

## EDITORS' INTRODUCTION

## Can regulation and governance make a difference?

Regulation and governance have become popular phenomena for social scientists to study and for good reason. Although redistributive, distributive and developmental policies still abound, the expanding part of governance is regulation. Indeed, few projects are more central to the social sciences than the study of regulation and regulatory governance. Regulation and the significant issues raised by it have become central to the work of social scientists from many disciplines – political science, economics, law, sociology, psychology, anthropology, history and others. Furthermore, the strong interest of other professional and scholarly communities, such as physicians, nutritionists, biologists, ecologists, geologists, pharmacists and chemists, makes regulatory issues even more central to scientists and practitioners who are perplexed by the demands for better, fairer, more efficient, and more participatory systems of governance.

We have established this journal to serve the needs of these varied professional and scholarly communities. We aim to provide a leading interdisciplinary platform for the study of regulation and its implications for governance. We seek to bridge and solidify discussions among a variety of relevant disciplines, serving the development of core theoretical and empirical insights in the study of regulation.

In this editorial introduction, we introduce the new journal first by offering an avowedly brief history of how interest in regulation has grown across the social science disciplines in the course of the last century. We then argue that the most recent buildup of that wave of research interest has coincided with a shift in political studies from an interest in government to governance. Finally, we distinguish regulation from governance and set out broadly, yet clearly, the intellectual agenda and vision for *Regulation & Governance*.

### Regulation before governance

From the outset, regulation as a subject of social science research grew out of a convergence of many streams from other fields. The Progressive Era in the USA spawned not only muck-raking exposés of the need for new regulatory agencies, but also early scholarly contributions that evaluated the new regulatory institutions and the political economy of the American regulatory state (Cushman 1941; Bernstein 1955; Mitnick 1980). The influence of important legal and political innovators, such as Louis D. Brandeis, President Woodrow Wilson's chief economic advisor and architect of the Federal Trade Commission, stretched from the Progressive Era through to the New Deal.

The next chapter in regulatory studies opened in the 1960s and 1970s, when the USA and other developed nations experienced a burst of new forms of consumer, civil rights, health and safety, and environmental regulation, and with these changes came renewed interest in regulation (Wilson 1980; Bardach & Kagan 1982). More recently, there has been a move away from treating the USA as the main arena for regulatory studies,

especially as the European Union has become an important trendsetter in both risk regulation and regulation for competition (Majone 1994, 1997; Moran 2003; Vogel 2003).

Another important strand of regulatory studies emerged out of corporate crime research. Especially after the Watergate scandal in the early 1970s, this field has attracted many of the brightest and best postwar criminologists. At first, many in the core criminological tradition dismissed the study of corporate crime as outside the realm of "real" crime. However, Edwin Sutherland, the most famous of all American criminologists, created the field and, as early as 1939, invented the term "white-collar crime" in his presidential address to the American Sociological Society (now ASA). Through the years, a remarkable number of leading regulatory scholars since Sutherland started out as criminologists or lawyer-criminologists. Many of the best psychologists of regulation also have had a foot in the criminology camp. Many scholars in criminology have found white-collar crime more interesting than street crime and eventually have found regulation, broadly conceived, more interesting than even white-collar crime.

Many criminologists studying regulation, in turn, became engaged in sociology. Just as many of the leading criminologists were actually lawyer-criminologists, many of the leading sociologists of regulation were actually lawyer-sociologists, whose intellectual home became the Law and Society Association in the USA or the Socio-Legal Studies Association in the UK. For regulatory scholars, the law and society movement was much more than a meeting place for scholars who had an interest in both the law and the sociology of regulation. For decades in the late 20th century, the Law and Society Association annual meeting was the place where regulatory scholars most consistently met to exchange ideas, an interest that was consolidated in the Collaborative Research Network on Regulatory Governance and in the journal *Law and Policy*, the latter an outlet that over time acquired a strong orientation toward regulatory scholarship. The Law and Society Association also embraced legal anthropologists who had strong interests in regulation, as well as legal historians and legal economists of regulation.

Legal economists who were interested in regulation increasingly moved away from the law and society field and instead found their home in the law and economics associations that emerged in the 1980s and 1990s. Regulation had long been an important topic in mainstream economics. Nobel Prizes were won for work on regulation, including a cluster awarded to economists from the University of Chicago who were critics of certain kinds of regulation. Indeed, the Chicago School generated both so much political support during the Reagan era in the USA and the Thatcher era in the UK, and so much intellectual opposition, that these economists had a massive influence in making regulation and deregulation a central topic across the social sciences. Accompanying the rise of the Chicago School, a public choice tradition also flourished in Virginia and elsewhere around the analytics of conceiving regulators as self-interested maximizers of their interests as bureaucrats (as opposed to guardians of a public interest).

Across the political spectrum, from Keynes to Hayek, it is fair to say that many of the most influential economists have worked on regulation. This remains true today; some of the stellar economists in the corridors of global power, such as Joseph Stiglitz (2002), are centrally interested in regulation. The spread of privatization around the world, which is empirically associated with the explosion of new regulatory agencies, has in the past two decades created a growth industry in applied regulatory economics to inform the policy work of such agencies. Economic history and business history have also been fertile contributors to regulatory scholarship (Chandler 1977; North 1990).

## Regulation after governance

In recent decades, political scientists have also taken a renewed interest in regulatory studies. This, too, has been connected to the worldwide growth in privatization, as political scientists and public policy scholars have responded to a demand for advice from new regulatory agencies. This renewed interest in regulation among political scientists has coincided with criticism of the specialization and division of the discipline along lines mirroring the legislative and executive branches of the state. From within, then, some in the discipline began pluralizing, taking on board the additional criticism that political science had become too statist and thereby asserting its credentials in the study of the politics of global institutions as well as highly local nongovernmental institutions (Ostrom 1990). The study of nongovernmental organizations took firm root in political science, as did the study of the politics of the judicial branch and of private sector governance. Political science and sociology became much more interrelated disciplines, with significant research agendas in political science now less exclusively focused on the state and interested as well in private–public governance (as manifested, for example, by the journal *Governance*).

Obviously, in naming this journal *Regulation & Governance*, we are in part responding to this broader movement within political science. But we also conceive of “governance” as a broader term than “regulation.” Governments and governance are about providing, distributing, and regulating. Regulation can be conceived as that large subset of governance that is about steering the flow of events and behavior, as opposed to providing and distributing. Of course, when regulators regulate, they often steer the providing and distributing that regulated actors undertake as well. That said, we agree with Julia Black’s (2002) view that it often makes sense to regard regulation as more narrow than governance. Administrative lawyers might have good reasons for wanting to treat as regulators only that set of public organizations with the power to enforce rules or, even more narrowly, with the power to enforce rules against the private sector. Some political scientists, indeed even other administrative lawyers, might want to take an interest in regulation of the state within the state (as an Auditor General does, for example) (Hood *et al.* 1999). Others will want to ask whether the stock exchange (a private organization) is a more or less effective regulator of an aspect of securities markets than public organizations, such as the Securities and Exchange Commission or the International Organization of Securities Commissions. Many regulatory scholars will say that they are interested not only in regulation by rules; they may want to distinguish principles from rules or regulation through social norms from regulation through formal rules. Scholars of building design and urban planning (Newman 1972), of the Internet (Lessig 1999), and even of Disney World (Shearing & Stenning 1987) may be more interested in how architecture regulates than in either formal or informal norms.

Similarly, some researchers view the market itself as a mechanism of regulation, perhaps at times posing a challenge to conventional economics. This is a common view among Foucaultian scholars of neoliberal governmentalities, for example. But it is also common among environmental economists and others who talk of the policy choice between creating a market in pollutants versus drafting rules to control those same pollutants. It is equally fruitful to ask whether an unregulated market in some products leads to outcomes of a different kind from various approaches to regulating that market. All of these questions and approaches fall within the purview of *Regulation & Governance*.

## Our challenge

The mission of *Regulation & Governance* is to open regulatory studies to the turn toward governance and to help create a space where all social sciences will take regulation more seriously, whether political science, regulatory economics, law and society scholarship, anthropology, history, geography, sociology, psychology, business, law, or other disciplines. We believe that these disciplines will take regulation more seriously if we can move the boundaries of regulation toward the boundaries of governance. This means, we suspect, that advances in regulatory theory will have an exciting integrative potential for the social sciences overall. Indeed, we believe that regulatory studies have emerged at the cutting edge of paradigmatic change in the social sciences.

The field of restorative justice is one of many illustrations of how a paradigm change incubated within regulatory scholarship is infusing new perspectives into how we think about constituting competitive markets and state–business relations to that end (Parker 2004), how we think about creating peace from international conflict (Howley 2000), how we think about education policy (Morrison 2007) and health policy (Brennan & Berwick 1996). Similarly, if it is true that we are in an era of networked governance (Castells 1996; Rhodes 1997; Slaughter 1997) and that the rise of regulatory forms of governance is intimately connected with this new reality (Majone 1997; Scott 2004), we should not be surprised that innovations in networked regulation capture the imagination of big thinkers and practical doers alike about the direction the world is heading. Because we do think there is some truth to such claims about the nature of contemporary change, we see the promotion of better regulatory studies as a worthy way of understanding and improving the world around us.

Bad regulation, after all, can do terrible damage to people. Good regulation can control problems that might otherwise lead to bankruptcy and war, and can emancipate the lives of ordinary people. Mediocre, unimaginative regulation that occupies the space between good and bad regulation leads to results that are correspondingly between the extremes of good and bad. Regulation matters, and therefore the development and empirical testing of theories about regulation also matter. Because regulation and regulatory studies make a crucial difference in the lives of millions of people, all of us in the intellectual community of regulatory scholars need to become more demanding than we have been about theoretical rigor and empirical evidence.

This journal is epistemologically plural about the sort of evidence it takes seriously. The editors would like to see more regulatory innovations tested by randomized controlled trials or other rigorous program-evaluation methods. We recognize that, for many problems in regulatory policy, epidemiological research or multivariate analysis of data that are not randomized will provide more realistic and encompassing quantitative insight. For other kinds of questions, to be sure, entirely qualitative ethnographic research will provide appropriate, if not superior, insight. Rigorous historical research based on careful poring over primary sources will be the most important empirical approach to responding to still other questions.

The analytic insights of philosophers and theoreticians can help prompt new questions and approaches and they will certainly be welcome in this journal. Regulation is a field where innovative moves are being made to integrate explanatory theory (ordered sets of propositions about the way the world is) and normative theory (ordered sets of propositions about the way the world ought to be). This means there is promise in crafting

of theory around concepts that are fertile simultaneously in normative and in explanatory theory – such as transparency, domination, procedural justice, and accountability.

We also hope that scholars of regulation will learn from what may seem initially to be distant work of other social and natural scientists, whether their work focuses on, say, the governance of schools or of beehives. When beehives and schools really work with a buzz, they are remarkably impressive self-regulatory accomplishments that depend on an externally imposed architecture and external incentives. The best regulatory theory of the most general import might be generated out of lateral influences from quite exotic areas of regulation. To be sure, we think environmental regulation, competition policy, and central banking are substantively more important to the lives of people than is the regulation of beehives. But big ideas have come from bees before in the social sciences (Mandeville 1714). In an era when the social sciences are beginning to learn from the physical and biological sciences about how complex systems can defy equilibrium models, generating endless waves of patterned novelty, we can be open to learning from how the system architecture of a beehive optimizes the discovery and delivery of the food the hive needs.

As editors, we are ecumenical on definitional questions, on what matters substantively, on disciplines and interdisciplinarity, and on epistemology. Yet, we will be ruthlessly narrow in winnowing submissions to select those that make major strides toward advancing our understanding of governance through advancing our understanding of regulation. We will be demanding on empirical rigor and on theoretical sophistication. As we hope this first issue shows, and as our plans for the second and subsequent issues make plain to us, we will be successful in recruiting some of the best minds from across the social sciences to the ever more exciting challenge of confronting the big questions of regulation and governance.

### **Regulatory studies and the transformation of the social sciences**

One of the more exciting contributions to the social sciences of the past decade has come from Jared Diamond in the form of two books, *Guns, Germs and Steel* (1997) and *Collapse* (2005), the first about how some civilizations grow to dominance and others to domination, the second about how they collapse. Diamond is a well-regarded physiologist, currently at the UCLA Medical School, who moved with the great paradigmatic changes in the biological sciences of the late 20th century to make brilliant contributions to both ecology and evolutionary biology. Along with the new molecular biology of the DNA revolution, these were the theoretically oriented nodes of reorganization of the biological sciences that replaced a biology organized around categories of living objects (anatomy, botany, zoology, entomology, and so on). Diamond's contribution to the social sciences is interesting in two ways. First, it was inspired, during biological fieldwork in the New Guinea highlands, by thinking not about the dominant North Atlantic civilizations, but about what many would consider obscure ones. Second, Diamond's contribution breathed new life into the social science discipline – geography – that was perhaps more in decline than any other in the late 20th century.

The most inventive part of Diamond's theory is the claim that technological and social changes enabling economic development spread horizontally – within bands of latitude – not longitudinally. One important reason for this is that agricultural and environmental management technologies diffuse on an east–west axis where climatic

conditions are similar. An interesting feature of Diamond's contribution, from our perspective, is that it proffers a theory of regulation and governance. The collapse of civilizations into unsustainability, Diamond's work suggests, can be averted by well-crafted state and village-level environmental regulation and the diffusion of exemplary corporate self-regulation. Another interesting feature of Diamond's work is that it manages a fertile synthesis of explanatory theory and normative theory about social injustice and peacemaking in relationships between societies and in coexistence with nature.

*Regulation & Governance* may never discover the next Jared Diamond. Yet, we certainly hope to encourage and enable more regulatory scholars to develop theoretically integrated and empirically sweeping visions of how to reinvent the social sciences. Diamond's work illustrates why we think the world is changing in a direction where regulatory research in the interstices between social science disciplines holds out the promise of the kind of paradigmatic revolution the biological sciences have already enjoyed. That said, regulation and governance scholars should not try too hard to be paradigmatic revolutionaries. We suspect that, if they simply try to do good scholarship at the intersection of regulation and governance, paradigmatic development of the social sciences will be an emergent property of the networked aggregation of their contributions. Perhaps this journal will make a useful contribution to catalyzing the promise of paradigmatic development. That would happen, of course, only if the bees that fly into this hive are workers.

### Our editorial policy

It should be clear by now that we are interested in, indeed intrigued by, conceptions of regulation with boundaries that expand toward those of governance. At the same time, we are emphatically interested in the regulatory parts of governance – the parts that are about steering, as opposed to providing, distributing, running, or voting. Our intellectual efforts to understand systems of regulatory governance also make us sensitive to issues of accountability and transparency closer to home, in our own editorial policy. Our commitment to efficient, transparent and productive editorial processes has so far been manifested in a review process that is both prompt and constructive. Our commitment to efficiency and procedural fairness also makes us value readers' and authors' views on any of our editorial practices. Please write to us at any time if you have concerns or suggestions.

John Braithwaite  
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