

Preface

An edited book is usually the product of many conversational circles. The 43 chapters of this book draw together the work of an especially talkative group, the Regulatory Institutions Network (RegNet) program based at The Australian National University (ANU).

John and Valerie Braithwaite established RegNet in 2000. John Braithwaite had obtained financial backing from ANU in the form of a strategic development grant. Initially, RegNet was a part of The Australian National University's Research School of Social Sciences, but, as a result of wider processes of restructuring, it is now part of The Australian National University's College of Asia and the Pacific. The plan for RegNet included establishing an ANU-wide network for the study of regulation involving other centres in other parts of the university, such as the Centre for Health Stewardship at the Medical School and the Australian Centre for Environmental Law at the Faculty of Law. RegNet's network aspirations moved well beyond ANU, with membership open to non-governmental organisations (NGOs), government departments, regulators and other universities. It was all about building networks, networking networks and creating interdisciplinary conversations around the concept of regulation.

Why build an interdisciplinary research program devoted to the study of regulation? Lawyers, after all, had turned regulation into a dull topic. Regulation was about authoritative rules issued by the state. For some lawyers the meaning of regulation was confined to the rules of delegated legislation. The answer has both theoretical and empirical dimensions. Empirically, regulation had pluralised in important ways. States were drawing on third parties to deliver, for example, their welfare programs or foreign aid programs. Businesses such as banks were required to have compliance units that met particular standards—standards that, as in the case of banking regulation, were increasingly coming from international organisations such as the Basel Committee on Banking

Supervision. Would these bodies keep the world's financial system safe from crisis? States were signing on to free-trade agreements that were long and complex and seemed to go well beyond dealing just with the movement of goods. Why did these agreements contain standards that strengthened patent monopolies? This seemed inconsistent with the goal of free trade. The publics of states began to learn that their states could be sued directly by foreign investors. Consumers were taking a lot of interest in labels to do with standards relating to fair trade and forest stewardship. Who set those standards? Who checked for compliance? Regulation was changing in many different ways.

The changes taking place in regulation were only part of the reason to build a research program around it. The big problems facing states—such as crime control, environmental degradation, sustainable development, improving outcomes for the poor, women, indigenous peoples, children and the elderly and stopping the degradation of tax systems—would require creative regulatory solutions. John Braithwaite, normally the embodiment of respect for others, engaged in some mild-mannered trashing of disciplinary boundaries in the social sciences, arguing that traditions of excellence within the disciplines were narrowing their capacity to deliver creative solutions to these big problems. If these creative solutions were to have a chance of arriving, regulation could not continue to be thought of as an inelastic thing of law. Rather it had to be seen as a multilevel dynamic process in which many actors play a part and have varying capacities and means of intervention. Better ways of tackling big problems would only come when regulation achieved a resonance across the social sciences. Naturally, the important insights and findings of the disciplines would be retained, but synthesised into bigger and bolder regulatory theories for testing. The search for insights was not to be confined to the analytical worlds of social scientists, but included the insights of regulatory practitioners. Of course, this was not a prescription for a lack of excellence in the disciplines, but rather one that aimed to encourage the disciplines to come out from behind their walls in search of the partnerships that would generate the new knowledge needed to address the world's problems.

Perhaps drawing inspiration from the story of the Ark, Braithwaite assembled a group of scholars from different disciplines including anthropology, criminology, law, psychology, sociology, geography and political science. As the people who had been recruited to the RegNet enterprise began arriving, they were housed in various

parts of The Australian National University's campus. When, for example, Drahos arrived, he was given a room with a window directly opposite a kitchen vent—a special bonus, according to Braithwaite. The accommodation problems were solved when ANU provided the RegNet group with a new building that remains its home today: the Coombs Extension building (named after Herbert Cole Coombs, a senior Australian public servant, financial regulator and a Bretton Woods architect, who, among many achievements, helped found The Australian National University in 1946).

In its first three or so years, the RegNet program underwent an intense period of growth. By the beginning of 2004 there were more than 40 academic staff. Close to AU\$32 million had been raised. Long-term research partnerships had been established with government departments and regulators, including the Australian Federal Police, the Australian Taxation Office, the Australian Competition and Consumer Commission and the National Occupational Health and Safety Commission, as well as with organisations outside Australia such as the British Home Office and Metropolitan Police and the Canadian International Development Agency.

The structure of the core RegNet program was always a little opaque to outsiders. Within RegNet there were various centre initiatives such as the Centre for Tax System Integrity (led by Valerie Braithwaite, it was RegNet's biggest centre and established in 1999 with funding from the Australian Tax Office); the Centre for Restorative Justice led by Heather Strang; the Centre for Competition and Consumer Policy led by Imelda Maher; Security 21: The International Centre for Crime and Justice under the charge of Peter Grabosky and Clifford Shearing; and the National Research Centre for OHS Regulation, its first director being Richard Johnstone. John Braithwaite described these centres as 'tents', the idea being that they would be collapsed (after people had exited, it should be added) and new tents erected to explore different dimensions of regulation.

And that is more or less what happened. Centres were closed and new ones erected. Examples include the Centre for International Governance and Justice (Hilary Charlesworth) and the Centre for the Governance of Knowledge and Development (Peter Drahos). RegNet was also part of a successful bid for funding from the Australian Research Council that saw the establishment of the Centre for Excellence in Policing and

Security. Peter Grabosky and then Roderic Broadhurst led the RegNet node of that centre. Roderic Broadhurst has gone on to be appointed to the foundation chair in criminology at ANU.

The variety of topics contained in the chapters of this book is a product of an openness to new initiatives that was nurtured by the Braithwaites. One did not join RegNet to be a criminologist, a tax lawyer or some other kind of specialist, but rather to collaborate in the study of regulation in its manifold forms, seeing if there were patterns and solutions to problems that could become the basis of a more general set of theories. Forming working groups around crosscutting thematic initiatives such as the role of hope in governance was one way in which thinking across regulatory areas was encouraged.

Today's RegNet is led by Sharon Friel. With its foci including health equity and governance, climate change, energy governance, peacebuilding, trade and investment, it is different to the RegNet that started a decade and a half ago. The one constant in this process of exploration and rebuilding has been advancing knowledge about regulatory processes to solve big problems.

The PhD students who joined the RegNet enterprise found that their topics seemed to have very little in common with each other. What were the links among, for example, tax havens, open-source biotechnology, the auditing of human rights in the HIV/AIDS field, public security in Northern Ireland, Somali piracy, corruption in Myanmar and Australia's Pharmaceutical Benefits Scheme? It wasn't immediately obvious. If unity was to be found in regulatory theory what was regulatory theory about? How were responsive regulation, smart regulation and meta-regulation related? This book is a response to these and many other questions asked by cohorts of RegNet PhD students over the years. It arrives late, but then could not have arrived much sooner since the questions and work by RegNet's PhD students have been central to the development and testing of regulatory theory. Many of these students have gone on to academic careers and some of them have contributed to this volume (see the chapters by Russell Brewer, Michelle Burgis-Kasthala, Lennon Chang, Christian Downie, Miranda Forsyth, Ibolya Losoncz, Gabrielle Simm and Natasha Tusikov). Other contributors to this volume, such as Cameron Holley, Nathan Harris, Kristina Murphy and Gregory Rawlings, spent the initial parts of their postdoctoral careers at RegNet in its early years, contributing to its growth.

The conversation that finally sparked this book into project form took place between Peter Drahos, Veronica Taylor (Regnet's director until the end of 2014) and Jeroen van der Heijden, who has taken regulatory theory into the field of urban sustainability. As RegNet had moved to improve its educational offerings to its PhD students under the stewardship of Kate Henne, the need for a text that provided PhD students with a more structured entry into the work of the RegNet program had become compelling.

The overall goal of this collection is to introduce a reader such as a PhD student, a regulatory practitioner or a policymaker to the central issues of regulatory theory through a selection of key concepts and topics that have been investigated by members of the RegNet group. The authors, all of whom either are at RegNet or have spent significant periods at RegNet, were asked to focus on the arguments around those key concepts, to reference texts they saw as important (while avoiding over-referencing), suggest some further reading and to stick to a word limit.

One aspiration for this book is that it will be a useful text for those wishing to learn more about the field of regulation, how it pervades social life in more ways than we realise, its dynamics of change and the possibilities of constructive intervention in its processes. RegNet, as is clear from the second half of the book, has studied regulatory problems in many different substantive contexts. One advantage of representing the diversity of RegNet's work in this volume is that a law enforcement official, a public health policymaker, a human rights lawyer, a competition regulator, a tax regulator or a practitioner from any of the other fields that are discussed in this volume will be able to read a chapter or chapters that engage with some contextual detail with which they are familiar, but should also see from other chapters that specific issues of interest to them also relate to broader patterns such as that regulatory outcomes within the borders of one state increasingly have their origins in decisions taken outside those borders (the globalisation of regulation).

With around 100 academics having trodden through RegNet's corridors of conversation it would have been difficult in one volume to give everyone an individual voice. Rather, the goal has been to group chapters around dominant themes and concepts that have emerged in the process of RegNet's rethinking of regulation over the past decade and a half. As the introduction by Drahos and Martin Krygier makes clear, three lines of investigation have been recurrently important in RegNet scholarship: the role of emotions in understanding the limits

and creative possibilities of regulatory institutions; the redistribution of the tasks of regulation within state and society; and regulation as a continuous process in which actors do or can intervene.

The first three sections (social-psychological foundations, concepts and theories and the role of the state in regulatory transformations) bring together the theory-building part of RegNet's work. The remaining sections set their discussion of theories and concepts in substantive areas such as human rights, health and commerce. This might be read as setting up a distinction between theory and its application, but within the RegNet program this distinction has not been seen as useful. Rather the goal has been innovation in regulatory knowledge, recognising that innovative ideas are part of a messy developmental loop that may have its source in the concrete particulars of regulatory systems or with practitioners who in moments of reflection offer insights that become the basis of new theory-building initiatives.

The book begins by introducing the reader to some of the psychological dimensions of regulation. Under Valerie Braithwaite's leadership, RegNet has a long history of exploring the psychological underpinnings of regulatory institutions such as tax or institutionalised virtues such as trust. This section also conveys some sense of the methods of the RegNet group, ranging from statistical analysis of large datasets to qualitative fieldwork and the use of case studies. RegNet can fairly claim to be the home of much of the work on responsive regulation; the first complete articulation of that theory is to be found in Ayres and Braithwaite's 1992 book, *Responsive Regulation*. As the next section of the book makes clear, the investigation of the ideal of responsiveness in regulation has led to the identification of different types of responsiveness, as well as theories such as smart regulation that place the emphasis on flexibility and the complementarity of regulatory instruments rather than on following a preset sequence of responses. The third section brings together the work done by RegNet scholars on the changing role of the state in regulation. To what extent have states been rendered rule-takers rather than rule-makers under conditions of globalisation? Can we plausibly argue that capitalism has entered a regulatory phase of its evolution? After these three sections there come four sections that represent substantive and persistent themes within RegNet's work. Rights-based regulation in its many forms, such as the human rights work of Hilary Charlesworth or the work by Nicola Piper on the rights of vulnerable temporary migrant workers, has been a hugely important part of RegNet's

research programs. Judith Healy was an early leader in RegNet on the integration of health regulation and regulatory theory and Scott Burris' visits to RegNet helped to foster this part of RegNet's work. As the essay by Sharon Friel makes clear, a sweeping research agenda around public health regulation has grown. The section on crime and regulation could easily have been the subject of a separate book. The essays in this section reflect the diversity of RegNet's contributions and methods in the study of crime, security and institutions of justice. As with many other disciplines, regulatory theory is slowly beginning to revitalise criminological theory. So, for example, Heather Strang's essay details the randomised trial carried out to test hypotheses in restorative justice while Roderic Broadhurst and Mamoun Alazab use datasets involving millions of emails to analyse the problems of regulating a global public bad: spam.

The final section on regulation and commerce covers what might be thought of as more traditional areas of regulation such as consumer safety, mining regulation and competition regulation—areas into which RegNet scholars have sought to inject innovative ideas. The essay by John Wood on consumer regulation speaks to a connection that has been deeply important to RegNet: the connection with the world of regulatory practitioners where practitioners include those from advocacy organisations and social movements. A number of practitioners were invited to contribute to the volume, but only John Wood found the time to write. His essay on consumer regulation is a gentle tour of regulatory achievements that date back decades and represent hard-fought victories won by a consumer movement in which he was a leader, working with others such as Ralph Nader. His contributions to promoting public goods are too long to list here, but they include helping to bring about freedom of information legislation in Australia, serving as Deputy Commonwealth Ombudsman and, in later years, bringing his skills and knowledge to help island countries in the Pacific region. He passed away in 2016. His daughter Charlie Wood, a key climate activist in 350.org Australia and in the RegNet family, continues to fight for those public goods that motivated John throughout his life.

Tracing the intellectual influences on the work of RegNet is not an aim of this volume. This would end in an impossibly long and likely incomplete list of names. In any case, the various chapters in the book convey a strong sense of where the influences have come from. By way of illustration, ideas and approaches from the law and society tradition such

as Nonet and Selznick's writings on responsive law have consistently informed much of RegNet's work, perhaps because law and society has been an open tradition in which different views of what it is to be critical and empirical have emerged. There have been long-term collaborations such as the one between Robert Kagan from the University of California, Berkeley, and Neil Gunningham from RegNet. There have been important writing projects such as *Regulating Law*, led by Christine Parker, Colin Scott, Nicola Lacey and John Braithwaite. There have been joint initiatives such as the one by David Levi-Faur (Hebrew University), John Braithwaite and Cary Coglianese (Pennsylvania University) that produced the founding of the journal *Regulation and Governance*, a journal that has become a home for some of the best writing in the field. Individuals have impacted on particular strands of RegNet's work as in the case of Tom Tyler's and Kristina Murphy's work on procedural justice and obedience, Lawrence Lessig's writings on code and the way it expands regulation by architecture, Michael Power's pioneering analysis of the rise of the audit society and Philip Pettit's work on the republican idea of liberty.

Beyond the many individual collaborations, initiatives and influences, RegNet has also seen itself as part of a broader community of organisations and centres that were also advancing knowledge of regulation. The American Bar Foundation (where Terry Halliday, a long-time adjunct at RegNet, is based) and the Centre for Analysis of Risk and Regulation at the London School of Economics are examples of influential nodes in a bigger network of the study of regulation.

Having well and truly committed the sin of grievous omission in the preceding paragraph, it is time to end. The principal reason this volume has swollen into obesity is that it presents a stocktake of RegNet@15. While the primary aim of this stocktake is to provide a service to our students and the broader community of regulatory studies, it might also be helpful for ANU, which provided the start-up funds for RegNet, to see whether it has been money well spent.

Last but not least, it also serves as a tribute to John and Valerie Braithwaite for having the vision and bravery to build RegNet and to infuse it with an atmosphere of affection and loving support. The achievements of great athletes are underpinned by countless micromovements that escape the notice of admiring observers, but produce what seems impossible. In academic life, great leadership and achievement depend on many micro-acts quietly done, some of which

are not noticed by other than their recipients: the door that is always open, the conversational moments that help colleagues produce fresh insights, writing notes of praise that help build confidence, participating in events that matter to others, always engaging with the work of colleagues, delivering criticism gently, reading and rereading their drafts, suggesting ways to improve them and making individuals feel part of circles of public achievement. Somehow, John and Val found the time for these things and more. The essays in this book are just one example of their remarkable influence on regulatory scholarship.

On a personal note, my thanks go to the contributing authors whose timely responses to my deadlines have helped bring this volume to fruition. Martin Krygier read all the chapters of the book and helped me to think through the complexities of introducing the volume. John Braithwaite, Julie Ayling, Jeroen van der Heijden and Neil Gunningham provided helpful comments and suggestions at various stages. I am also grateful to the members of the Social Sciences Editorial Board of ANU Press for the speed with which they were able to find reviewers for the manuscript, and also for their constructive thoughts on the manuscript itself. As an aside, I regard the ANU Press model of publishing as a wonderful example of how academics can break free of the tyranny of global publishing cartels. My thanks also to the three reviewers who found the time to read the manuscript and make suggestions for its improvement.

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Peter Drahos

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