

Risking reason or taming technocracy? Counter-movements and regulation in the global south

Bruno Queiroz Cunha calls for a different understanding of regulation

The past decade has witnessed a number of high profile regulatory failures, the 2008 financial crisis probably being the most pervasive. These failures have highlighted severe shortcomings in one of the dominant regulatory orthodoxies, namely the one that centres on the importance of credibility. As illustrated by Alasdair Roberts' *The Logic of Discipline*, the dominant emphasis has been on regulatory approaches that minimize discretion and flexibility, and that place great emphasis on technocratic decision making. Emphasizing credibility and lack of discretion denies the inherently political nature of regulation and reduces the scope for a constant questioning of regulatory choices and interventions, as well as the kind of resources that are being devoted to particular interventions. Such an understanding of regulation would in contrast advocate the importance of adaptability.

The criticism of regulatory orthodoxies has been particularly pronounced in the global south. The emphasis here has not just been on failings in financial regulation, but has focused on public services more generally. Localized social mobilization in different countries has generated new critical narratives that are exposing the flaws in the rhetoric and practices of regulatory orthodoxies. These narratives have begun to penetrate policy makers' rhetoric and formal decision making processes. A number of innovative initiatives have emerged that can be considered as laboratories for new ideas concerning the delivery and regulation of public services.

Such developments go against the traditional pattern of regulatory (policy) diffusion in which initiatives that flourished in the developed world travel 'southwards', as was observed in the diffusion of the regulatory agency 'model'. More broadly, reforms in the global south favoured the creation of regulatory regimes that were inspired by the 'logic of discipline', namely by establishing rule-based systems

that supposedly removed electoral incentives and decision making from elected officials and put experts and technocrats in charge. However, in numerous cases, the regulatory apparatus in emerging economies soon turned into rather dysfunctional caricatures of first-world regimes.

One popular and convenient explanation for this failure in absorbing institutional models has been 'underdevelopment'. Such an account merely highlights the contrast between the supposed sub-par performance and that of some form of idealized world. Without wishing to deny the existence of structural weaknesses in emerging economies (diagnosed by observers from both the political right and left), a more critical reflection on the large scale institutional transplants would question why these transplants were adopted and remained predominant even in contexts where local policy alternatives were potentially available.

Contrary to stereotype, the global south has witnessed innovative methods to design and implement policy and to organize governance. Some of these experiments have generated considerable international interest. Well-known examples include conditional cash transfers and micro-credit technologies. Another prominent example is the global diffusion of participatory budgeting mechanisms. A shared theme across all of these initiatives is a concern for local diversity, interdependencies and needs. These initiatives have resulted from and encourage a continuous process of experimentation and adaptation. Even if one were to suggest that such innovative initiatives may face a harder time when encountering more difficult policy areas, it is unlikely that regulation can remain totally immune from such experiences.

Brazil offers a good example. Over the past few years, disappointment with existing regulatory regimes has been reflected in opinion polls, escalating

complaints, legal challenges and disputes involving regulated companies and utility industries. Brazil has also witnessed a growing counter-movement that challenges regulated public services whose operations are accused of a lack of transparency and a hurried, non-deliberative type of formal decision making. Regulatory regimes were accused of emphasizing a technocratic vision of public services that did not reflect public preferences. These counter-movements have emerged in a variety of forms, from the highly critical and popular to those focusing on litigious disputes. Regardless of format, they have increasingly put pressure on regulators and regulated companies to offer further concessions in fields such as public transport systems, water services, telecommunications, and private health insurance.

The rise of these counter-movements that challenge regulated public service regimes is arguably the most visible part of a much more deep-seated problem. There is an irresolvable and growing tension between, on the one side, a model of 'reinventing government' that has encouraged considerable institutional change following the idea of a technocratic and non-intervening state, and, on the other, growing demands for democratization, wealth distribution and, therefore, a more active (and interventionist) state. This tension is highly perceptible in contemporary Brazil with likely consequences for existing regulatory frameworks and decision making processes.

One of the main actors involved in the disputes over the regulation of public services in Brazil deserves particular attention. The Free Fare Movement (*Movimento Passe Livre*) initially served as a hub for a policy community made up almost exclusively of university students and more politically engaged individuals in urban centres. More recently, its membership has grown much larger and diverse. It articulates a coherent critique against one central tangible and pervasive

problem affecting urban areas in developing countries, a discourse that has been adopted by wider groups in society.

Free Fare's major demand is the abolition of all public transport charges as a way for everyone to enjoy their rights to the city. This demand used to be dismissed and ridiculed by policy makers. However, after the large scale and nationwide street protests of June 2013, and in the light of Free Fare's continuous growth in popular support, criticisms became more vitriolic and confrontational. More recently, prominent forums have responded to Free Fare's central message, which has spread to other regulatory fields beyond public transport. Free Fare's discourse has become far more salient and it can no longer be given the same short shrift as in the past. This is especially the case as these suggestions are put into policy practice. For example, a free fare policy has been set up to compete with a long established private bus service in Maricá, a city of around 100,000 people in the State of Rio de Janeiro.

The pressure exercised by Free Fare and other social movements have shown a potential for additional changes. In 2014, largely as a result of the widespread support for counter-movements, the Brazilian federal government launched a proposal for a National Policy of Public Participation and declared it would seek concrete ways to improve public participation in policy and rule making. At that point, influential conservative figures associated with the existing regulatory orthodoxies attacked the government's proposal as representing a disguised assault on representative democracy and constitutional rule. Conservatives succeeded in galvanizing support and eventually vetoed the proposal in parliament amid extensive mass media coverage.

The conservative backlash to counter-movements might be said to reflect

the typical resistance of a group that seeks to protect its influence. Another interpretation, however, is to suggest that the premature end to the National Policy of Public Participation was due to a lack of high level political support from the outset. One may therefore have to question whether the government was truly committed to the new policy, or whether this was largely a political sop.

How to build productive ties among fragmented groups in order to enable critical viewpoints to be reflected in the institutional process remains a major challenge. In Brazil, the surge of new ideas for regulation practice and public service delivery is an indication of greater maturity. The continuous consolidation of democracy over the last decades has empowered local groups and increased society's awareness and clout in decision making processes. This, in turn, has fuelled bottom-up pressures for greater responsiveness of policy approaches and instruments. Regulatory failures and 'policy surprises' that do not fit the orthodoxies in regulatory thinking present key problems to the purist advocate of conservative orthodoxies of regulation. However, the sustainability of these orthodoxies has become increasingly questionable. It is high time to realise that adaptability to local circumstances ought to be given the same status as credibility in contemporary regulatory theory and practice.

Reference

Roberts, Alasdair (2010) *The Logic of Discipline: global capitalism and the architecture of government*, Oxford: Oxford University Press.

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