The nature and future of Regulatory Stewardship
• How it took 4,000+ years to get to Regulatory Stewardship

• Stewardship elsewhere

• What Regulatory Stewardship could be – light, regular and plus
Evolution of regulation

• Codex Hammurabi
  • Ca 1750 BC
  • System of prescriptive rules and penalties for non-compliance
Evolution of regulation

- Codex Hammurabi
  - If a builder builds a home
  - And the home falls down and kills its owner
  - Then the builder shall be killed
Evolution of regulation

- Greek and Roman influence (ca. 600 BC – 600 AD)
- Further codification of rules and penalties
- Focus on commerce, property and bodily harm
Evolution of regulation

Greek and Roman influence (ca. 600 BC – 600 AD)
- Rules given by deities and/or inspired by nature
Evolution of regulation

• Middle ages (ca. 600 – 1600 AD)
  • The body as target of punishment
  • Deterrence becomes a spectacle
Evolution of regulation

- Middle ages (ca. 600 – 1600 AD)
  - Ultimate surveillance and judgement
Evolution of regulation

• Renaissance, Enlightenment, and Early Modernity (16th – 19th C)
  • Birth of leniency
  • Punishment becomes an administrative ritual to correct
Evolution of regulation

- Renaissance, Enlightenment, and Early Modernity (16th – 19thC)
- Globalization of a specific type of regulation
In summary:

- For more than 3,700 years ‘regulation’ meant:
  - Hierarchy
  - Intrusive
  - Deterrence based
  - Prescriptive
  - Static
  - One size fits all

- Yet, from beginning of 20th Century onward, regulatory friction becomes problematic.
Paradigm shifts

- 1950s onward
- Growing awareness of risks from industrialization
- Growing awareness of human behaviour
- Growing awareness of cost of regulation
• Insights that people do not just comply because they ‘fear’ consequences of non-compliance

• Move towards compliance-based regulation and positive incentives

• Mixing of strategies (e.g. Responsive Regulation)

• Ca. 1970s onward
Paradigm shift #2
Risk regulation

• Growing externalities (risks) because of industrialization and globalization

• Call on governments to be cost-effective (New Public Management)

• Risk-based regulation as an approach to regulatory governance

• Ca. 1980s onward
Paradigm shift #3
Outcome oriented regulation

- Performance and goal-based regulation
- Call on government to stimulate innovation
- Challenge between freedom and certainty
- Ca. 1990s onward
Paradigm shift #4

Inclusive regulation

- Collaborative and deliberative rule-making and implementation

- Delegation, privatization, and contracting out of regulatory tasks to 3rd parties (regulatory intermediaries)

- Finding a balance between collaboration and capture

- Ca. 1990s onward
Paradigm shift #5

Behavioural regulation

- Growing critique to neo-classical model of rationality
- Heuristics and biases shape behaviour
- ‘Nudge’ choice rather than limit choice
- Ca. 2000s onward
In sum

- Over the last 50 years ‘regulation’ has become to mean:
  - Panarchy
  - Collaborative
  - Mixed incentives
  - Goal based
  - Flexible
  - Tailored

- Response to ongoing calls for less regulatory friction and more regulatory facilitation
In sum

- Regulatory failure?
- Too much regulatory complexity?
- Too much facilitation?
In sum

• Over the last 50 years ‘regulation’ has become to mean:
  • Panarchy
  • Collaborative
  • Mixed incentives
  • Goal based
  • Flexible
  • Tailored

• Response to ongoing calls for less regulatory friction and more regulatory facilitation
In sum

• Response to ongoing calls for less regulatory friction and more regulatory facilitation

Over the last 50 years ‘regulation’ has become to mean:
• Panarchy
• Collaborative
• Mixed incentives
• Goal based
• Flexible
• Tailored
In sum

• Over the last 50 years ‘regulation’ has become to mean:
  • Panarchy
  • Collaborative
  • Mixed incentives
  • Goal based
  • Flexible
  • Tailored

• Response to ongoing calls for less regulatory friction and more regulatory facilitation

4,000 years

50 years
Reform option #1

Lean regulation

- Administrative Procedure Act and Regulatory Accountability Act (USA):
  - Efficiency, transparency, accountability
  - Benefit-cost analyses
  - Ethics on data collection
- One in, one out (IOOO rule)
Reform option #2
Better regulation

- Systems thinking
- Horizontal coordination
- Collaboration and deliberation in rule-making and implementation
- Regulatory review and update
Reform option #3

Regulatory stewardship

- Monitoring, review and reporting of existing regulatory systems
- Robust analysis and implementation for changes to regulatory systems
- Good regulatory practice
In sum

• Different responses to similar challenges

• All responses are, to some extent, experiments in progress
• Spiritual and religious epistemologies and ethics
  • e.g., Abrahamic religions

• First Peoples’ epistemologies and ethics
  • e.g., kaitiakitanga

• Political and moral philosophy since the Enlightenment
  • e.g., social contract
  • e.g., Kant’s categorical imperative
• Constitutional stewardship
• Environmental stewardship
• Health stewardship
• Ethical stewardship
• Stewardship theory
Stewardship elsewhere

Regulatory governance

- Regulatory stewardship
- Regulatory trust
- Bratspies (2009)

- Responsible regulation, meta-stewardship
- Brownsword (2011)

- Regulatory orchestration
- Pegram (2017)
In sum

• Stewardship as a mode of (regulatory) governance can be thought of as a sliding scale...

• Stewardship is a fluid, outward looking idea

• Stewardship
  • structure (systems)
  • agency (individuals and communities)
In sum

• Stewardship as a mode of (regulatory) governance can be thought of as a sliding scale...
Future of Regulatory Stewardship

- NZ focus on regulatory stewardship
  - Sits between USA and EU/UK regulatory reforms
  - Mainly structure focus
  - More inward than outward looking
  - Necessary but not sufficient
Future of Regulatory stewardship

- More comprehensive focus on regulatory stewardship
- Minimum competence requirements for all levels
- Recognized community of regulatory professionals
- Genuine participation with stakeholders (external and internal)
- Stewardship ‘regular’
Future of Regulatory stewardship

• The hard questions
  • Social license to regulate?
  • Ethical stewardship relationship between gov’t and regulatory staff?
  • Nurture a culture of voicing the internal good and bad?
  • Public accountability of higher levels?

• Stewardship ‘plus’
The hard questions

“Stewardship questions the assumptions that accountability and control [through authority] go hand in hand.

[It] asks us to forsake caretaking [because] we do not serve [others] when we take responsibility for their well-being.”

Peter Block, 2013

Stewardship ‘plus’
Thank you.

Questions?

Professor Jeroen van der Heijden

Chair in Regulatory Practice
School of Government
Victoria University of Wellington

Honorary Professor
School of Regulation and Global Governance
Australian National University

jeroen.vanderheijden@vuw.ac.nz

www.RegulatoryFrontlines.wordpress.com