

structures of these legal genres moderate and are transformed under their influence. Yet, considering the book's focus on social change and identity, more substantive engagement with existing scholarship is needed to address the broader relationships between social and legal change (Levitsky 2015; McCann 2006), law and identity (Danielsen and Engle 1995), as well as the legal regulation of sexual identity categories (Stychin 2003). These bodies of literature might have strengthened Tracey's analysis in two ways: first, by enriching her insights with more theoretical depth, and second, by allowing her to show more explicitly how her findings might extend, support, or challenge existing work in this field, and in doing so better highlight the originality and utility of her claims.

Overall, *Discourse, Identity, and Social Change in the Marriage Equality Debates* is a work of high quality and broad appeal. Tracey offers an analysis of impressive depth and clarity, and in doing so, makes a strong case for the utility and empirical power of discourse analysis as a method, proving its ability to give us a comprehensive way to understand legal phenomena. Her work will be of interest to scholars working in fields as diverse as discourse and language studies, gender and sexuality studies, law and jurisprudence, sociology, and sociolegal studies.

References

- Danielsen, Dan & Karen Engle, eds (1995) *After Identity: A Reader in Law and Culture*. New York: Routledge.
- Levitsky, Sandra R (2015) "Law and Social Movements: Old Debates and New Directions," in Sarat, A. & Ewick, P., eds., *The Handbook of Law and Society*. Malden: Wiley-Blackwell. 382–98.
- McCann, Michael, ed. (2006) *Law and Social Movements*. Aldershot: Ashgate.
- Stychin, Carl Franklin (2003) *Governing Sexuality: The Changing Politics of Citizenship and Law Reform*. Oxford: Hart Publishing.

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

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Meta-Regulation in Practice is an ambitious reflection on the challenges of Australian retail market regulation under dynamic and

politically-fraught conditions. Fiona Simon has a unique perspective on problems facing the Australian electricity sector, having moved between the worlds of academic research, regulation and industry practice. She uses her rich “insider/outsider” insights to stress-test meta-regulation theory. The material is laid out to understand whether the industry was enabled to self-regulate to meet the public interest. Simon concludes that, due mainly to high levels of conflict and socio-technical complexity, meta-regulation did not work in practice to achieve this end.

The book is filled with rich description of the marketization of retail services. Following privatization of electricity assets in the mid-1990s there was a vacuum in market governance. A light-handed regulatory model ceded much power to retailers who in turn failed to organize effectively. Counterintuitively retailers then sought prescriptive rules to provide certainty in uncharted waters, granting a strong role to the regulator to develop a consumer protection regime with input from consumer advocacy organizations. From 2003 to 2015 the focus shifted from a State-based to national consumer protection framework however State governments continued to intervene in the market to secure political ends in highly contingent ways. The energy policy landscape became increasingly complex as more stakeholders crowded in and criticism of industry practice by consumer advocates escalated. A softer co-regulation approach was eclipsed as conflict intensified around social objectives and consumer advocates demanded more rules and enforcement (despite reasonably good compliance rates). Conflict amongst regulators also developed around whether or not the market was functioning in a truly competitive manner.

Simon describes these complex developments in a fairly dense manner, and the chapters’ flow is hampered as we move from Victoria’s market creation, to current national developments then back to older hardship debates in Victoria. Nevertheless, each chapter is rich with detail that is not easily found in other published material. Sometimes it feels as though the regional variations between State-based markets are subsumed by the Victorian experience which Simon knows best. Also, the regulator and retailer perspectives dominate the government, departmental and consumer advocates’ perspectives, perhaps limiting the insights that could be drawn about third-party agency outside the regulator-business relationship.

Fundamental to Simon’s argument is the conflict between social and economic objectives in the marketized electricity sector, in particular between efficient competitive market outcomes and universal service provision and affordability. Drawing on Niklas Luhmann’s systems theory, she argues that irreconcilable stakeholder perspectives on the public interest prevented third parties

from influencing industry to change its moral position and for regulators to facilitate this transformation in a light-handed manner. For Luhmann (1995) the social system is made up of numerous sub-systems (law, politics, media, economy etc.) that can only react to the environment in terms of their specific binary code, such as profit/loss; legal/illegal; government/opposition; or by translating the language of another system into its own, e.g. from nature to profits. These largely irreconcilable self-referential systems provide Simon with the explanation as to why meta-regulation failed. Stakeholders quite simply didn't share moral frameworks, could not communicate effectively across their codes, and retailers could not value the concerns of third parties within their own internal calculus.

For Simon, contrary to many of the meta-regulation case studies, there is no simple account of "virtue and vice" in the energy sector. Not-for-profit consumer advocates provide one or sometimes multiple accounts of the greater good (the conflicts between environmental and social welfare NGOs are latent in her account), but these are not necessarily more or less valid than the public interest claims made by market protagonists (efficiency, least cost outcomes). The reputation mechanism is unreliable because retailers are answerable almost exclusively to commercial and internal organizational imperatives and the mass market is structurally disengaged or inactive. As such, the regulator struggles to clarify the public interest over time with the aid of third parties. Instead conflict intensifies or is consistently displaced with new developments. Herein lies Simon's important critique of the relevance or utility of a normative meta-regulation approach under conditions of equivocal and contested accounts of the public interest.

In such highly contested landscapes Simon argues the meta-regulatory approach can intensify rather than alleviate conflict. The failure of meta-regulation can give rise to a form of "responsive politicization of regulatory issues" that is more onerous than old style command and control regulation (227). This is where Simon's argument is least satisfying because it (possibly unwittingly) idealizes a form of regulation at arm's length from government intervention and politically-infused issues of redistribution. In fact, what Simon regards as ineffective meta-regulation could be characterized as the actions of the regulatory welfare state. Under conditions of marketization in particular political-economies, welfare considerations become a core part of the regulatory agenda and regulatory agencies have no choice but to fuse economic, social and political goals in their decision-making (Haber 2017; Levi-Faur 2014). Simon recognizes that regulation can be used as an instrument of social policy but sees this leading to "politicization" and poorer outcomes for stakeholders. Yet this failure to agree on the public interest and

ongoing contestation may not be a sign of ineffective (meta)regulation, but an inherent feature of regulatory welfarism where the economic, political and social spheres are unavoidably entangled in messy ways. As Fiona Haines (2011) has argued effective responsive regulation may necessarily be heavy handed and the notion of light handed regulation is more a fiction that denies the inevitable (and often desirable) political nature of regulation.

Simon is correct to point out the limits of the normative meta-regulatory model. Of course, further comparative case studies would be required to consolidate this finding (studies by Dieter Helm and others on UK electricity regulation may provide ready-made comparison points). But this conclusion is the least surprising aspect of Simon's scholarly work. Once we contextualize developments in terms of economic liberalization of essential services and the attendant redistributive and regulatory politics the real surprise is that "regulation for self-regulation" could succeed in an ongoing sustainable manner. The stakes are too high, the interests too varied and entrenched, the ideological perspectives too polarized and the range of potential outcomes too broad. Perhaps the most surprising finding is that *given these differences*, compliance has been quite high and social protection mechanisms relatively robust over the last 20 years. Simon's important work has much to tell us about the variety of ways that regulatory instruments can be integrated into a welfare regime under conditions of marketization and how this reshapes the nature and processes of legal and political accountability. Moreover, far from all stakeholders operating in the isolation of their own self-referential systems to deliver simple reproduction, this history of the sector reveals the agency of a small group of key actors who speak across codes, translate their visions and engage strategically and collaboratively to produce new forms of state-market entanglements in energy governance.

References

- Haber, H. (2017) "Rise of the Regulatory Welfare State? Social Regulation in Utilities in Israel," 51 *Social Policy & Administration* 442–63.
- Haines, F. (2011). *The paradox of regulation: What regulation can achieve and what it cannot*. Cheltenham, UK: Edward Elgar Publishing.
- Levi-Faur, D. (2014) "The Welfare State: A Regulatory Perspective," 92 *Public Administration* 599–614.
- Luhmann, N. (1995) *Social Systems*. Stanford: Stanford University Press.

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