
Section 7: The regulation of commerce

This section provides examples of the substantive regulation of commerce that have been important to RegNet scholars as sources of insight into theory development, as well as for the application of regulatory theory. John Wood synthesises a complex history to reveal the long-run success of consumer regulation—a success to which he was a major contributor (see the Preface). Imelda Maher, the first director of RegNet’s Centre for Competition and Consumer Policy, illustrates how regulation is more constitutive than contradictory of competition and how the enforcement of competition law in transnational contexts is increasingly based on an architecture of networked governance. The institution of tax was the object of a multidisciplinary research effort carried out by the Centre for Tax System Integrity (CTSI), the largest of many centres that have been housed within RegNet. Among other things, its work on compliance and responsive regulation had a practical and successful influence on the way in which the Australian Tax Office engaged with those with tax obligations—for example, in the ‘cash economy’ and by corporations in the context of transfer pricing. Greg Rawlings, a former member of the CTSI, discusses the successes and failure of states and the Organisation for Economic Co-operation and Development (OECD) in dealing with tax havens and profit shifting by multinationals. Kyla Tienhaara’s chapter outlines how the investor state dispute-settlement mechanism, now to be found in many hundreds of trade and investment agreements, allows for the private

regulation of public regulatory sovereignty. Neil Gunningham and Darren Sinclair, drawing on their work in mining regulation, show that solutions inspired by meta-regulation may founder when they run into resilient informal systems with deep roots. Here, the insights of legal pluralism are needed (see Forsyth, Chapter 14, this volume). Jeroen van der Heijden also explores the limits of creative governance solutions, this time in the context of urban sustainability and resilience. Collaborative governance and voluntary programs within cities are producing instances of success when it comes to energy efficient, low-carbon buildings, but these instances are yet to reach the scale and increase in growth required if cities are to reach a new sustainable equilibrium with their surrounding ecosystems. States remain central nodes in webs of regulation when it comes to scaling up regulatory solutions. The limits of new regulatory approaches in the context of the paradigm of new environmental governance and approaches such as experimentalism, adaptive governance and collaborative governance form the topic of Cameron Holley's chapter.

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