethos increases entrepreneurial risk-taking, leading to need for more rather than less oversight.
- (Dynamic) low risks overlooked
- Negative public reaction ('why are you not inspecting my workplace/school/tube station?')

The idea of risk regulation elides with the idea of regulation by risk.

Multiple layers and dimensions of risk regulation



Critiques of risk-based decision making

TECHNICAL

Data & resource-intensive

Cooperation with 'risk creators'

Identification of legitimate sources

Priority setting

Balancing flexibility & certainty

PRINCIPLED

Myopic

Expertise bias (elitist)

Over-regulation over-juridification

Stifles the spirit of enterprise

FOUNDATIONAL

Relinquishing law's commitment to protect *everyone*

The fallacy of the risk society