EU AGENCIES IN CRISIS: INSTITUTIONS OF AN UNFINISHED POLITY

MICHELLE EVERSON & ELLEN VOS

OVERVIEW

- I. Agencies as institutions of crisis
- 2. Agencies as a part of an evolving polity (crisis of categorisation)
- 3. Incomplete constitutionalisation ('crisis of delegation')
- 4. Political abdication, accountability (mandate) overload and reputational risk
- 5. The (failed) promise of 'Good Governance'
- 6. An agency of political wills...and 3 elements of knowledge (Majone/Liza Herzog)



CRISIS OVERCOMES OPPOSITION (PARLIAMENT & COMMISSION)

- ESFS: EBA, ESMA & EIOPA (ESTB/ECB)
- De Larosière group (traditional concept of market failure), European regulation must be strengthened to improve an 'inadequate mix' of regulatory and supervisory skills and to create a co-ordinated early-warning system 'to identify macro-systemic risks of a contagion of correlated horizontal shocks.'



Comitology = 'Obscurantism' (limits/risk model)

NEW PUBLIC MANAGEMENT: NO LEGITIMATION NEEDED?

- The Lamfalussy group (prior to crisis): Unwieldy EU regulation and discrepancies in national implementation were seen as regulatory failings because they led to differential treatment of financial instruments, both 'violating the pre-requisite of the neutrality of financial supervision' in the EU market, and delaying adaption of European financial services 'to the pace of global financial market change.'
- Autonomous regulatory models gain normative legitimacy as postulation of a concept of *pareto*-efficiency mediates against concerns that executive power should never be endowed with too broad a mandate. Discretionary powers may be delegated to independent agencies where they have no redistributive consequences, or the subject-matter of regulation is value-neutral in terms of general welfare losses (Majone 1994).

CRISIS OF CATEGORISATION (NO REGULATORY FUNCTION?) – POLITY IN FLUX

- Egeberg & Trondal (2016): agencies are intergovernmental, transnational, or supranational in character, whereby images may overlap, but trend away from 'Community Method' to executive control.
- Everson, Monda & Vos: (2014): 'in-betweeners' building integrated post-national executive (member states & EU).
- Busuioc & Groenleer (2014): substitute for Commission since latter too bureaucratic, too politicised and composed only of generalists (as integrative tool).



ESMA: INCOMPLETE CONSTITUTIONALISATION AND THE PROBLEM OF DELEGATION



Experts and laypersons; sectarian knowledge and majoritarian process? (Direct powers, hierarchy of norms, delegation, *Meroni* 2.0)

POLITICAL ABDICATION?

- Systemic risk no clear definition, but 'waiting is not an option,' such that 'policies have moved ahead of academic research' (Arnold et al 2012). Executive discretion as learning process, but......
- '[A] central bank is not an appropriate institution for macro-prudential supervision because central bankers are not legitimate politically to make decisions that involve important trade-offs between political and economic objectives [.] [S]uch decisions should be left with finance ministries and other elected officials' (Ferran & Alexander 2010:).
- Frontex? Technocratisation of political disagreement.



Expertise as immaculate conception?

(MANDATE) ACCOUNTABILITY OVERLOAD

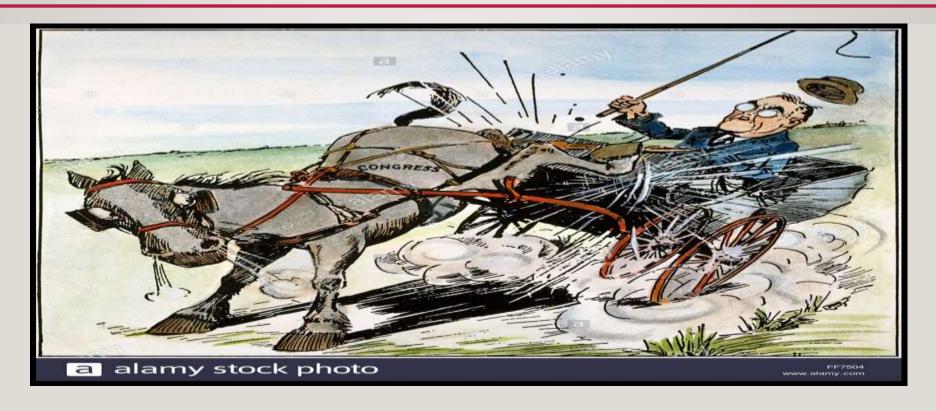
- Governance usefully designates 'a distinctive method/mechanism for resolving conflicts and solving problems that reflects some profound characteristics of the exercise of authority that are emerging in almost all contemporary societies and economies' (Schmitter 2001).
- Commission White Paper (2001): administrative legal instruments (transparency, accountability etc...). Bolster 'Community Method', denying complex reality of discretionary delegation.



REPUTATIONAL RISK

- For private companies, and more especially financial companies, the 'intangible', or non-accountable commodity of reputation is priceless: 'damage to an institution's reputation (and the resulting loss of consumer trust and confidence) can have very tangible consequences a stock price decline, a run on the bank, a spike in policy surrenders, an outflow of assets under management, a drop in new sales, a ratings downgrade, an evaporation of available credit, regulatory investigations, shareholder litigation, etc' (Stansfield 2006).
- Public institutions? (Coercion and Accountability)

AN AGENCY OF WILLS: EXOGENEOUS AND ENDOGENOUS LIMITS TO AGENCIFICATION?



Politicised administration – APA backlash?

'KNOWLEDGE': NEW LEGITIMATION

- Brexit lesson agencies as embedded 'political economy' (Polaynian Countermovement)
- Lisa Herzog: 3 knowledges
 - Discovery (Hayek/Joerges)
 - Epistemic/expertise
 - (Political) Deliberation
- Matter of where you place agencies in the constitutional structure