

A Response to Christopher Hodges Regulatory Powers and Enforcement

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Law Reform Commission Annual Conference
November 2016



University College Dublin

An Coláiste Ollscoile, Baile Átha Cliath

Response

1. Agree that regulation is tricky because it is about changing behaviours.
2. Agree also that collaborative governance is promising
 - search for capacity and engage key actors with the social, market and legal pressures which promote compliance.
3. However, collaborative modes require highly skilled regulators, paying attention to all dimensions of a regulatory regime, including availability of higher level penalties.
4. Effective implementation is technically and culturally challenging and requires learning and iteration.
5. Where collaborative modes are not well overseen/implemented, businesses have opportunities for shirking – see Honohan Report on Financial Crisis 2010.
6. Argues for more flexible toolkit, but also highly skilled regulatory cadre and recognition of wider range of actors in regulatory regimes.
7. Law reform by itself insufficient. Requires oversight of regulatory management and practice and new forms of engagement with firms.



Black's Conceptualisation

'regulation is the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes which may involve mechanisms of standard-setting, information-gathering and behaviour-modification.' (p20)



Regulation

- Rules/Principles
- Primary/Secondary Legislation
- Hard/Soft Law
- Associational/Bilateral Contracts
- Technical Standards

- Self-Report
- Inspection
- Certification
- Audit
- Complaints
- Whistleblowing
- Bounties

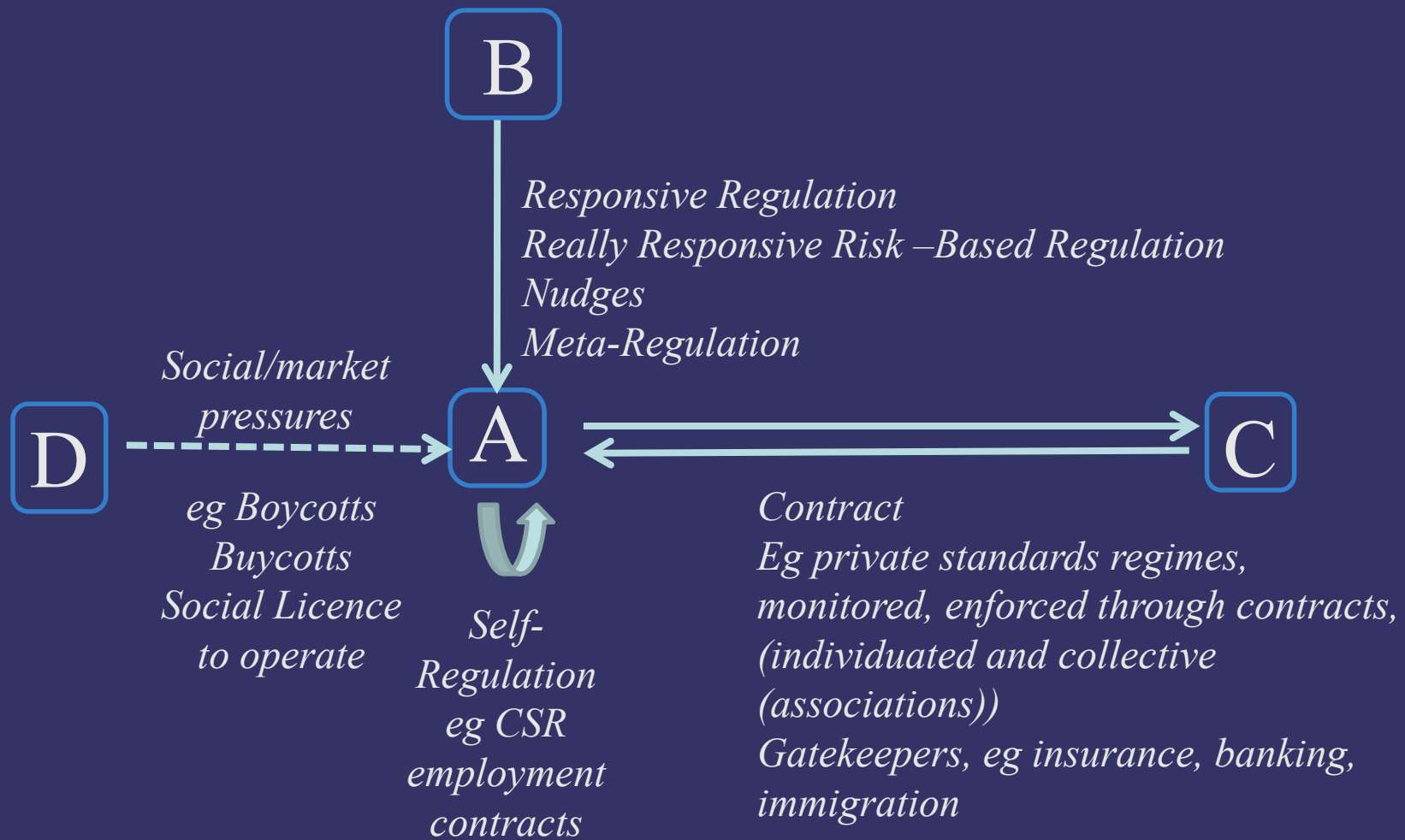
Norms
(standard-
setting)

Feedback
(information
gathering)

Correction
(behaviour
modification)

- License Revocation
- Criminal Sanctions
- Admin Penalties
- Warnings
- Advice
- Education
- Taxes
- Private Rights
- Scoreboards
- Media





A – Target of Regulation – Firm, Govt Agency, NGO, Individuals

B – Government (agency and/or department)

C – Contracting Party (firm or government), Association (trade, sporting, etc)

D – Third parties – eg consumers, NGOs, investors, competitors, employees



Enforcement Network



Network Actions

1. Setting norms
 - a. Legislation
 - b. Compliance Programmes
2. Monitoring
 - a. Agency oversight
 - b. Sharing Information/Experience
 - c. Whistleblowing and complaints
3. Enforcement
 - a. Warnings
 - b. Contract withdrawal
 - c. Civil Proceedings
 - d. Administrative Sanctions
 - e. Agency Prosecution
 - f. Cross-Sanctioning

