

Regulating *for* and *with* the masses: a new era of regulation?

Hanan Haber and **Eva Heims** discuss the growing significance of regulation for social and distributive purposes

In 2015, the Well-being of Future Generations (Wales) Act 2015 was enacted, aimed at 'improving the social, economic, environmental and cultural well-being of Wales' (Welsh Government, 2015a). The Act requires public bodies to 'think long term', involve the public and those affected by policy and ambitiously 'take action to try and stop problems getting worse - or even stop them happening in the first place' (Welsh Government, 2015b). A cheerful animated video commissioned by the government follows the future life trajectory of a new-born, Megan (Welsh Government, 2015c), depicting how the Act will enable her to have a fulfilling and secure future, in employment, health, culture and environmental terms.

What explains this legislation in the first place? Why legislate for this cause, and why involve citizens in its implementation? Although adorable, animated babies do not lobby for legislation, nor do they organize in interest groups, vote or make political contributions. While it may be fairly intuitive to explain policy which overlooks individuals, causes or groups with little political clout, the growth of regulation aiming at protecting and involving those with little political voice (such as future generations or the economically vulnerable) comes as a surprise to regulatory scholarship and those who take a cynical view of political and regulatory processes.

We argue this Act is part of two wider trends, worth exploring together. The first is the growth of regulation for social and distributive purposes, and the second, the

growth of 'regulatory participation', involving citizens directly in regulatory decision making. This means regulation for social and redistributive purposes is growing in scope and significance. This is specifically so referring to vulnerable citizens, increasingly shielded from the market in different national settings and across sectors, from the regulation of the disconnection due to non-payment in the utilities, to 'mortgage rescue' schemes in housing credit, to regulating fees in pension markets, with wide variation between sectors and national settings (Haber, 2011, 2015, 2016).

In the second trend, we can also increasingly observe the emergence of 'participatory regulation', in which formerly expert-dominated regulatory decision making now entails citizen involvement. Examples range from policing to environmental regulation, demonstrating citizens' increasing involvement in governance processes at the local level by deliberating, rather than voting, about how government policy or services affect them, in different ways. Even in two jurisdictions of the UK, England and Wales, and Scotland, we have seen different types of participation emerge in the same sector at the same time, namely in price-setting in water regulation (Heims and Lodge, 2016).

These developments may signal a tentative move away from a regulatory world that is predominantly shaped by the concern to reassure investors.

Interestingly, increased participation is often accompanied by a stronger representation of vulnerable or 'voiceless' citizens in regulatory processes. For example, despite the mentioned different nature of customer engagement in water regulation in Scotland as opposed to England and Wales, customer representatives in both jurisdictions were able to push water companies to be more mindful of their most vulnerable customers (especially large families on low incomes) during the last price review.

Regulating for the voiceless, regulatory participation and legitimacy

A simple explanation for both

trends in regulatory policymaking might be that a rise of participatory regulation and representation of the vulnerable in regulatory processes may be aimed at alleviating concerns about the legitimacy of regulatory processes. Given that legitimacy of expert-led non-majoritarian regulatory bodies has long been questioned, we may assume that participatory approaches and representation of the vulnerable can remedy the 'legitimacy deficit'.

Whether this is indeed the case, however, crucially depends on what we think regulatory objectives ought to be and how they can be achieved. Is regulation about long term stability in the market or is it about meeting the (short or long term) interests or needs of different groups of citizens? At the very least, more representation of

interests is not only a pluralist dream but also means important trade-offs between very different kinds of goals, all of which we can safely assume to be societal values. While more participation may provide the appearance of more legitimacy, it may also increase controversy regarding what is perceived as legitimate regulatory decisions.

The shifting of political, social and environmental decision making to the regulatory arena, while also changing how regulatory decision making operates, signifies interesting times for citizens and scholars of regulation alike. As regulatory objectives as well as the nature of regulatory processes are in flux, it remains unclear how new tensions arising from this ongoing shift are to be reconciled and what consequences this transformation will have. In order to gain a better understanding of these issues, scholars and practitioners of regulation thus need to seek to understand what is driving these processes, how tensions between different goals are to be reconciled, and who speaks for those with and without a voice.

References

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