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*Rethinking Regulatory Democracy*

57 Admin. L. Rev. 411 (2005)

Abstract by Beatriz Ivanova

The author analyzes select aspects of the notice and comment process in three types of regulatory proceedings in order to examine the interplay between regulating policy and democratic politics. The article starts by examining how existing methods for obtaining public input on regulations actually work. Next, the article looks at what the leading viable alternatives are to the notice and comment process. The article concludes by suggesting which alternatives are desirable for both the public and private interest groups.

The author argues that data from the three regulatory proceeding case studies indicates that the general public would care more than some commentators suggest and that the notice and comment process should change to encourage a broader base of public feedback. While the author acknowledges the complex reality of the bureaucratic state and the need for scientific and nuanced regulatory policies, he also argues that this does not per se exclude broader participation. Instead, a new kind of hybrid regulatory democracy can be fashioned by creating an independent participation agency which selects small groups of people to consult and articulate their views to regulatory agencies. While there may not be a firm consensus in these groups, they would nonetheless present a more accurate representation of public opinion than the narrow views of a private interest group.

The first part of the article discusses the history and development of the regulatory bureaucracy and process and how vast areas of legislative power were delegated to unelected regulatory agencies. The second part of the article examines the current regulatory scheme through its analysis of case studies of three types of regulatory proceedings. The third part uses the information and conclusions of the studies to reinforce the author's argument that the notice and comment process should be redesigned to incorporate more public opinion in a way that is consistent with the current scheme, in order to decrease the power and influence of private interest groups.