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REGULATORY MANAGEMENT AND REFORM SERIES NO. 3

IMPROVING REGULATORY COMPLIANCE: STRATEGIES AND PRACTICAL APPLICATIONS IN OECD COUNTRIES

BY
JOHN BRAITHWAITE
THE AUSTRALIAN NATIONAL UNIVERSITY

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris 1993

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FOREWORD TO THE SERIES ON REGULATORY MANAGEMENT AND REFORM

Regulations are the sinews of modern government, the legal instruments that connect abstract government policies with the day-to-day activities of commerce and private life. To put it more precisely, **regulations make government decisions operational**, and hence perform a key role in the governing process. In the highly-developed administrative states characteristic of OECD countries, government effectiveness has become to a significant degree dependent on the systems that develop, monitor, enforce, adjudicate, and terminate regulations.

The pervasiveness of regulation has become one of the defining aspects of contemporary life in OECD countries. Governments in the OECD area have, over the years, constructed massive and complex regulatory systems through which they attempt to serve and balance the economic and social values of their citizens. Yet few governments are satisfied with the quality, effectiveness and cost of regulation. New demands -- from opening world markets and international integration, from problems of unprecedented scale such as environmental degradation, and from emerging interest groups such as consumers, to mention only a few -- have focused considerable attention on the role of regulation in causing and solving problems.

In the l980s, most OECD countries launched new public sector initiatives aimed at improving the performance, impact and institutions of regulation. These initiatives vary greatly in objective and design, but they have distinctive features that mark them as genuinely new management capacities enabling governments to regulate more carefully. This development can be compared to, and may be no less important than, the adoption of modern fiscal budgeting agencies by governments earlier in this century to better control and manage national expenditures.

The work of the OECD Public Management Committee (PUMA) on regulatory management and reform attempts to respond to the specific needs of the new reform initiatives. The purpose is to provide better information -- drawn from practical experience, comparisons, and international exchanges -- on the benefits, costs, and risks of reforms in the management, processes and institutions of regulation.

The series of occasional papers on regulatory management and reform is intended to disseminate more widely the background papers, reports, and preliminary results prepared for the programme. The regulatory management and reform work and series of papers is led by Scott Jacobs of the Public Management Service.

The papers are published on the responsibility of the Secretary-General. The views expressed in the papers are those of the author, and do not commit or necessarily reflect those of governments of OECD Member countries, or of the Australian National University.

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I. Introduction

This paper considers six causes of business non-compliance with regulatory standards:

1. Failure of business to understand the law;

2. Lack of commitment of business to the objectives that lie behind the law or to the rules chosen to secure those objectives, or both;

3. Perception by business that regulatory procedures are unjust (procedural injustice);

4. High costs of regulation;

5. Enforcement failure, including failure of deterrence, incapacitation and persuasion;

6. Failure of civil society.

The paper is in two parts. First we consider in turn why each of these is a cause of non-compliance. Then in the second part of the paper, we consider practical administrative solutions that have been applied in some OECD countries to each of these sources of non-compliance. Where relevant, we compare these successes with administrative approaches that have actually made the problems worse. To preserve the unity of this enterprise, attention will repeatedly turn to how one area of regulation -- nursing home regulation -- is administered in three OECD countries. This recurrent thread will be complemented with cases from the regulation of the environment, drugs, occupational health and safety, banking, futures markets, food safety, mining, and consumer protection.

We conclude that evaluation tools are available to diagnose which among the six causes of non-compliance are the major sources of compliance failure in a regulatory regime. Such evaluation can support a responsive compliance strategy, which we argue should be the administrative objective of reform.

A responsive compliance strategy rejects the notion of any statically optimal regulatory strategy in favour of constant innovation discovered through public-private dialogue and iterated public responses about compliance experiences. A responsive

compliance strategy can eliminate costly enforcement strategies when they are unnecessary; it can enhance more effective compliance options that are under-utilised. Hence, the approach should be of interest both to managers of regulatory programs and to budget offices concerned with cost-efficiency.

II. Sources of Non-Compliance

1. Failure of understanding

To improve compliance with the law, the business community must first understand the law. This is a deeply underestimated source of non-compliance.[1] In most OECD countries, the domains of regulation where this problem is deepest are companies and securities law and tax, though the increasing complexity of environmental and other laws is a major and growing concern. Evaluation research in Canada has found manufacturers to suffer a lack of understanding and awareness of various food safety laws.[2] In Australia, no company director has a complete grasp of obligations under companies and securities law and few have even a basic understanding because the law is so complex and unsettled.[3] A recent review of the Australian Tax Office's (ATO's) Large Case Program (LCP) of audits of the biggest 100 companies found that divergent understandings of the law was the most important cause of non-compliance:

> [T]he largest corporations (the top 100) can be said to be highly compliant, as this taxpayer base, with rare exceptions, is not intending to evade tax. In fact, only one instance of tax evasion has been prosecuted for the LCP. Nonetheless, corporations still have a large motivation to minimise tax, which occurs most fruitfully in areas where the law is unclear. In this taxpayer group, the degree of 'non-compliance' is more a function of a lack of clarity in the tax law than inappropriate taxpayer behaviour. The key, therefore, to increased voluntary compliance by the ATO definition is to narrow the gap between the ATO's and corporate taxpayers' interpretations of the law.[4]

There are domains such as nuclear safety, where a morass of highly detailed standards seems profoundly justified. But even here, it must be asked whether the

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[1]See Department of Justice, Canada, A Strategic Approach to Developing Compliance Policies: A Manager's Guide, Department of Justice, Ottawa, 1992, p. 6.

[2]Siegel, Brenda, Compliance and Enforcement Policy Study: Reform Evaluations, Ottawa, CMO 5571, 1990.

[3]Baxt, Robert, Thinking About the Regulatory Mix: Companies and Securities and Trade Practices, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

[4]Quoted in Boucher, Trevor, Risk Management on a Market Segmented Basis, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

community is safer with a simpler set of rules, the totality of which is understood by plant operators. When a body of rules becomes so complex as to obscure their ultimate objectives and their systemic properties, crises can be responded to with sub-system solutions that worsen the problem for the whole system.

2. Collapse of belief in the law

Understanding the law is a necessary but not a sufficient condition for compliance. Understanding the law can cause resistance to it if that understanding leads to the conclusion that the law is unjustified. Of course, this resistance is a good thing if the law is a bad law, a bad thing if it is a good law. Thus, compliance also generally requires that those asked to comply believe in the law. Complete belief in the law means belief in both the detailed rules that constitute the law and in the policy objectives that lie behind it. Separating these two elements of belief is critical for policy analysis. When business actors reject the policy objectives lying behind the law but accept the rules that are intended to secure those objectives, disastrous results are likely. A truck driver who takes the rest breaks required in the law but who believes he can drive well after all-night parties is a risk. On the other hand, when business commits to the policy objectives of a law but reject the rules that specify how the objectives are to be obtained, disaster is not inevitable. Indeed in the latter case, a culture of regulatory innovation to achieve agreed goals in new ways becomes a possibility. We will illustrate below the practical importance of understanding belief in the law in this way in our discussion of nursing home regulation in the United States, the United Kingdom, Canada, Japan and Australia.

3. Procedural injustice

In addition to understanding of and commitment to the law, a third ingredient for improved compliance is belief in the legitimacy of the procedures for the enactment, implementation and enforcement of the law. This is called in the literature the procedural justice of the regulatory regime.[5] Procedural justice researchers have found that whether a person wins or loses in an encounter with the justice system (e.g., a court case, an arrest) explains much less of the variance in how accepting they are of the outcome than whether they thought they were dealt with through fair procedures. Drawing on Leventhal[6] and Tyler,[7] we can identify five principle criteria of procedural

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[5]Tyler, Tom R. Why People Obey the Law. Yale University Press, New Haven, 1990. Lind, E. Allan and Tyler, Tom R. The Social Psychology of Procedural Justice, Plenum Books, New York, 1988.

[6]Leventhal, G.S., What Should be Done With Equity Theory? in K.J. Gergen, M.S. Greenberg and R.H. Weiss (eds.) Social Exchange: Advances in Theory and Research. Plenum, New York, 1980.

[7]Tyler, Tom, What Is Procedural Justice? Criteria Used By Citizens to Assess the Fairness of Legal Procedures, Law and Society Review 1988, 22: 103-135.

justice: decision consistency; decision correctability; control for regulated persons (process control, decision control and representation); impartiality; and ethicality. In my research team's recent evaluation of the Australian nursing home regulatory process we have begun to show how a regulatory regime can be evaluated against these procedural justice criteria.[8]

4. Cost of regulation

A fourth condition for compliance is that compliance is affordable. Even if a business understands and agrees with a procedurally just law, if it cannot mobilise the resources to comply, it will not comply. Moreover, in a perfectly competitive market, managers who borrow resources to comply with desirable and just laws that threaten the viability of the firm will be ejected by the shareholders. Or they will be taken over by a predator that stops the borrowing and lives with the legal consequences of the law breaking.

Of course, at levels of cost that fall far short of threat to the viability of the firm, the cost of compliance can be expected to have an effect on the level of compliance. As the law demands higher standards (of say pollution reduction) at higher cost, a level of pollution reduction which is economically optimal for the firm will eventually be passed. Beyond this point, the law will continue to demand higher and higher levels of pollution reduction, but the increasing costs of reducing pollution will heighten non-compliance as the standards in the law get tougher. Beyond the optimum level of stringency in the law, improved pollution reduction from higher compliance is outweighed by reduced pollution reduction from growing non-compliance. The economic analysis of law here has an interesting practical message that seems counter-intuitive to the naive environmental activist. The naive activist believes that the higher the standards in the law, the better the environment will be protected. An economic analysis shows that this is true only up to the point of that optimum level of stringency in the law beyond which non-compliance drives the level of pollution more than the standard set in the law.

But the economic analysts of law are naive in their own way. Because cost is not the only cause of non-compliance (there is also understanding, belief in the law and its procedural justice) the optimal level of stringency in the law defined by a purely economic analysis will always be false. Businesses regularly comply with laws oblivious to an understanding of the full costs of that compliance. Often the information costs of acquiring that understanding will be prohibitive. Socio-legal researchers repeatedly encounter executives who say that they insist their staff “comply with the law whatever it costs”. Short of compliance causing insolvency, there is reason to believe

[8]Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Gibson, Diane, Raising the Standard: Resident Centred Nursing Home Regulation in Australia. Department of Health, Housing and Community Services, Canberra, 1992.

that many of these executives do what they say.[9] Economically irrational compliance for reasons of corporate responsibility and misunderstanding are both commonplace. Business executives are neither the moral eunuchs nor the omniscient mathematicians that some economic analysis assumes them to be.

5. Enforcement failure

Three types of enforcement failure will be discussed: deterrence failure, incapacitation failure, and failure of persuasion. To help understand these distinctions, think of a convicted drug dealer. If a one year prison sentence seems to him a modest price to pay for the returns of his multi-million dollar drug business, then we have deterrence failure. If he is able to continue to run his drug empire from inside, even to find new clients among the inmates, then we have incapacitation failure. The idea of prison is not only that it deter, but also incapacitate criminals by segregating them from victims. If a long sentence for a marijuana user generates resentment among the community of users, then enforcement fails to persuade against the harm that drugs can do. Failure of detection as a result of inefficient targeting of inspections or defective information systems can contribute to these forms of enforcement failure.

Economists are wont to reduce enforcement to deterrence. Enforcement is just another cost of non-compliance. Firms will comply when the expected costs of penalties for non-compliance exceed the expected costs of doing what is necessary to comply. Enforcement is reduced to one element in the cost of compliance equation. But there is much more to enforcement than this. Enforcement is critical when there is economically irrational resistance to the law. We see this in certain U.S. regulatory cultures wherein some business actors have a “live free or die” attitude to resisting government regulation that they see as an infringement of their liberties. The Mine Safety and Health Administration inspector confronts an extreme case of this type when an Appalachian mine owner chases him off the property brandishing a gun. But not all cases of business being impervious to rational deterrent threats are this extreme.

The enforcement objective in such cases can be less about accomplishing deterrence than about incapacitation. When the nursing home regulator withdraws the licence of a nursing home, or the corporate regulator puts in a receiver, the purpose of these enforcement actions is not deterrence but to **incapacitate** the firm from doing any further harm (to nursing home residents in the first case, to new creditors in the second). Incapacitative enforcement is rendered necessary not only by economically irrational resistance to law but also by the fact that the state often finds itself in a “deterrence trap”. John C. Coffee, Jr. has explained that regulators often confront a deterrence trap because so many kinds of business law-breaking have very high rewards and low probabilities of detection.[10] Let us imagine that a certain type of

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[9]See the discussion in Ayres, Ian and Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, Oxford, 1992, Chapter 2.

[10]Coffee, John C., Jr., No Soul to Damn: No Body to Kick: An Unscandalized Inquiry Into the Problem of Corporate Punishment. Michigan Law Review (1981): 79: 386-459.

illegal stock market manipulation has only a one in a hundred chance of being detected and proven beyond a reasonable doubt. The average returns from this kind of crime are $10 million. It follows that the fine required to deter the rational offender is over a billion dollars. If we want to deter those who expect a higher-than-average return, the fine must be even higher. The state is then in a deterrence trap: If it imposes the fine required by the rational actor model, it may bankrupt the firm or at least so deplete the liquid assets of the firm that workers will lose jobs, plants will not be built. Because the state cannot afford to do such damage to its economy, it must replace deterrence as an enforcement objective with incapacitation. It must resort to measures such as putting executives in jail, threats to withdraw the firm's licence to operate unless it sells the business as a going concern to another operator, consent agreements and injunctions to change business practices and other incapacitative remedies.

Finally, enforcement work is not only about deterrence and incapacitation, it is also about persuasion. Enforcement is about persuading business about the wisdom of compliance. Chester Bowles concluded from his experience with the U.S. Office of Price Administration during World War II that 20 per cent of all firms would comply unconditionally with any government rule, five per cent would attempt to evade it and the remaining 75 per cent are also likely to comply, but only if the enforcement threat to the dishonest five per cent is credible.[11]

Enforcement work does not only, or even mainly, persuade compliance through punitive threats or sanctions. Government inspectors do a lot of explaining as to why compliance with a particular regulation is necessary to meet the requirements and the objectives of the law. They do a lot of tapping managers on the shoulder to remind them to do something that they know they should do, but sometimes forget to do, or neglect to do because of competing pressures on their time. When the non-compliance is oversight like this, inspectors can increase compliance without any recourse to deterrence or incapacitation. Writing a polite letter is one of the most effective and widely used enforcement techniques. Its social meaning and social power is different in different OECD countries, however. In Japan, for a regulator to put a concern in writing can be a cause of deep shame and requital by responsible executives; the same letter may be viewed matter-of-factly or even ignored in the United States. In summary, we will consider three types of enforcement failures in this paper: deterrence failure, incapacitation failure and failure of persuasion.

6. Failure of civil society

The enormous difficulties in getting capitalism working in the old communist countries has made us more sensitive in the OECD countries to nurturing the many institutions of civil society that are important ingredients of productive, decent capitalism. Communism destroyed much more than markets. To bake the cake of successful capitalism, we are required to do more than add individuals willing to work

[11]Bowles, Chester, Promises to Keep: My Years in Public Life 1941-1969. Harper and Row, New York, 1971.

hard to free markets and stir. What are some of these institutions of civil society that the Eastern European social scientists are saying that their societies must build? They include private organizations of all sorts—citizen associations, business organizations, churches, universities and newspapers that are diverse and independent of the state. Examples of institutions of civil society that are important to nurturing compliance with regulatory laws are business schools that teach ethics, professional associations of accountants and lawyers that discipline unprofessional conduct, industry self-regulation schemes, trade unions as guardians against occupational health and safety abuses, an environmental movement as guardians against crimes of pollution. Communism's terrible legacy was that it destroyed all intermediate institutions between the individual/family and the state.

But it is not unknown for capitalist states also to destroy or disempower intermediate institutions. The threat to civil society in the capitalist world is not only from the state taking over self-regulatory capacities: there is also a threat from below, from an ideology of individualism that is impoverishing intermediate institutions right down to the family. In the next part of the paper, we will see that there are some practical things that governments can do, and refrain from doing, to arrest the decay of the citizenship and community that are sustained by intermediate institutions. Governments, of course, are not the most important actors in improving compliance by nurturing the institutions of civil society Governments, however, must learn humility and realise that the institutions of civil society are more important institutions for securing compliance with decent laws in a democracy than the police, the courts and the regulatory apparatus of the coercive state.

III. Administrative Responses to Compliance Failure

In this part of the paper, we will consider practical administrative responses to the six problems that have been attempted in different OECD countries. We start with ways of addressing the problem of achieving regulatory law that is understood by business; then, how to accomplish business commitment to the law; how to accomplish procedurally just regulation; how to contain the cost of regulation; how to solve the three types of enforcement failure; and finally, how to nurture institutions of civil society that foster business responsibility.

1. Failure to understand the law

Australia is an example of a country with companies and securities laws that are so complex that they are utterly incomprehensible to the average business person and indeed to the average legal adviser to the average business person. Australia is also a country that has a disastrous international reputation for the integrity of its capital markets, a reputation that is now generally recognised as imposing a substantial cost on the economy. Legal complexity is implicated in Australia's non-compliance problem

not only through failures of understanding, but also through enforcement failure.[12] A thicket of laws identifies by exclusion where loopholes are to be found in a way that a small number of general legal standards do not. This is more a problem in the common law countries than in those that follow the Roman legal tradition of starting with broad principles that blanket the legal terrain and then deducing more specific principles from these.

But there are solutions within the common law tradition. New Zealand has accomplished more simplicity in its law than Australia, for example, thanks to different traditions of parliamentary drafting combined with an Acts Interpretation Act which underwrites a purposive simplicity within the culture of the judiciary.[13] All three elements seem important: an Acts Interpretation Act must be complemented by a change of culture in both drafting and judging. Justice Richardson of the New Zealand Court of Appeal has explained the required approach: "But as we all know legislation may be incomplete or ambiguously expressed...In New Zealand one test and one test only is mandated by statute. Under our Acts Interpretation Act we are required—and have been since 1888—to accord to every Act and every statutory provision such fair, large and liberal interpretation as will best ensure the attainment of the object of the legislation according to its true intent, meaning and spirit."[14]

Interest groups often oppose broad standards in the law in the mistaken belief that this will create more uncertainty than a large number of more specific laws. U.S. nursing home regulation supplies a classic illustration. This industry has been at the forefront of criticising broad standards. When nursing home X is found to be in breach of a broad standard on which nursing home Y in similar circumstances is found to comply, nursing home X screams inconsistency. It complains to its industry association about the "vague" and "subjective" standard.

The industry association, representing these member grievances, pleads for the standard to be "tightened up". Consumer groups also think that the standards should be made more specific, but for different reasons. They are concerned that vague standards are unenforceable. Legislators in the United States have been responsive to these pleas because they feel frustrated that inspectors are not cleaning up the industry the way they had hoped; their analysis fits nicely with that of the industry and consumer groups. These standards, the legislators conclude, are so vague that they give the inspectors too much discretion to subvert the legislative mandate. Finally, the technocrats—the behavioral and medical scientists and the lawyers—despair at vague

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[12]Schoer, Ray, Self-Regulation and the Australian Stock Exchange, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

[13]Baxt, Robert, Thinking About the Regulatory Mix: Companies and Securities and Trade Practices, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

[14]Justice Richardson, Judges as Lawmakers in the 1990s, Monash University Law Review (1986): 12: 35-48.

standards. Their technocratic commitment is to tightly defined protocols to ensure that the same things are assessed in exactly the same way using precisely defined criteria.

Thus, if there is one thing that all of the influential players of the U.S. nursing home regulatory game have agreed upon it is that broad standards that are not tightly specified must be narrowed. The consequence has been an historical process of all these constituencies succeeding in having one broad standard broken down into two narrower standards; then later each of those two standards is subdivided into three still narrower ones. Consequently, today in the United States there are over 500 federal nursing home standards, supplemented by state standards that in some states exceed the federal standards by a factor of two or three.

A stark contrast is Australia where there are only 31 broad outcome-oriented nursing home standards which cover all of the territory traversed by the 500 plus U.S. standards. Thus, a myriad of U.S. rules about treatments, dressings, recording of pain problems in care plans are replaced by a single "freedom from pain" standard in Australia. The interesting question is which set of standards is rated more consistently—the broad and vague Australian standards or the narrower U.S. standards that are the product of this pursuit of specificity. Work by my research team shows that it is the Australian standards that are more consistently rated and by a very wide margin.[15] In contrast, in the U.S. there is very little consistency of ratings at all. In the best U.S. reliability study, only 25 per cent of the regulations cited by the official government team were also cited by a validation team going into the same nursing homes.[16]

Our research has identified a number of reasons why the broad, simple Australian standards make for greater certainty of outcome than a more complex set of rules. But one generalization stands for a number of these factors. This is that the pursuit of reliability for parts of the U.S. standards reduces the reliability of the whole—the set of standards as a package. Even when splitting one regulation into two succeeds in increasing the consistency with which that problem is adjudicated by inspectors, it reduces the reliability with which all other standards are rated. Perhaps one extra standard has only a tiny effect on the reliability of all other ratings, but an accumulation of a hundred extra standards has a massive effect. This is because we end up with a complex set of standards which no one, inspectors included, can keep in their heads or consistently monitor.

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[15]Inter-rater reliability coefficients on the Australian standards range from .93 to .96. These were calculated after an inspector employed by the researchers independently rated compliance at the same time as government inspectors were in the home. Braithwaite, John, Braithwaite, Valerie, Gibson, Diane, Landau, Miriam, and Makkai, Toni, The Reliability and Validity of Nursing Home Standards. Department of Health, Housing and Community Services, Canberra, 1991.

[16]Spector, William D., Takada, Adrianna H., Durgovich, Margaret L., Laliberte, Linda L. and Tucker, Richard, PaCS Evaluation: Final Report, Health Care Financing Bureau: Baltimore, pp. 119-122.

Determined industry-government-consumer commitment to keeping the standards broad and simple is not the only way in which Australian nursing home regulation is a model program of how to deal with the problem of business misunderstanding of the law as a source of non-compliance. The government also diverted some of its regulatory resources into a national training course on what was required to meet the standards. This was attended by managers from over ninety per cent of nursing homes in the country. After the success of this course, a permanent national training centre was established to assist nursing home staff to meet and surpass the standards by improving quality of care and quality assurance. Quality of care for Australian nursing home residents does seem to have improved as a result of the thoroughgoing reform and simplification of regulation.[17]

2. Collapse of belief in the law

Let us stick with nursing home regulation to illustrate some of the practical things regulators can do to strengthen industry commitment to regulatory standards. The most obvious is to develop standards in an open dialogue with the industry and consumer groups, combined with a research strategy to evaluate the standards independently, where that research strategy is designed in consultation with the stakeholders and the results of the evaluation research are shared openly with them. This was done in the Australian nursing home case. True to the assumption that lies behind this section of the paper, we have found robustly across different regression models that nursing homes with managers who had a stronger belief in the desirability and practicality of the standards, did in fact have higher compliance with the standards.[18]

A strength of the Australian consensus nursing home standards is that they are outcome-oriented standards[19] rather than standards than mandate inputs (structures and processes). This distinction from the health services literature[20] is essentially the same distinction that is made between performance and specification standards in the regulation literature. The difficult business of sustaining industry commitment to standards is easier when the standards are consensus outcomes. Standards that mandate inputs can undermine commitment as cases arise where implementing the input actually undermines consensus outcomes. For example, when nurses neglect

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[17]Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Gibson, Diane, Raising the Standard: Resident Centred Nursing Home Regulation in Australia. Department of Health, Housing and Community Services, Canberra, 1992

[18]Makkai, Toni and Braithwaite, John, Criminological Theory and Regulatory Compliance, Criminology (1991) 29: 191-220.

[19]Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Gibson, Diane, Raising the Standard: Resident Centred Nursing Home Regulation in Australia. Department of Health, Housing and Community Services, Canberra, 1992

[20]Donabedian, Avedis Evaluating the Quality of Medical Care, Milbank Memorial Fund Quarterly (1966) 44, 166-206.

hands on care in order to complete the documentation required for input standards, they begin to wonder about the value of the standards. It can be good regulatory policy to nurture belief in the desired outcomes while being flexible about demanding a commitment to the government's preferred inputs.[21] Such flexibility can not only sustain the commitment to the outcomes which are the ultimate objectives; it can also encourage innovation to discover new and better processes and technologies for securing those outcomes.

Unfortunately, in a regulatory scheme with a very large number of input standards a commitment to inputs that neglects outcomes becomes a common coping strategy. When inspectors are regularly citing specific inputs, it can make sense for the firm to concentrate energies and commitments to minimizing and rectifying input infractions. In a regulatory system dominated by input standards, firms can explicitly nurture a commitment to getting the inputs right and neglecting outcomes by paying bonuses according to the number of citations managers accumulate in their spheres of responsibility. American nursing home chains do just this.

I have argued elsewhere that what you risk and often get with regulation based on a large number of input standards is ritualistic roller-coaster compliance.[22] The inspector identifies a number of inputs that are out of compliance; the firm promptly brings these inputs into compliance; next time the inspector calls, a completely different set of inputs are out of compliance because underlying problems that are fundamental to securing outcomes are not tackled. Each time the firm papers over the input problems, with new cracks appearing each time because foundational problems are never addressed. Ritualistic roller-coaster compliance is a pathology of regulatory systems where actors on both sides of the fence lose sight of their commitment to desired outcomes.

Even within such systems, however, change is possible to shift the balance of commitment onto outcomes rather than inputs. Remember, industry really believing in improving the outcomes is what is important to improving quality of life for the people regulation is designed to protect. An outcome that is important for nursing home residents is freedom of movement. Tying residents into chairs or beds is rarely in the interests of residents though with difficult residents it can make life easier for staff. The United States has had disastrous outcomes on this freedom of movement criterion. In 1988 over 41 per cent of nursing home residents in the United States were being subjected to physical restraint.[23] Estimates for this outcome in Britain are not so

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[21]See Bardach, Eugene and Kagan, Robert A. Going by the Book: The Problem of Regulatory Unreasonableness, Temple University Press, Philadelphia, 1982.

[22]Braithwaite, John, The Nursing Home Industry, in A. J. Reiss and M. Tonry (eds.), Crime and Justice: A Review of Research, Volume V, University of Chicago Press, Chicago.

[23]Medicare/Medicaid Nursing Home Information, U.S. Department of Health and Human Services, Baltimore, Md., 1988.

precise, but the figure is clearly closer to zero than it is to 10 per cent.[24] Our much less systematic evidence from Japanese and Canadian nursing homes suggest that they are more like the United States than Britain while Australian nursing homes fall between the United States and Britain while being closer to Britain in the level of restraint use.

We found in our research that compliance with the input of having a signed doctor's order approving the use of the restraint and giving reasons for its use is very high in the United States, whereas in Britain checking for signed doctor's orders of this kind is something nursing home inspectors do not bother with. Mandating the input is in fact a poor way of delivering a freedom of movement outcome because nursing homes manage to secure the services of captive doctors who, for a fee, sign more or less whatever they are asked to by the nursing home.

British nursing home residents generally have maximum possible freedom of movement not because regulators have successfully enforced inputs that deliver these outcomes but because care managers truly believe in the importance of the outcome; they find the idea of tying old people up a deeply disturbing professional practice. British sensibilities in this domain are outcome-oriented while American sensibilities are input-oriented. What is interesting is that this American regulatory failure has suddenly begun to be reversed during the past two years. In a number of States (e.g. Vermont, Florida) the reversal has been dramatic, with the percentages of nursing home residents who are physically restrained halving during 1990-91. Regulatory critics lose sight of the fact that there are periods of history where dramatic regulatory accomplishments are secured in a relatively short space of time. The transformation of rail travel in Europe from a relatively hazardous to an extraordinarily safe form of travel in the late nineteenth century is a case in point as was the mid-twentieth century transformation of the safety of air travel.

Just such dramatic progress is occurring in the United States on the issue of restraining nursing residents at this point in history. So what changed? The law has not changed in any fundamental way on this issue: inappropriate restraint has always been forbidden; it has just been the case that the law has been implemented by ritualistic checking of documentary inputs. More indirectly, law reform was important because consumer movement lobbying for the Omnibus Budget Reconciliation Act (OBRA) amendments to federal nursing home regulations in 1987 included a significant focus on the restraint issue that helped create the climate for change. Deterrence has not delivered the reform; in fact, deterrence may even have decreased in this area during 1990-91.

What changed was professional beliefs about the inappropriateness of restraining old people. Industry commitments shifted from an exclusive focus on paperwork inputs to a determination to change outcomes. So what changed these industry commitments?

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[24]Braithwaite, John, The Nursing Home Industry, in A. J. Reiss and M. Tonry (eds.), Crime and Justice: A Review of Research, Volume V, University of Chicago Press, Chicago.

What changed was the emergence in the American nursing home industry of restraint-free nursing homes that were then promoted by certain heads of state regulatory agencies, by certain industry associations such as the New Hampshire Health Care Association, as role models of excellence in caring. The Kendel Corporation's nursing homes provided the leading role models. Then the consumer movement switched from its more standard tactic of attacking poor quality providers to lauding the accomplishments of the restraint-free homes. The National Citizens' Coalition for Nursing Home Reform organized a high profile “Untie the Elderly” conference on Capitol Hill. It praised the state regulators who were pressuring their nursing homes to improve restraint outcomes.

Ultimately, although the OBRA 1987 reforms to federal laws did not change specification standards into performance standards (in fact, some new specifications were added), when OBRA 87 was implemented in 1990, a widespread interpretation of the new law in the industry was that “OBRA requires a reduction in the use of restraints”. As a matter of law, it did not. But as a matter of regulatory culture, it did. 1990 effected a change to a more outcome-oriented regulatory style on this issue, greater in some states than in others, that saw inspectors looking more critically at restraint outcomes, raising for the first time questions about why this nursing home had levels of restraint much higher than others in the district, challenging claims that particular cases of restraint were really necessary, persuading nursing homes to implement quality assurance programs with the objective of reducing unnecessary restraint.

Rapid changes in compliance practices occurred because: 1. Innovators within the industry developed what was (within the U.S. context) a new paradigm of restraint-free care; 2. Entrepreneurial regulators and consumer leaders turned those innovators into role models; 3. This publicity was a lever to transform the regulatory culture nationally to some degree—to a regulatory culture that focused more on outcomes and on pressure to move the industry in a direction that the role models showed to be possible; and 4. Industry beliefs changed about the desirability and feasibility of deregulating the lives of their residents. Conceptually, the sequence innovation-modelling-attitude-change is the stuff of the truly dramatic changes in compliance outcomes that do occur from time to time.

3. Procedural injustice

In the last section, we identified five criteria of procedural justice that can be strengthened in an effort to secure industry willingness to comply: consistency, correctability, control (process control, decision control and representation); impartiality; and ethicality. I have argued that progressively more detailed laws do not make for consistency. What then does? The answer is banal and it is the same answer as on the impartiality and ethicality criteria. It is training, training, and training, plus, of course, good selection so you have people who are trainable. Consistency, impartiality and ethicality are products of regulatory cultures that engage in constant dialogue about the importance of these values.

Correctability is actually one of the means for seeking such a regulatory culture. Procedural injustice of all types is allowed to flourish in regulatory organizations where most decisions are made by front-line staff without having to engage in dialogue to defend their decisions to those effected. The U.S. inspection practice that is now widespread across many regulatory domains of an exit conference exemplifies the dialogue that is needed to enable mistakes to be corrected. At the exit conference, the inspectors outline what they believe they saw and why they think it constitutes a breach of the regulations. Sometimes they will also open up a discussion on the diagnosis of why the problem was allowed to arise and what sort of plan of correction might be put in place. This is a simple reform that eliminates at an early stage many aggravating injustices that might fester into gladiatorial contests if they were written as citations before they were talked about. An inspector who justly identifies the responsibility of a manager for a, b and c, but unjustly for d, might quickly secure an admission of a, b and c at an exit conference so long as the inspector is open to correction for his mistake on d. Without the exit conference, an infuriation driven by the injustice of being cited for d can easily lead to litigated resistance to all four citations. Talk is cheap.

An extremely successful approach to building procedural justice into the regulatory process is provided in Australia's antitrust and consumer protection legislation, the Trade Practices Act. Australian antitrust law is unusual in that it provides for flexible administration of the law by allowing the Trade Practices Commission to authorize conduct which would otherwise be in breach of the law. The Commission authorizes the conduct when it finds that there is a public benefit from the conduct that exceeds its anti-competitive cost. After receiving a written submission from the applicant for authorization (usually an industry or professional association) on the likely benefits and anti-competitive effects of authorization, submissions are sought formally and informally from others who are likely to be effected by the conduct—competitors, suppliers, retailers, consumers, etc. After considering this evidence, the Commission releases a draft determination outlining the reasons why it proposes to authorize or refuse to authorize the conduct. All interested parties then have a right to call a “pre-decision conference” to discuss the draft. If any interested party wants a conference (often no one does) then one is held with all parties invited. Principals can bring lawyers, but the lawyers are only granted an opportunity to speak with special permission from the chair.

The strength of this simple approach is that it builds in correctability for Commission authorization in a way that gives substantial process control to principals. Principals are not precluded from putting any reasonable approach on the table. When they do, it is in the presence not only of the regulatory decision-makers but of the other parties who would be effected by their proposals as well. Dialogue can lead to consensus on the spot for a best way of imposing conditions on authorizations. For example, if a commodities exchange seeks authorization for anti-competitive barriers to entry for membership of the exchange (minimum capital requirements, etc.), interests concerned about exclusion might negotiate at the conference the terms of independent appeal mechanisms against refusal of membership as a condition of authorization. Given the depth of the conflicts between the parties at these conferences, it is a constant surprise to those of us who participate in them regularly how civil and

constructive the parties are at them, regardless of whether the conference is small (half a dozen people) or big (eighty people). Because the principals have a significant amount of voice in and control over the process that settles conditions of authorization, prospects of securing compliance with those conditions are improved. Pre-decision conferences based on draft regulatory decisions are perhaps a device of some general potential for strengthening the procedural justice of regulatory deliberation. It may be that a pre-decision conference in advance of a draft authorization decision being released would not be as constructive a process as the Trade Practices Commission conferences. Perhaps it is necessary to put a draft on the table to ensure focus on the central issues.

4. Cost of regulation

Commentators normally assume there to be a trade-off between the cost of complying with regulations and how much bite the regulations have in achieving regulatory objectives (like cleaning up the environment). In this section, it will be argued that this is not necessarily so. Specifically, we will suggest that the innovation of privately written yet publicly ratified rules opens up rich potential for lower cost regulation that is more effective.

Of course the most straightforward way to reduce the costs of regulation to industry is to be less demanding in the outcomes mandated by the rules. Analytical methods such as risk assessment, cost-benefit and cost-effectiveness analysis are useful for illuminating in different ways the policy choices that must be made here. But for any given level of stringency of outcome desired, a variety of administrative and legal responses are available to minimize cost. One is to be as outcome-oriented as practicable, leaving it to the firm to meet the challenge of designing least-cost inputs that deliver the required outcomes. This is part of the efficiency appeal of effluent charges and tradeable pollution permits, for example. Indeed, these strategies can encourage firms to do better than a mandated outcome by allowing them to internalise the benefits of doing so. Practicability is an issue, nevertheless, as measurement problems and enforcement costs might be high for mandating certain outcomes (e.g. measuring the pollution coming from each car) and low for mandating inputs (forcing pollution-control technology in car manufacture).

Whatever the optimal mix of performance and specification standards or taxes in a particular regulatory domain, there will be cost savings in a flexible approach to such specifications as are mandated. Most OECD countries have “waiver” or “variance” provisions in many of their regulatory statutes. There can be heavy administrative costs, however, in processing large numbers of waiver or variance applications. The U.S. Mine Safety and Health Act has an innovative statutory approach to this problem. Take the problem of roof support, a key issue because roof falls are a major cause of death and injury in modern underground coal mines. The regulatory challenge is great with mine safety regulation because the stakes are high. Yet there are enormous difficulties in writing rules appropriate for all types of mines—deep and shallow, thick-seamed and narrow-seamed, gassy and non-gassy, under water and under land, bituminous coal and anthracite. An outcome approach to

regulation is not very workable here because it will never be acceptable to wait until miners are killed or injured before any regulatory action is taken.

The Mine Safety and Health Act meets this challenge by declining to mandate generally applicable specifications for the roof control of mines. Instead it requires mine operators to devise their own roof control plans that satisfy certain statutory criteria. This allows operators to come up with their own plan, tailor-made to comport with the unique geological conditions they confront in their mine. Responsibility for finding the least-cost strategy for meeting safety objectives is therefore passed to where that responsibility is likely to be taken most seriously—to the mine itself. To reduce the administrative burden of approving so many different types of roof control plans, the Mine Safety and Health Act takes the simplifying step of setting out standards for seven different types of roof support techniques. In other words, the law educates, as well as adds some order to the administrative chaos that particularistic regulation can create by saying: Here are seven different ways you can do the job and here are standards we expect you to meet if you go down any of these seven tracks. But you don't have to choose any of these seven standard ways. You can come up with your own new approach, and so long as you can convince us that it is no less safe than these standard ways, then we will approve your unique strategy. The act therefore provides guidance and keeps plan approval costs manageable without stultifying innovation in safety technology.

Privately written and publicly ratified rules not only have advantages for compliance through reducing compliance costs. Commitment to compliance is likely to be higher when rules are written by the people who have to make them work. Dedication to compliance is more probable when rules are written to make maximum sense within the context of the unique environmental contingencies confronting that particular organization. Privately written and publicly ratified rules is the heart of a more general strategy that Ayres and I refer to as enforced self-regulation.[25] The MSHA variant of having seven default roof control approaches is an illustration of the more general adaptation of enforced self-regulation that we call contracting around regulatory defaults.[26] The default rules need not be publicly written as in the seven MSHA roof control defaults. Several sets of exemplary private rules written by firms A, B and C could be incorporated into the law as default options that any firm could choose. Maintaining a regulatory default(s) allows regulators to learn from privately promulgated rules, while allowing some (especially smaller) firms to avoid the costs of

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[25]Enforced self-regulation means the state requiring the firm to write rules that satisfy certain broad criteria of acceptability. If the rules fail these criteria they are sent back for rewriting. The proposed rules are public and available for comment from public interest groups. Once the state publicly ratifies the privately written rules, it can institute public enforcement action for breach of these rules; but more importantly, it requires internal compliance officers to be put in place to enforce privately the privately written rules. See Ayres, Ian and Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, Oxford, 1992, Chapter 4. There are many variations on enforced self-regulation that we cannot fully discuss here. For example, rules can be ratified or rejected *ex post* by inspectors after they find problems, instead of *ex ante*, as in the MSHA case.

[26]Ibid., pp. 108-9.

rulemaking. This practical strategy borrows from a more general theory of default rules.[27]

5. Enforcement failure

(a) Deterrence failure

Prosecutors often say that the thing corporate law-breakers really fear is prison[28] and indeed criminological research based on interviews with corporate executives supports this conclusion.[29] This finding may simply reflect the fact that when asked about their fears, people mention the worst thing that could happen to them. That is, if capital punishment were available for insider traders, insider traders would mention their fear of the chair and say little about the fear of prison. This would not necessarily mean that capital punishment effects a marginal increase in deterrence above and beyond the deterrent effect of life imprisonment for insider traders.

Many countries manage to deter non-compliance perfectly adequately in various domains of business regulation without ever resorting to imprisonment. This is accomplished through a multiple array of more subtle tools than imprisonment, including non-government enforcement such as through tort law. It cannot be denied, however, that the problem of the deterrence trap discussed above does arise from time to time. Cash fines high enough to deter could have drastically unacceptable spillover effects on employment and innocent communities for offences with low detection probabilities. Coffee has suggested an innovative solution to this problem: an equity fine.[30] With a 1 per cent equity fine, for each 100 shares held in the company, one new share would be issued to a victim compensation fund. This would result in a discounting of the value of all existing shareholdings by one per cent. But there would be no depletion in the firm's liquidity. Shareholders would be given reason to insist that management complied with the law. Yet this would be accomplished without threatening the viability of the firm or its capacity for sustaining employment. The Australian Law Reform Commission has commended this approach to the government and a former Australian Attorney-General advocated the equity fine publicly, but opposition from the business community was strong and no action has been taken. Regardless of the political feasibility of this particular reform idea, it shows that there are escape hatches from the deterrence trap. Others are imprisonment and some of the incapacitative remedies (licence suspension or revocation, putting in an administrator or receiver) that will be discussed in the next section.

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[27]Ayres, Ian and Gertner, Robert, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, Yale Law Journal (1989), 99, 87-130.

[28]Rozenes, Michael, Prosecuting Regulatory Offenders, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

[29]Clinard, Marshall, Corporate Ethics and Crime: The Role of Middle Management. Sage, Beverly Hills, 1983.

[30]Coffee, John C., Jr., No Soul to Damn: No Body to Kick: An Unscandalized Inquiry Into the Problem of Corporate Punishment. Michigan Law Review (1981): 79: 386-459.

(b) Incapacitation failure

In the last section, we argued that the deterrence trap is not the only reason that deterrence fails to deliver compliance. Indeed, a more common reason is that non-compliance is not caused by any calculation that the costs of compliance exceed its benefits, but by a determination to resist what is seen as unreasonable government interference in business even in the face of very high costs. More common still is non-compliance that is caused by incompetence. In the latter case, advice can usually be provided to solve the management failures responsible for the noncompliance.

However, in some cases of incompetence or intransigent resistance to regulatory requirements, the offenders must be incapacitated. A nuclear power plant simply cannot be allowed to operate under such risks. No amount of advice may suffice to equip a nursing home administrator who lacks the required health care training or administrative competence to care for sick aged people.

American states have legislated to deal with this problem by enabling the regulatory agency to appoint either an administrator or receiver to replace existing management and run the nursing home or a monitor to be constantly in the nursing home advising management on what needs to be done. Of course the ultimate incapacitative remedy is licence revocation. But, as in the deterrence trap, this can make for unacceptable spillovers of the sanction onto innocent victims. When any health care institution is shut down, the dislocation of a move can have very negative consequences for the health of patients. This is why putting in an administrator is a preferred incapacitative remedy. In the Australian context, where, except in the state of Victoria, the power to put in an administrator does not exist, the administrative approach is to force an incompetent or intransigent operator of a health care institution to sell it as a going concern under threat of a licence revocation that would drastically deplete the value of the asset.

Incapacitation is important to regulation in a much more banal way as well. As Shearing and Stenning have pointed out, a trip to Disney World shows the power of social control that works without command or deterrence[31]. We are guided into ordered waiting of our turn by a system of bars and gateways. Once on the ride, other bars and seating configurations make it nearly impossible for you to endanger yourself and other people on devices that operate a breakneck speed. The private system of regulation at Disney World is based on incapacitation, seemingly without any deterrent threats being issued at the regulated customers.

Does the incapacitative idea that we see in private regulation at Disney World have any application to governments regulating business? Consider the regulation of

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[31]Shearing, Clifford D. and Stenning, Philip C., From Panopticon to Disney World: The Development of Discipline, in A.N. Doob and E.L. Greenspoon (eds.), Perspectives in Criminal Law: Essays in Honor of John L.J. Edwards, Canada Law Books Inc., Aurora, Ontario, 1984.

futures markets. Gunningham's research on futures markets in Chicago, Hong Kong and Sydney found that regulatory command and control and deterrence are not the most important factors that secure the integrity of these markets.[32] Rather it is a complex network of informal controls. In the "open outcry" system of the Chicago Mercantile Exchange, traders shout prices until they find other traders willing to take the other side of the contract. Gunningham concluded that fraud is at a surprisingly low level in the apparent anarchy of the pits because an unwritten set of rules have emerged that are enforced by refusals to trade with floor members who have a bad track record of complying with them. However, there are times when the chaos of the pits reaches extraordinary levels where traders have to "jump, howl, flail, shove and jostle" and occasionally "fight, spit, gouge and jab pencils".[33] Under the cesspit conditions of a heated market with 500 people in the ring, obviously the network of informal controls that normally work so well are put at risk. The chaos is reflected in the fact that in a crowded pit you can have four or five different prices operating in different sections of the pit. This leads Gunningham to emphasise the importance of what I am calling incapacitative regulation (what he calls structural solutions). An example is reducing the size of the trading pit so surveillance by large customers and regulators is made easier and so the intimate interdependencies that make the network of informal controls work can be kept intimate.

(c) Failure of persuasion

There is a problem of narrowly economistic thinking about regulatory compliance characteristic of commentators from both the left and the right of the regulation debate. From the left, thinking about regulatory compliance tends to be dominated by the idea that business is untrustworthy and that the only language they understand is sanctions handed down by courts that will hurt them where it counts—on the bottom line. From the theorists of the right, we get a curiously comparable way of thinking. Hobbes[34] and Hume[35] insist that we must not rely on institutions that assume that citizens will be virtuous. Rather, we should design institutions that are fit for knaves. Geoffrey Brennan and James Buchanan[36] pick up this theme, arguing for institutions that "economize on virtue" because the harm inflicted by those who behave worst will not be compensated for by the "good" done by those who behave better than average.

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[32]Gunningham, Neil, Thinking About Regulatory Mix: Futures Markets, Occupational Health and Safety and Environmental Regulation, in P. Grabosky and J. Braithwaite (eds.), The Future of Australian Business Regulation, Australian Institute of Criminology, Canberra, 1992.

[33]Ibid., p.

[34]Hobbes, Thomas, De Cive, Appleton-Century-Crofts, New York, 1949.

[35]Hume, David, Of the Independency of Parliament, Essays, Moral, Political and Literary, Vol. 1. Oxford University Press, London, 1963.

[36]Brennan, Geoffrey and Buchanan, James M., The Reason of Rules: Constitutional Political Economy. Cambridge, Cambridge University Press, 1985, p. 59.

The trouble with institutions which assume that business will not be virtuous is that they destroy virtue. I have observed the tragic little drama of virtue being destroyed many times during my regulatory compliance fieldwork. The inspector marches into a workplace and starts making threats; citations are written; most critically, the demeanor of the inspector and the policy that stands behind that demeanor communicate the expectation that the manager on the receiving end of the encounter is untrustworthy. The regulator communicates the assumption that it is only compulsion, or only the bottom line, that will move the manager to submit to the policy of the law. But this assumption is often wrong. The safety manager may deeply care about the safety of her workers, and she resents, bitterly resents, being treated as if she does not care. This resentment can destroy her good faith, her willingness to work for the outcomes of improving safety even when she has met all the input standards specified in the law. Persuasion rather than threat is the preferred way of securing compliance because a wealth of psychological research shows that compliance that is chosen voluntarily is more robust and enduring than coerced compliance.[37] Treat human beings like knaves and they will tend to be knaves.

The policy challenge becomes one of creating a culture of regulatory inspection wherein positive appeals to business responsibility are the strategy of first choice. In part, this means combining the search for breaches of standards with alertness to opportunities for praising positive measures that have been taken. Again, the new culture of Australian nursing home inspection is an outstanding exemplification of this objective. Figure 1 lists the results of a questionnaire sent to 165 Australian nursing home inspectors and 26 nursing home regulation program managers on the comparative frequency with which they use different strategies for securing compliance.

Threatening and using sanctions are the least deployed of all tactics; strategies that involve praise and encouragement are the most used. This is as it should be. The evaluation research undertaken by my research team suggests that it has been associated with a considerable improvement in the quality of life of Australian nursing home residents achieved at modest regulatory cost.[38] Strategies based on threat and sanctioning should be reserved for when persuasion fails; in most regulatory domains in most OECD countries persuasion will succeed most of the time. There is great variation between nations and between industries in the frequency with which it will be necessary to abandon the assumption that businesses are virtuous for the assumption that they are knaves. Ayres and I have argued that the important lesson to learn from

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[37]"Over 50 studies examining the effect of extrinsic incentives on later intrinsic motivation indicate that inducements that are often perceived as controlling (e.g.tangible rewards, surveillance, deadlines), depending on the manner in which they are administered, reduce feelings of self-determination and undermine subsequent motivation in a wide variety of achievement-related activities after the reward is removed" (Boggiano, Ann K., Barrett, Mary, Weiher, Anne W., McLelland, Gary H., and Lusk, Cynthia M., Use of the Maximal Operant Principle to Motivate Children's Intrinsic Interest, Journal of Personality and Social Psychology (1987) 53, 866-879).

[38]John Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Gibson, Diane, Raising the Standard: Resident Centred Nursing Home Regulation in Australia. Department of Health, Housing and Community Services, Canberra, 1992.

a century of experience with regulatory compliance is that it is a mistake to have a static commitment to either assumption.[39] Rather, we need a dynamic regulatory strategy that assumes business responsibility first, then defects to a deterrence-based strategy when that assumption is misplaced, then defects to an incapacitation-based strategy if deterrence fails.

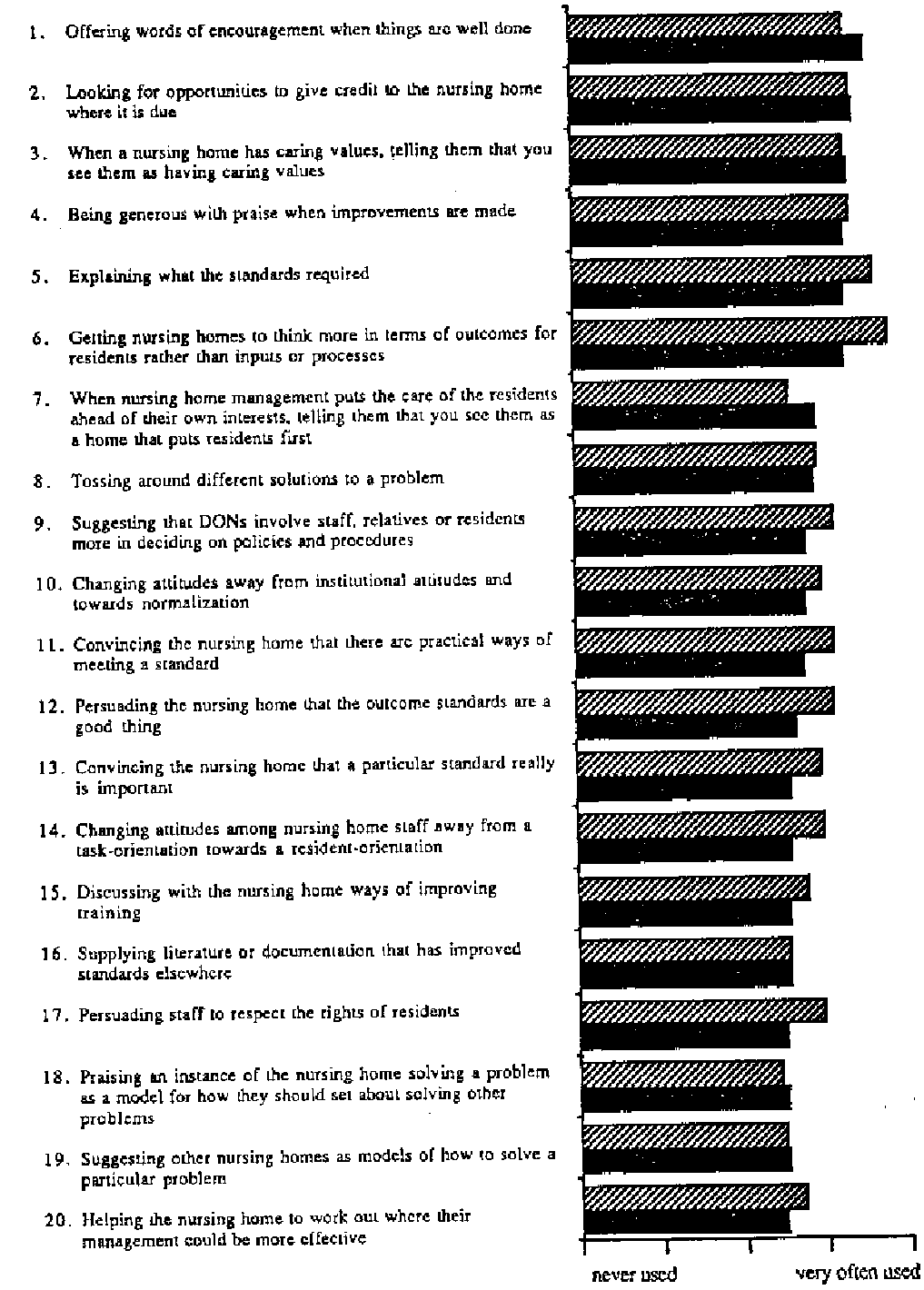
6. Failure of civil society

Just as in the case of the particular firm it is better to try voluntarism before coercion, so at the level of regulatory strategy, when markets fail, there should be an initial preference for self-regulatory solutions over government intervention. Equally, just as voluntarism often fails with the individual firm, so self-regulation often fails when it is an entire industry that is being asked to behave in a socially responsible way. Governments should not have a misplaced optimism about industry self-regulation. At the same time they might have a disposition of reluctance to resort immediately to government command and control in a way that destroys the commitment of an industry to make self-regulation work. Industry associations that engage in self-regulation schemes are only one of the institutions of civil society that are important for securing compliance. I will illustrate the range of institutions involved by discussing practical examples involving first industry associations; then foundations and education programs established by private firms; consumer groups, trade unions and environmental groups; and professional associations. In each case I will discuss the role OECD governments have played in nurturing or undermining the constructive development of these institutions of civil society.

[39]Ayres, Ian and Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, Oxford, 1992.

FIGURE 1

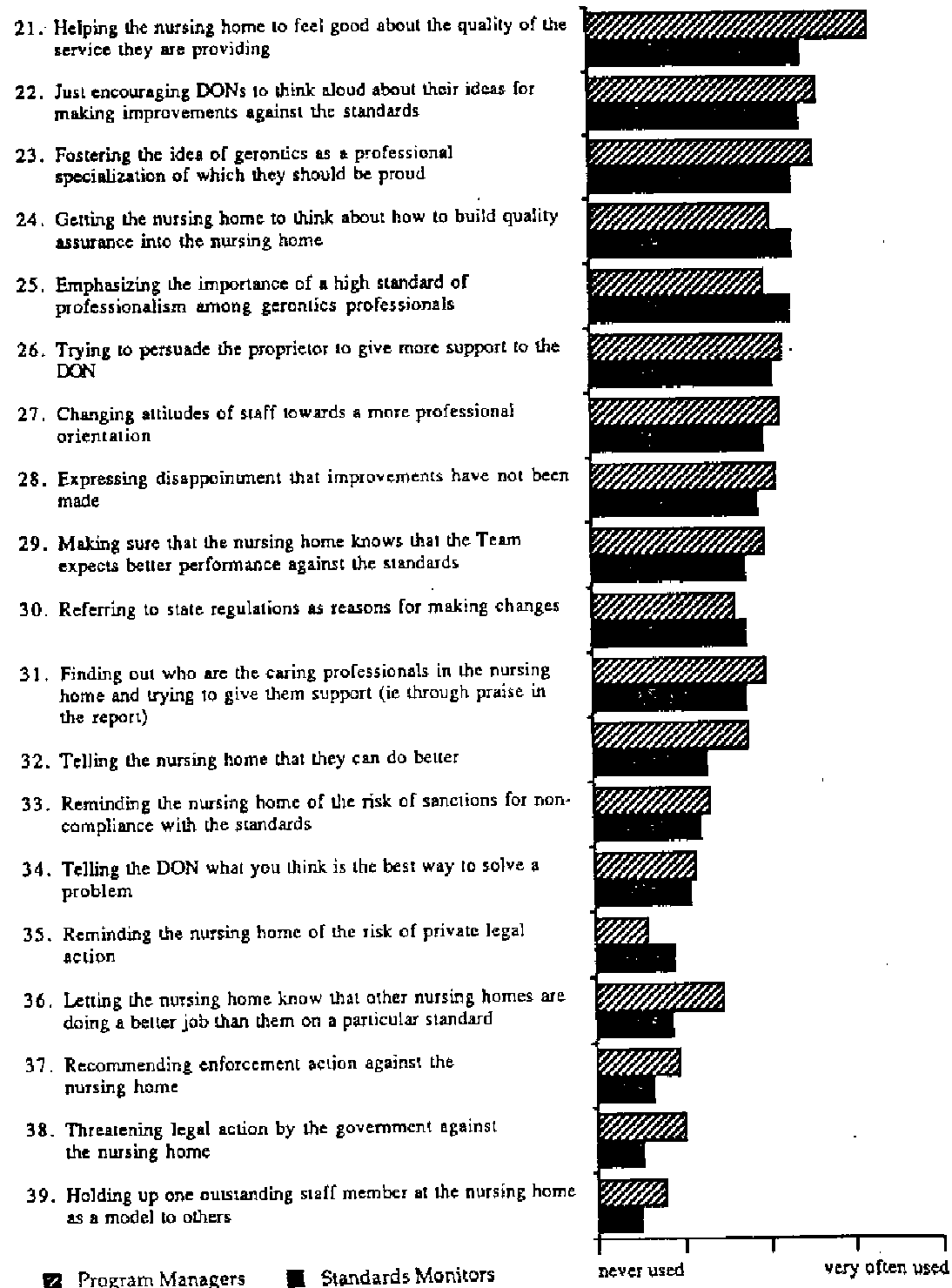
AVERAGE USE OF VARIOUS STRATEGIES FOR GETTING COMPLIANCE



* Exact wording of the question was 'Different approaches will work under different circumstances in getting nursing homes to comply with government standards. How often have you used each of the following approaches to encourage compliance with the standards?' Responses: 'never used', 'rarely used', 'sometimes used', 'quite often used', 'very often used'.

FIGURE 1

AVERAGE USE OF VARIOUS STRATEGIES FOR GETTING COMPLIANCE (Continued)



* Exact wording of the question was 'Different approaches will work under different circumstances in getting nursing homes to comply with government standards. How often have you used each of the following approaches to encourage compliance with the standards?' Responses: 'never used', 'rarely used', 'sometimes used', 'quite often used', 'very often used'.

(a) Industry associations

Computerized checkout systems (CCS) in supermarkets have been a problem to the Australian consumer movement for a decade. The main concerns have been the elimination of price marking on individual items in the supermarket undercutting the price-sensitivity of consumers' shopping and making it difficult to challenge “mistakes made by the computer” at the checkout. In response to these concerns, the lower house of the Victorian state parliament was persuaded in the early 80s to legislate for mandatory individual item price marking in supermarkets. This loomed as a disaster for those retailers who had already invested in the new technology because the costs of both computerized checkouts and individual item price marking exceeded the costs of either approach separately. While the Victorian legislation was being discussed by other state governments and stalled in the Victorian upper house, the Australian Retailers' Association opened negotiations with consumer protection agencies and consumer groups around Australia about the prospects of solving the problems through a voluntary code.

The Trade Practices Commission worked actively to persuade the parties that both industry and consumers could do better under a uniform national code than under laws which the consumer movement would be successful in getting enacted in some states but not others. While the consumer movement to this day is not fully persuaded of this, it was this brokering and persuading role that was the crucial intervention of government in facilitating these elements of civil society to begin to work together to solve the problem. The code provided for minimum standards for the location and markings of prices on supermarket shelves, for itemized prices with a summary description of the product on the docket issued at the checkout, and a variety of other informational protections.

Most interestingly, the code was given a nice self-enforcing feature. Whenever a consumer had a price charged at the checkout that was greater than the price advertised on the shelves, they would get the product free. This right was advertised in large signs placed in stores with CCS. Of course, all new self-regulatory schemes, like all new regulatory schemes, have their unintended consequences. Some enterprising consumers actively searched for glitches in supermarket computer systems and arrived at the checkout with a trolley load full of the offending product! This self-regulatory scheme is far from perfect; in some states the advertising and implementation of the scheme by retailers has been very poor. Nevertheless, it probably is true that both consumers and industry are doing better on this issue than they would have done through lobbying in the nation's parliaments. From the perspective of consumer protection agencies, the self-enforcing quality of the code provides an immediate, proportionate sanction that can give complainants much better justice than they could manage by enforcing state laws against what would be relatively minor offences. Indeed, one wonders, given the backlog of more serious consumer protection offences that are always on the plate of Australian consumer protection agencies, whether any prosecutions would ever have occurred for computer pricing errors.

Another new technology voluntary code in Australia has been the Code of Conduct for Electronic Funds Transfer Services (EFTS). The principals involved in negotiating this code were the Australian Bankers' Association, various government consumer protection agencies and consumer groups. Since the Code was first introduced, many other countries have followed the Australian approach rather than the more legislative approach that has been adopted in the United States. The first Code was adopted in 1986 by the industry without consumer group participation. It was a failure, largely because consumer groups were locked out of negotiations and dissatisfied with the result. The consumer groups worked effectively to communicate through the media horror stories of consumers being ripped off by EFTS between 1986 and 1988 and the Code was widely criticised as little more than an expression of good intentions by the industry. This led to a Trade Practices Commission Report in December 1988, Finance Industry Code of Conduct on Electronic Funds Transfer Services.[40]

The Code was then redrafted in a way that won the confidence of consumers.[41] Consumer groups were involved at three levels: negotiation over drafting: access to an independent dispute resolution mechanism in the form of the Australian Banking Industry Ombudsman Scheme (with a prominent consumer leader being appointed to a senior position in this scheme alongside appointees with industry backgrounds); and in review and monitoring of the Code by a tripartite government-industry-consumer Council called the Australian Payments System Council.[42] The Code has been successful. The number of complaints involving EFTS to Australian consumer protection agencies has fallen. Fewer than five per cent of the complaints being received by the Australian Banking System Ombudsman Scheme now relate to EFTS.

Like the Computerized Checkout Code, the EFTS Code is impressive in being attentive to enforcement. This is accomplished by requiring certain terms of the Code to be incorporated into contracts between banks and consumers. The Australian Bankers' Association learnt the value of consumer input from the whole exercise, its executive -director, Mr. Allen Cullen being quoted as saying that consumer input has been “very valuable, it improved the Code materially, particularly in relation to dispute resolutions where the changes were a direct response to consumer representations”.[43]

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[40]Finance Industry Code of Conduct on Electronic Funds Transfer Services, Trade Practices Commission, Canberra, 1988.

[41]Daniels, David, Electronic Funds Transfer Code of Conduct, Dunhill Madden Butler, Sydney, 1990.

[42]Carver, Liza, Consumer Participation in the Self-Regulatory Process, Consumer Credit Legal Centre (NSW) Inc., Sydney, 1990.

[43]Ibid.

(b) Foundations and programs established by private firms

Both the Australian Retailers' Association and the Australian Bankers' Association provide fairly general coverage of the members of their industry using the technology concerned. While many forms of self-regulation depend for success on reasonable comprehensiveness of coverage, this is not always the case. In fact, one or two firms sometimes transform the compliance culture of an industry across a nation by setting higher standards of corporate responsibility that other firms follow. The next case study is of a single firm that is seeking to transform the self-regulatory culture of an industry not only nationally, but internationally.

Ciba-Geigy, the Swiss chemicals giant, had a history of terrible controversy from the 1960s through the 1980s, particularly in Japan where thousands of consumers suffered SMON, a disease involving paralysis and loss of eyesight, from taking a Ciba-Geigy anti-diarrhoeal drug.[44] In the eyes of consumer and environmental groups, Ciba-Geigy was a pariah corporation that covered up the side-effects of products that it then marketed in an inappropriate way, that persisted in marketing products in the third world long after they had been demonstrated to be unsafe in countries such as Japan and the United States, that had engaged in product testing by spraying third world agricultural workers with experimental chemicals from the air without their consent. In the mid-80s, Ciba-Geigy was on the threshold of an international consumer boycott that would have rivalled the campaign against Nestlé over the breast-milk substitute issue.

By 1986, some significant changes had occurred at Ciba-Geigy to strengthen internal compliance systems, listen to its critics and respond with constructive reform. Some cynics see the changes at Ciba-Geigy as cosmetic, driven by the public relations rather than the production functions of the firm. But some of the changes are clearly more fundamental than public relations fluff. At the end of 1986, Ciba initiated a program on the Risk Assessment of Drugs – Analysis and Response (RAD-AR). RAD-AR is about getting leading companies to be more open about the risk factors associated with their products, to foment a more constructive dialogue about the risks and benefits of particular pharmaceuticals, where industry critics are part of the dialogue.[45] RAD-AR's success has been patchy, varying from one part of the world to another. Many companies have attended RAD-AR seminars, but not many have acted to make their safety and efficacy data more genuinely open to their competitors and critics. While there has been no radical transformation of the industry, there is no doubt that the quality of the debate over the risks and benefits of drugs has improved in recent years and that RAD-AR has played some part in this.

Governments also have an important role to play in fostering openness and international debate about risk and benefit data by harmonizing the requirements they impose for lodging data about the risks and benefits of drugs. Governments, in other

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[44]Hansson, Olle, Inside Ciba-Geigy, International Organization of Consumers' Unions, Penang, 1989.

[45]On RAD-AR, see Horisberger, B and Dinkel, R. (eds.), The Perception and Management of Drug Safety Risks, Springer-Verlag, London, 1989.

words, can set a framework that nurtures a shared grammar for dialogue about risks and benefits within civil society. When governments better accomplish this, there will be more Ciba-Geigys with RAD-AR programs.

The second example of a private firm having an impact on the culture of compliance in an industry involves much more direct involvement by government—the Solomons Carpet case in Australia.[46] This story starts with the Trade Practices Commission detecting what it regarded as a misleading advertising breach by Solomons Carpets, which is the largest carpet retailer in Australia. The breach was a less serious matter than others that were putting demands on the Commission's scarce litigation resources; it was also in an area that the Commission did not view as a top enforcement priority. So it decided to offer Solomons an administrative settlement which included voluntary compensation for consumers in excess of the criminal fine that was likely should they be convicted. The facts of the matter made it fairly unlikely that any court would order compensation for consumers, but likely that a modest criminal fine would be imposed. All the Commissioners felt that Solomons would reject the administrative settlement because it would be cheaper for them to face the consequences of litigation. Even so, in the interests of consumers it was decided that the idea was worth a try. The Commissioners turned out to be wrong because their expectations made the error of assuming that such decisions are necessarily made by companies according to a deterrence cost-benefit calculus of the unitary corporation. Unknown to the Commission at the time, there was also a “soft” target within the company, namely the Chairman of the Board, the retired patriarch of this family company. For him, as a responsible businessman, it made sense to accept the Commission's argument that resources should be spent on correcting the problem for the benefit of consumers rather than on litigation and fines.

The Chairman of the Board was dismayed at the prospect of allegations of criminality against his company, and was concerned for its reputation and his family reputation. He was also angry with his chief executive for allowing the situation to arise and for indulging unethical marketing practices. He sought the resignation of his chief executive and instructed his remaining senior management to cooperate with an administrative settlement that included the following seven requirements:

1. Compensation payouts to consumers

2. A voluntary investigation report to be conducted by a mutually agreed law firm to identify the persons and defective procedures that were responsible for the misleading advertising.

3. Discipline of those employees and remediation of those defective procedures.

[46]A more detailed discussion of the significance of this case and others like it will appear in Brent Fisse and John Braithwaite, Corporations, Crime and Accountability (to be published late in 1993 by Cambridge University Press).

4. A voluntary Trade Practices education and compliance program within the firm and among its franchisees directed at remedying the problems identified in the self-investigation report on an ongoing basis and at improving Trade Practices compliance more generally.

5. An industry-wide national Trade Practices education campaign funded by Solomons to get its competitors to also improve their compliance with regard to advertising of carpets.

6. Auditing and annual certification of completion of the agreed compliance programs by an agreed outside law firm at Solomons expense.

7. A press release from the Commission advising the community of all of the above and of the conduct that initially triggered the investigation. (The press release attracted significant coverage in most major Australian newspapers).

In addition, although it was not part of the deed of agreement, Solomons volunteered to conduct an evaluation study of the improvement (or absence thereof) in compliance with the Act by its competitors as a result of the industry-wide education campaign it had funded. All of this work is still not completed and evaluated at the time of writing, but early indications are that Solomons as a result of this self-regulatory effort, triggered by a consent agreement with the government, has substantially improved not only its own compliance, but industry-wide compliance.

At every level, more onerous, more costly, more effective reforms were achieved than ever could have been obtained via a criminal prosecution. In most cases of this sort, we should not expect such a positive result for compliance. That is, in most cases the firm will act as a unitary actor that seeks to minimize its costs. At the same time, a lesson of regulatory experience is that it is not uncommon to encounter individual leaders of firms who are motivated as much by a responsible desire to right the wrong (and by reputational concerns) as they are by minimization of costs. The extent to which such leadership will be a minority phenomenon will vary from one OECD country to another. However small a minority such business leaders are, the costs for regulators in giving their social responsibility a chance before proceeding with a prosecution will usually not be great. And the benefits of business leadership to transform the culture of compliance industry-wide are vast in comparison with the benefits of deterring a single firm.

(c) Consumer, trade union and environmental groups

From the business point of view, consumer groups should be viewed as a blessing as well as a curse. Most business leaders have a clear perception of how consumer groups can be a curse for them by pushing up regulatory costs. But they are reluctant to concede that when consumer groups criticize shoddy, unsafe and protected products, they create a pressure for improvement that can increase international competitiveness, a pressure lacking in non-democratic societies without an active consumer movement. There have been moves in some countries to disempower

voluntary consumer groups that have been critical of governments by using taxpayers' funds to establish government-run product testing organizations to produce magazines in the “Consumer Reports” and “Which?” mold. Such magazines have more bite and appeal to consumers when they are in the hands of consumers rather than governments. Governments that set out to sever the sinews of criticism of business and government from below in civil society will not do well by the competitiveness of their business community in the long run.

On the other hand, there are positive things governments can and ought to do to empower consumers with access to information. There are many major consumption decisions that are hard for lay consumers to make without assistance from more technically competent professionals. An example is choosing a nursing home. The U.S. and Australian governments have legislated to empower consumers with information in this domain by making available to consumers the results of routine government nursing home inspection reports. To take another example, consumers have no information about the hygiene of the kitchens in the restaurants where they eat. In Ottawa, Canada sanitation inspection results are released to the media, who do the work of empowering consumers with information abut which restaurants are repeatedly found to have filthy kitchens.

The role of consumers in fostering compliance can go beyond pressure through informed choices in the marketplace, shunning nursing homes with low standards. The United States has recently changed its law to give elected representatives of nursing home residents the right to be present and participate in exit conferences following nursing home inspections. This is more than just a way of improving compliance by putting some countervailing power in place against capture of inspectors by nursing home management. Consumers can also play a central role in ongoing monitoring of compliance. If a problem identified in a nursing home inspection is food being served cold to residents or residents being showered before 6 a.m. to suit the convenience of staff, then inspectors may be limited to annual inspections for checking the implementation of plans of correction on these matters. But residents will be experiencing whether or not the food is cold three times a day every day of the year. Hence, a residents' committee that is informed and empowered to participate in exit conferences and/or other regulatory deliberation can deliver the best feasible ongoing monitoring of certain types of compliance. More fundamentally, resident participation builds in assurance that the regulatory process will not stray from a focus on the outcomes that truly matter to residents.

A similar point can be made about empowering workers to participate in occupational health and safety regulatory dialogue so that they are enabled to monitor that plans of correction are implemented by management and stay implemented.[47] Civil society has also been mobilized by Australian governments to ensure compliance with environmental laws. Examples are the use of citizens as voluntary beach

[47]See Gunningham, Neil, Safeguarding the Worker: Job Hazards and the Role of Law, Law Book Co., Sydney, 1984.

inspectors to check for both erosion and water pollution, and recreational divers as voluntary wardens of historic shipwrecks.[48]

(d) Professional associations

Some professional associations work as monitors of compliance in much the same way as the consumer, trade union and environmental groups discussed in the last section. An example is the Medical Lobby for Appropriate Marketing, a worldwide group of doctors who monitor medical journal advertisements for breaches of the ethical code of the International Federation of Pharmaceutical Manufacturers' Associations. Their enforcement technique is simple. Member doctors write large numbers of letters of complaint to the manufacturer about unethical advertisements, a tactic that has had modest and increasing success. Five of 17 MLAM letter writing campaigns between January 1988 and June 1989 resulted in agreement by the company to alter claims or withdraw the product.[49] This strike rate increased to 5 out of 9 for the period July 1989 to June 1990.[50]

Like doctors, lawyers, accountants and many other professions have ethical standards that can be important bulwarks against business non-compliance with the law.[51] Effective self-regulation of ethics in the professions hence becomes an important part of what delivers effective self-regulation of business. Beyond the importance of such entrenched cultures of professionalism in civil society, there are now emerging new professions specialising in business compliance. These include an emerging profession of environmental auditors,[52] a now fairly well established profession of safety engineers, and legal auditors who have specialties ranging from antitrust to corruption prevention or who are generalist legal auditors.[53]

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[48]Grabosky, Peter,

[49]Wade, V.A., Mansfield, P.R. and McDonald, P.J., Drug Company Evidence to Justify Advertising, The Lancet, (1989) November: 1261-1264.

[50]Mansfield, Peter R., Classifying Improvements to Drug Marketing and Justifications for Claims of Efficacy, International Journal of Risk and Safety in Medicine, (1991), 2, 171-184. Of course, with such data one can never be sure that the company would not have changed its marketing practices without the pressure from MLAM.

[51]Grabosky, Peter, Professional Advisors and White-Collar Illegality: Towards Explaining and Excusing Professional Failure, *Conference Proceedings No. 10: Complex Commercial Fraud*. Australian Institute of Criminology, Canberra, 1992.

[52]Price, Courtney M. and Danzig, Allen J., Environmental Auditing: Developing a “Preventive Medicine” Approach to Environmental Compliance, Preventive Law Reporter (1986) October: 26-38.

[53]Brown, Louis M. and Kandel, Anne O., The Legal Audit: Internal Compliance Investigation. Clark Boardman and Co, New York, 1990.

Compliance professionalism has received a big boost in the United States over the past year by the promulgation of new federal corporate sentencing guidelines by the Congress on the recommendation of the U.S. Sentencing Commission. These guidelines grant quite significant discounts off sentences imposed on corporations convicted of criminal offences if they can show that they had credible corporate compliance systems in place. The desire to benefit from such discounts has motivated many firms to invest in compliance auditing for the first time. This includes legal counsel doing antitrust compliance audits, engineering consultants doing occupational health and safety audits and in-house environmental specialists auditing compliance with environmental regulations. Compliance professionalism is also getting a boost from regulatory agencies and prosecutors who negotiate consent decrees that include provisions to mandate regular compliance audits.[54] Sigler and Murphy have been leading advocates of an "interactive" approach to corporate compliance whereby firms get gentler treatment from enforcement agencies when they invest in good faith compliance programs.[55] A number of regulatory domains where this is beginning to occur have been documented by Sigler and Murphy.[56]

IV. Conclusion

Simple, cheap evaluation tools are available to assess which of the six sources of non-compliance are the greatest problems in any given regulatory domain. An opinion survey of a random sample of managers in the regulated industry can assess: 1) their level of understanding of particular laws; 2) their belief in the law and commitment to the practicality of making it work; 3) any sense of procedural injustice they feel about any aspect of the regulatory process; 4) their estimate of the cost they will bear and have born as a result of the specific regulatory demands made on them during the past two years; 5) whether deterrence, incapacitation or persuasion were accomplished in any specific enforcement actions to which the firm was exposed and in response to actions taken against other firms. Diagnosis of the failure of civil society (the sixth item on the list) cannot be achieved by this quantitative survey of managers. A more wide ranging qualitative assessment of the work of professional associations, industry associations, consumer groups, and others is needed here. My research team's evaluation of the Australian nursing home regulation reforms has its limitations

[54]For example, In re Owens-Corning Fibreglass Corp., No. TSCA-PCB-82-0108 (U.S. Environmental Protection Agency Reg. II filed July 29, 1982). Involved a PCB compliance audit for 63 facilities.

[55]Sigler, Jay A. and Murphy, Joseph E., Interactive Corporate Compliance: An Alternative to Regulatory Compulsion, Quorum Books, New York, 1988.

[56]Sigler, Jay A. and Murphy, Joseph E., Corporate Lawbreaking and Interactive Compliance: Resolving the Regulation-Deregulation Dichotomy. Quorum Books, New York, 1991.

(particularly on point 5) but it does illustrate how these six criteria can be assessed to inform critique and innovation in compliance reform.[57]

Table 1 is a summary of the conclusions in this paper. Compliance with regulatory laws cannot be accounted for with any unidimensional explanation. Nor can it be achieved by simply adding together all the ingredients in Table 1. Running a regulatory agency with a successful blend of these ingredients is not like operating a hot-dog stand; it is like managing a high-class restaurant, where the menu constantly changes, where sensitive chefs are continually tasting outcomes and adjusting the mix of ingredients, where people are empowered to use their imagination to innovate with new recipes. The mix of ingredients a regulator needs for success can change with the introduction of a new technology in an industry, a new executive director of an industry association with a different philosophy on business-government relations, or a lost court case.

As Ian Ayres and I have argued elsewhere, the administrative objective should be to have a dynamic regulatory strategy that is responsive to how responsive industry is being in attaining compliance outcomes.[58] For example, it can be a good strategy for the government to communicate that it wants to give industry the space to make self-regulation work, but that it will evaluate the effectiveness of the self-regulation after a trial period. If the self-regulation scheme is then found wanting, there will be escalation through different levels of government regulation until the problem is solved. Communicating such a dynamic strategy gives industry an incentive to make self-regulation work. So success not only turns on a judicious mix of ingredients, but also on communicating the fact that the ingredients will be added in an order that depends on industry response. Incompetent regulators are insensitive to the need for feedback and response and to the desirability of empowering stakeholders to come up with creative new solutions to historically unique situations. Incompetent regulators are locked into static analyses: "the bottom line is all business understands, so prosecution is always our major weapon for getting compliance";" the firms in this industry are responsible and can be trusted to comply voluntarily". There is no cookbook for a dynamic strategy in pursuit of regulatory compliance. However, regulators can become more sensitive to the range of options and objectives that should be considered on the path to developing a dynamic compliance strategy. Fostering such sensitivity has been the objective of this paper.

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[57]Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Gibson, Diane, Raising the Standard: Resident Centred Nursing Home Regulation in Australia. Department of Health, Housing and Community Services, Canberra, 1992.

[58]Ayres, Ian and Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, Oxford, 1992.

Table 1: Summary of Negative and Positive Actions by Governments

CAUSES OF NON-COMPLIANCE	NEGATIVE ACTIONS GOVERNMENTS CAN TAKE	POSITIVE ACTIONS GOVERNMENTS CAN TAKE	INSTRUCTIVE CASE STUDIES
Failure of understanding	Clarify parts of the law while increasing the complexity of law as a whole	Simplification	New Zealand Acts Interpretation Act combined with commitment to simplicity in cultures of judiciary and legislative drafting
Collapse of belief in the law	Input-oriented rather than outcome-oriented regulation	(a) Standards based on dialogue with stakeholders (b) Look for innovators who deliver better outcomes and make them role models	(a) Outcome standards for Australian nursing homes (b) Turnaround of the restraint problem in U.S. nursing homes
Procedural injustice	Leave appeals of regulatory decisions to the courts	Provide for correctability with process control early in the decisionmaking process. Training.	(a) Exit conferences wit U.S. inspections (b) Pre-decision conferences of Australian Trade Practices Commission
Cost of regulation	Universalistic rules inflexibly enforced	Cost-benefit, cost-effectiveness, risk assessment, enforced self-regulation, contracting around defaults	U.S. Mine Safety and Health Act
Deterrence failure	Exclusive reliance on cash fines	Equity fines	--
Incapacitation failure	Exclusive reliance on deterrence or persuasion	(a) Administrative incapacitation (b) Structural incapacitation	(a) U.S. Nursing home regulation (b) Disney World, futures pits.
Failure of persuasion	Design regulation that is "fit for knaves"	Informal positive sanctions and persuasion as strategies of first choice	Australian nursing home regulation
Failure of civil society	"Take over" from civil society (e.g. take over product testing magazines from voluntary consumer groups)	(a) Nurture self-regulation (b) Encourage leadership from firms that have looked into the abyss (c) Empower consumer, union and environmental groups with information and a monitoring role (d) Nurture professional self-regulation and compliance professionalism and compliance auditing	(a) CCS and EFTS self-regulation (b) Ciba-Geigy, Solomons (c) Publishing inspection reports (Ottawa restaurants); stakeholder right to attend exits (d) Sentencing discounts for effective internal compliance systems