

Chapter 7

Recognising the Social Nature of Regulatory Compliance and Focusing on Front-Line Interactions



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Abstract In the swirling conversations about regulation and compliance, a fundamental aspect is often neglected: the fact that regulatory compliance is inherently a social process. Regulation requires individuals (and their organisations) to alter their behaviour and subject themselves to some sort of review or monitoring of that behaviour. Further, actions and involvement with one another are required by individuals on the front-lines of regulation, the regulators, and the regulatees, and not just the individuals at the highest levels of governments and organisations. This chapter will review how regulatory compliance is fundamentally a social process that is engaged in by key—but often overlooked—front-line actors, describe these interactions, and detail the implications for regulatory governance moving forward.

Keywords Regulatory compliance · Front-line · Organisational culture · Cooperation

7.1 The Nature of Regulation

The very essence of regulation is about changing the behaviour of individuals and organisations to align with some broader aim. Those aims might be preventing a chemical spill or ensuring the safety of drilling on an offshore platform, but those goals are the sum total of daily decisions and actions at an individual level. Accordingly, compliance with regulation is both an action or behaviour at a particular point in time and the accumulation of actions or behaviours over time. It is the decision of a wastewater treatment plant operator to halt discharge into a waterway when a piece of equipment is malfunctioning and it is the compliance culture in a factory that ensures that solvent-soaked rags are always placed in containers with lids to

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mitigate the release of air pollutants. These behaviours constitute the implementation of regulation, and they are ultimately the actions of individuals on the front-lines of regulation: regulators and regulatees.

7.2 Regulatory Actors

All too often, the regulatory actors, whose actions constitute the implementation of regulation, are overlooked. Regulators, at least for purposes here, are not the heads of government agencies or politicians who set regulatory goals, but rather the individuals on the front-lines of ensuring that regulations are implemented and complied with by those who fall subject to them. In the USA, they might be state or local government environmental inspectors, or they might be inspectors with the federal Occupational Safety and Health Administration that endeavour to make workplaces safe, or they might be government officials operating at multiple levels of government that work with public school cafeterias to oversee the regulations of what public school students may or may not eat as part of their school breakfasts or lunches. To be effective in their jobs, regulators must have technical competence in a host of industrial areas that they regulate, they must have a sound understanding of the regulatory goals that are sought as well as the risks that those regulations strive to mitigate, and they must be able to engage with a wide range of regulatory counterparts, other regulators, and the general public. The work of these regulators day in and day out to ensure regulatory compliance and their regulatory interactions allows them to be categorised as “street-level bureaucrats,” according to Lipsky (1980), or the more recently preferred term “front-line workers” (c.f. Maynard-Moody and Musheno 2003). These public servants are critical to implementation of regulation.

Regulators, however, cannot implement regulation alone as they are dependent on their counterparts in regulated firms, the regulatees. The term regulatees is not used to indicate the leaders of firms or organisations, but rather used to describe the individuals on the production floor, the drilling rig, or in a restaurant who make sure that applicable regulations are complied with, and they are the ones who meet with regulators during routine inspections and submit regulatory reports to regulators as required. Indeed, many regulatees engage with multiple regulators even from the same agency, as is often the case in the US context when it comes to environmental regulations as firms work with different regulators for air, water, and waste regulations. The primary job responsibilities of regulatees might be compliance, but compliance might also be one of many dimensions of their job. Much like regulators, regulatees must also be technically competent when it comes to their firm’s operations, but they also must understand how regulations apply to their firm, they must navigate the regulatory environment with their corporate environment, and the demands of their clients or customers. These regulatees are essential to achieving regulatory compliance and are also considered front-line workers.

7.3 The Regulatory Environment of These Actors

Both regulators and regulatees are humans operating in a regulatory context that is far from simple—they are not regulatory automatons who implement regulation as written with complete consistency and accuracy. First, these individuals have their own motivations for the work they do. For instance, why did an individual become an aviation inspector? Was it a love of air travel that motivated that individual? While stopping to consider an individual's motivations may seem unimportant, understanding those motivations is the foundation of the work of the individual and how that work is approached. Pautz and Rinfret (2013) note the importance of these motivations and attitudes in their study of subnational environmental regulators in the USA. Pautz et al. (2018) also detail these attitudes of food service directors in American public school cafeterias. Second, regulators and regulatees have their own perceptions of the individuals they interact with to achieve regulatory compliance. An environmental inspector may be an environmentalist who loathes industry that pollutes the environment. The operator of a printing operation may detest government involvement in industry and find government regulations stifle the ability of the company to do its work. Here again, the attitudes that regulatory actors have about their regulatory counterparts will affect the implementation of regulation and their interactions. Third, regulators and regulatees exist in an organisational context and industrial sector(s) which will affect their work. All organisations have their own cultures (and likely numerous micro- or subcultures) and those dynamics will impact how regulators and regulatees approach regulation and compliance. For example, environmental inspectors in an American state environmental agency might find that their organisational culture changes dramatically when a new agency head, who is a political appointee, takes over the agency and completely upends the regulatory priorities. Additionally, a regulated firm may want to do the right thing and exceed its regulatory mandates, but it may lack the financial or technical capacity to do so and is seemingly always contending from outside pressures that it is a bad regulatory actor. These dimensions convey the complexity of the regulatory environment for these individual actors.

7.4 Regulatory Actor Behaviours

As a result of the human and social natures of regulatory compliance, attention must be paid to the individual behaviours of these actors, notably the exercise of discretion and the use of coping behaviours. Regulators and regulatees have ample opportunity to use discretion in their work. A landfill inspector may decide not to punish a landfill for erosion that is likely brought on by torrential rains and work with the landfill to mitigate the ill effects of erosion rather than formally sanction the landfill for non-compliance. A regulator may choose this course of action because of a broader goal of working with a regulated firm in an effort to pursue long-term

positive regulatory outcomes. Additionally, a regulatee working in a public school cafeteria may opt to make soup from scratch and risk violating sodium requirements because students are more likely to eat the food than the commercially available, canned soup that students discard. While both a regulatory agency and a firm may endeavour to limit the exercise of discretion in the work of these individuals on the front-lines, it would be nearly impossible to script how a regulator should respond in every possible situation or offer standard operating procedures for every scenario a regulatee may encounter. The very nature of regulation itself will always entail some degree of administrative discretion.

Besides the use of discretion, coping behaviours are commonplace among front-line workers (c.f. Lipsky 1980; Maynard-Moody and Musheno 2003). Coping mechanisms are the ways that these individuals make what are often near-impossible jobs manageable. For an environmental regulator who is responsible for upwards of 200 firms in a wide range of industries to a health inspector who has more restaurants to visit than hours in the day, these regulators may figure out which firms need more time during a physical site inspection and which firms are likely complying on their own and do not need as rigorous surveillance to do so. This is not to say that these individuals are cutting corners but rather are human and often burdened by untenable workloads and taxed by the sheer volume of regulations that can often be complex and even contradictory; as a result, they have to make decisions about how to achieve the desired outcomes. Similar behaviours are undoubtedly found among regulatees who also have to make choices and prioritise their work in equally complex work environments.

7.5 Regulatory Interactions

The discussion thus far has largely focused on the regulators and regulatees as individuals, but it is their interaction with each other—whether during physical site visits, reviews of regulatory reports, or conversations between the two—that constitute regulatory compliance. Regulation cannot be implemented and achieved alone, it requires a regulatory relationship and is a social process in which both parties are dependent on one another. The interactions between regulators and regulatees require education and information exchange. The information needs and asymmetries subject the actors to risk, vulnerability, and uncertainty. Regulators are responsible for engaging with a variety of firms in different industries and may not be conversant in the latest technologies, processes, or even what it is like to work in that sector; therefore, they are reliant on the regulatee's expertise and willingness to share information. Conversely, regulatees are often in a position where they need assistance in understanding the regulations and what the regulatory agency is actually looking for in terms of implementation. Regulatees also seek to learn about the regulatory agency's prioritisation and what changes may be forthcoming. Here, the regulatees are dependent on the regulator providing this information. With this ongoing need for information and education, the regulator and regulatee need one another.

This information exchange (and dependence) imparts risk for both parties as they open themselves up to vulnerability and uncertainty when they share. A regulatee might seek help from a regulator about a situation that may demonstrate the firm is out of compliance. The regulatee might be earnestly trying to achieve the broad regulatory aim but uncovered a problem and is not sure how to respond given the lack of clarity in a particular regulation and its applicability to the firm. Accordingly, the regulatee may be forthright with their regulator about the situation, but that openness comes with risk and uncertainty about what the regulator may or may not do. Similarly, a regulator may not fully understand a particular production process and need the regulatee's assistance in understanding how a regulation might be implemented. Revealing that lack of understanding to a regulatee makes the regulator vulnerable to the regulatee who may not comprehend how the regulator does not understand these technical aspects and that could undercut the regulatee's view of the regulator, potentially having significant ramifications for their future work together. It is unlikely that in any regulatory situation, a regulator and a regulatee could do it alone. Regulators and regulatees come together through various situations to make sense and meaning of the regulations themselves and to solve problems, thereby making regulatory compliance a fundamentally social process (Van de Walle and Raaphorst 2019, p. 7).

Also, essential to these regulatory interactions is the extent to which respect, cooperation, collaboration, and even trust are present. To learn from one another, to share information, and to make sense of regulation together requires that each regulatory actor have respect for the other and endeavour to work together. Each party has to recognise the role that the other is filling and that they have to engage in dialogue and work together to achieve their professional obligations. Of course, the regulatory actors might not respect the other, but their work might be more easily pursued if there is at least respect for the other actor's regulatory role in the regulatory structure. As the previous discussion of coping mechanisms suggests, there are means for these regulatory actors to carry on without even this most basic level of respect, but research has demonstrated that in most cases, there is respect (Pautz 2013). Indeed, to manage the workloads that each regulatory actor encounters, it is hard to imagine interactions between a regulator and a regulatee that are not built around some degree of cooperation and collaboration (Fineman 1998). The desire to cooperate could be solely rooted in rational self-interest, but it could also be grounded in the recognition that cooperative working relationships lead to better outcomes (Posner 2000). Kagan et al. (2011) aptly summarise that "... effective regulation requires imaginative cooperation as much or even more than it requires government monitoring and legal coercion" (Kagan et al. 2011, p. 39).

This need for cooperation and its importance in regulatory interactions has precipitated conversations, both in the academic space and the practitioner space, about the need for trust in regulatory interactions. Pautz and Wamsley (2012) demonstrate the need—and even desire—for trust in the regulatory interactions between environmental regulators and regulatees. Acknowledging the role that trust plays in regulatory interactions helps advance understanding about how regulators approach

their regulatory interactions with regulatees and the regulatory enforcement style that they utilise (c.f. Scholz 1998). Considering the need for cooperation and perhaps even trust in these interactions can also advance understanding about the multiple roles that regulators may personify and the variability of experiences of regulatees.

In their interactions with regulatees, regulators often embody multiple roles. Regulators are an essential part of a regulatory regime that monitors and assesses compliance, but the very nature of their interactions and the realities of being a regulator also leads to other roles. Regulators often need to be coaches and help regulated firms achieve compliance through encouraging, troubleshooting, and other means rather than just the role of a strict enforcer of the regulations. Regulators also routinely provide assistance—whether formally or informally—to regulatees to help the firms achieve compliance. To what extent a regulator embraces these coaching and assistance roles varies based on the individual but also on the organisational environment and legal environment. And the extent to which a regulator assists a firm is likely a function of their regulatory interactions.

The interactions regulatees have with regulators vary depending upon their experiences with regulators and the role that the regulator embraces. It is also important to note that regulatees regularly engage with multiple regulators, not only from different regulatory bodies, but perhaps also from the same regulatory agency. This variability also shapes how the regulatees approach their interactions with regulators and their perceptions of them.

This discussion of regulators, regulatees, and their interactions demonstrates that regulatory compliance is sought and achieved through the social interactions of these critical actors. Additionally, there can be great variation in these interactions and approaches, which is commonsensical given that this is fundamentally an exploration of individuals and their behaviour. Despite the importance and prominence of regulators and regulatees and their interactions, they continue to be understudied and are often negated when designing (or redesigning) regulatory schemes.

7.6 Implications

The inherently social nature of regulatory compliance demonstrates that acknowledging and understanding the interactions between the regulator and the regulatee is critical. Accordingly, there are a number of important implications for regulatory governance. First, the interactions between regulators and regulatees have to be considered in regulatory design. It is not enough to promulgate regulations and assume that those regulations will be implemented as written because it is up to individuals to implement them and there will always be variability. Second, and related to the first point, regulators and regulatees have to be engaged in regulatory processes in an intentional rather than in a passive way. It is insufficient and detrimental to assume that they will behave in a uniform and predictable way. Engaging these actors early and often in all phases of regulatory development not only acknowledges their critical role but is also likely to lead to better regulatory outcomes because

implementation will be considered from the beginning. Third, there should be more intentional training and managing of these interactions to harness the positive dimensions of cooperation while keeping at bay concerns of regulatory capture. Given the front-line role of these actors and their positionality in organisational hierarchies, it would be advantageous to help equip regulators and regulatees for their interactions with one another and help them understand their central roles by setting them up for positive and cooperative interactions. Fourth, there must be allowances for cooperation, and cultivating cooperation, in these interactions and a recognition of the need for positive interactions. Too often, regulators and regulatees and their interactions are presumed to be adversarial, and the need for these actors to engage positively with one another has to be cultivated. Finally, and most fundamentally, there needs to be a recognition of the importance of these interactions and that attention must be paid to them because regulatory compliance is an inherently social process.

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