



Engaging regulation

Martin Lodge and **Andrea Mennicken** explore the significance of contemporary enthusiasm for more engagement in regulation

The claim that regulators, other governmental actors, corporations and not-for-profit organizations, including universities, should 'engage' with those affected by their actions is unlikely to generate much opposition. Yet, no matter how much agreement there is about the importance of engagement at one level, debates about engagement – engagement for what, for whom, and by what means? – expose fundamental concerns about relationships between different parties, and therefore also about understandings of democracy. We discuss each concern in turn.

One principal question concerns the purpose of engaging in engagement. Several rationales can be distinguished, ranging from the enhancement of choice, of participation, to the enrichment of 'experience', and enhancement of legitimacy. Enhancing choice is about encouraging the kind of conditions that allow individuals to exercise meaningful choices, including the provision of more information/transparency which will permit better informed choices, thus reducing sub-optimal selections due to the complexities involved in distinguishing between different goods and products.

Engagement can, however, also be about ensuring 'satisfaction' with a particular service or product. Here, the idea is to find out more about customer preferences; for example, in water, it might be about probing into potential trade-offs between concerns about price levels and the extent of leakages or the degree of water pressure. More investment to address the latter will affect the former (i.e., higher prices). In this case, engagement is aimed at enhancing the responsiveness of organizations to particular constituencies that goes beyond the standard complaints handling procedures of the past. In turn, it also might facilitate understanding among affected constituencies of the various choices that regulated organizations have to face; for example, about levels or types

of investment. Finally, engagement can be about the encouragement of participation, at the rule making and/or enforcement level. Emphasis here lies in the inclusion of individuals and organizations with an interest in shaping decision making and monitoring regulatory and corporate activities.

Taking engagement seriously, therefore, requires reflection about the various understandings of engagement. It is unlikely that there will ever be a full consensus on what engagement means, but for the contemporary enthusiasm for 'more engagement' across regulatory circles to advance, it will be important and inevitable to clarify the purpose of (different) engagement types and to distinguish between different activities that are undertaken in its name.

The second principal question relates to representativeness. No engagement process can aspire to mirror the diverse preferences of various stakeholders. Selecting 'representative' individuals and organizations that have sufficient resources and interest is challenging – and it raises questions of institutional design, such as the subsidization of particular interest representatives (an idea developed by Ayres and Braithwaite in their classic *Responsive Regulation*). Engagement does not necessarily come naturally to all organizations; regulators may prefer their econocratic models over mediation processes, firms are likely to prefer the comfort of gaming regulators over debating with rowdy customers, and customer advocacy groups are ambivalent about directly engaging with firms and regulators about their models. More generally, bringing together different 'users' with overlapping interests might lead to mediated outcomes which all parties can accept. However, in the case of fundamental conflicts, it is less likely that different parties will be able to agree.

The question about representativeness raises further issues. One is whether

engagement should be about 'users', 'consumers' and 'customers' or about 'citizens' whose lives are fundamentally shaped by the presence and quality of particular essential services. It is problematic to develop a profile of the 'average user', and it is debatable whether specific attention needs to be devoted to particular, vulnerable individuals. Such concerns are particularly prominent when it comes to public services affecting potentially highly vulnerable individuals, for example, in care homes, prisons or schools, but they also arise in relation to utilities more broadly. Infrastructures and essential services might be regarded as 'services' on a par with supermarkets and hotels, but they might also be seen as critical for enhancing social and economic mobility. These questions extend to other areas as well. Taking the case of the liberalization of cannabis and its regulation as an example (see the article by Palermo and colleagues in this issue), it clearly matters whether a regulatory regime incorporates the views of patients, or of recreational users, or both. Similarly, Mathias Koenig-Archibugi and Kate Macdonald (this issue) highlight that engagement processes are not just about the user, they are equally about other potentially vulnerable individuals, namely workers, as in the case of child labour, and producers.

Defining engagement in terms of user/customer or citizenship has wider implications for the role of regulation and of regulated services; for some, user engagement allows for market-type engagement with services roughly equivalent to satisfaction ratings used in the hotel industry and other online rating systems. Such rating systems may, however, not be regarded as sufficient when talking about the significance of particular services for economic and social life. Defining engagement for citizens rather than customers highlights not just the central role of certain industries in social, economic and political life. It



pushes also for an understanding of regulation that seeks to widen participation and, arguably, enhance democratisation.

Forms of representativeness can be further distinguished along two dimensions. The first dimension pertains to questions of individual versus collective representation. One theme that has gained increasing traction is that the focus of engagement processes should move from the individual to the community level. Defining the boundaries of a 'community' is, however, also highly problematic. In some areas, defining a community might be relatively straightforward where certain geographical or natural boundaries (such as water catchment areas) make defining a community feasible. However, defining a community in the context of fluid and mobile populations is far more difficult, even when leaving aside questions of multiple 'community identities' (e.g., ethnicity, socio-economic status, gender, age). In some places these identities might be overlapping, in others, however, such identities might be cumulative and divisive. Such problems are further accentuated by so-called transboundary problems. These are problems that cut across geographical and organizational boundaries, and make the definition of what the relevant community is – and what the decision making rules might be – highly problematic.

The second dimension relates to time. In view of growing concerns about sustainability, there is a question whether the current generation of customer-citizens will discount the future to the detriment of future generations. Even though some might argue that thinking about the future encourages companies to invest in 'gold-plated' costly and inefficient spare capacities and that therefore the inclusion of current customers will provide a welcome counter-weight to put downward pressure on costs faced by current generations. How to induce long term thinking and the interests of future

generations into engagement processes in the present represents a serious challenge.

The third principal question relates to questions of technique. The preferred method of engaging is certainly related to the underlying rationale. Engaging with customers on the basis of complaints relates to understandings that engagement is largely about advancing choice. In such models, engagement is largely about developing better tools to identify problems and complaints in order to understand customer choices better. However, many regulatory bodies have increasingly moved to more pro-active forms of engagement, whether it is through the extensive use of surveys and focus groups, or through the inclusion of engagement fora into consultative, if not decision-making processes.

Engaging with stakeholders has become, as noted, a central theme in contemporary regulation. **carr** has accompanied this process in comparative research that began with an initial investigation into recent changes in Scottish and English/Welsh water regulation (Heims and Lodge, 2016a, 2016b). This led to a much wider discussion about the origins of the interest in engagement processes, particularly across economic regulators. These discussions revealed considerable differences in motivation. They also highlighted the importance of regulatory bodies in guiding and mediating these processes, while noting the challenges for customer and/or citizen representatives to fully engage in these processes, for example because of asymmetries in technical knowledge and expertise and unfamiliarity. The questions raised by formalizing engagement processes beyond these initial quasi experiments are at the centre of contemporary regulatory conversations.

Debates about engagement may merely be seen as an interesting detail for those fascinated by the world of reg-

ulatory to-ing and fro-ing. However, understanding engagement also offers important insights into more general debates about regulation, marketization, and political order. Engagement on its own offers no panacea for fewer regulatory crises or for advanced citizenship. On its own, no matter in what form, 'engagement' might not lead to superior outcomes. Engagement processes may simply wither away as the interest of various parties fades. Or they may lead to blockages and 'populism', for example when particular groups come to dominate the process. Or they may lead to dominance by the well organized over the highly diffused, and they may offer a convenient cover for influential actors seeking to capture regulatory decisions. Advancing knowledge of and in engagement processes requires sensitivity to such issues, to advance critical debate about conditions and consequences of engagement, and not to push for engagement for its own sake.

References

Heims, E. & Lodge, M. (2016a) 'Closing time? Regulatory agencies and consumer engagement in economic regulation' in *Regulatory agencies under challenge*, **carr** Discussion Paper 81. London: LSE.

Heims, E. & Lodge, M. (2016b) 'Customer engagement: towards a new era in economic regulation' in *Customer engagement in regulation*, **carr** Discussion Paper 82. London: LSE.

Martin Lodge and **Andrea Mennicken** are Director and Deputy Director of **carr**.