Is Beneficent Regulation the ‘New Better Regulation’?

Nano-Regulation in the Wake of the ‘New Better Regulation’ Movement

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The aftermath of the latest financial market crash has witnessed an outpouring of moral talk pervading the global political arenas. World leaders and regulators are making the most of what is known in American politics as the ‘bully pulpit’: They are drawing on the influence that their respective offices afford them to make sure their moral talk is given effect in a manner not dissimilar to their legal measures. While maintaining the clamour for more, better, robust, sound, vigorous regulation at high pitch, they are demanding that regulatees commit to pre/proto-legal moral principles. It has now become familiar to hear public statements enjoining bankers and other actors that they should not wait for legislation to act, that their future business should be based on the ‘social benefit’ of their products and not merely on their commercial consideration, that, as a whole, ‘markets need morals’.  

The increasing prominence of moral issues in regulatory policy and law-making, as observed in post-Lehman's financial market regulation, is paradigmatic to the regulation of other spheres of activities including the regulation of science and technology. Financial market

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regulation is struggling to go beyond the regulation of risk to include the regulation of benefits that the market produces. Current concern on the disbursement of bonuses and the talk of Tobin Tax on banks can hardly be limited to the risk regulation paradigm without overstretching the concept of risk.

On the other hand, the regulation of nanotechnology is still captive to the risk regulation discourse to the detriment of an earnest debate on issues of benefit management and the moral standards for such regulation. Notwithstanding the recent attention to the regulation of benefits as such, the topic resides in the preambulatory rather than the operative clauses of the nano-regulation agenda. It is important that the nano-regulation discourse heed to the ongoing push for the reinvigoration of moral ideals if another regulatory failure is to be avoided. Situating the regulation of nanotechnology against the backdrop of the current ascent of moral thought in the regulation discourse, this paper argues that the proposed reinvigoration of moral ideals should consist in reclaiming the virtue of beneficence. It will do so by setting up beneficence against justice as the regulatory virtue and calls for setting aside a jurisdiction for ‘beneficent regulation’.

The paper is organised in three parts: Part I presents a brief overview of the rise of what I shall call the ‘New Better Regulation’ (henceforth NBR) movement, the nascent but fast-paced developments within the movement and the relevance of its ethos to the regulation of nanotechnology. Part II carries forward the discussion of the ideals that the NBR movement and the regulation of nanotechnology are engaging. This involves examining the chief moral ideals, of which justice is undoubtedly the most dominant. Justice is, however, not the whole of morality; nor is it the uncontested superordinate concept. Scenarios where the application of any one conception of justice leaves the rights and interests of agents unaddressed are commonplace. Most liberal conceptions of justice do tolerate inequality as a price to be paid for the operation of a preferred doctrine of justice. With this background, it is argued that there is a need to reclaim beneficence as the regulatory virtue for governing nanotechnology, with a view to supplementing, complementing and correcting the myriad variants of the ideals of justice.

Finally, Part III draws attention to some of the particularities of nanotechnology that justify the choice of beneficence as the ideal regulatory virtue. It will be argued that the momentum created by the NBR movement is an opportunity for setting aside a jurisdiction for ‘beneficent regulation’ whereby the benefits of the technology and their distribution will be under an exclusive scrutiny. Such jurisdiction is vital if the promises of the technology are not to be vitiated by narrow interests and inefficient mechanisms of distributing the wealth that the technology generates.