

Book Review: Meta-Regulation in Practice: Beyond Normative Views of Morality and Rationality by F.C. Simon

In Meta-Regulation in Practice: Beyond Normative Views of Morality and Rationality, F.C. Simon offers a critique of the theory of meta-regulation, drawing upon the twenty-first-century experience of energy regulation in the state of Victoria, Australia. Cosmo Graham recommends the book for its combination of commendably clear theoretical exposition and insightful reflections upon a real-world story.

Meta-Regulation in Practice: Beyond Normative Views of Morality and Rationality. F.C. Simon. Routledge. 2017.

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Meta-Regulation in Practice: Beyond Normative Views of Morality and Rationality has a misleading title! It suggests an in-depth examination of regulatory theory explained using complex and specialised analytical language resting on wider theories of the world. It is, however, a clearly written book which provides a critique of one regulatory theory: the meta-regulation of the title. This critique is first developed by author F.C. Simon on theoretical grounds, and then through examining the experience of energy regulation in Eastern Australia, primarily the state of Victoria, between roughly 2000 and 2015: a period which covers the transition from state-owned monopolies to private sector suppliers working in a competitive, regulated market.

The theory is largely confined to the second and concluding chapters, although it provides a thread through the discussion of regulation. The heart of *Meta-Regulation in Practice* consists of four chapters: the first concerns the introduction of a competitive retail energy market in Victoria; this is followed by a chapter on the creation of energy markets in Eastern Australia until 2015. There are then two case study chapters: one on hardship regulation in Victoria and another on assessing whether effective competition has been achieved.

Meta-regulation, for Simon, is an approach that can be summarised as regulation for self-regulation, which she sees as being developed largely, although not exclusively, by [Christine Parker](#), stemming from the well-known work of [Ian Ayres](#) and [John Braithwaite](#) on responsive regulation. The idea behind meta-regulation is to enlist third parties and market forces to drive the self-regulation of businesses, thus overcoming the information asymmetry faced by regulators. Within this approach, rules are based on principles, which allows for the necessary flexibility in practice that will help to make the law reflexive and responsive. Third parties, such as NGOs and activists, are involved in consultation for policy formation and in enforcement via monitoring. Information is provided through business transparency: specifically, compliance and performance reporting. Businesses are expected to self-regulate and internalise these norms.

The aim is to produce regulation in the public interest and, Simon argues, there are certain assumptions underpinning this theory. First, that there is a consensus of values that can be achieved between the participants; secondly, that businesses and regulators work through classic instrumental rationality, hence the 'rationality' in the book's title. Finally, there is also an assumption that the views of third parties are preferable to those of business.





Image Credit: Wind Turbine, Challicum Hills Wind Farm, Western Victoria, Australia ([Jorge Láscar CC BY 2.0](#))

Against this approach to regulation, Simon sets the work of the German sociologist, Niklas Luhmann, who has his own set of assumptions that is largely opposed to those of meta-regulation. Luhmann sees society as organised into functional sub-systems which produce meaning for themselves on the basis of binaries, such as government/opposition, in relation to the political sub-system. These sub-systems can only comprehend each other based on their understandings and are unable to act outside of these; as a result, they cannot control or influence each other's activities. They are closed systems. This is the opposite of meta-regulatory theory, which assumes that companies are open systems amenable to direct inputs from their environment, and Simon's adoption of it gives a clear indication of where the book is going. At best, Luhmann's insights make meta-regulation more complicated. Simon suggests that meta-regulation in complex and contested regulatory environments will bring command and control regulation back into play on the terms of the political system, with a responsive politicisation of regulatory issues. Unlike many writers in the area, Simon presents a commendably clear exposition of her interpretation of Luhmann's views.

Meta-regulation is a theory with a very Australian flavour, both in terms of its genesis and the context within which this story take place. There are, however, clear resonances in the UK, both academically and in practice. For example, Ofgem is moving towards principles based on regulation, and Sustainability First, a well-connected UK NGO, has been running [a new public interest network project since 2015](#) which aims, among other things, to develop clearer alignment between different stakeholders as to what the long-term public interest looks like in the energy and water industries. The argument and story in this book are thus of interest to a wider audience.

Many of the episodes in the narrative are also familiar to those with a knowledge of energy regulation in the UK. There is a discussion of the policy arguments over hardship programmes provided by utilities, the issues of disconnections, the regulation of doorstep selling and decisions as to whether or not markets are sufficiently competitive. From a UK perspective, there are a couple of striking things within the story. First, the level of political intervention is very high and many examples are provided. A favourite is the Queensland Premier's war on Origin Energy in 2012, which seemed to have stemmed from a misunderstanding of the terms of the regulatory regime and his own price freeze. On a more systemic level, there was the sidelining of the Essential Services Commission (ESC) in Victoria, when its reports were politically unpalatable in 2004 because, among other reasons, they did not find evidence of the systematic disconnection of financially vulnerable consumers, as well as due to the creation of an independent commission to look at hardship, to which the ESC did not provide a submission.

This raises a second issue which is, as Simon reports it, a cavalier approach to evidence and interpretation of the rules on the part of consumer advocates, and apparently the Ombudsman, in Victoria. Although it can hardly be claimed that there is no political intervention in energy regulation in the UK, especially considering the current tariff cap plans, there seems to have been a much higher level in Australian states. Also, although consumer advocates and regulators in the UK have had robust disagreements, there has not been, in my experience, misinterpretation of the rules or an over-reliance on anecdotal evidence. Insofar as this evidence contributes to a well-argued critique of meta-regulation, these aspects seem to be contingent on or perhaps peculiar to Australia.

It would have been helpful to have more background context about the Australian energy market(s), the relevant institutions and the development of policy. So, for example, the total size of the Victorian energy market, somewhat over two million customers, only comes out in passing. This seems relevant when discussing a market with five incumbents at its beginning, because it means that these are relatively small organisations, which will influence their reaction to policy developments. It is also noticeable that one of the drivers for developments is the Australian federal system, because this placed responsibility for energy regulation on state, as opposed to federal, governments, although part of the story relates to the transition from a state to a federal system.

In terms of the experience of meta-regulation in Australia, the author's conclusions are that its adoption amplifies political behaviour; that it increases the perceptions of risk held by the stakeholders; and that the reliance on the reputational effect of market mechanisms is unreliable, if not largely non-existent.

Meta-Regulation in Practice is a very good book which unusually coherently combines theoretical reflection with a real-world story. It will be of interest to students of regulatory theory and those who are specifically interested in energy regulation. Unfortunately, as the author points out, it is unlikely that those involved in the practice of regulation will read it.

Cosmo Graham is a Professor of Law at Leicester Law School, University of Leicester, having previously worked at the Universities of Hull, Sheffield and Liverpool John Moores. He works in the fields of competition and constitutional law, the regulation of essential services and complaint handling. He has done substantial research on consumers in vulnerable circumstances as well as carrying out research and consultancy for numerous bodies including the Legal Ombudsman, the European Commission, Ofcom and the Civil Aviation Authority. He was a member of the Competition Commission from 1999-2008.

Note: This review gives the views of the author, and not the position of the LSE Review of Books blog, or of the London School of Economics.