

*Brasilia, June 2018*

---

# Regulatory Capacity

Martin Lodge  
Centre for Analysis of Risk  
and Regulation (**carr**)  
LSE

---

---

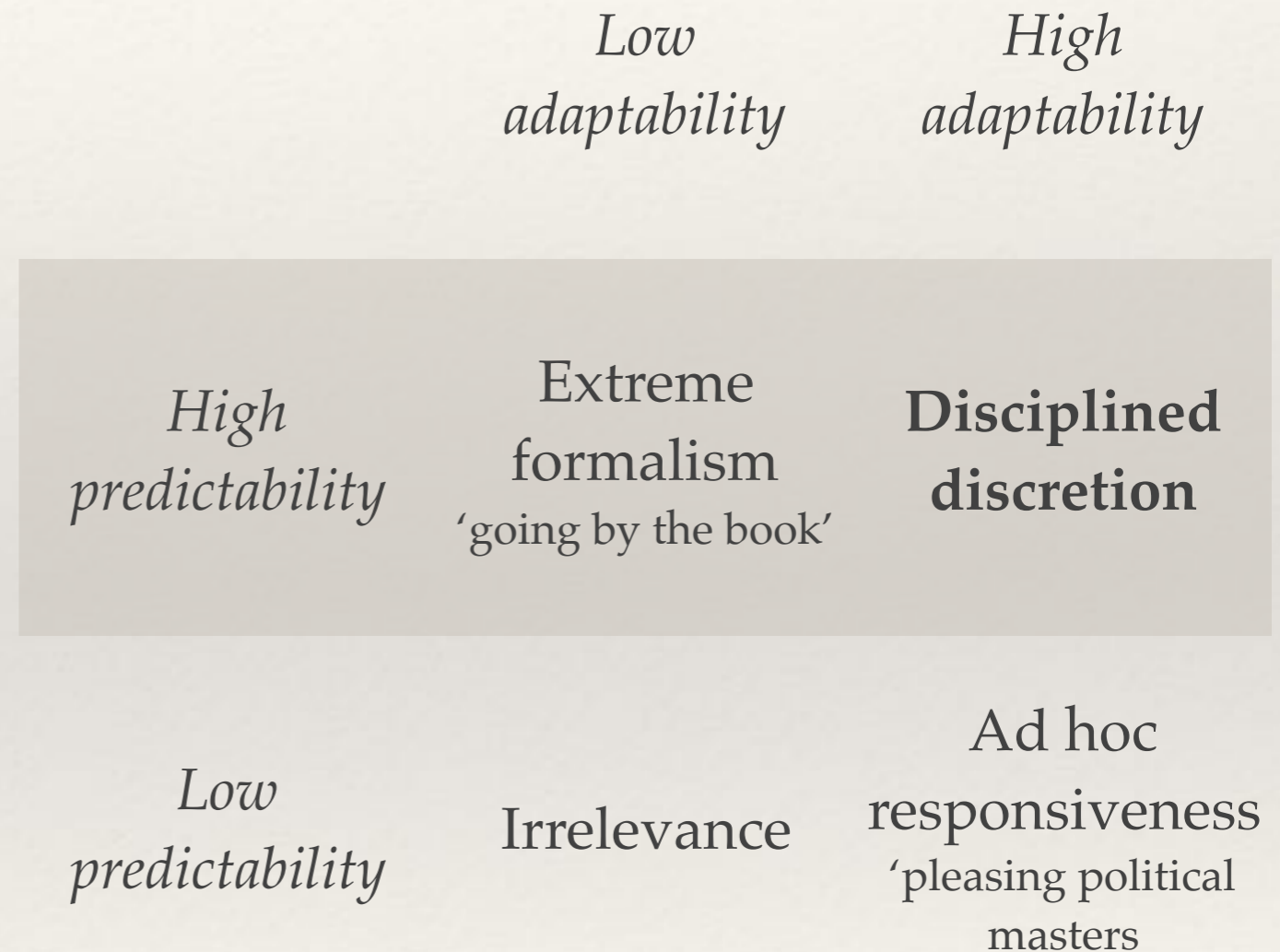
# Background

---

- ❖ Completion of study on regulation of logistics infrastructures
  - ❖ questions about design of overall approach towards attracting investment into infrastructure
  - ❖ role understanding of different actors
    - ❖ PPI, ministries, regulatory agencies, TCU (high dispersion)
    - ❖ gaming by companies
- ❖ broader interest: enhancing regulatory capacity
  - ❖ ministries, enforcement, procedural tools

# Disciplined discretion

- ❖ Seeking to move towards predictability & adaptability: living with incomplete contracts
- ❖ Agency governance & conduct
- ❖ 'responsive regulation'
- ❖ 'tramlines'
- ❖ coordination protocols



---

# Tramlines

---

- ❖ Underlying idea: agreed trigger points that allow for revisiting the original contract
- ❖ sends early warning about financial and other performance (too positive / too negative)
- ❖ needs mutual agreement among parties on indicators
  - not those that are open to criticism regarding gaming
- ❖ move beyond reliance on formal legislative process?

---

# Regulatory capacity

---

Analytical capacity  
*strategy, quality, risk aversion*

Oversight capacity  
*haphazard information collection*

Delivery capacity  
*capacity to enact programmes/be accepted  
by 'targets'*

Co-ordination capacity  
*multi-organisational sub-optimisation*



---

# Developing regulatory capacity

---

- ❖ Inter-institutional and organisational features of capacity
- ❖ **Challenge tools:** information challenge functions
  - ❖ requires: resources & acceptance
- ❖ **Procedural tools:** IAs, coordination protocols
  - ❖ requires: resources and acceptance by organisation
- ❖ **Incentive tools:** changing the gaming calculus
  - ❖ requires: yardsticks & benchmarks
- ❖ **Engagement tools:** 'stakeholder engagement'
  - ❖ requires: regulator as mediator, acceptance by stakeholders

---

# Conclusion

---

- ❖ How to introduce ‘disciplined discretion’?
- ❖ What can a regulator do to enhance regulatory capacity?
- ❖ What can a regulator do to enhance reputation for competence?
- ❖ What should companies do to encourage ‘disciplined discretion’?
- ❖ How to develop capacities to support inter-organisational capacity-building?