A Comprehensive Framework for Privacy Regulatory Regimes

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http://rogerclarke.com/DV/RMPP.html (Text)
http://rogerclarke.com/DV/RMPP.pdf (Slides)

**14th Computers, Privacy and Data Protection Conference
CPDP'21 – Brussels – 27-29 January 2021**
Theme: 'Enforcing Rights in a Changing World'

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A Comprehensive **Framework**
## for Privacy Regulatory Regimes

- A structure for Themes and Issues in past and particularly future research

- Common Features:
  - Descriptions of concepts
  - Arrangements of key elements (often within a two- or three-dimensional matrix of ideas)
  - Descriptions of processes

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A Comprehensive Framework

for Privacy Regulatory Regimes

- Biology
- General Systems Theory

- Industrial Control
- Cybernetics

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A Comprehensive Framework
for Privacy **Regulatory** Regimes

- Biology
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- Socio-Economic Law and Policy
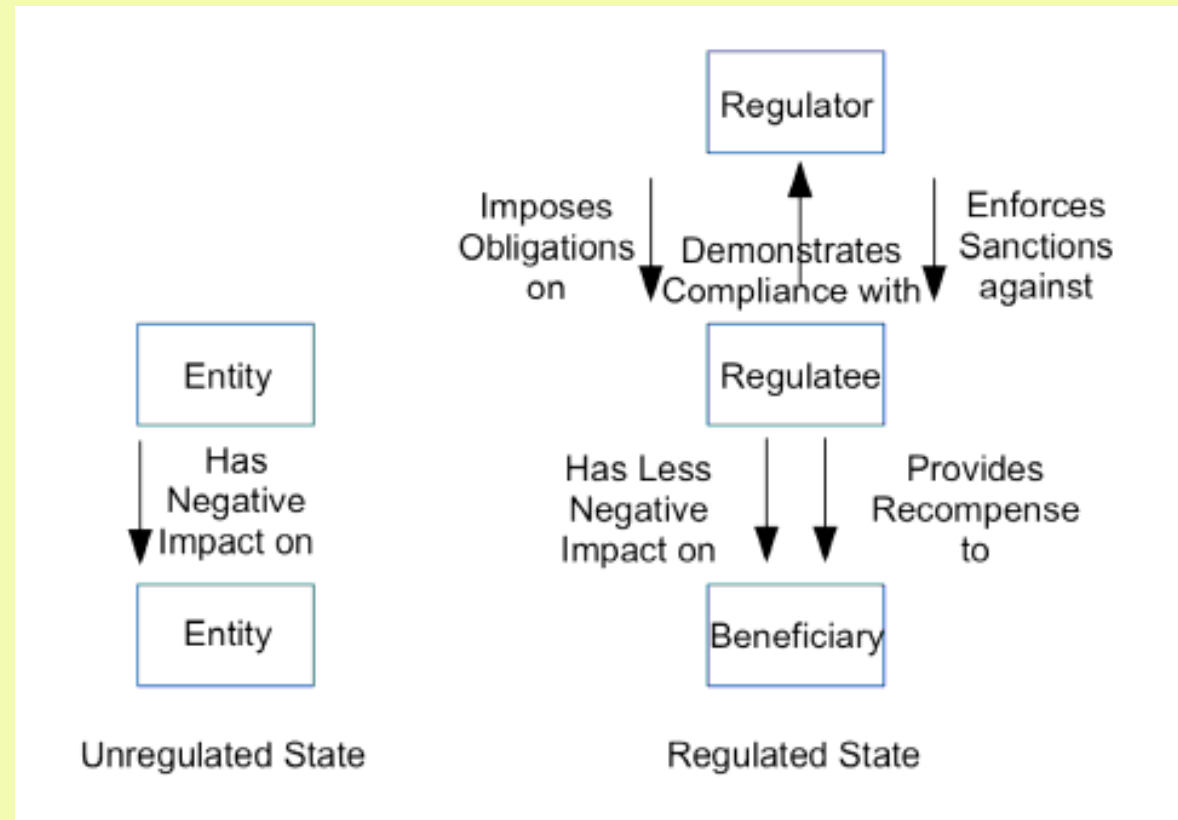
Dimensions of Regulatory Contexts

- **Cultures** (sub-dimensions: ethnic, lingual, religious, philosophical)

- **Systems of Law** (code, common law)

- **Divisions of Law**
  (private, public; criminal, commercial)

- **Jurisdictional Structures**
  (international;   supra-national;
  national, incl. single-, dual-level)

- **Industry Sectors** (categories of goods
  and services, and associated threats)

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Evaluation Criteria for a Regulatory Regime

Process

- Clarity of Aims and Requirements
- Justification
- Proportionality
- Transparency
- Reflection of Stakeholder Interests
- Participation

Product

- Comprehensiveness
- Coherence, Comprehensibility, Compatibility
- Articulation
- Efficiency
- Flexibility, Adaptability

Outcomes

- Effectiveness
- Oversight
- Enforceability
- Enforcement
- Review

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http://rogerclarke.com/SOS/Drones-PS.html#R

Regulatory Mechanisms

- **Factors that influence the behaviour of entities** towards policy objectives, in particular by **stimulating** appropriate behaviours, and **deterring, preventing, sanctioning** harmful ones

- Mechanisms may be:
  - **Natural Processes**
  - **Instruments / Measures / Artefacts**:
    - with extraneous purposes
    - with a regulatory purpose

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Proposition:

A Hierarchy of Regulatory Mechanisms

(7) Formal Regulation

(6) Meta- and Co-Regulation

Government   Compliance

(5) Pseudo Meta- and Co-Regulation

(4) Industry Sector Self-Regulation

(3) Organisational Self-Regulation

Self-Governance   Safeguards, Mitigation

(2) Infrastructural Regulation

(1) Natural Regulation

Systemic Governance   Auto-Adjustment

Formalism
Compulsion

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Natural Regulation

Intrinsic to the relevant socio-economic system

Competitive Behaviour
Reputational Effects
Cost/Benefit Trade-Offs

'Leave well alone'
'If it ain't bust, don't fix it'

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Infrastructural Regulation

The mechanical steam governor:
Reinforce positive aspects
Inhibit negative aspects

Automated ...
Monitoring
Exception condition detection
Adjustment of parameters
Deployment of countermeasures
Suspension of activities

Byproduct, Retro-fitted on,
or Architected in

| (7) Formal Regulation |
| (6) Meta- and Co-Regulation |
| **Government**   Compliance |

| (5) Pseudo Meta- and Co-Regulation |
| (4) Industry Sector Self-Regulation |
| (3) Organisational Self-Regulation |
| **Self-Governance**   Safeguards, Mitigation |

| (2) Infrastructural Regulation |
| (1) Natural Regulation |
| **Systemic Governance**   Auto-Adjustment |

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Infrastructural Regulation Examples

Dam sluice-gates
that automatically adjust
to water-level, water-flows
and precipitation events

Lessig's 'West Coast Code' –
computer and network architecture,
standards and protocols

'The {Extended} Laws of Robotics'
http://rogerclarke.com ...
... /SOS/Asimov.html#LawsExt

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Self-Regulation

- Codes of Ethics,
  Codes of Practice
- Meta-Brands
- Complaint Schemes

- Customer Charters
- Ethics Statements
- Corp. Soc. {& Env'l}
    Responsibility
    Statements

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A View of Self-Regulation

Wolves herd sheep
not for the benefit of the sheep
but for the benefit of the wolves

Meta-Regulation
  Govt-regulated
  industry self-reguln

Co-Regulation
- Statutory basis
- **Institutionalised
  negotiation process**
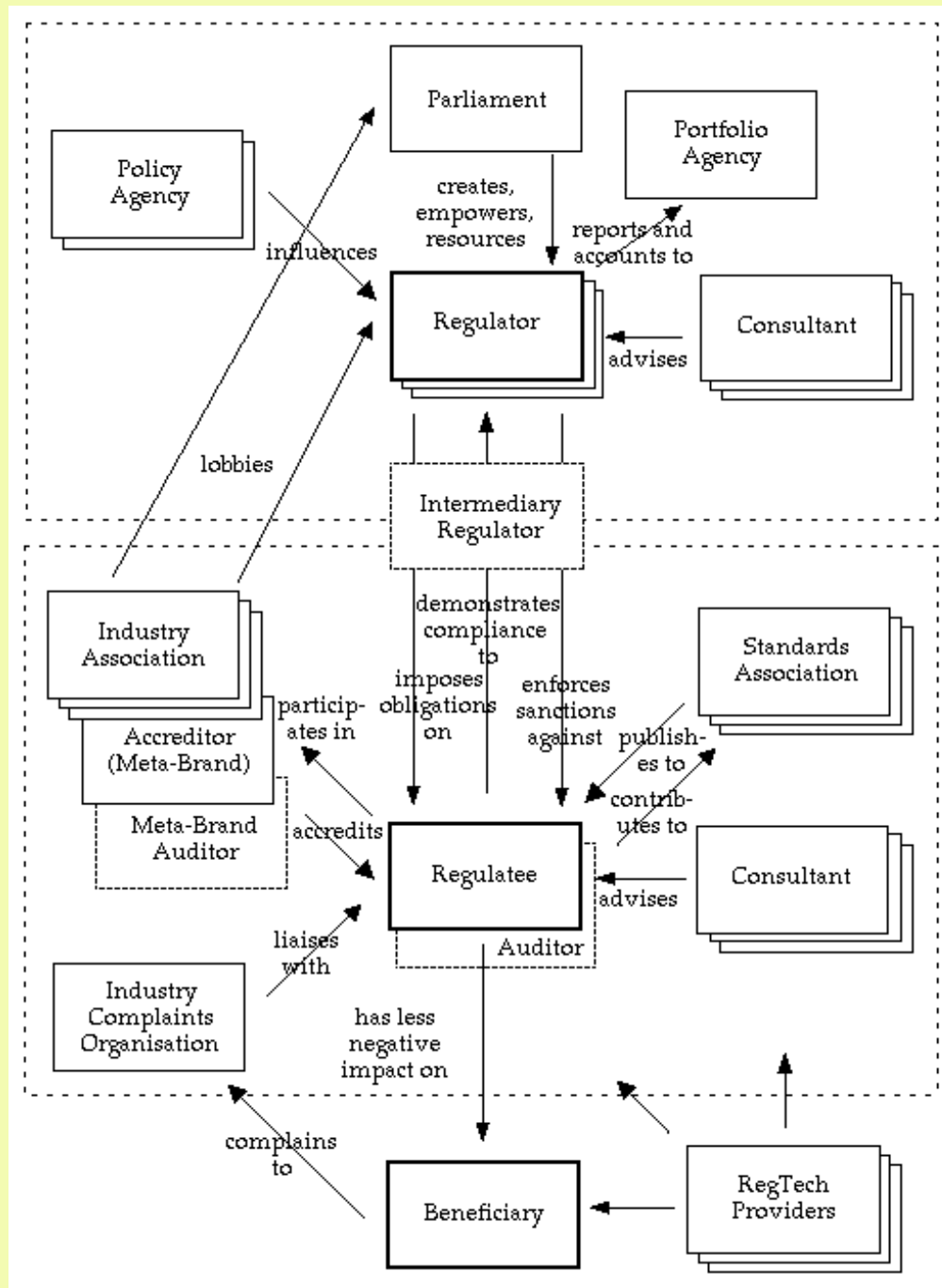- **All stakeholders in**
- Actual enforcement

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Principles for Responsible AI
10 Themes   /   50 Principles

1   Assess Positive and Negative Impacts and Implications

2   Complement Humans

3   Ensure Human Control

4   Ensure Human Safety and Wellbeing

5   Ensure Consistency with Human Values and Human Rights

6   Deliver Transparency and Auditability

7   Embed Quality Assurance

8   Exhibit Robustness and Resilience

9   Ensure Accountability for Obligations

10   Enforce, and Accept Enforcement of, Liabilities and Sanctions

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http://rogerclarke.com/EC/RAIC-50Ps-190803.pdf
http://www.rogerclarke.com/EC/AIP.html

Players in Regulatory Schemes

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Applications to Privacy Protection

- **Adversarial – Constructive Tension**
  - Exercise of Organisational Power
    e.g. imposed Terms, surv'ance PITs
  - Exercise of (Weaker) People-Power
    e.g. lies, complaints, lawsuits, PETs

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- **Collaborative – Co-Regulation**
  - A Stakeholder-Negotiated Design,
    Regulator-Enforced
  - Designed-in Balance

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