Good Question

An Exploration in Ethics

A series presented by the Kenan Institute for Ethics at Duke University

Regulation

RISK REGULATION INVOLVES **TRADE-OFFS**.

CRISES CAN BE **OPPORTUNITIES** FOR **REGULATORY LEARNING** AND **IMPROVEMENT**.

QUESTION

What makes for an ethical policy response to a crisis?

ANSWER

Is it ethical for policy makers to exploit the political opportunity created by a public crisis to enact regulatory change? Or, is it unethical not to prepare a policy response for a crisis? Are some approaches more ethically justified than others?

When a crisis such as an oil spill, a financial meltdown, or nuclear disaster occurs, it focuses public attention in ways that less dramatic processes, such as the accumulated death and illness caused by automobiles or pollution, or the hardships of income inequality, do not. Policy makers often have developed proposals to address the risks that cause these everyday harms, but lack political support to implement them. Public perceptions of a crisis event can provide a brief window of opportunity to turn proposals into policy. But crises and public outcry can also distort policies.

The imperative of responding to crises poses difficult ethical dilemmas. The question is not just whether to respond, but how. Post-crisis actions that address one risk can introduce others. For example, government bailouts may ease a financial crisis, but can invite more risk-taking in the future. Or consider the 2011 Fukushima nuclear accident in Japan: it increased public antagonism toward nuclear energy across the globe, and spurred German policy makers to phase out nuclear energy by 2022. While Germany has pledged to shift to renewable resources such as solar and wind power, critics argue that at least in the short term, Germany will rely more on coal, thereby increasing emissions of both conventional air pollutants and carbon dioxide, exacerbating health threats and climate change. Mitigating one risk hastily can generate another.

We will never live in a risk-free world. Excessive anxiety about rare crises could distract resources from more solvable problems. But not acting after an avoidable crisis, or adopting "window dressing" to satisfy popular demands for action, may not only fail to prevent another crisis, but also leave the public vulnerable to the everyday harms that more innovative policy makers might have reduced.

Ethical responses to crises often require balancing "risk-risk trade-offs." Policy makers need to incorporate expert insights about these trade-offs, while fostering robust public debate over policy goals and remaining wary of special interests. In preparing for and dealing with a crisis, policy makers should ideally take a comprehensive view of the problems that it reveals, examining historical responses to similar events, relevant policies in other countries, and applicable strategies from other regulatory contexts. Financial regulators have recently had occasion to brush up on their understanding of policy responses to the Great Depression. The Gulf oil spill has prompted consideration of safety approaches by European oil drilling regulators. Health care policymakers concerned about medical errors have learned from safety approaches in the airline industry. And responses to flu pandemics may teach us important lessons about cyber-terrorist threats.

Crisis events tend to generate many ethical dilemmas, without easy answers. To address crises with a due concern for ethics, policymakers should think in advance, about both *how to prepare for* and *how to learn from* crisis events, so that responses reflect more than hasty reactions, and pursue the most sensible opportunities to reduce risks that threaten the common good.

PROFILE

During the Deepwater Horizon Oil Spill in 2010, **Lori Bennear**, an assistant professor of environmental economics in the Nicholas School of the Environment, started thinking about how her discipline might help regulatory officials reconsider their policies in light of such a crisis event. After oil spills, environmental economists frequently engage in assessments of the damages from the oil spill, but pay less attention to evaluating and potentially reforming safety regulations for drilling. Bennear proposed a research agenda on post-crisis regulatory reform to **Ed Balleisen**, an associate professor in the Department of History who heads up the Kenan Institute for Ethics Rethinking Regulation program—an initiative that brings together faculty and graduate students from across the university who are interested in regulatory policy and strategies of regulatory governance. Balleisen quickly agreed that the questions Bennear had raised would also have broad appeal to scholars working in different areas, especially at a time when crisis events seemed to be occurring frequently around the world.

Balleisen and Bennear then recruited **Jonathan Wiener** and **Kim Krawiec**, professors at Duke Law School. Wiener writes about the challenges of assessing and managing risk-risk trade-offs, while Krawiec focuses on financial regulation, including issues around corporate compliance, insider trading, and

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derivatives hedging practices. Together, the four envisioned a research agenda for a study on "Recalibrating Risk: Crises, Perceptions and Responses," and have recruited other collaborators both in the U.S. and other countries. These scholars come from diverse disciplines including law, history, sociology, economics, political science, public policy, and psychology. "This project has assembled scholars from across the globe to analyze the similarities and differences in how regulatory agencies in different countries have responded to the same crises. These comparisons are critical in assessing the impact of regulatory organization, democratic institutions, civil society, and other political factors on policy change," said Bennear.

Collectively, they are exploring three main types of crisis events: financial crises, nuclear accidents, and oil spills, in a number of industrialized societies. In addition to contributors from the United States, Norway, Japan, and Italy, the project has so far gleaned guidance from two policy makers: Kenan Practitioner in residence **Sally Katzen**, former director of the United States Office of Information and Regulatory Affairs; and former Congressman **Brad Miller**. The project and its edited volume of essays are intended to benefit both academics and policy makers. "This volume will offer a variety of insights about how to prevent low-probability but high consequence events, especially with regard to the three types of crises that we are studying. Perhaps more importantly, it will identify best practices for policymakers who face unanticipated crises, which invariably present wrenching moral dilemmas under conditions of uncertainty and enormous pressure to act," said Balleisen. "This book, like the broader Rethinking Regulation initiative, fosters interdisciplinary collaboration to address compelling problems in public policy, and the moral questions that they pose. It seeks to learn from past and current policy-making; to exchange ideas and insights with current and former regulators; and to chart new directions for social science research."

THE KENAN INSTITUTE FOR ETHICS

THE KENAN INSTITUTE FOR ETHICS

Box 90432 Durham, NC 27708
(919) 660-3033
kie@duke.edu

dukeethics.org

Director: **Noah Pickus**
Associate Director: **Suzanne Shanahan**
Communications Manager: **Katherine Scott**
Research Analyst: **Jennifer Cook**
Photography: **Chris Hildreth/Duke Photography**
Design: **David Pickel/Addison-Design.com**

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