



Regulation, Participation, and Policy Design

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In an era of increasing economic inequality, truly democratic public policy must be designed in ways that expand the political voice of affected but otherwise politically-marginalized constituencies. Many affected constituencies are too under-resourced, diffused, or politically-weak to organize and press their interests. Improved designs for agencies and policy processes are needed to level the playing field. Policies with such power-balancing features are essential not only to making government efforts to manage the economy more durable, but also to ensuring they address inequities. My research highlights two such institutional designs: proxy advocacy and citizen audits.

Economic Inequality is Partly Grounded in Power Disparities

Research has documented how and why the U.S. political process is skewed to respond to the wealthy. The key dynamics include legislators' dependence on campaign donors; economic and cultural ties binding elites; the greater organization and effectiveness of business advocacy organizations; declining labor union strength; and the fact that legislators often lack staff resources to conduct their own policy research and draft bills.

These problems of unequal political influence also affect administrative institutions at the federal, state, and local level. What is more, public policymaking skewed by such factors happens not only in the legislative arena but also in regulatory agencies. Regulators are at times overly dependent on interest groups for research and information, particularly as agency resources dwindle and policy issues become more complex. Regulators may also pursue skewed goals when they share socioeconomic or cultural backgrounds with industry representatives.

Regulatory agencies constitute the front-line of governance, where much of public policymaking actually takes place. Ensuring responsive, accountable government therefore requires efforts to correct potential failures of the regulatory process. At the same time, regulatory institutions also offer untapped potential for institutionalizing more democratic, power-balancing processes and institutional designs.

Proxy Advocacy for Those Otherwise Without Voice

One approach to equalizing influence involves institutionalizing forms of representation within bureaucratic bodies for disempowered groups affected by key regulatory policies. Although many agencies have public advisory boards, a dedicated internal representative can provide a more effective voice. Consider two examples:

- At the local level, cities face the challenge of ensuring that deals struck with developers for major new projects actually produce the promised benefits for local constituencies, such as jobs or investments in green space, schools, or affordable housing. Agreements to provide such community benefits are often ignored as developers capture or pressure local government bodies. But some cities have developed new representative oversight bodies that include affected constituencies. In Oakland, for example, the massive redevelopment of the old Oakland Army Base is monitored by a city-chartered oversight body with both developers and community organizations. This body not only oversees compliance but also empowers community groups to bring claims when developers fail to meet commitments.
- Similar mechanisms can work in federal regulatory bodies. Scholars have suggested the creation of dedicated offices charged with representing the interests of marginalized, diffused, or under-resourced constituencies – a kind of “regulatory public defender.” Arguably the Consumer Financial Protection Bureau can be understood as a larger scale approach to proxy representation. Although this agency is an expert-based rulemaking body, it also pro-actively engages in outreach to constituencies such as

veterans, students, and pensioners whose needs have often been overlooked in financial regulation, using this engagement to inform their policymaking and advocacy within the financial regulation arena.

Citizen Audits and Participatory Monitoring

A second strategy for balancing power through policy design lies in the design of enforcement and monitoring mechanisms that enable citizens to audit and help enforce regulations on the ground. Such “citizen audits” can enable more effective monitoring and enforcement of standards against private actors, provide more information to policymakers, and protect against some forms of regulatory inaction or special interest capture.

One example of citizen audits lies in the Community Reinvestment Act of 1977. Four important design features allowed the Act to function in this way and should be replicated in other policy designs. First, the Act proposed broad but flexible standards for judging whether a bank met local credit needs, creating space for community groups to participate in specifying those needs and evaluating whether they were met in their particular community. Second, the agency collected and made public data on bank lending that helped citizens conduct these evaluations. Third, the Community Reinvestment Act process empowered citizen groups to request agency reviews of banks falling short of meeting local needs, triggering inspections where the regulators may have been lax or inattentive. Fourth, these reviews had real consequences for the banks themselves: because banks needed a good Community Reinvestment Act “score” to gain regulatory approval for mergers, they had a clear incentive to address community concerns.

The end result in cities with well-organized community groups was the institutionalization of a degree of countervailing power. These design elements can be replicated to enable participatory monitoring and enforcement in other policy areas as well.