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Gray, G.; van Rooij, B.

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# Regulatory disempowerment: How enabling and controlling forms of power obstruct citizen-based regulation

Garry Gray 

Department of Sociology, University of Victoria, Victoria, British Columbia, Canada

Benjamin van Rooij 

Faculty of Law, University of Amsterdam, Amsterdam, The Netherlands

School of Law, University of California, Irvine, Irvine, CA, USA

## Abstract

Regulatory studies assume that citizens can act as regulators to complement or correct failing state and market forms of regulation. Yet, there is a growing literature that shows that in reality citizens may fail to be effective regulators. This paper systematically analyses how power inequalities obstruct citizens in their regulatory roles. It compares four case studies with highly different social and political contexts but with similar outcomes of citizens failing to regulate risk. The case studies are analyzed by operationalizing sociological and political science ideas about manifestations of enabling and controlling forms of power in order to understand the way power inequalities obstruct citizens in their regulatory roles across diverse contexts. The article shows how citizens, from farmers and manual workers in both authoritarian developing and democratic developed contexts to even highly trained medical professionals from the US, have limited agency and are disempowered to act as regulators. Our analysis reveals that five patterns of disempowerment play a crucial role in obstructing successful society-based regulation: (i) dependency, (ii) capacity, (iii) social hierarchy, (iv) discursive framing, and (v) perverse effects of legal rights.

**Keywords:** citizen-based regulation, inequality, new governance, power, regulatory governance.

## 1. Introduction

In the last two decades, the field of regulation has witnessed a shift away from a dominant focus on the state as the key locus of regulatory activities. Using terms such as *decentered regulation* (Black 2001, 2002), *smart regulation*, (Gunningham *et al.* 1998) and *regulatory pluralism* (Gunningham & Sinclair 1999; Grabosky 2012) scholars have pointed out that regulation also involves and should involve activities of non-state actors. In this literature, there has been much attention on the role that citizens can play as regulators. Many scholars have stressed the importance of citizens and society at large as regulatory actors (e.g. Ayres & Braithwaite 1992; Gunningham *et al.* 1998; Hutter & O'Mahony 2004; Hutter 2006). Hutter (2006) for instance has argued that citizens can fulfill key regulatory roles of standard-setting, information gathering on regulatory behavior, and behavior modification to get regulated actors to conform their activities to regulatory norms. Kagan and colleagues have argued that so-called “social-license pressures” (support from local communities) are key in regulating environmental risks at industrial firms (Kagan *et al.* 2003). Studies of regulation in developing and emerging economies have also started to stress the importance of society-based forms of regulation. O'Rourke (2004) for instance points out the importance of citizens in acting as co-regulators with the state to deal with pollution in Vietnam. The World Bank (2000) issued a research report summarizing a large number of multicountry studies finding that when state enforcement fails, citizens can play an effective role in regulating pollution either acting directly in the

Correspondence: Benjamin van Rooij, School of Law, University of California, Irvine, Irvine, CA, USA. Email: bvanrooij@law.uci.edu

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community (Huq & Wheeler 1993), or by interacting with information disclosure systems (Afsah *et al.* 1996, 1997, Afsah *et al.* 2000).

Some scholars have sought to understand the broader reasons why a regulatory space for citizens has opened up, pointing to forces such as globalization, liberalization, privatization, and governmental failure (cf. Peters *et al.* 2009; Grabosky 2012). Chng (2012), for example, details how regulatory mobilization by NGOs in Manila occurs in a regulatory space fragmented by market liberalization, privatization of state sectors, and weak state regulation. Other scholars have analyzed how new and non-state forms of regulation and regulatory institutions arise, stressing the importance of the local conditions and the interaction between the state, social movements, and regulated actors (cf. Bartley 2003, 2007). As such, there is a growing body of work pointing to the importance of societal forms of regulation, as well as understanding the broader forces in which such regulation develops. From the regulatory literature, we know much less, however, about the exact conditions under which citizens themselves will start to play regulatory roles. Studies that have asked this question have done so in the context of developing countries and emerging markets. One insight from these studies is that the state still matters (cf. van Rooij *et al.* 2016). O'Rourke's study (2004) of citizen regulation in Vietnam has for instance clearly argued that for citizens to play a successful role as regulators, they must have the support of state regulatory institutions. Moreover, we also know that citizens can only take successful regulatory action against pollution if they have sufficient independence from such polluting sources of income (van Rooij 2010). Huq and Wheeler's (1993) study of the role of local communities in regulating pollution in Bangladesh has for instance shown that only communities with limited ties to local industry were able to take effective action to reduce pollution of local firms.

Prior research has also alluded to the important links between power and regulatory processes (cf. Hopkins & Maslen 2015; Gunningham & Sinclair 2011; Silbey 2011). For instance, Heimer (1999), in research on infant intensive care units, showed that successful implementation of new legal practices depended on the power and interests of specific individuals who might benefit from the adoption of new institutional routines. More recent work by Susan Silbey and colleagues has built on earlier findings such as Heimer's (1999) by examining power through concepts such as authority, autonomy, expertise, and credibility (cf. Gray & Silbey 2014), and by drawing on broader discussions of power put forth by Wrong (1996), Weber (2009), Bachrach and Baratz (1970, 1962), and Lukes (1974). Furthermore, we see that power has also been addressed in studies of regulatory enforcement strategies about debates on *punishment versus compliance* with the former side arguing that much of the literature is based on a pro-management bias that ignores and/or downplays issues of power and stratification (Hawkins 1990; Pearce & Tombs 1990; Gray 2006a).

In this article, we examine what happens when citizens become co-regulators on the frontline and how these experiences are shaped by manifestations of power. We argue that what is needed is an analysis that takes the perspective of citizens across various contexts and unearths how they develop a regulatory awareness of the risks they run and the need to take action. And, in turn, how they then make decisions whether or not to take action and if so what action to take. As Almond and Gray (2017) observe, there is a tendency, in particular in new governance models of regulation, to assume that citizens on the frontline are autonomous agents possessing appropriate levels of agency to speak up and become a citizen regulator. However, as studies of organizational safety demonstrate, there often exists a hierarchical credibility gap where the local knowledge of those on the frontline are often ignored through embedded but unacknowledged stratification (Vaughan 1997; Perin 2005). In response, some new governance research has sought to provide a more nuanced account of citizen co-regulation possibilities (cf. De Burca & Scott 2006; Karkkainen 2006; Nourse and Shaffer 2009; Lobel 2012; Lynch-Wood & Williamson 2013; De Burca, Keohane, & Sabel 2013) as well as different pathways for citizen empowerment (cf. van der Heijden 2013; Holly, Gunningham, and Shearing 2012). Overall, though, new governance approaches have been critiqued for neglecting or downplaying the role of power and inequality in regulation and for assuming the existence of individually responsible subjects capable of meaningfully participating in their own regulation (cf. Rodriguez-Garavito 2005; Super 2008; Shamir 2008; Cohen 2008, 2010; Alexander 2009; NeJaime 2009; Tucker 2012).

This article builds on these literatures to look in-depth at how power inequalities exactly come to undermine citizens in their regulatory roles. To do so it expands Gaventa's (1980) earlier work, in operationalizing enabling and controlling manifestations of power and applies that to assess how power inequalities can come to obstruct citizens in their regulatory roles. This analysis allows for a fine-grained and nuanced understanding of how a

combination of different forms of power come to undermine citizen-based regulation. This produces a comprehensive understanding of the role power plays in undermining citizen regulation that adds to the existing work on the relation between regulation and power generally and the hopeful and critical new governance work.

This article uses the most different case selection strategy (Seawright & Gerring 2008). It selects cases that are all similar in one aspect, citizens failing to successfully regulate risk, but different in the personal resources of the citizens involved, as well as in the social and political contexts these citizens exist in. As such the article has selected cases where successful citizen regulatory agency was absent in order to understand how manifestations of power played a role here. The paper explicitly does not address cases where citizens have been able to successfully take regulatory action, and thus does not portend to draw conclusions on such cases or the overall cases of citizen-based regulation.<sup>1</sup> These seemingly similar cases come, however, from highly diverse contexts and three different regulatory regimes (i.e., environment, occupational health and safety, and medical). One is from rural China involving villagers and workers suffering from extreme industrial pollution with severe risks and harms on their environment and health. The second case analyses farmworkers in Canada and the third case studies factory workers in Canada who possess legal safety rights but rarely use them when confronted with dangerous work or when exposed to industrial pollution. And, finally, the fourth case focuses on how medical professionals inside US hospitals, who have an ethical obligation to speak up when observing risks to patient safety (i.e., a Hippocratic Oath), often choose to remain silent.

This article draws directly on prior qualitative and ethnographic work by the authors (in three of the four cases studied) where they analyzed the cases discussed in this paper separately and without the comprehensive power analysis used here (Gray 2008, 2002; Gray 2009; Singer *et al.* 2011; van Rooij *et al.* 2012; Lora-Wainwright *et al.* 2012; Gray & Silbey 2014; Gray & Singer 2014). The present article extends this work by applying the power analysis framework in a comparative analysis across these diverse cases to draw out patterns of how power inequalities obstruct citizen regulation that prior work has not yet drawn out.

## 2. Approach and methods

### 2.1. Studying power in citizen-based regulation

To understand how power shapes citizens and workers in everyday practices to act as co-regulators, this article draws on the work of Gaventa (1980), who studied how power shapes action and acquiescence in a context of industrialization and pollution. According to Gaventa, stratification, resource dependency, political exclusion, and cultural reframing kept Appalachian citizens from addressing the increasing risks the mining industry brought to their communities and workplaces. Similar to Gaventa, the present article uses an analytical framework derived from power theorists (cf. Haugaard 2002). We do so by using insights about how power manifests itself and shapes human action, which here consists of the actions citizens may take to regulate risks they face. From this diverse and often abstract theoretical body of work we see that there are many different aspects of individual, social, and political power that are relevant here. Broadly, we follow Haugaard (2002) in seeing two core different forms of manifestations of power.

First, is what we shall call “enabling power”. This idea is central amongst consensual power theorists that stress manifestations of power of groups, seeing power as the capacity for action of the group, and stressing aspects such as knowledge distribution (Barnes 1988), cohesion (Parsons 1963), and legitimacy (Arendt 1970). Enabling power exists when actors have certain resources that enable them to act. A broad distinction, developed similar to Cotula’s sources of power imbalances (2008), can be made between financial resources, informational resources (knowledge, education), social resources (contacts, organization, cohesion), political resources (discretion, authority to make decisions, legitimacy, rights), psychological resources (confidence, hope, patience, energy), and skills to use these resources. Having more or less of these resources means having more or less power and the ability for action and, for our purposes, the ability to invoke rights and use one’s voice and take regulatory action.

Second is conflictual power theorists that see power in terms of the control that one social actor exercises over another. Here we can distinguish between approaches that stress behavioral control (Dahl 1957, Dahl 1961 (reissued in 1963, 1968), excluding control (Schattschneider 1960; Bachrach & Baratz 1962, 1970), anticipated control (Bachrach & Baratz 1962; Dahl 1968), inclusive control (Barnes 1988), and reframing control (Gramsci

1971; Lukes 1974; Bourdieu 1977, 1987, 1989; Foucault 1979, 1980; Giddens 1984). Table 1, while not doing justice to the complexities of the underlying theories, does capture the core issue at stake in each of them by presenting the different control oriented power theories in simple terms, using an A and B format with A exercising control over B.

The present study draws inspiration from these approaches to how manifestations of enabling and controlling power can come to shape the action of citizens who may play regulatory roles. These ideas help us better see what types of issues influence citizens when they have rights to act as regulators. The ideas from these power theories are broadly speaking very much in line with two core ideas about preconditions for regulatory success. Regulators, to be effective, must have both sufficient capacity and independence from those they regulate. Traditionally, regulatory studies have examined these issues by looking at the financial and human resources as well as organizational capacities of enforcement agencies (Selznick 1949; Katzmann 1980; Wood 1988; Kagan 1994; Hawkins 2002) and by addressing the external influences looking for problems of capture, corruption or other undue influence by who those regulators regulate or third parties (Kagan 1994; Bernstein 1955 (reprinted in 1977); Carpenter & Moss 2013).

Similarly, citizen regulators need sufficient capacity and independence to take effective regulatory action. In addition, we recognize that for citizens to play a regulatory role we should not just look at whether they can successfully take action, but we must also look at whether they actually develop grievances as they recognize the impact of the damages and translate these grievances into action (cf. Felstiner *et al.* 1980).

So, when we try to understand how manifestations of enabling and controlling power shape citizen based regulation we must look at whether citizens have sufficient capacity and independence to develop grievances into action, and when they develop such grievances whether their action will be successful to stop the harm they face. The ideas in power theories show us what to look for when we study capacity and independence. Here we have summarized the core ideas from power theories and what they mean for citizens playing regulatory roles. For the regulatory capacity of citizens to develop grievances and take action, we must look at whether citizens have major deficiencies in enabling forms of power along the resource types outlined in Table 2 below. Each resource type listed in Table 2 refers back to a different form of enabling power. Here, we follow Cotula's operationalization of these types of enabling sources of power as discussed above (cf. Cotula 2008).

And to study whether citizens can develop grievances and act independently, should they have sufficient capacity, we can look at whether there are strong disturbing forces of controlling power at play as outlined in Table 3. Here, each form of controlling power relates back to those discussed in the literature above.

The present study uses the above two tables as an analytical framework to understand the sources of enabling and controlling power that were at play in four case studies of citizens who could have potentially played a strong regulatory role but failed to do so. Each case is first analyzed individually (Starman 2013; Baxter & Jack 2008) and then, in the discussion section, the cases are brought together to analyze which enabling and controlling sources of power were at play and how such powers influences citizen regulators. The analysis of the cases were done inductively (Thomas 2006) and in relation to the overall framework of enabling and controlling power. As a result, the study does not statistically test the power theories or use the data presented to make a judgment of which theory fits best. Rather, the study uses theory to structure findings about disempowerment in the data

**Table 1** Explanation of control types of power

Control type	A has power over B, because:
Behavioral	'A is able to make B do what he does not want to do' (Dahl 1970)
Excluding	A is able to exclude B or issues that are important to B from processes of decision making that affect B, or A is able to exclude B from accessing information that affects B (Bachrach & Baratz 1962)
Dividing	A succeeds to align part of group B with its interests, undermining group B cohesion (Barnes 1988)
Anticipated	B acts in such a manner as she thinks A wants, based on B's perception of A's reputed power and an anticipation of his interests and wishes (Bachrach & Baratz 1962; Dahl 1968)
Reframing	'Socially structured and culturally patterned behavior of groups, and practices of institutions' shape the knowledge and interests, and thus the behavior of B, possibly to the advantage of A (Lukes 1974)

**Table 2** Enabling power resources and their relation to citizen-based regulatory action (based on Cotula 2008)

Resource type	Explanation and relation to citizen-based regulation
Financial	Having sufficient money to pay for the costs to get information to understand one's risks and potential grievances, and the financial means to pay for costs incurred in regulatory action. In addition, the more financially independent citizens are, the less vulnerable they are to control by those they seek to regulate
Informational	Having sufficient information to make a proper analysis of the risks and grievances, to know and understand about related rights to regulate, and about the available options for regulatory mobilization and how to be successful in regulatory action
Social	Having sufficient organization and cohesion to share knowledge about risks and grievances, as well as regulatory pathways. Having sufficient organization and cohesion to thwart outside interference. Having sufficient contacts to get information, to influence regulatory rights formation and to successfully take regulatory action
Political	Having the authority to change or influence changes in regulation, and the discretion to make or shape decisions to implement regulation, as well as the legitimacy, which can originate from authority, discretion, and the rights themselves to take regulatory action
Psychological	Having sufficient confidence, hope, energy, and patience to understand risks and grievances and take regulatory action
Skills	Having skills including analytical, strategic, diplomatic, and negotiation skills to make use of the resources to understand one's risk, influence regulatory processes and successfully take regulatory action

**Table 3** Types of controlling power and their effects on rights seekers

Control type	Relation to citizens as regulators
Behavioral	Citizens are kept from taking regulatory action by opposed parties through direct usage of or threats to existing dependencies/physical action (cf. Dahl 1970)
Excluding	Citizens are excluded from participating in procedures that affect their rights or the mobilization of their rights or the regulation of risks they face (cf. Bachrach & Baratz 1962)
Dividing	Part of a group of citizens who have suffered grievances and face risk have been co-opted by those opposed to regulation, undermining group coherence, and thus successful regulatory action (Barnes 1988)
Anticipated	Citizens do not take regulatory action as they fear this is against the interests and wishes of actors they think are powerful (cf. Bachrach & Baratz 1962; Dahl 1968)
Reframing	'Socially structured and culturally patterned behavior of groups, and practices of institutions' (cf. Lukes 1974) shape how citizens understand risk and regulatory action to prevent and control such risk

(cf. Ragin and Becker 1992; Glaser & Strauss 1967; Charmaz 2003; Turner & Gray 2009; Timmermans & Tavory 2012) and to reveal broader patterns that may be relevant for other cases in the future where such a framework of analysis may be applied.

## 2.2. Comparative case study methods

This article draws on four in-depth case studies to analyze how forms of power affect citizens taking regulatory action. Our qualitative case study approach draws on a branch of multisite ethnography whereby authors of distinct field research, who have collected data independently, often with different research designs and with multiple researchers, collaboratively discuss and reanalyze the data with a new hypothesis or research question (Gray & Silbey 2011). The value of this approach is that "the mixture of case studies provides cross-case comparisons of meaning-making processes at the ground level" of regulatory empowerment and across occupational fields (Gray & Silbey 2014, p. 105). This version of multisite ethnography differs from the more commonly known practices of multisite ethnography whereby either a research team conducts interviews and observations in the same organization (Becker *et al.* 1962; Huising & Silbey 2011) or a single researcher who conducts observation and field research at multiple sites (Marcus 1995; Rodriguez-Garavito 2005). However, using this approach

does come with limitations. For instance, given that we use data from four different case studies that were each designed differently we are unable to have the same systematic comparison as in a study of four cases that were designed together for comparison.

The case studies used in this multisite ethnography involve failures in citizens to act as regulators in both a developing country and in developed countries. We used a most different approach to select the cases, where they are similar in the fact that citizens failed to regulate risk effectively, but different in the amount of resources these actors have and the freedom and support they can expect in the political and legal context. Below in Table 4, we summarize the differences in the four cases. As illustrated, the cases progress in a sequence where citizens have the least resources and the most restrictive political and legal context to cases where they have more resources and less political and legal restrictions. This case selection allows us to assess how manifestations of power come to play a role in obstructing citizens to regulate risk across a diverse set of circumstances in terms of financial, educational, and social resources as well as across different levels of political freedom and access to justice.

The methodological approach taken was to combine the cases in order to make cross-case comparisons and to build transdisciplinary knowledge (Reme *et al.* 2015) of meaning-making at the ground level of regulatory empowerment. While we discuss the methods of each case study below, we do not seek to generalize in a traditional statistical manner (i.e., sample to population). Limitations inherent in qualitative case study methodology do not allow us to generalize our findings to all citizen regulators or to make causal inferences about factors affecting society-based regulation. However, at the same time, the cases do offer a range of variation (Trost 1986; Small 2009) in regulatory empowerment settings that we anticipate will be distinguishing factors influencing regulatory empowerment on the frontline. Therefore, the goal in this study is to generalize conceptual understanding on regulatory (dis)empowerment in a qualitative manner (Lincoln & Guba 1985). In other words, the concepts inductively arrived at in our case studies may be relevant and generalized in a transferability/external validity manner (cf. Shenton 2004; Polit & Beck 2010; Guenther & Falk 2019) to other contexts and situations where regulatory disempowerment is at play. The first three cases were selected because they provide a useful contrast between frontline manual laborers in both a developing country (farmers in China [Case 1]) and in a developed one (factory and farmworkers in Canada [Cases 2 and 3]). The fourth case study, however, represents an interesting counterfactual to research on regulatory and legal empowerment (healthcare professionals in the US). Here, we examine the idea of healthcare providers as citizen regulators, in particular, whether healthcare professionals feel empowered to speak up about identified risks to patient safety.

In the case of farmers in China (Case 1), research is based on fieldwork conducted in 2004 (Van Rooij 2006) and 2009 (van Rooij *et al.* 2012; Lora-Wainwright *et al.* 2012). The 2004 study consisted of one of over six months in recurring visits to the villages surrounding the factory studied. At first, informal interviews were conducted with village leadership about the general economy and governance of the village, and then informal interviews were conducted with villagers about farming practices. So, at first, the study did not focus on pollution in order to gain the trust of local citizens, and only after such trust was established were interviews conducted to find out how citizens had responded to the pollution. In addition, the study did recurring interviews with environmental regulators. The methods used in this first study were case study methods where multiple interviews were triangulated to find out what had happened in the factory and in the village. For details of the 2004 study see van Rooij 2006. In 2009, a team of researchers returned to the village to conduct a more systematic study about the environmental health awareness of the citizens and to examine why despite severe pollution with

**Table 4** Case selection overview

	Financial resources	Education	Social capital	Social hierarchy	Political freedom	Access to justice
1. China rural pollution victims	–	–	–	–	–	–
2. Canada farm workers	–	–	–	–	–	–
3. Canada factory workers	–/+	–/+	–/+	–	+	–/+
4. US hospital staff	++	++	++	++	++	++

negative financial and health effects hardly any action had been undertaken. The research team, consisting of anthropologists, health specialists, and legal specialists spent between April and August 2009 in the village. They conducted over 100 informal interviews with a range of citizens (both in terms of age, gender, and social status). They used a specially designed line of open interviewing that either started by asking citizens how their health was or what type of water they drank. And then through open questions the interview would allow the citizens themselves to explain whether they saw pollution problems and whether they thought these had caused damages and what they could and had done about it. For details of the 2009 study see Lora-Wainwright *et al.* 2012.

In the case study of frontline rural laborers in Canada (Case 2), we draw on literature from anthropological field research data (cf. McLaughlin 2009a, 2009b; McLaughlin *et al.* 2014; Weiler & McLaughlin 2019) in order to provide a lens into the social context of regulatory (dis)empowerment in migrant farmwork and everyday practices surrounding citizen co-regulation. These studies focused on farmworkers in temporary migrant programs in Canada and used primarily qualitative methods to illustrate the difficulties of speaking up and taking on the role of citizen-regulator. In an extensive ethnographic project on migrant farmworkers, McLaughlin (2009b) interacted with over 350 migrant farmworkers from Canada, Jamaica, and Mexico. The vast majority of migrant farmworkers in the Canadian temporary migrant program she studied were from Jamaica and Mexico (approximately 90 percent). She also conducted follow up in-person interviews in both Mexico (with 50 workers) and in Jamaica (with 28 workers) after these workers left Canada at the end of the farm season. In addition, government, program officials, employers, supervisors, and healthcare professionals were also interviewed. McLaughlin's work adopted a community-based participatory research approach to understanding the lived experiences of migrant farmworkers in Canada. The work by McLaughlin and her colleagues allow us to make a comparison of frontline meaning-making between farmers in China (Case 1) and farmworkers in Canada (Case 2).

For Case 3, we used data from an in-depth five-month ethnographic study that consisted of participant observation inside a unionized Canadian factory (Gray 2006b, 2008, 2018). The project consisted of over 1,000 hours of fieldwork and was specifically undertaken to understand how health and safety rights, risk, and regulation is experienced and shaped on the ground level inside a factory. Similar to other factories in Canada, the firm is subjected to environmental, employment, labor, and health safety regulations and is periodically the subject of onsite inspection and also audited for compliance. During the fieldwork, participant observations of various departments and subunits were conducted (e.g., steel milling, tubing, shipping and receiving, auto parts, and assembly lines). The observations were continually analyzed using grounded theory (Glaser & Strauss 1967) in order to take into account differences in work-group cultures as well as the varying compositions of workers in each group. However, rather than adopt the strict objectivist epistemological orientation of the original grounded theory approach (Glaser & Strauss 1967) a more interpretative and constructivist epistemological perspective was followed in both the analysis (cf. Charmaz 2003) and in the use of academic voice (cf. Gray 2017).

Within each factory subunit there were production workers of three ranks: students and temporary contract workers who are not part of the union; junior union workers who are assigned to subunits by management; and senior union members who bid on the subunit and job where they would like to work. Unlike students, temporary staff, and junior production workers, a senior bid-operator has greater authority when confronting a manager and is more likely to be listened to because of their union bid status. The small amount of control and power bid-operators do possess though is limited to the specific job they have achieved through the bid. In addition, unionized workers also included skilled trade workers such as electricians, millwrights, and tool-and-die makers. For more details on the methodology of this case study see Gray & Silbey 2014, 2011; Gray 2008, 2002.

In the case of hospital workers in the US (Case 4), interview data were analyzed from 111 healthcare professionals across 12 different hospital subunits inside the same hospital located in the Northeastern United States. Interview participants included both senior level staff (hospital directors, chiefs of staff, chairs of departments, board of trustees) and middle level managers of varying status (surgeons, other doctors, nurses, social workers, and therapists). Overall, 73 percent of the participants were clinicians, 61 percent were female, and 33 percent were senior managers. The interview data that were drawn upon in this case study was part of larger project that involved medical simulation, safety climate surveys, and participatory action research (Singer *et al.* 2011, 2015; Gray & Singer 2014). The qualitative data were analyzed using thematic analysis (Braun and Clarke 2006) which involves open coding when examining data patterns within a data set. In addition to open coding, additional

focused coding took place on individual decision-making related to speaking up or remaining silent about risks to patient safety.

### 3. Case 1: Rural pollution regulation and pollution victims in china

Our first case is a village in China's South-West. It is a village that symbolizes China with three decades of strong economic growth through industrialization, having one large chemical fertilizer company and several smaller village owned factories. While at first villagers worked in the factory, over the last decade a large migrant population from poorer provinces has moved to the village to work in the factory. Villagers now earn extra income through land they lease to the factories. Village leaders have become very wealthy, as they own the smaller factories that work with the chemical fertilizer plant and through income from the migrant workers whose temporary labor contracts they arrange. Villagers and migrant factory workers have steadily learned that development has come at a price, as pollution first affected their local produce, then their livestock and fishponds, and now their own health. While local farmers and workers steadily, accident after accident, and spill after spill, learned about the effects of pollution, they had a strong potential to take regulatory action (Lora-Wainwright *et al.* 2012).

Farmers and workers could have reported what they knew about the pollution to the local environmental authorities who were not aware of the illegal practices as they were occurring in the remote village at night when no inspector could go out to the factory (van Rooij 2006). Local enforcement authorities in China rely chiefly on citizen complaints to take action against such strategic polluters, as the agencies lack the capacity to carry out inspections against polluters who hide their violations (van Rooij & Lo 2010). And since the late 1990s, China has increasingly created a larger space for citizens to play a role as co-regulators against pollution, seeing that citizens were needed to help state regulatory agencies who at the time often lacked the capacity and independence to take successful action (van Rooij 2012). All but for one petition to the township, and not even the county authorities, in 1985, as far as we know, local citizens have never directly complained to the environmental authorities. Moreover, they would not talk to the media, even after an explosion killed eleven factory workers and national media came to the village. Farmers and workers have also not sought legal advice or to initiate legal action using increasingly stronger legal rights and more accessible legal procedures introduced through legislation since 2000 (Wang 2006; van Rooij 2012), even though they have been able to work with lawyers for instance with divorce cases. The only action villagers have taken has been to organize sporadic blockades at the factory gates in the village, resulting in negotiations between village leaders and representatives ending in settlements that do not even cover the full costs of pollution, let alone prevent and control the economic and health risks that the local industrial pollution continues to cause (van Rooij *et al.* 2012).

We clearly have a case here where citizens do not fulfill their important regulatory potential. We found, what we have termed a "compensation trap" at play. In such a compensation trap farmers and workers have suffered from strong economic and health damages never sought the regulatory action they could take, but did no more than focus on compensation, without trying to prevent and control pollution.

In part, they have done so because farmers and workers have lacked key sources of enabling power. Like most rural citizens local villagers lack informational resources, both about pollution and the legal processes available to deal with it, nor do they have financial resources to pay for better information, for instance proper health checks, epidemiological analysis, or independent pollution testing. They lack key political resources to be able to get the attention of those in power to address their grievances. And they lack the social resources, as their community lacks cohesion and directed leadership to address these issues. After years of living in pollution without taking much action, experiencing a normalcy of deviance (Vaughan 1997) and a learned helplessness (Abramson *et al.* 1978) and informed disenchantment (Gallagher 2006), citizens also do not have much confidence and hope that regulatory action should they organize it would succeed. And of course, with the lack of experience in taking action citizens have never honed their skills that would further enable such regulatory action.

Controlling forms of power are at play as well here and have exacerbated the lack of enabling power. Citizens cannot act without undue influence from those who are opposed to them taking regulatory action. The local citizens who suffer from pollution are caught in an intricate web of local interdependencies between the factories as main sources of income for themselves, village leaders as well as the local state. Their lack of financial resources coupled with the income and services they could get from the local factory and the development opportunities it

brought has made citizens here highly dependent on these factories, as well as subordinate to their own community leaders who have directly enriched and empowered themselves by brokering alliances with the local factory. Several strong forms of controlling power are at play here. First of all, we see that there is strongly divisive controlling power, where the factory's policies of enriching and coopting some villagers and not others have directly undermined village cohesion, leading to a structural stratification that undermines successful village activism (cf. Gaventa 1980). Second, there is strong anticipatory power, where villagers, especially those that work in the factory, but also those that have steady income through factory leases of village land, are afraid of the economic repercussions should they take regulatory action. Citizens are also excluded from fully participating in the regulation of the pollution in their community. Citizens never get to truly give input on environmental impact assessments evaluating expansions at the factory, nor do inspectors involve local citizens when they come and do local inspections. And finally, citizens were kept from regulatory action through discursive controlling power, through frames of reference that falsely defined local regulatory violations as a fundamental dichotomy between economic growth and pollution regulation (the development discourse), a problem that cannot be solved (the negative discourse), and one for which one at best can get compensation not regulation (compensation discourse) (van Rooij *et al.* 2012).

This case symbolizes that in systems where state regulation is likely to remain weak, as it is here given the remote location as well as successful evasion of inspection efforts, that there can be locally embedded actors with a regulatory potential. However, these actors must overcome power imbalances to start to play a successful regulatory role. To remedy this issue, regulatory reformers that support citizen based regulation must look far beyond strengthening legal rights. The farmers in China had since the 1980s gradually received improved rights to take regulatory action, both through participating in regulatory decision making (for instance in EIA decisions), as well as having rights to take direct tort action against pollution with a reversal of the burden of proof for causation and rights to oversee lax administrative enforcement through administrative litigation. Yet, as citizens lacked core forms of enabling power and were directly influenced by controlling power, they were unable in practice to use the legal rights they have.

These findings are perhaps not too surprising in the Chinese context with its authoritarian political system (Nathan 2003), its close state market ties (Huang 2008), and its underdeveloped rule of law and barriers to the courts (Minzner 2011), as well as with its limited space for civil society (Hildebrandt 2013).

#### 4. Case 2: Health and safety of farmworkers in Canada

In contrast to farmers in China, one might assume that farmworkers in more developed democratic countries with strong legal institutions, such as Canada, are able to play a stronger regulatory role. Indeed, most farmworkers in Canada have legal safety rights and thus possess the potential to be citizen regulators.<sup>2</sup> The one remaining exemption is in the province of Alberta where farmworkers only recently gained legal access to workers compensation, child labor standards, health and safety legislation, and a legal right to refuse unsafe work.<sup>3</sup> While Alberta farmworkers have only recently been given the power of a citizen regulator, what about farmworkers in the other parts of Canada who were already covered by workers compensation and health and safety laws – do they individually speak up when required? In Canada, workers are individually responsible for speaking up and exercising legal safety rights when confronted with unsafe work. This is important given the lack of direct intervention by regulators as the regulatory approach here has come to rely on complaints and action initiated by the farmworkers rather than outside regulators. For farmworkers in Canada, then, there is a real need to become a citizen regulator when confronted with pressure to perform unsafe work.

Similar to farmers in China, research shows that farmworkers in Canada also face difficulties playing an effective role in the implementation of regulation (Faraday *et al.* 2012). Part of the reason is that many farmworkers in Canada are not Canadian citizens and farm owners in Canada often hire their agricultural labor through temporary migrant programs. As a result, these temporary farmworkers face structural vulnerabilities when trying to integrate into the Canadian workforce. According to McLaughlin (2009), temporary farmworkers face “a system in which one group of people faces restricted rights and freedoms and/or has diminished capacity to exercise ostensible rights, freedoms, and benefits vis-à-vis another group of people, who has inherently greater power and controls their access to these rights” (p. 102). Research and investigations into temporary migrant programs in

Canada show that these farmworkers, given the precariousness of their employment, rarely speak up and become citizen regulators who enforce their regulatory rights (Barnetson 2010; Hennebry *et al.* 2016). In practice, a lack of regulatory empowerment among migrant farmworkers becomes the norm as workers legitimately fear job loss and repatriation. In addition, there exist language barriers to successfully speaking up, and a lack of practical knowledge on how to safely exercise legal safety rights (Basok 2007; Preibisch & Binford 2007; McLaughlin *et al.* 2014).

In McLaughlin's (2009) anthropological field research into migrant farmwork in Canada, she notes "all [farm] workers know that they can choose not to work or to stand up for their rights, but they also know that doing so could place the well-being of their families at risk" (p. 102). Similar to the farmworkers in China, a negative discourse also pervades the local culture of safety where problems are often perceived as just the reality of daily life. The result is a regulatory system that is not empowering but one that is interpreted and experienced as a *threat* to frontline migrant farmworkers, as well as an *obstacle* to regulatory empowerment (Gray & Silbey 2014). Globally, there has been a trend toward the use of temporary migrant programs to fill low-skilled worker positions. The structural design of these programs are known to limit the ability of migrant workers to practically enforce their employee rights, and, in turn, become citizen regulators (Holley 2000; Fudge & MacPhail 2009; Tucker & Sargeant 2010).

So just like the Chinese case we see here that citizen regulators, although technically they have the legal right to take regulatory action, in practice tend to stay silent. Here again a combination of enabling and controlling manifestation of power is at play. We see that workers here lack key political/legal (formal status, lack of steady contracts, access to political leaders and representatives), financial (lack of steady income), informational (knowledge of the law and its procedures), psychological (confidence), and skill resources related to language and experience that keep them from taking action. Such lack of resources, just like in China, also makes the farmworkers here, in particular the temporary foreign farmworkers, more vulnerable to controlling forms of power, especially as they anticipate harm to their immigration situation and income, and discursively have come to believe that activism is too difficult and impossible in practice.

### 5. Case 3: Health and safety of factory workers in Canada

In contrast to farmworkers, factory workers in Canada have a stronger regulatory potential to act as citizen regulators. Canadian factory workers have a right to form a union, access workers compensation, as well as the following three key legal health and safety rights: a right to know about dangerous chemicals in the workplace, a right to participate in joint health and safety committees, and most importantly, a legal right to refuse unsafe work. For factory workers, regulatory pluralism and shared governance has been in operation since the 1970s when the Internal Responsibility System was introduced in Canada which combined "participatory rights for workers with reforms to external enforcement to create a regime of mandated partial self-regulation" (Tucker 1995, p. 245; Tucker 2012). In other words, new governance models of regulation which conceptualizes employees as empowered workers and a new source of regulatory enforcement beyond the state, is actually an older model of regulatory governance in Canadian health and safety regulation (Tucker 2012; Gray 2006a, 2002). The Canadian experience then with what those in regulation studies often refer to as a new governance model, with individuals as autonomous citizen regulators, provides an important cross-case comparison for regulatory initiatives in developing countries seeking to legally empower frontline workers.

Legal mobilization approaches to creating awareness of safety rights through safety marketing campaigns have been largely successful in helping Canadian factory workers become aware that they have legal rights and an individual responsibility to act as a citizen regulator. In other words, there exists a strong potential for regulatory empowerment among workers in Canada given their awareness of their rights. Yet, factory workers are often reluctant to speak up and voice safety concerns despite the fact that factory workers are legally empowered and could technically fulfill the non-state role of a citizen regulator. Research has shown that there exist a number of endogenous factors, including cultural, personal, and structural factors that constrain the successful usage of safety rights in practice as envisioned by new governance models (Gray & Silbey 2014). In a study of the legal right to refuse unsafe work among factory workers in Canada, Gray (2011) found that while close to 100 percent of the workers he surveyed were aware of their legal right to refuse, 80 percent of them nonetheless stated that

they had performed work that they 'knew' was unsafe and only 30 percent believed that having a right to refuse unsafe work actually helped them in practice. Those who believed they could successfully use their right to refuse were often workers higher on the union seniority list illustrating the importance of hierarchy and workplace power.

Gray (2009) also observed in his qualitative field research on the same sample of factory workers that when these factory workers failed to act as a citizen regulator – by exercising their legal right to refuse unsafe work – their lack of regulatory action was often viewed by management and regulatory bodies as an apathetic acceptance of the unsafe conditions. This perception of worker safety apathy as the main problem to regulatory empowerment is often shared Gray (2006, p. 884) argues among regulation scholars themselves (cf. Hawkins 1990, p. 462). As a result, regulation studies often contain theoretical assumptions regarding the ability of the frontline workers to become legally empowered citizen regulators. According to Almond and Gray (2017), such top-down theoretical assumptions contained in the literature represent “an ideological choice as well as a strategic one, in that it marginalizes consideration of social meanings, individual experiences, and agency” (p. 9).

While regulatory empowerment is often stressed by policy makers and regulation researchers far too often little attention is paid to how regulatory empowerment through individual rights is framed by power relations inside the workplace. By locating responsibility for regulatory governance to those structurally less powerful, lower in the hierarchy with less security, regulatory empowerment can lead to the perception of workers being complicit in non-compliance behaviors. Rather than being regulatory empowered, as is often envisioned in new governance models where workers are viewed as autonomous agents with agency, worker empowerment on the frontline is often limited with individuals possessing narrow capacity to successfully act as citizen regulators. Regulatory empowerment runs the risk then of leading to factory workers being blamed for violations when they do not exercise their safety rights, which, in turns leads to a subtle shifting of both accountability and responsibility to those on the frontline.

The practical politics of regulatory empowerment means that actions intended to empower the frontline (i.e., safety rights) can actually undermine the ability of individuals to speak up and exert individual responsibility within their own local workplace cultures. Therefore, it's not surprising that similar to both our farmers in China and migrant farmworkers in Canada, factory workers often do not fulfill their role as a citizen regulatory due to the interplay of enabling and controlling manifestations of power. While factory workers in Canada have greater access to informational resources of enabling power about the legal rights available to them and, for some workers, greater access to financial assistance, controlling forms of power often mitigate the effectiveness of enabling power in practice. As a result, rather than formally exercise legal safety rights, most factory workers instead tend to deal with safety hazards in informal ways or not at all.

In addition, with factories in Canada continually relocating from developed to developing countries, workers are sometimes caught in an intricate web of local interdependencies where the threat of a factory closing is not simply a negotiating tactic but a real possibility. In the local culture of citizen-based regulation, forms of divisive controlling power play a role when workers fear that speaking up might negatively affect not only their jobs but also that of their coworkers. The fear of job loss may also contribute to anticipatory forms of power, especially among nonunionized workers and those lower in the social hierarchy, leading to decreased levels of group cohesion and individuals becoming reluctant to take regulatory action. These manifestations of power, which are often experienced in subtle ways in local practice, also contribute to broader forms of discursive controlling power with framing references such as 'keeping production going' and 'keeping one's job'. These discursive frames are continually re-enforced through manifestations of controlling power embedded in the local cultural, social, political, and structural experiences of factory work employment.

## 6. Case 4: Medical ethics in the United States

In contrast to our farmers and blue-collar factory workers, higher social status white-collar medical professionals inside hospitals represent an interesting counterfactual to the shifts in regulatory models that seek to empower individuals on the frontline (Singer *et al.* 2011, 2015; Gray & Singer 2014). Healthcare professionals, when compared to farmers and factory workers, structurally appear to be in a stronger regulatory position to be active citizen regulators. These professionalized workers have higher levels of education and are encouraged to speak up

not only for their own benefit but for the sake of patient safety. In fact, some healthcare providers such as physicians have an ethical obligation (i.e., a Hippocratic Oath) to speak up when observing risks to patient safety. Yet, similar to farmers and factory workers, research shows that healthcare providers inside hospitals also often choose to remain silent (Leape 2002; Kish-Gephart, Detert, Trevino, & Edmondson 2009).

In a case study of the willingness to communicate observed patient safety risks inside a Northeast teaching hospital in the United States, Gray and Singer (2014) found a number of endogenous factors limiting the willingness of healthcare providers to speak up. For instance, social hierarchy was observed to play a significant role in the decision to speak up or remain silent. Rather than hierarchy based on official rank, social hierarchy focuses on the social meanings that people attach to actions within their immediate work setting and goes beyond viewing hierarchy strictly as an objective classification of accountabilities and expectations. Social hierarchy inhibited the willingness of inexperienced and low-ranking healthcare providers to speak up because they perceived that speaking up was inappropriate in certain social contexts and that their perception of immediate patient safety risk might be perceived as unreliable due to their lack of expertise and overall experience. Decisions to speak up were also influenced by an individual's own perceptions of their individual credibility, authority, and professional autonomy.

Healthcare professionals also chose to remain silent on patient safety risks if they anticipated confrontation with colleagues. Similar to factory workers who avoided speaking up in order to avoid confrontation with their immediate supervisor healthcare professionals inside the hospital also avoided speaking up at times as a way to avoid conflicts with colleagues at work. Rather than speak up when confronted with a safety issue, healthcare providers noted socially acceptable ways to speak up. Inside the organizational context of the hospital, speaking up about patient safety was more positively perceived if it was done (i) selectively, (ii) appropriately framed and explained to minimize confrontation, (iii) indirectly, and (iv) never in front of patients. Violating these social norms of speaking up were understood to be harmful to workplace relationships with colleagues, even if they required disregarding the best interest of the patient.

Some medical professionals also feared that if they did speak up about a safety problem that they might then end up 'owning the problem' and that this would place further constraints on their time and resources. These individuals often cited limited capacity and a perceived lack of authority to adequately take ownership of the problems they observe. In addition, several healthcare providers noted structural impediments to speaking up stemming from both the physical and organizational design of the hospital. Physical space constraints were revealed to be a problem in what was often a full emergency department of the hospital with patients at risk by being placed in the hallway because there was no room. All these above factors not only limited the development of autonomous white-collar citizen regulators inside hospitals, but also contributed to silence about patient safety risks becoming culturally embedded and rationalized among the medical professionals.

However, the US hospital workers did have greater access to enabling forms of power when compared to both our farm and factory workers. For instance, the healthcare providers had greater access to political and institutional leaders, access to legal representation, and informational resources regarding both their legal rights and obligations to patient safety. They were continually provided information on the importance of speaking up. Yet, many of the healthcare providers worked in teams and thus decision making is not necessarily individual for them but often a collective endeavor. As a result, enabling forms of power related to skill varied among team members during team-based safety decision-making. In the healthcare field, regulatory disempowerment is more likely to occur when individuals possess varying levels of skill resources when working in teams. This corresponds with past research (Vaughan 1997; Perin 2005) that has shown that there is often a hierarchical credibility gap inside organizations where local knowledge on the frontline (and variations related to skill based enabling forms of power among frontline workers) is often ignored through embedded and unacknowledged stratification.

The psychological resources (such as confidence) that are needed for regulatory empowerment are often lacking among healthcare providers, in particular those lower in the social hierarchy (Edmondson 1999). In turn, this leads to varying levels of perceived agency in practice. As a result of these variations in enabling power among healthcare providers, controlling forms of power, such as anticipated control, lead some healthcare workers to stay silent through organizational forms of self-censorship (Morrison & Milliken 2000; Henriksen & Dayton 2006; Gray & Kendzia 2009). While our case study here has focused on healthcare professionals, patients are also able to speak up and become a citizen co-regulator. However, similar to our findings of healthcare

professionals, speaking up among patients inside organizations and professional settings is context specific (Koutantji, Davis, Vincent *et al.* 2005; McGreevey 2006; Lyons 2007; Davis, Koutantji, & Vincent 2008). For instance, Entwistle *et al.* (2010, p. 1) found that patients' willingness to speak up about safety concerns "depends heavily on the quality of patient–professional interactions and relationships." Overall, organizational factors, such as social hierarchy and social norms surrounding the context of when it is considered appropriate to speak up, as well as physical and organizational structural impediments, play a role in limiting enabling forms for power in institutional practice (Kohn, Corrigan, & Donaldson 1999; Naveh & Katz-Navon 2014).

## 7. Synthesis and Discussion

Across our four cases citizens had an obstructed form of agency that contributed to them being unable or unwilling to perform the regulatory roles that they could play to mitigate the environmental and safety risks in their direct vicinity. Despite the direct harms that they observed or even risked to suffer themselves, these citizen co-regulators did not successfully use available recourses they had to prevent and control damages. It is not the case that they were fully powerless bystanders with no opportunity or ability to act. Rather, in all four diverse cases citizens had the ability to take stronger action that might have reduced the risks they observed, yet they did not. The citizens we observed had only partial agency, as they had only limited enabling power and were obstructed by sources of controlling power. And therefore, even though they had some capacity for action, this capacity as well as their willingness to use it was reduced through structural power inequalities. This we argue creates a situation of regulatory disempowerment (see Table 5).

Regulatory disempowerment runs in two directions. When citizens lack the power to act as successful regulators, regulation of risk is undermined and citizens will continue to confront risks and some will also suffer extra damages. In addition, citizens will also continue to face damages without being able to address them or see them successfully regulated by others, which, in turn, will further strengthen their disempowerment. Across our four diverse cases, we observed that citizens were negatively impacted by imbalances in enabling and controlling power. In the four diverse cases we studied where citizens failed to become effective regulators, citizens, even though they had legal rights, lacked key informational, political/legal, financial, social, psychological, and skills resources, and become more vulnerable to undue influence either directly or indirectly from the business entities that caused their risks and that they might have been able to regulate.

The analysis above shows a rich and complex mosaic of how manifestations of enabling and controlling power come to disempower highly diverse citizens in terms of their resources and political and legal contexts they exists in from becoming effective regulators. When we look at the cases in combination, we can analyze what patterns of disempowerment are at play here. What we see in Table 5 above is that there is already a basic difference between cases where there is an imbalance in enabling sources of power (cases 1 and 2) and those where there is relatively more developed enabling power of the potential citizen regulators (cases 3 and 4). We also see that a lack of enabling power (cases 1 and 2) can make citizens more susceptible to particular forms of controlling power that keeps them from taking action (such as anticipatory, exclusionary, and divisive manifestations of

**Table 5** Overview of imbalances in enabling and controlling power across the four cases

Case	Imbalance in enabling power	Imbalance in controlling power
1. China rural pollution victims	Lack of financial, informational, and social resources, lack of confidence, and lack of experience and activist skills	Divisive control, anticipatory control, exclusive control, discursive control
2. Canada farmworkers	Lack of political, legal, financial, informational, lack of experience and activist skills	Anticipatory and discursive control
3. Canada factory workers	Greater access to informational and financial resources and also more formal legal rights. Weak social resources	Divisive, anticipatory, and discursive control
4. US hospital staff	Greater access to political, legal and informational power. But different levels of skills and a lack in psychological power and social cohesion	Anticipated and reframing control

power). And we see from this that particular elements of enabling and controlling power can play a vital role in the overall disempowerment of citizens who can play regulatory roles. Here we see for instance that social resources can play a vital role in undermining group cohesion and restrictive social hierarchies (cases 1, 2, 3, and 4). Or we see that discursive frames play a major role in disempowerment (cases 1, 2, and 3) and finally that in some cases citizens have legal resources (especially legal rights) as a key source of enabling power but are kept from exercising them due to a lack of other sources of enabling power or strong adverse sources of controlling power.

This analysis thus shows that in these four cases there have been combinations of enabling and controlling power at play through particular patterns. From these cases we can draw out five such patterns (see Table 6 below for an overview), relating to issues of (i) capacity, (ii) dependency, (iii) social hierarchy, (iv) discursive framing, and (v) legal rights. By distinguishing these patterns, we can better understand regulatory disempowerment and cases where citizens fail to become effective regulators.

The first pattern of regulatory disempowerment that we observed in our cases was *capacity based*. Capacity refers to the “conditions, circumstances, and resources that enable regulators to secure compliance” (Gray & Silbey 2014, p. 113). For civic regulation, such capacity is markedly different than for state regulators where this has traditionally been studied. Such capacity based disempowerment comes directly out of imbalances in enabling sources of power. And when we look at the array of imbalances at play here for citizens as regulators, we find different ones than for state regulators. Clearly in the case of Chinese and Canadian farmers we saw that basic individual resources were deficient, such as language skills, self-confidence, knowledge about proper legal procedures, and individual contacts with leaders to address their problems. But we also see that group level, social resources were often lacking. We clearly saw in China, and this is very similar to what Gaventa and Gould and colleagues found in rural communities living near polluting industry in the US and Canada (Gaventa 1980; Gould *et al.* 1996), that communities that lack cohesion and solidarity have trouble taking successful regulatory action. In China, rather than act as one, the community of villagers had become split due to social stratification that came with industrial development, as well as the fact that some villagers (both in certain geographical locations as well as those in leadership positions) benefited much more from the polluting factory than others. Similar to the Chinese community, some level of cohesion is also needed among healthcare professionals inside hospitals as the study in the US revealed. However, this cohesion is structural built into the working dynamics of healthcare professionals where collaborative medical work and team based regulatory compliance are often required.

A second pattern of regulatory disempowerment that we observed in our cases was *dependency based*. The dependency pattern of disempowerment comes when severe imbalances in enabling power make citizens more susceptible to controlling power that keeps them from regulatory action. While traditional regulatory scholarship has pointed out the risks of state regulators being captured by those they regulated (Laffont & Tirole 1991; Ayres & Braithwaite 1992; Carpenter & Moss 2013), as well as academic capture in regulation research (Zingales 2014; Gray 2013, p. 337), citizen regulators can also become captured. In China, villagers depended on the polluting factory for income from the land it had leased from them, while factory workers feared losing their jobs.

**Table 6** Five patterns of regulatory disempowerment

Pattern of disempowerment	Explanation
Capacity	Imbalance in financial, informational, social sources of enabling power, most clearly at play in Case 1 and 2
Dependency	Lack of (some) sources of enabling power creates vulnerability to forms of controlling power, especially exclusionary, anticipatory and divisive power, most clearly at play in Case 1 and 2
Social hierarchy	Lack of social cohesion and/or strong social hierarchies keep citizens from effective regulation, most clearly at play in Case 1 and 4
Discursive framing	Discursive sources of power keep citizens from seeing an effective way to regulate risk and protect their true interests, most clearly at play in Case 1, 2, and 3
Legal rights	Having legal resources and rights but being unable to exercise them due to other sources of enabling and controlling power, most clearly at play in Case 3

Meanwhile, village leaders who could have rallied community activism to regulate the pollution depended on income they received from organizing the factory's migrant labor force, as well as from running small even more polluting enterprises that supplied to the big factory.

In our Canadian factory case study, workers were also dependent on the factory owners for income and quitting such jobs was not generally considered an option as decent paying manufacturing jobs were difficult to obtain and there was always the threat lurking that the owners might move production to a less developed and regulated country. Migrant farmworkers also faced dependency issues as their ability to stay in Canada was structurally linked to their employment relationship. While factory workers tended to be less structurally dependent than farmworkers, it was observed that team leaders inside the factory who could have spoken up on behalf of frontline workers instead tended to encourage workers to turn a blind eye to regulatory violations in order to keep production running. It was known in the local culture that team leaders were dependent on middle managers being satisfied with their ability to encourage workers to focus on production opposed to health, safety, and environmental concerns.

Dependency contributes to vulnerability as well as susceptibility to threats and intimidation among frontline workers and community group members, which, in turn, influences their capacity to meaningfully participate in regulatory empowerment. If those on the frontline of regulatory engagement perceive regulatory capture among group leaders then such knowledge is likely to "limit actors with less authority and autonomy from exercising agency" (Gray & Silbey 2014, p. 125). When middle level managers and informal leaders are perceived to be captured it places constraints on the agency of individuals below them in the organization and/or social status of the group. Dependency based patterns of regulatory disempowerment may then contribute to regulatory capture among citizen regulators.

The dependency and capacity patterns interact, just as enabling and controlling power interact. For instance, the less capacity citizens have the less enabling power they have, and, as a result, the more likely that they become dependent and lose their independence to act as regulators given that their behavior is now more likely to be shaped by controlling forms of power. In many cases, like the ones studied here, this may well mean that citizens are equally if not more likely than state regulators to become captured and obstructed in successful independent regulatory action.

A third pattern of regulatory disempowerment that we observed in our cases was related to the concept of *social hierarchy*. Here, even if a citizen regulator has formal status, capacity, expertise, knowledge, and independence there is the risk that regulatory disempowerment might still occur on the frontline due to social hierarchy. Those higher in the social hierarchy can stifle speaking up among those lower in the social hierarchy, and when it is in their interest elites can keep non-elites from successfully invoking regulatory protection. This pattern was observed in our China case where leaders in the village who had been captured kept others from speaking up. Similarly, in the Canadian factory, compliance limiting middle level managers and informal leaders were observed to discourage speaking up about safety when it disrupted the production process. And, in the hospital case in the United States, where even if one is higher in social status and formal hierarchy, they still might not speak up and fulfill their citizen regulatory role due to organizational factors. In the hospital case, however, social hierarchy seemed to have protected the status quo and existing norms, rather than result from individual healthcare providers being captured.

The social hierarchy pattern shows how disempowerment can happen even when there is some formal status, some enabling power, and some formal independence that should shield citizens from controlling forms of power. Here we see that what can seem to be capacity and independence, in reality is not, when the sociological hierarchies as they are understood and reinforced in daily practices allow those at higher social hierarchies to exercise strong controlling powers over those that are socially subordinate to them (Moody & White 2003; Magee & Galinsky 2008; Gray & Singer 2014). This shows that to truly understand how controlling power works, requires an understanding of how citizens in a given social field understand the hierarchy of those that get to exercise or submit to such forms of power. Far too often the influence of power and hierarchy as a form of regulatory disempowerment is neglected in regulatory research where it's simply assumed that individual agency will be positively exercised by those who have been assigned formal legal positions and regulatory rights on the frontline. Future research needs to examine how social hierarchies are embedded on the ground level as well as the subtle ways they contribute to regulatory disempowerment.

A fourth pattern of regulatory disempowerment that we observed in our cases was *discursive based*. Here, private regulators might be influenced by discursive frames that do not allow him/her to see the full risk or the full potential of regulatory actions to address specific risks. This is of course clearly linked to the discursive form of controlling power. The Chinese case is illustrative here. During the informal discussions with farmers about the pollution and potential responses, it became apparent that they used three particular frames that kept them from neither fully seeing the nature of the pollution problem nor seeing the full remedial regulatory action needed to prevent and control further harm. Farmers would for instance use a pessimistic frame (“there is nothing that can be done” (没□法 (*mei banfa*)), even though this was a profitable company that could easily have used the environmental installation it had to reduce pollution significantly. Or farmers would state that economic growth and development precedes environmental protection. (先吃□以后□保 (*xian chibao, yihou huanbao* (lit. Meaning “eat your belly full before you can protect the environment))), where again there was no fundamental contradiction in this case between economic development and pollution control, as the factory already had the environmental installations. And lastly, farmers would say that all they could hope for was compensation, seeing damages as something that can be compensated but not regulated. These frameworks kept farmers here from taking fuller regulatory action, even if they would have sufficient independency and capacity. A similar negative discourse (i.e., ‘nothing can really be done about it’) was observed inside the Canadian factory as well as the discourse of ‘keeping production going’. Production discourses versus safety discourses have a long history inside industrial workplaces. In addition, inside the hospital, the discourses of speaking up for patient safety and do no harm (i.e., the Hippocratic oath) were compromised by the local cultural practices of avoiding speaking up in ways that could weaken patient trust.

So, this brings us to yet a deeper level of understanding regulatory disempowerment. Rather than just focusing on the surface level resources and group dynamics that constitute the regulatory capacity, or the vulnerabilities to influence that come with a lack of dependence, or even the subtle internal understanding of social hierarchies, here we must look deeply into the frames of reference and understanding that citizens place on both the risks they face as well as on the regulatory options they come to see. It shows that to truly address citizen regulatory roles requires a deep internal understanding from their perspectives.

A fifth pattern of regulatory disempowerment that we observed in our cases was *legal rights based*. This fifth pattern is the culmination of how imbalances in enabling and controlling manifestations of power affect citizens in ways that come to misdirect even stronger regulatory rights they have been granted. Rights are often necessary but not sufficient for regulatory empowerment. Simply having knowledge of rights, laws, and regulations doesn’t mean that citizens will feel empowered to exercise such rights. By granting rights to citizens, they are steered toward a certain form of activism that may not necessarily work well for them to become successful regulators. Here the Canadian worker case is important. When workers were granted the right to speak out against unsafe labor conditions, it was assumed that this would give them the legal power to speak up. However, when their lack of independence and capacity made it unable for them to do so, the same right to speak up has now appeared to have turned against them. With the rights came responsibilities, even if they could not invoke the right to speak up. And when workers did not speak up when they had to work in unsafe conditions, they were now seen as complicit and jointly responsible for the ongoing hazards. So, having a right that cannot in reality be easily invoked can undermine regulatory capacity.

Regulatory research, we suggest, needs to examine how individual rights often do not match up with the ability to invoke such rights in practice. More work is needed to help people invoke rights because even if someone on the frontline has knowledge of their rights it doesn’t necessarily mean that they have the capacity or independence to act. In other words, our focus should be less about seeking more rights and more about creating rights interventions that disrupt power structures that sustain disempowerment.

## 8. Conclusion

Now that regulation has moved beyond the state (Gunningham & Sinclair 1999; Black 2001, 2002), and now that it has discovered citizens as subjects of regulatory activity, it is time that the field of regulatory studies looks in earnest at the empowering and disempowering effects of this shift. This study has shown that when citizens are disempowered, they’re unable to fulfill their regulatory potential and that a shift toward civic regulation will

become ineffective. More worrying though is that this study has shown that granting citizens' rights and regulatory powers may actually be disempowering in of itself and further undermining their regulatory capacity as well as strengthening social inequalities and hierarchies.

The move toward citizen-based regulation requires a deep understanding of how inequality and regulation interact. Within regulatory contexts varying levels of regulatory inequality and disempowerment take place because in everyday practice citizens possess varying degrees of limited agency. The regulatory potential of citizen regulators is routinely constrained by inherent inequalities embedded in the social context of regulatory decision-making (Chng 2012). As our cases demonstrate, simply giving individuals rights to participate, speak out or even litigate doesn't necessarily result in greater risk regulation. Frontline engagement, especially when structurally taking place within a discourse of neoliberal responsabilization (Gray 2009), may actually strengthen rather than reduce social inequalities. Involving citizens in regulation may thus be disempowering, rather than empowering.

To truly study and promote civic regulation means moving beyond the technocratic approach to regulation that seeks to match the right instruments and actions, and instead to understand how activism, mobilization, and collective action can give citizens the power needed to become successful regulators. This then expands the field of regulatory studies to incorporate directly insights from studies about contentious politics, rights mobilization, and citizen empowerment. It forces the field to look critically at the overall empowerment and disempowering effects of *and* on regulation, and thus study regulation directly in relation to inequality and power imbalances.

Future research into regulatory disempowerment should explore how different combinations of enabling and controlling power across different fields of regulation come to disempower citizens from becoming effective co-regulators. The patterns we identified in this article (capacity, dependency, social hierarchy, discursive framing, and legal rights) provide a conceptual pathway to explore how forms of enabling and controlling power influence citizen co-regulators who, in everyday practice, possess varying degrees of limited agency.

## Endnotes

<sup>1</sup>Our case studies focus on how inequality and power interact with regulation. While our cases illustrate current impediments to effective citizen co-regulation, we are not suggesting that citizen regulation is inevitably doomed to fail. Indeed, as one of our anonymous reviewers pointed out there have been many historical success stories of citizen legal mobilization. In particular, publications that raised citizen consciousness on issues related to health problems in the meat packing industry (Sinclair 1906), the environmental effects of pesticide use (Carson 1962), and the importance of seat belts and other safety designs in car manufacturing (Nader 1965). Also, we see that after a disaster or a crisis there is an increased likelihood of successful regulatory mobilization (cf. Hutter & Lloyd-Bostock 1990). And, organizational behavior research also points to the role of charismatic leaders or 'champions' inside organizations who serve to encourage citizen participation and 'buy-in' for new ideas and/or to follow regulatory rules (cf. Hendy & Barlow 2012; Singer *et al.* 2011). However, rather than focus on success stories, our cases demonstrate that in everyday routine practice citizens possess varying degrees of limited agency and, as a result, involving citizens in regulation may at times be disempowering, rather than empowering.

<sup>2</sup>A distinction needs to be made between farmers (as owners and employers) and farmworkers (employees working on farms). See Faraday *et al.* (2012) for the struggles that farmworkers in Canada have faced when attempting to collectively organize and form unions.

<sup>3</sup>In 2015, a socio-democratic party called the NDP (New Democratic Party) was elected in Alberta for the first time after 80 consecutive years of conservative, right-leaning, provincial governments. The NDP promised to develop new health and safety regulations for farmworkers that would include similar regulatory empowerment provisions found elsewhere in Canada. In 2016, farmworkers were finally provided protections under the workers compensation system. And, in November of 2017, the NDP introduced new health and safety regulations, which includes the legal right of workers to refuse dangerous work. In 2019, the United Conservative Party of Alberta defeated the NDP to win a majority government.

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