Book Review

A Hitchhiker's Guide to Regulation

Eric L. Windholz. *Governing Through Regulation: Public Policy, Regulation and the Law.* London: Routledge Critical Studies in Public Management, 2018. Xi + 282 pp, US\$160. ISBN: 9781138935587.

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Introduction

As regulation boomed as an instrument of public policy, from the 1980s, so it has also become a major field for scholarly research which draws on a remarkably wide range of disciplines, including accounting, anthropology, criminology, economics, geography, law, political science and sociology. Regulatory governance today has its own major conferences and journals (notably *Regulation & Governance*), titled professorships and thriving graduate programmes. In *Governing Through Regulation: Public Policy, Regulation and Law*, Eric Windholz argues that much of the scholarly literature is insufficiently engaged with and accessible to practitioners. A key objective of this volume is to engage the burgeoning practice community with the central ideas of contemporary regulatory governance scholarship. Windholz's readership is 'persons who find themselves working with regulation ...' recognising that the practitioner is increasingly likely to be a postgraduate student of regulation. Windholz has significant experience on both sides of the divide, having worked as regulatory practitioner for many years, prior to completing a PhD and establishing a new academic career. What he offers is essentially a mapping of the key concepts and issues addressed by regulatory governance. He provides a very clear introduction to the reader with some knowledge and interest in contemporary regulatory governance.

To assist the reader Windholz offers clear discussion of key concepts including governance (not just by governments, but also by markets and through networks), public policy (activities in the space 'through which competing interests and values are weighed and balanced and compromises made'), regulation ('heavily contested') and law (distinguishing 'functional' and 'expressive'). The discussion offers a valuable anchoring point for the reader recognising that definitions are not

essential concepts, and that multiple and overlapping definitions need to be navigated to make sense of contemporary regulatory governance. The author is quite explicit in setting down his own commitments around regulation in the first chapter. Thus he sees regulation as a process which is state-centred, purposive, sustained, and centrally concerned with modifying behaviours. He is transparent that the regulation he addresses, while not relating to any particular state, is a process within democratic capitalist economies. Thus the frame does not explicitly address private regulation nor regulation in other societies. Indeed the principal focus of the literatures addressed in the book is North America, Western Europe (principally the UK) and Australia. This approach makes for easier reading, but arguably glosses over very significant cultural and political differences, relevant to regulation, between the United States and European states and beyond. For example a key aspect of the narrative, describing the shift from welfare state models in which governments directly provide public services to regulatory models in which the state oversees the delivery of such services by others, plays better in Europe than the US. Moreover, public entities did not stop producing services, but were put in competition or cooptation with private entities in many cases. As Windholz acknowledges, the concept of regulatory state has been somewhat overtaken by the richer regulatory capitalism concept in which state, business and civil society actors interact to establish more hybrid forms of regulatory governance in which all three kinds of actors are present or potentially present within many regimes both as regulators and as regulatees.

Regulatory theory, as traditionally conceived, is concerned with explaining the incidence of and changes in regulatory regimes. As Christopher Hood argued in *Explaining Economic Policy Reversals* (1994), such change can be explained by reference to interests, ideas, habitat (including technology) and institutional factors (such as institutional decay). The interplay of interests has long been very influential, creating concerns about developing regulatory regimes for fear that they will serve private interests, either because they were argued for and designed for this purpose or because the regime will inevitably be captured over time. It is an important question to what extent such concerns have been addressed in the institutional design of regulation calculated to inhibit or detect the influence of private interests. Windholz captures well the very significant revisions of these kinds of theories which are needed to explain how regulation of such areas as employment, consumer markets and environment frequently seems more public than private regarding. Through helpful tables the author shows the reader that different strands of theory and explanation may apply to different contexts, with useful examples. The summarising table offered for institutionalist theories is particularly valuable in helping to sort out what he admits is quite a range of theoretical strands which foreground aspects of

institutional structures as explanations for regulatory incidence and change. Windholz offers a clear discussion of competing explanations of change, but does not take the opportunity to challenge the idea that regulatory theory extends well beyond the change question to address many of the other issues addressed in the book, including the development of rules and regulatory norms and modes of enforcement and promoting compliance.

The discussion of theory leads Windholz to prioritise not so much explanation but rather the mapping of complexity through the lens of regulatory space and regulatory regimes, engaging with the way that state power is framed, exercised and shared. These two concepts emphasise the multiplicity of state, business and civil society actors engaged in regulatory governance in any particular policy domain. Regulatory space is described as fluid, lacking clear boundaries and offering space to occupy. Regulatory regimes comprise the network of actors involved with particular policy issues. Diagrams relating to tobacco control show the reader the range and complexity of actors involved, and might have been enhanced through the kind of feature in which actors with more relationships coming in and out of their nodes are shown as larger (and thus more significant players) (as with social network analysis).

Arguably the central chapter of the book is that on Policy Processes and the Regulatory Policy Cycle. As a mapping exercise this chapter asks the reader to think through from the initiation of a policy in agenda-setting and design, through to rule making, implementation and evaluation. Arguably, regulatory governance research has focused too much on setting and implementing norms and too little on agenda-setting and evaluation and Windholz offers an antidote to these biases within the literature. I found the elaboration of modes of participation in policy making particularly rewarding, and they run through the book in other sections too. The importance of participation is both to enhance decision making through better learning, but also develop stronger buy-in for regulatory policies. Windholz is perhaps at his most effective and original in drawing together the concerns of public policy making with regulatory governance in this chapter and the following chapter on better regulation, which considers both regulatory failure and the great variety of modes through which regulation may be legitimated.

Subsequent chapters elaborate this public policy cycle approach to regulatory governance addressing agenda-setting, design, regulatory impact assessment, implementation and evaluation. I found the chapter on design particularly rewarding as it draws together a wide range of literatures quite systematically in understanding better the processes and choices for working out how to tackle a particular policy problem. Thus the book contributes to our thinking about who participates in the room, how consultation is managed, how account is taken of

contributions to policy discussion and how transparent such processes should be. It also engaged us with questions of accountability for such processes, all too often neglected by governments and agencies, and which have been a key focal point for better regulation reforms in the EU since 2015. Discussions of implementation and evaluation were somewhat less well developed in their thinking, though very effective in conveying the sense of how the current literature thinks about key regulatory challenges.

Two concluding chapters endeavour to briefly evaluate the future of regulatory governance and what the reader has learnt about addressing the challenges. Windholz sees an intensification of the pressures which underpinned the growth in regulatory governance, notably new technologies, fragmented societies and diverse modes of engaging with citizens. He sees polycentric regulatory regimes growing in importance. However, a key choice made by the author, not to address transnational and international dimensions of regulation, limits the value of his crystal ball, especially as so much regulatory innovation is found today in transnational regimes. Surely the growth in transnational regulation is likely also to be a key trend as we increasingly encounter phenomena which affect people across borders and which national governments cannot effectively address on their own. Thus, the importance of networks of regulators and of others, of the enrolment of governments by third parties, identified by Windholz, is likely to be particularly significant in addressing transnational governance issues. In his discussion of the importance of broadening participation in regulatory governance, the author highlights the value of learning and feedback. Processes of participation also create risk that the wealthiest or most interested will be able to dominate proceedings, if not well regulated. In the concluding chapter one of his lessons is that we should 'facilitate learning' in regulatory governance. Windholz recognises the importance and the difficulty of creating learning environments with appropriate feedback loops in regulatory regimes. The author could have addressed these issues more fully and they provide scope for future research which might be more empirically oriented as to the conditions under which effective learning and feedback loops may be fostered. Overall the reader will find a very effective mapping of the field in this book, which will serve as an advanced introduction to students, academics and practitioners to the concepts and issues in contemporary regulatory governance.