

Edited by

**REGINE PAUL • MARC MÖLDERS**

**ALFONS BORA • MICHAEL HUBER • PETER MÜNTE**

# Society, Regulation and Governance

**New Modes of Shaping Social Change?**





# Society, Regulation and Governance

---

*'This book contains excellent chapters on a number of questions concerning regulation and governance. It is especially welcome because of its comparative focus, its use of cutting-edge international theoretical perspectives and its detailed engagement with a series of different social domains. It is an important addition to the literature.'*

Christopher Thornhill, The University of Manchester, UK

*'Society, Regulation and Governance not only sheds new light on but also develops a fundamentally new approach to one of the most essential questions of the social sciences, i.e. how and to what extent societal development can be changed through intentional and directional action. Including both conceptual developments and empirical-historical analyses, the editors and contributors manage to give a comprehensive and highly elaborated answer to an enduring question.'*

Poul F. Kjær, Copenhagen Business School, Denmark

*'This collection represents an ambitious attempt to advance international conversations about regulation and governance further. It combines theoretically advanced discussions with careful empirical analysis. This volume is an important addition to the literatures and deserves attention.'*

Martin Lodge, London School of Economics and Political Science, UK

*Society, Regulation and Governance* critically appraises the issue of intentional social change through the lens of regulation and governance studies. A twofold understanding of regulation and governance underpins the conceptual and empirical engagement throughout the book. On the one hand, regulation and governance are understood to be innovatively minded. On the other hand the book argues that, at their respective cores, regulation and governance are continuously concerned with how intentional social change can be fostered and what results can be yielded in terms of shaping society.

This book brings together sociologists, political scientists, legal scholars and historians to produce an interdisciplinary critical evaluation of alleged 'new modes' of social change, specifically: risk, publics and participation. It makes three key contributions by:

- offering a consolidation and re-appraisal of a debate that has become increasingly vague with its academic and political proliferation
- identifying a uniting conceptual-analytical core between regulation and governance which explains the adaptability and innovation-mindedness of processes of 'shaping society'
- re-focusing on the 'essence' of regulation and governance approaches – intentional modes of social change.

---

**Regine Paul, Marc Mölders, Alfons Bora, Michael Huber and Peter Münte** are in the Law and Society Unit at Bielefeld University, Germany.

**Edward Elgar**  
PUBLISHING

The Lypiatts, 15 Lansdown Road, Cheltenham, Glos GL50 2JA, UK  
Tel: + 44 (0) 1242 226934 Fax: + 44 (0) 1242 262111 Email: [info@e-elgar.co.uk](mailto:info@e-elgar.co.uk)

William Pratt House, 9 Dewey Court, Northampton, MA 01060, USA  
Tel: +1 413 584 5551 Fax: +1 413 584 9933 Email: [elgarinfo@e-elgar.com](mailto:elgarinfo@e-elgar.com)

[www.e-elgar.com](http://www.e-elgar.com) [www.elgaronline.com](http://www.elgaronline.com)

ISBN 978-1-78643-837-9



9 781786 438379

# Society, Regulation and Governance

REGINE PAUL • MARC MÖLDEERS  
ALFONS BORRA • MICHAEL HUBER • PETER MÜNTE





# Society, Regulation and Governance

New Modes of Shaping Social Change?

---

*Edited by*

Regine Paul

Marc Mölders

Alfons Bora

Michael Huber

Peter Münte

*Law and Society Unit, Faculty of Sociology, Bielefeld  
University, Germany*

 **Edward Elgar**  
PUBLISHING

Cheltenham, UK • Northampton, MA, USA

© Editors of the Work and authors of their contributions respectively 2017

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

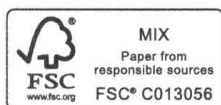
Published by  
Edward Elgar Publishing Limited  
The Lypiatts  
15 Lansdown Road  
Cheltenham  
Glos GL50 2JA  
UK

Edward Elgar Publishing, Inc.  
William Pratt House  
9 Dewey Court  
Northampton  
Massachusetts 01060  
USA

A catalogue record for this book  
is available from the British Library

Library of Congress Control Number: 2017933394

This book is available electronically in the **Elgaronline**  
Social and Political Science subject collection  
DOI 10.4337/9781786438386



ISBN 978 1 78643 837 9 (cased)  
ISBN 978 1 78643 838 6 (eBook)

Typeset by Servis Filmsetting Ltd, Stockport, Cheshire  
Printed and bound in Great Britain by TJ International Ltd, Padstow

# Society, Regulation and Governance



## Contributors

---

**Anne-Laure Beaussier** is a postdoctoral political scientist at the Centre for Risk Management at King's College London. She has published on health care governance and quality regulation in England, France and the USA.

**Alfons Bora** is Professor of Sociology of Law at the Law and Society Unit of Bielefeld University. He has published on issues of constitutionalization, regulation and law.

**Emma Carmel** is Associate Professor of Social Policy at the University of Bath. She founded the Governance Research Group there and has published on migration and social policy governance in Europe.

**Michael Huber** is Professor of Sociology of Regulation at the Law and Society Unit of Bielefeld University. He has published on regulation, especially in the fields of higher education, environmental issues and risk-based regulatory approaches.

**David Kuchenbuch** is a postdoctoral historian at the University of Gießen. He has published on the cultural and sociological significance of architecture and urban planning and the history of globalism.

**Marc Mölders** is Associate Professor in Sociology at the Law and Society Unit of Bielefeld University. He has published on the role of public spheres in intentional societal change and learning theory.

**Peter Münte** is a postdoctoral sociologist at the Law and Society Unit of Bielefeld University. He has published on the sociology of knowledge and processes of scientization in relation to regulation and governance.

**Regine Paul** is a postdoctoral political scientist at the Law and Society Unit of Bielefeld University and a John F. Kennedy Memorial Fellow at the Minda de Gunzburg Center for European Studies, Harvard University (2017–18). She has published on comparative migration governance and risk-based regulatory reforms in Europe.

**Henry Rothstein** is a Senior Lecturer and Deputy Director of the Centre for Risk Management at King's College London, and a political scientist



by training. He has published on risk, regulation and the relationship between science and governance in the EU and the UK.

**Jan-Felix Schrape** is a postdoctoral sociologist at the University of Stuttgart. He has published on changes in media structures and the actors of innovation processes.

**Lars Viellechner** is Associate Professor of Public Law at the University of Bremen. He has published on constitutional law and legal theory, especially focusing on the transnationalization of law.

# Preface

**Alfons Bora and Michael Huber**

---

The present volume revisits the persistent discussion about societal steering by focusing on current developments in regulatory and legal thinking. The well-rehearsed critique of a narrow 'command and control' approach has led to the emergence and proliferation of de-centred ideas of regulation and reflexive law and gave birth to the new concept of governance. Apart from highlighting the innovative impetus that can be linked to those triggers, our discussion reflects on a number of conceptual and practical problems that have arisen from these new ideas in the realm of planning, shaping and developing modern society. The semantics of governance contain a contemporary description of the exercise of power and its legitimation that has gained a strong prominence during recent decades. To a certain extent, it has turned the scales against law and regulation, which are tightly linked to the nineteenth and twentieth century nation-state, claimed to be an outdated model of societal organization. We however argue in this publication that the perspective of law and regulation can be used fruitfully to conceptualize the relation between the different fields and subsystems of modern society and have collected a number of empirical and conceptual contributions that support this crucial point.

Established in early 2013, the Law and Society Unit at Bielefeld University's Faculty of Sociology, Germany, is dedicated to research and teaching in sociology of law (Bora) and in sociology of regulation (Huber). Key aspects of our work concern sociological theories of law and regulation, the regulation of science and technology (especially technology assessment) and risk regulation. This volume marks major research interests represented at our Unit, which have been shaped by our continuous puzzling about the themes set out above. It also represents the fruit of our long-lasting co-operation and debate with colleagues, and the scholarly environment more generally, interested in regulation and governance across Europe.

Our profound thanks go to the contributors of this volume, for facilitating both critical reflections during various discussions of the manuscript and a disciplined materialization of their thoughts in writing the final

version. We further thank Petra Borgsen, Theresa Petrausch and Annika Thieß for their great administrative support, Jacob Reilley for language editing and further valuable recommendations and Petra Borgsen for her valuable editing support for the final publication. Last, but not least, we are grateful for constructive feedback by anonymous reviewers as well as the excellent management of the commissioning and publication process by Emily Mew and Ellen Pearce at Edward Elgar.

# Contents

---

<i>List of contributors</i>	vii
<i>Preface</i>	ix
Introduction: Society, regulation and governance: new modes of shaping social change? <i>Regine Paul and Marc Mölders</i>	1
PART I SOCIETY, REGULATION AND GOVERNANCE: A CONCEPTUAL-ANALYTICAL MAP	
1 Semantics of ruling: reflective theories of regulation, governance and law <i>Alfons Bora</i>	15
2 “Bringing the social back in”: governance analysis as a mode of enquiry <i>Emma Carmel</i>	38
PART II NEW MODES OF SOCIAL CHANGE? “RISK” AND “PUBLICS” IN REGULATION AND GOVERNANCE	
3 Risk: new issue or new tool in regulation and governance research? <i>Regine Paul</i>	59
4 Why states think about risk differently: the case of workplace safety regulation in France and the UK <i>Henry Rothstein and Anne-Laure Beaussier</i>	75
5 Regulating teaching quality: comparing quality regulation in English and German higher education <i>Michael Huber</i>	90



6	Governing through transnational arrangements: the case of Internet domain allocation <i>Lars Viellechner</i>	106
7	Shaping pressure: on the regulatory effects of publicity <i>Marc Mölders</i>	121
8	Reciprocal irritations: social media, mass media and the public sphere <i>Jan-Felix Schrape</i>	138
PART III WHAT'S NEW ABOUT NEW MODES OF SOCIAL CHANGE IN REGULATION AND GOVERNANCE? THE CASE OF "PARTICIPATION"		
9	The experimentalization of the social: activation, participation and social self-organization as scientific facts in the 1940s <i>David Kuchenbuch</i>	153
10	Improving modern society: governing science and technology by engineered participation <i>Peter Münte</i>	166
	<i>References</i>	181
	<i>Index</i>	219

# Introduction: Society, regulation and governance: new modes of shaping social change?

**Regine Paul and Marc Mölders**

---

Since the origins of philosophical reflections, scholars have been busied with questions of how society can best be shaped and how, in turn, society itself shapes the very conditions and patterns of human interaction. Early treatises on “shaping society” include Aristotle’s consideration of the benefits of communal life in a city state, Confucian ideas on how governments can best promote people’s virtue for societal good, and Machiavelli’s thoughts on the prerequisites of successful and powerful ruling. What unites these strands of thought is the belief in societal malleability, i.e. the possibility for intentional, that is, directed and directional “governmental” (in a broad sense) action aimed at making a difference in social developments.

While citizens have long puzzled over how society shapes their lives and how society can be shaped according to their ideals, state philosophers, political theorists and sociologists have not seemed to come to any final agreement (either within or across their respective disciplines) about how such shaping occurs, how predictable it can be, and what its exact outcomes are. “Society” presents itself as a classic moving target – today famously vexed with the complex and deeply unsettling dynamics that are summarized under the heading of globalization. Thus, theorizing about “shaping society” has produced countless claims about new instruments, new tools, new goals, new actors, new arenas and new procedures involved in such shaping processes. With such novelty claims and new analytical venues gaining momentum, there has been a tendency to bracket off questions of societal malleability and intentional change.

This volume takes up one line of such argumentation and reappraises the academic debate about new modes of regulation and governance. In doing so, it re-focuses on (the possibility of) intentional change in contemporary society. We argue that, in much of the literature concerned with novelty diagnoses, questions of social malleability have been moved back stage, yet they still pull essential conceptual and analytical strings there.

The notion of shaping society serves as a bridging concept to acknowledge that regulation and governance research is marked by the co-existence of new modes of societal control and, at the same time, a rather unaltered (although often implicit) analytical attention to intentional social changes.

While new modes of regulation and governance might usefully clarify the role of hierarchical and formalized rule-making, they do not usually claim that state supported law and law-making have lost all relevance. Neither do they lose sight of what we will call “the essence” of regulation and governance: the attempt of intentionally changing society in some pre-established and specific way. Indeed, the fact that intended results may not be achieved often leads to new waves of revising existing regulatory and governance approaches, rather than giving up trying (e.g. illustrated in the discussion on how behaviors of regulatees can be best modified also without hierarchical law-making; cf. Hood et al. 2001). Underpinning our conceptual and empirical engagement throughout the chapters is a twofold understanding of regulation and governance. Regulation and governance are – at the same time – innovatively minded and, at their respective cores, concerned with how intentional social change can be fostered and what results it can wield in terms of shaping society. The prominence we give to the notion of *intentional change* in this edited volume’s title pays tribute to our conceptual argument. Even though novelty and innovation claims guide much contemporary research on regulation and governance<sup>1</sup> (“new modes of. . .”), we should not too readily renounce the possibility that political interventions always had and potentially always will have intentions, target specific social changes and are continuously backed by, or at least embedded in, a wider set of legal rules and sanctions. Furthermore, they always wield specific societal effects, even if it is in ways that were not originally predicted or envisaged.

Rather than adding yet another theory about shaping society to the already crowded market, this volume pauses to take stock of the debate and critically assess novelty claims. We seek to engage with existing arguments by examining scholarly discussions in social sciences and legal studies on new modes of intentional change in regulation and governance research. What do novelty claims refer to in regulation and governance research? How has our conceptual language developed to take account of the supposed novelty? To what extent does law and formal rule-making by the state still matter in these debates? How has novelty played out in specific empirical examples of regulation and governance? To what extent have new modes of intentional change contributed to overcoming issues with more conventional forms of “ruling”, “steering” and “governing”? And finally, what’s really new about such novelty claims and how do they feature in wider historically embedded accounts of social sciences reason-

ing and its repercussions in policy-making? To address this set of questions in a systematic manner, our critical assessment takes three distinct forms:

- a *conceptual-analytical mapping* of regulation and governance and their ability to account for modes of intentional change which can be observed in contemporary society (see chapters by Bora and Carmel);
- detailed *empirical examinations* of two specific “new” modes of intentional change which have received wide attention: risk (see chapters by Paul, Rothstein and Beaussier, and Huber) and publics (see chapters by Viellechner, Mölders, and Schrape); and last but not least
- a wider *historicizing embedding* of contemporary novelty claims, specifically with regard to “shaping society” in twentieth century discourses about “activated” or “engineered” forms of participation as they unfolded at the science-policy interface (see chapters by Kuchenbuch and Münte).

It is with this mix of conceptual appraisal, empirical case studies, and a wider historicizing contextualization – and by including contributions by an interdisciplinary set of scholars from sociology, political sciences, legal studies and contemporary history – that we hope to contribute to more reflexivity on our own scholarly assumptions about what novelty may be about and where we observe continuity in the debates about regulation and governance.

While the structure of the book’s chapters follows the three sections outlined above, the contributions speak to one another across sections. As we indicate next, they address several of the core conceptual ingredients which we identify as significant for understanding and assessing new modes of intentional change in regulation and governance. Rather than detailing individual contributions, our introduction will now substantiate three general observations about major division lines as well as potentially shared ground in the academic debate about “shaping society” and indicate how the volume’s chapters relate to these. These observations consider academic debates about (a) the objects of intentional change, (b) the effects of attempts of intentional change and (c) the best conceptual means of capturing processes of intentional change. Jointly, they nourish our volume’s chief premise that it is analytically useful to identify (and refocus on) a common core in the seemingly divergent conceptual approaches of regulation and governance. We thus map out what we call “the essence” of regulation and governance – intentional modes of social change – and



thereby develop a compass for the volume and the principal lenses of its contributions.

Talk about “shaping society” first and foremost refers to the relationship between modes of intentional change and *the object of such change*. There has been wide discussion in the social sciences about the degree to which society as such can be the object of any intentional change in the first place. The so-called “crisis of interventionist thinking” was fostered by the experience that modern conditions render accurate and intended social change impossible – at least not without accepting unintended side-effects (see chapter by Bora). This connects to the wider claim that, given the “complexity” of modern society, any attempt to intentionally influence societal developments has to take into account that their object is not isolated, but forms part of a “turbulent world” in which the complex interplay of different social spheres, institutions, arenas of decision-making, norms, values, standards, operational criteria, etc., makes governing difficult (as prominently argued in complexity theory, e.g. Room 2011; also: Benz 2004). Indeed, it is now common sense that regulation and governance might be “often achieved in rather unexpected and contingent ways” (see chapter by Carmel).

This points to the ambivalent diagnosis that while scientific knowledge about the issues with intentional change is flourishing, we simultaneously witness an ever-increasing range of new instruments (such as risk analysis), new forums (such as publics) and new procedures (such as participation and consultation) which are deemed more suitable to shape society. Thus, from our viewpoint, “shaping society” is strongly connected to both a scholarly and a practice-related reluctance to give up on the evolution of tools, methods, procedures, etc., which are designed to (better) foster change. This is probably clearest in the empirical case analyzed by Kuchenbuch. Even though the possibility of intentional social change is restricted and troubled at best, losing sight of society (or at least relevant parts thereof) as an object of intentional change is not considered an option either. In other words, the intention to change outlives its own failure to induce accurate social change. Indeed, the debate about reflexive law epitomizes the idea that, in order to continuously impact societal developments, law needs to be reflexive; it needs to build the possibility of failing to reach its aims and an adaptation mechanism for such failures into its DNA (Teubner and Willke 1984; Teubner 2013). With the resilience of intentional change, the state and its formal rule-making have survived, too, despite the widely acknowledged limitations and despite repeated attempts to write them off or to at least ascribe to them with diminished relevance (see chapter by Bora).

This ambivalence connects to our second observation on *the effects of*