

Does Regulation Promote Democratic Governance or Kill It?

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**NOTE: THIS IS A VERY ROUGH DRAFT OF A PAPER FOR PRESENTATION AT THE
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Abstract: Proponents of regulation claim that tighter rules promote transparency and effective governance, while critics lament the lack of accountability of regulatory agencies. Examining financial regulation in Ireland during the recent global economic crisis, as well as lobbying regulation from a global vantage, this paper questions whether or not regulatory initiatives really promote democratic governance? It argues that two forms of regulation need to be distinguished: regulating the activities of private actors (such as producers or consumers) with each other to, for example, correct for market failures, impose social goals and product standards; and regulation of interactions between public and private actors. It argues that regulation between public and private actors can ensure some transparency, but only because the stakes and cost for non-compliance are low. This is seen in lobbying legislation that calls for all interest groups to register with the state before lobbying can be pursued. Yet, in regulation of activities of private actors, where the stakes are higher and there are greater penalties as seen in financial regulation, rules and abilities to penalize non-compliance remain intentionally ineffective. This is because the object of regulation is significant corporate actors.

There are three main sections to this paper.

In the first, I discuss the importance of regulation and the regulatory state in EU politics. Here we consider what is meant by the term regulation as well as consider main ideas behind public and private interest theorists. It will be argued that if there is 'regulatory capture', then this can broadly point to the idea of 'less' democratic governance when regulatory structures are in place; in contrast, if regulation functions in the public's interest, then this can be said to promote democratic governance.

The second section discusses two 'types' of regulation and examines experiences using evidence from Europe and North America. The first consists of regulating the activities of private actors, to, for example, correct for market failures, and impose social goals and product standards. One example of this is seen in regulation of financial services. The second type includes regulation of interactions between public and private actors. An example of this is seen in the regulation of lobbyists that calls for all interest groups in the political system to register with the state before lobbying can be pursued. This section will analyze the failures of financial regulation during the 2000s in Ireland, with specific attention paid to the weaknesses of the Irish financial services regulatory authority. It then analyses the experience of the regulation of lobbyists from a global comparative perspective.

The final section concludes that when there is regulation of activities of private actors, where the stakes are higher and there are greater potential penalties as seen in financial regulation, regulators are less likely to monitor and penalize potential breaches of rules precisely because private actors have captured the agency. Yet, in regulation of interactions between public and private actors as seen in lobbying regulation, one sees that elements of democratic governance can be ensured (i.e. this form of regulation can act in the interests of the public), but only because the stakes and cost for non-compliance are low.