

Strengthening the Capacity for Regulatory Analysis

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The worlds of regulation practice and research are in crisis. To overcome this state of crisis, a different approach towards capacity creation is required. This new approach, which we call regulatory analysis, places its emphasis on creative problem-solving capacity. This contrasts with arguments that place their faith on enhanced through hi-tech or hi-intelligence instruments or via importing 'best practice' from one place or another. Such an approach will facilitate a more sophisticated understanding of advantages and limitations of different regulatory strategies.

The case for a new understanding of what is required in regulation is overwhelming. The financial crisis and major incidents, such as oil spills, nuclear catastrophes and food scandals, have revealed the exhaustion of much of the intellectual agenda that has informed the choice of regulatory instruments over the past few decades. However, far from questioning the instruments' apparent limitations, contemporary discussions are mostly about the failure in implementing strategies to deal with the 'flow and stock' of regulation, whether this involves risk-based regulation, sun-setting, impact assessments or so-called 'one-in, one-out' provisions. Over-specialisation within regulated domains has also reduced the interest in cross-domain learning. Regulatory experiences are seen as specific, permitting a general attitude of disinterest regarding cross-sectoral experiences.

A sense of crisis also prevails in the world of research. Academic research has, for understandable career-based reasons, become focused on 'fashionable' research themes. Despite continuous commitments towards interdisciplinarity, research is driven largely by disciplinary concerns and interests. Engagement with the world of practice has not been infrequent, but such encounters have been limited in other ways. Critical views were at best tolerated, while other contributions offered mostly descriptive commentaries on

ongoing reform initiatives. Little sign exists that there is a new intellectual endeavour out there that is going to shape regulatory thinking in the coming decade or longer.

So what can be done? How can the worlds of research and practice come to a better and more fruitful relationship that could influence the capacity for regulatory analysis in the 'real' world? Of course, the world of the academic researcher will always be shaped by the demands of career advancement through academic publishing. Nor do we suggest that the world of research should pretend to have the answers to the problems in the 'real' world, and neither should it be expected to (however convenient this may be in terms of responsibility-shifting). At the same time, for the world of research, this does not mean that the world of practice should be ignored or treated as some form of troublesome and low-quality data.

How, then, can the capacity for regulatory analysis, be enhanced? Capacity can be enhanced through well-structured and challenging interchanges between research and practice. One key role for academic research is to listen to the concerns and challenges affecting practice and to gain thereby an understanding of the substantive questions involved. Furthermore, academic research and teaching should be able to provide analytical devices and frameworks that are valuable for the world of practice by facilitating conversations between researchers and practitioners, and among practitioners themselves.

Achieving such an improved mode of conversation requires three essential elements in order to shape the conversation between research and practice. First, one key element is the importance of standing back from the daily search for the latest quick fix and to concentrate on the perennial and common challenges that affect regulatory life. This requires an ability and willingness on both sides to be challenged and to open themselves up to a transparent examination of underlying assumptions, working hypotheses and assumed underlying mechanisms.

Focusing on the core challenges - for example, how views about regulatees shape instrument choice, how consultation can include under-resourced 'stakeholders', how risk should be handled, how impacts can be measured - allows for a sharing of experiences and a growth in joint understanding. This requires a willingness to go beyond the usual comfort zones of powerpoint (or 'prezi') presentations and the quest for the 'latest thinking'. Such 'updating' activities may have their place. However to advance regulatory analysis capacity properly requires a return 'back to basics' towards an approach that facilitates a conversation which concentrates on perennial questions and issues. Context matters in such conversations, but without a better understanding of the generic debates, tensions and limitations, there is little use in considering how context might affect the kind of answers we propose to particular problems.

Second, strengthening regulatory capacity through a conversation between research and practice needs to be problem- and problem-solving-driven. Most of all, this means that the generic issues need to be considered in the contrasting ways in which different approaches and viewpoints address particular debates and challenges. Similarly, a capacity for regulatory analysis encourages the consideration of different potential solutions. It is only through such pluralisation of perspectives that regulatory capacity will develop sufficient creativity and flexibility to detect emerging issues, to develop understandings to problems, and to respond creatively with regulatory solutions.

Third, an approach towards regulatory analysis that facilitates such a pluralisation, if not a contestation between rival approaches towards identifying problems and solutions does not just encourage creativity. It also strengthens awareness as to the weaknesses of various approaches, in particular the specific pre-requisites and scope conditions that are associated with particular approaches. It is exactly those underlying assumptions and pre-requisites that are often hidden away in the reform advocacy that seeks to praise the advantages of one set of particular instruments over others. To strengthen regulatory analysis, it is important to turn attention to the question as to the underlying cause-effect relationships and what makes particular interventions work in particular settings and how

such mechanisms could be transported elsewhere. We can only come to such an understanding if we are aware of the limitations and vulnerabilities of any one form of intervention. Such an awareness emerges through the systematic challenging of experiences.

In sum, in a world where we do not know where the next crisis is coming from, issues of capacity are centrally about being resilient and being able to 'bounce back' in reflective and creative ways. This can only be achieved in a context where capacities have been trained in going back to the fundamentals and reflecting creatively about problems and solutions.

The interaction between worlds of practice and research can facilitate this kind of capacity building – through a careful and systematic exchange that takes on a challenge function. Such challenging is not about expressing mutual disrespect, but about the challenging of assumptions and the sharing of joint experiences. In other words, regulatory analysis is about developing an attitude of curiosity and scepticism. This means that regulation should be seen as an inevitable failure and that any reform initiative should be accompanied by academic howls of fatalism and scepticism. Rather, a commitment towards advancing regulatory analysis capacity means an enthusiastic embrace of cross-sectoral and cross-national learning that seeks to identify underlying assumptions and mechanisms, that is willing to be challenged and to move beyond the world of fads of fashion. Exposure to this kind of approach towards advancing capacity can be facilitated through carefully designed training courses that emphasise the fundamental questions and debates rather than the latest 'fix'. Another way would be peer-review processes that move beyond the tick-box and the search for 'best practice' and towards a style of peer-level conversation about how particular problems have been approached and solved.

Over thirty years ago, the famous public administration scholar Richard Spann bemoaned that the field of public administration was characterised by fads and fashions. The field of regulation is not short of its own fads, either. It is a field that is divided by different values

(with regulation being used to justify the contradictory values of efficiency, fairness and redundancy). Regulation is also a field in which underlying assumptions are often hidden away to support reform advocacy. To move regulation towards a capacity-rich world in which the worlds of practice and research creatively interact with each other, and are able to think more carefully about the applicability and desirability of particular interventions, that is, a move towards embracing the regulatory analysis agenda seems one promising way to advance debates.

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