

Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies by P. Grabosky and J. Braithwaite, Melbourne, Oxford University Press, 1986, pp. i-viii, 1-260, \$35 (hardback), \$17.50 (cloth).

Empirical study of the exercise of discretionary powers by regulatory agencies in Australia is in its infancy. *Of Manners Gentle* offers, on the admission of its authors, a sketch on a broad canvas, but an invitation to others to paint in the details. This is a modest claim for a book which might be called, to use a popular but not perjorative expression, the "hitch-hiker's guide" to regulation in Australia. The mass of information which the authors have collected by their personal research presents an often dense yet never uninteresting description of the regulatory style of Australian agencies. However the book is not without analysis. It presents an attempt to explain the behaviour of regulatory agencies, and, by developing a typology of agencies according to their enforcement policies and practices, to identify trends in regulatory style.

The data was collected in the following way. The Director of the Australian Institute of Criminology wrote to heads of government departments responsible for 116 federal and state agencies enclosing a list of questions the researchers intended to ask. Six weeks later the researchers arrived to interview officers at the agencies, which included government departments, statutory authorities and commissions. Answers to questions beyond the direct experience of the senior officers had been gained from relevant parts of the organisation. Both researchers remained present for two to three hour interviews. Tapes were made and off-the-record statements also taken in writing. The response rate to the survey was 95%. This enabled the researchers to present an overview of regulation in a wide range of areas of social control: corporate affairs, environmental protection, occupational health and safety, radiation control, consumer affairs, food standards, drug and medical device regulation, transport safety, prudential regulation, anti-discrimination policy, fraud against the government, in the context of medical benefits, tax and customs regulation, and the miscellaneous areas of fisheries, patents, arbitration, building and the media.

Methodology

Having chosen to conduct a broad comparative study rather than a case study of a particular agency, the authors' research method was of necessity tightly constructed.¹ The difficulties associated with the collection of data by the use of questionnaire and planned interview are well-known. The subject has the opportunity to dissimulate, even by a sub-conscious process. Answers to questions may be less than spontaneous, or even canned

¹ H. Eckstein, "Case Study and Theory in Political Science" in F. I. Greenstein and N. W. Polsby (eds.) *Strategies of Inquiry: Handbook of Political Science*, Vol. 7, Addison Wesley, 1975, 79.

because of the time allowed for preparation. In case studies of particular agencies, on the other hand, such as Keith Hawkins' study of regional water authorities in the United Kingdom,² data is collected by naturalistic observation of field staff in their routine work, supplemented by conversations. By "getting your wellies wet" as Hawkins did, data collection becomes a social process in itself, yet the researcher fades into the background and distortion of the data is minimised.

However, to criticise the authors on this account would be unfair. Questionnaire and interview is the only viable methodological approach to painting a broad canvas. And if the researchers had not given advance notice of the questions they intended to ask at the interviews, then they would not have obtained detail on matters beyond the knowledge of the senior officers at the interview. Possibly further explanation and justification of methodology could have been provided. As to the statistical analysis of the data collected, the present reviewer is not competent to comment, save to vouch that throughout the presentation of such analysis, in particular in Chapter 15, the book remains readable and convincingly argued.

Results

The scene is set in Chapter 1 for the analysis in the closing Chapters, by a brief description of the two archetypal strategic styles of regulatory agencies identified as a result of studies in the United Kingdom and the United States. One is the deterrence style where the agency's response to a breach of the law is invariably to impose the appropriate legal sanction, generally prosecution. In stark contrast is the compliance style where the agency utilises the sanction of legal action only as a last resort and prefers to consult, persuade and negotiate in order to achieve compliance with regulatory standards. The study shows that agencies employ an array of moves in their interaction with regulatees. Some agencies choose enforcement techniques across the whole array whilst others choose within a smaller ambit at varying extremes of compliance and deterrence. The central finding is that the style of most agencies can be categorised as a compliance style, a style "of manners gentle". On balance the results appear to conform to those of case studies in the United Kingdom establishing the predominance of a compliance style of enforcement. All that emerges as distinctively Australian, is the *variety* of approaches amidst the complexity of a federal-state regulatory maze which seems to have grown just like topsy. But the authors do not stop there. They pursue the matter further, canvassing the reasons why agencies opt for particular strategic styles. It is here that statistical analysis supports the core conclusion of the book.

In *Chapter 15—Explaining Regulatory Behaviour*, the authors conclude that the data supports predictions of Black that the greater the

² K. Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Clarendon Press, Oxford, 1984.

relational distance between regulator and regulatee, and the less powerful the regulatee, the greater the tendency to use formal sanctions.³ Thus, the deterrence model characterises the style of an agency responsible for a large number of regulatees. The compliance model characterises the style of agencies which regulate a single industry. Inspectors of such agencies tend to be in relatively frequent contact with the same regulatees and to be recruited predominantly from industry rather than being without prior industry experience. The entry of appropriate controls on the variables tested left the relational distance theory unshaken, apart from the presence of a competing explanation for regulatory style: that agencies generally adopt a compliance model of enforcement when regulating big business.

Theory

In *Chapter 16—A Typology of Regulatory Agencies* the authors utilise the data to develop a typology of agencies according to their enforcement policies and practices. This is a bold attempt to gain a theoretical perspective upon strategic style. The styles range across the spectrum from the “modest enforcers” of the deterrence model to the “conciliators” and “benign big guns” at the furthest extreme of the compliance model. The authors identify a shift in the direction of enforced self-regulation, evidenced by regulatees setting standards and monitoring their own compliance under the general supervision of the agency. A shift in the direction of conciliation is also identified. For example, occupational health and safety regulation now revolves around negotiation and conciliation between business, workers and government through the medium of tripartite structures.

The typology should provide encouragement to theorists to attempt to explain these shifts in regulatory style. Does one style rather than another achieve regulatory goals more efficiently? Has the shift to the conciliation style evolved because it is more efficient, or for other reasons? The discussion in Chapter 16 points to the need for application of theory to empirical data. The combined expertise of the authors in the disciplines of statistics, sociology and criminology enrich the suggestiveness of the unwritten invitation to further research. Can decision theory, organisation theory, systems theory or social psychology account for a finding that an agency having frequent and personal contact with a small number of regulatees in a single industry tends to be less punitive in exercising its discretionary power to enforce legal rules? Recent research in game theory suggests that repeat players in games where there is a temptation to cheat but where the future is important, discover that it is rational to cooperate with each other.⁴ The players develop mutual trust. The relational distance theory and the shifts in regulatory style await further analysis, in the light of empirical data gathered in the course of future case studies of particular agencies.

³ D. Black, *The Behavior of Law*, Academic Press, New York, 1976.

⁴ R. Axelrod, *The Evolution of Cooperation*, New York, 1984.

Accountability

The study confirms that legal rules are not enforced strictly by agencies. But the sort of conclusion drawn by Hawkins, that a compliance approach is chosen by an agency as the most expedient means for achieving regulatory goals, is not explicitly drawn from the results. The authors say that there have been many instances of corruption within agencies. The agencies generally quietly dismiss the officers concerned. The question of accountability presents itself vividly in the problem of "capture" of agencies, a more subtle problem than that of corruption. An agency is "captured" when its officers unintentionally serve the interests of the regulated industry, rather than those of the public. The study indicates that "capture" may occur in Australian agencies not so much because officers are offered plum jobs in industry but because they are recruited from industry. The results show that an agency whose staff are drawn from the industry which is being regulated prosecutes less frequently than an agency whose staff are recruited directly from school or from elsewhere in the public service.

The issue of "capture" is dealt with at several points in the book, but only briefly. (pp. 2, 198-199, 210, 214, 230). The discussion at first seems inadequate when so much of the empirical data invites a conclusion of "capture". Justification for what appears to be a rejection in Chapter 15 of the "capture" theory is sought in the statistical analysis of the data. The number of convictions secured by an agency is tested by the entry of controls for other variables, such as the enforcement alternatives to prosecution, the number of staff in the agency, the size of the regulated firm, whether notice is given prior to inspection, the presence of systematic monitoring of regulatees and criminal investigation training of agency personnel. The upshot is that the relational distance theory remains a satisfactory explanation for the "of manners gentle" style of many Australian regulatory agencies. But the authors dilute the impact of this conclusion by the qualification contained in the final paragraph of the book. They do not wish to deny that empirical research by way of crucial case study of a particular agency may reveal that that agency is captured. Such a case study simply takes on new significance when located upon the broad canvas of the authors' study.

This qualification casts doubt upon the legitimacy of drawing conclusions about capture theory from a study of the type which has been conducted. In order to form conclusions about capture there is a need to explore in greater depth the possible causal links between recruitment from industry and the "of manners gentle" approach. This would require the more detailed empirical data provided by naturalistic observation, and an excursion into social psychology of groups and organisation theory which was beyond the scope of this broad canvas study. Only a case study designed to elicit detailed data from all the players in a regulatory game can give a deep understanding of the nature of the interaction. Data would have to be sought not only from officers employed in the agency but also

from its regulatees, from members of the public such as pressure groups and from other agencies with which it interacts.

However, the authors' intention is to argue for the plausibility or probability of the validity of the relational distance theory rather than the capture theory. The fact that the study whets one's appetite for case studies which would provide more detailed information has to be accepted as a merit rather than a negative aspect of the book. *Of Manners Gentle* simply probes the regulatory scene in a manner different to that of a case study. The broad canvas approach can only encourage others in Australia to conduct empirical studies similar to those conducted in the United Kingdom and the United States. Once data concerning particular agencies has been collected the broad canvas will gain in intensity of tone and line. Indeed in a book published in the same year as that of Grabosky and Braithwaite, *National Styles of Regulation: Environmental Policy in Great Britain and the United States*⁵ by David Vogel, the empirical work of others forms the basis for analysis of the contrasting national styles of regulation in Great Britain and the United States. This work leaves unchallenged the claim made by Grabosky and Braithwaite that no study has ever before attempted to summarise the entire range of major regulatory bodies in one country (p. 8). The skill and thoughtfulness with which the authors have approached their task make the attempt a highly successful one.

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⁵ Cornell, 1986.