



Innovative Governance and Smart Regulation: Institutional and Regulatory Regimes for a Water-Constrained World

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The Challenge

- Increasing demand for water, already over-allocated in some areas, threat to water quality (eg nitrates)
- tension between pursuit of economic advantage and sustainable use,
- How can ecological services and functions be maintained while also meeting the needs of industry, agriculture and domestic users?
- How can water managers maintain legitimacy, credibility and trust when confronted by a diversity of interests, beliefs and values?
- How should resource managers act when the science is unclear ?

“there is enough water for everyone: the problem is largely one of governance: equitably sharing this water while ensuring the sustainability of natural ecosystems” (UNESCO)



Innovative Governance and Smart Regulation

- Next generation environmental regulation
- The new environmental governance
- Smart regulation

The shifting regulatory landscape

- The contracting state
- Increasing engagement of communities
- Increasing interest of business and commercial third parties in environmental issues

Reconfiguring regulation: five frameworks

- Process based regulation
- Informational regulation
- Smart Regulation
- Environmental partnerships
- “new” collaborative governance

Process based Regulation

- Recognises the limitations of the state to deal with complex environmental issues
- Focus on procedures rather than prescribing behaviour
- State shifts to meta-regulation and meta-risk management: the “regulation of self-regulation”

Informational Regulation

- green labelling
- environmental audit
- environmental reporting
- community right to know

Smart Regulation

- A plurality of regulatory instruments, and actors, influence environmental behaviour
- Recognises importance of mechanisms of informal social control
- Recognises roles of supply-chain pressure, commercial institutions, peer pressure to ‘regulate at a distance’
- Environmental policy means harnessing capacities of markets, civil society and other institutions
- Eg: empowering communities and markets with information; enforced self-regulation; role of ‘surrogate regulators’

Environmental Partnerships and co-regulation

- Combination of government set targets and industry based implementation
- Egs- Victorian vegetable growers
- The Cotton industry

The New Collaborative Environmental Governance

- Participatory dialogue
- Devolved decision-making
- Flexibility
- Inclusiveness
- Transparency
- Institutionalised consensus-building
- Shift from hierarchy to heterarchy

Policy Options: The Big Picture

- Hierarchy
- Markets
- Networks, partnerships and collaborations (the “new” environmental governance):

What sorts of policy (or combinations) suit what sort of problems?

Themes

- Business enterprises are complex and a variety of motivational drivers are needed
- Need to focus on encouraging and rewarding leaders as well as bringing laggards up to compliance
- Different frameworks are appropriate for different contexts

Much depends upon the nature of the problem to be solved

- Engage with “wicked”, complex and sometimes intractable problems beyond the direct reach of the regulatory state
 - complexity
 - fragmentation
 - interdependencies
 - ungovernability

Regional Natural Resource Management (NRM)

- Recognition that NRM best addressed at ecosystem level
- Devolution of NRM decision-making to regional level (56 regional NRM bodies)- a ‘fourth sphere of governance’
- Regional bodies: partnership involving both government and non-government actors (community, rural and other stakeholders)
 - must develop a regional plan and investment strategy
 - Implement these under a collaborative partnership-based decision-making process
 - Subject to performance indicators and other controls imposed by Federal Government
 - Federal Government tight control over purse strings and strict accountability mechanisms

Collaboration, Consensus and Conflict

- Underplaying of conflict in the literature
- Can participatory dialogue and deliberation be nurtured where conflict predominates?
- Deliberative practice more likely following failure of past strategies
- Deliberation in NRM bodies had not led to understanding and consensus solutions
- Problems of scale

Implementation deficits

- Reluctance of state agents to let go of traditional roles
- Resourcing
- Reliance on Volunteers
- Power sharing or ‘greenwash’?
- Political underpinnings

Implications for the role of the state

- New governance experiments vary in environmental complexity- capacity of state is inverse to complexity
- In Regional NRM state (i) sets and monitors performance standards and accountability mechanisms (ii) provides strong financial incentives for participants
- Key roles of the state: (i) definitional guidance (ii) incentives to participate (iii) enforcement capability

The need for “Smart Regulation”

- Who decides?
- What tools?
- What combinations?
- What sequence?
- What parties?
- use a range of tools in complementary combinations and
- to harness a broader range of stakeholders as surrogate regulators

Preliminary Design Questions

1. What is the desired policy goal(s) and what trade-offs are necessary to achieve it?
2. What are the unique characteristics of the environmental problem being addressed?
3. What is the range of potential regulatory participants and policy instruments?
4. What are the opportunities for consultation and public participation?

1. Design comprehensive policy mixes

- build on strengths and compensate for weaknesses of individual instruments
- build on advantages of engaging broader range of parties

But note

- practical limits/regulatory overload
- limited public resources
- not all combinations are complementary

2. Build in regulatory responsiveness because:

- a given instrument may be effective in influencing some but not others
- a particular instrument which seemed viable may prove not to be so (ie need to be adaptive and reflexive)

Solution:

- escalate up three dimensional pyramid
- introduce instrument sequencing trigger and buffer zones
- use of circuit breakers



3. Empower participants which are in the best position to act as surrogate regulators

4. Design measures which overcome short-termism

Certainty and predictability for industry?

Negotiation within the shadow of the State

Water Allocation Revisited

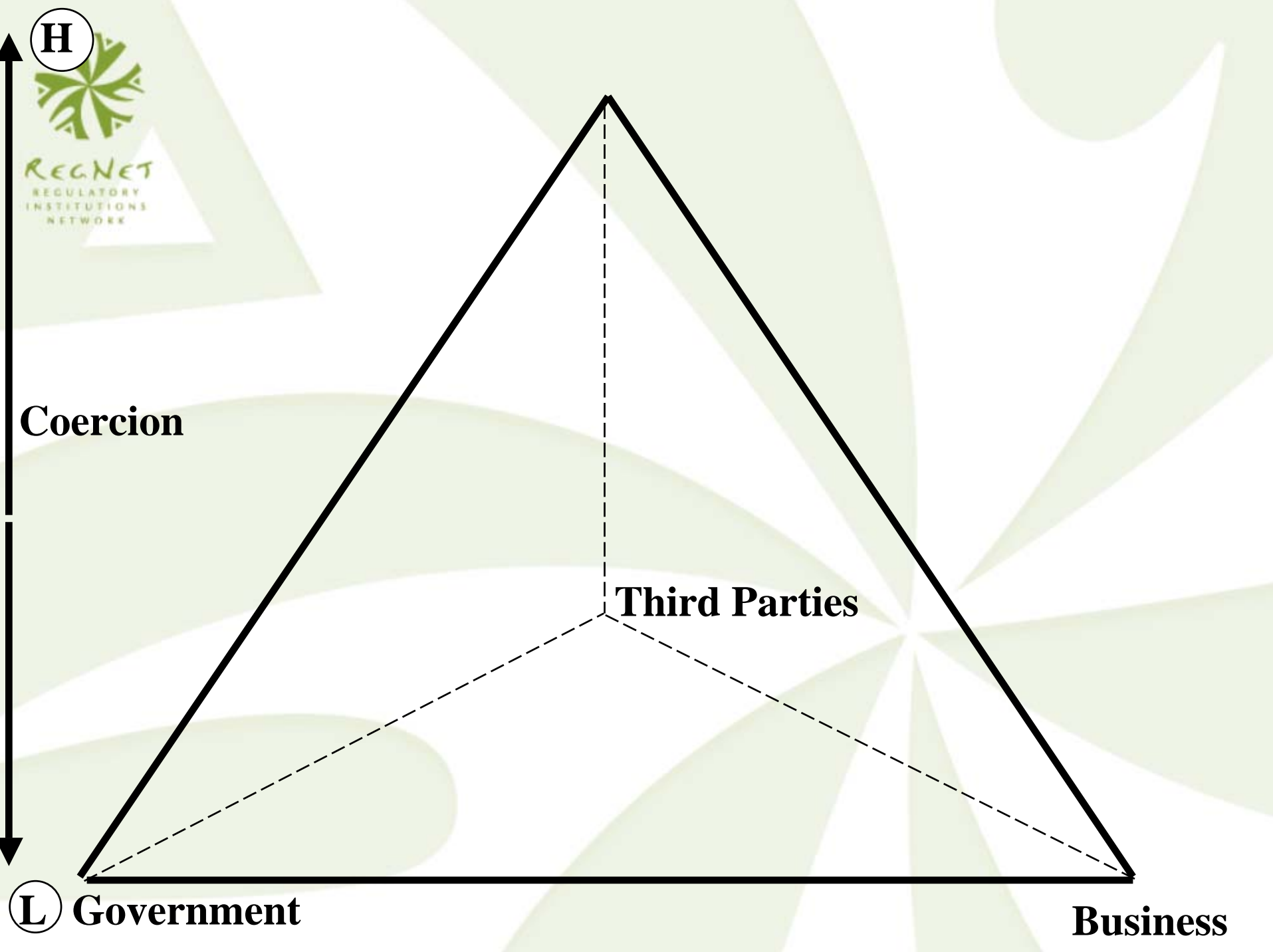
- Collaborative governance mechanisms may reduce conflict, change perceptions and increase legitimacy of agreed solutions
- The process may be time consuming and the policy outcomes ‘clumsy’ but better than available alternatives
- Use of collaborative governance does not preclude complementary forms of command and control or economic mechanisms
- Water pricing would increase motivation and efficient use and is likely to be part of the long term policy mix
- Opposition would be reduced if revenue is hypothecated
- An underpinning of direct regulation (a ‘default penalty option’) will minimise chances of lowest common denominator’ outcomes
- Smart regulation suggest important roles for third parties (Fonterra), for audited self-regulation and informational regulation.
- Although adversarial solutions and enforcement be instruments of last resort still need credible deterrence at the top of enforcement pyramid

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