
Editors' preface

The domain of regulation has expanded dramatically over the past decades. In the United States, regulation, defined as rules that govern private market and social activity and that are made and enforced largely by specialized administrative agencies, has always been a prominent mode of state action. By contrast, in Europe, Latin America, and other parts of the globe, regulation has only recently become a pervasive and distinct form of government activity with the retreat of both state ownership of industry and the taxing and spending policies of the welfare state. At the same time, the regulatory process has become global. Regulatory problems cross borders and therefore so too does the governance of those problems. Transnational, regional, and international bodies have proliferated. Deprived of the traditional police and revenue-raising powers of the nation state, these bodies govern primarily through rules and standards that both constrain and require regulatory action at the national level.

As regulation's domain has expanded, the processes by which it is made across the world have come under scrutiny. The constitutional anomaly of a system of policy-making in which the locus of power rests neither with elected politicians nor with courts, but with public officials in specialized administrative agencies and transnational networks, has given rise to a number of legal innovations designed to foster public accountability. It has also prompted extensive scholarly inquiry into how to further liberal democratic ideals in an age of regulatory governance. The instrumental ambition of controlling private market and social activity to suit public purposes has provoked debate on the types of legal procedures, rules, and sanctions that are most likely to produce effective regulation. Dissatisfaction with some of the more classic forms of rulemaking and enforcement has given rise to calls for more flexible arrangements that rely more heavily on soft law and private initiative in crafting the standards and control mechanisms designed to discipline the market and society.

These developments are on the policy agendas of countries and agencies across the world. This volume puts those policies in context. It offers the evidence and understanding provided by an examination of the variation of the legal powers, procedures, and standards that bind regulators. It provides a survey of important topics and methodologies in the field to serve as a guide for advanced students and as a springboard for future research. The volume addresses both the classic cores of the various regulatory states, along with some of the newer ways that those states have sought to govern, both domestically and transnationally.

This sort of variation provides crucial context for the understanding and evaluation of a global phenomenon. Observers, for example, debate whether legal procedures result in regulation in the public interest or agency capture by interest groups, what combination of legal tools and regulatory strategies will produce successful enforcement and industry compliance, and how elected officials can use the law to control regulators. These arguments can only benefit from the consideration of additional case studies and comparison. By the same token, policymakers can observe the extent to

which other legal systems have adopted these tools, whether there appears to exist a global consensus on their desirability, and, roughly speaking, whether these tools have or have not worked in other contexts. These are the classic justifications that have been advanced for using comparative law as a source of treaties, domestic legislation, and domestic and international court decisions in the core areas of private law, and increasingly, constitutional law, and they apply equally in the domain of regulation.

The book begins with the introduction, which provides a systematic explanation of the content and research agenda of the field of comparative law and regulation. The chapters that follow provide wide-ranging coverage of the law of the regulatory function that is the subject matter of the field—rulemaking, oversight, enforcement, and judicial review. The presentation of the law and the organization of the chapters move from the most traditional venue for regulating—public authorities in domestic jurisdictions—to what are considered relatively novel regulatory arenas—private bodies and international jurisdictions. Besides affording subject matter coverage, the chapters advance theory on three essential characteristics of the global regulatory process and central to the field of comparative law and regulation: jurisdictional differences and commonalities; convergence in certain areas of regulatory law; and legal prescription based on comparison across jurisdictions. These lines of theorization are developed for the multiple bodies—public and private—and multiple jurisdictions—domestic and international—that interact in the global regulatory process. Taken together, the chapters demonstrate the value of establishing a research agenda and creating a reservoir of knowledge dedicated to comparative law and regulation.

While the diversity of regulatory law across the world calls for comparison, restricting that comparison to regulation within country borders would miss an important part of the picture. Transnational governance, or cross-border regulation, requires cooperation by states and the agencies within states. But this cooperation is increasingly a feature of regulatory law, and is likely only to grow in importance in the future. The mechanisms that comprise transnational governance, despite the bewildering array of problems that cross borders in extremely distinctive and idiosyncratic ways, are interestingly comparable. Moreover, although transnational governance, for the most part, relies for enforcement and legitimacy on the states and agencies that are parties to cross-border regimes, it also has mechanisms—even if imperfect ones—to ensure that those parties produce something worthy of compliance.

This volume brings together the contributions of leading scholars in the field, both by jurisdiction and by method. It addresses both the classic cores of the various regulatory states, along with some of the newer ways that those states have sought to govern, both domestically and transnationally. The pages that follow present the state of the art in regulatory law across the world and we look forward to the way that the field will continue to develop.