

What regulatory rights do states owe their citizens in the 21st century?

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How we think about regulation

as a synonym for law

- administrative law and processes
- delegated legislation
- rule-making
- review mechanisms to hold regulators accountable, including judicial review

How we think about regulation (2)

as constraint on market / barrier to market entry

- OECD focus on trade and investment
- World Bank *Doing Business* (June 2016)
 - **Australia** 15/190
 - **Philippines** 99/190
- ASEAN Economic Community
- 'deregulation' discourse
 - transaction costs v social costs, distributive effects

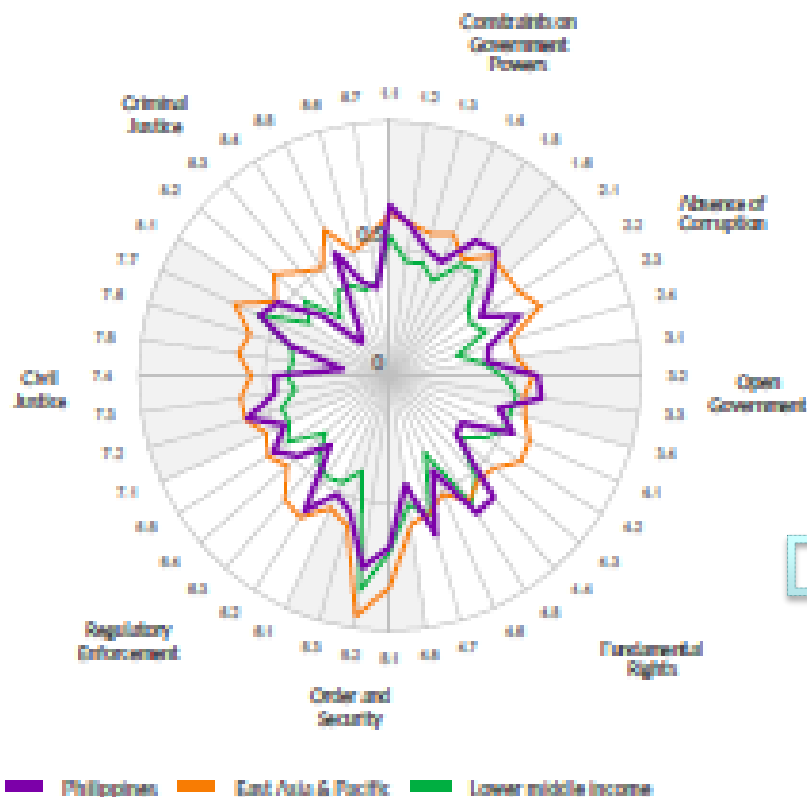
How we think about regulation (3)

As a penalty or enforcement mechanism

- e.g. World Justice Project
 - *Rule of Law Index* 2016
 - **Philippines** 70/113 (✓9)
 - **Australia** 11/113 (✓1)

Philippines

Manila, Davao, Cebu
Region: East Asia & Pacific | Income group: Lower middle income



Overall Score	Regional Rank	Income Rank	Global Rank
0.51	12/15	9/28	70/113

	Factor Trend	Factor Score	Regional Rank	Income Rank	Global Rank
II Constraints on Government Powers	⬇️	0.59	8/15	5/28	51/113
🚫 Absence of Corruption	—	0.48	9/15	2/28	56/113
📋 Open Government	—	0.51	9/15	9/28	63/113
👤 Fundamental Rights	—	0.5	10/15	14/28	83/113
🛡️ Order and Security	—	0.67	14/15	13/28	77/113
⚖️ Regulatory Enforcement	—	0.51	8/15	4/28	53/113
🏛️ Civil Justice	—	0.45	12/15	13/28	87/113
III Criminal Justice	—	0.36	13/15	17/28	84/113

⬆️ Trending up ⬇️ Trending down Low Medium High

Classical concerns about regulation

- Regulatory coherence (e.g. Llanto, 2016)
 - Are regulations across different sectors compatible?
 - Regulatory management system (RMS)
 - Agency charged with routine review and reform
- Efficient regulation
 - Red-tape cutting and 'guillotine'
 - Cost-benefit analysis
 - Regulatory impact analysis (RIA)
 - Reduce unanticipated consequences
- Enforcement capacity
 - Capable bureaucracies and independent agencies

Next-generation regulation

as ways of ‘shaping the course of events’

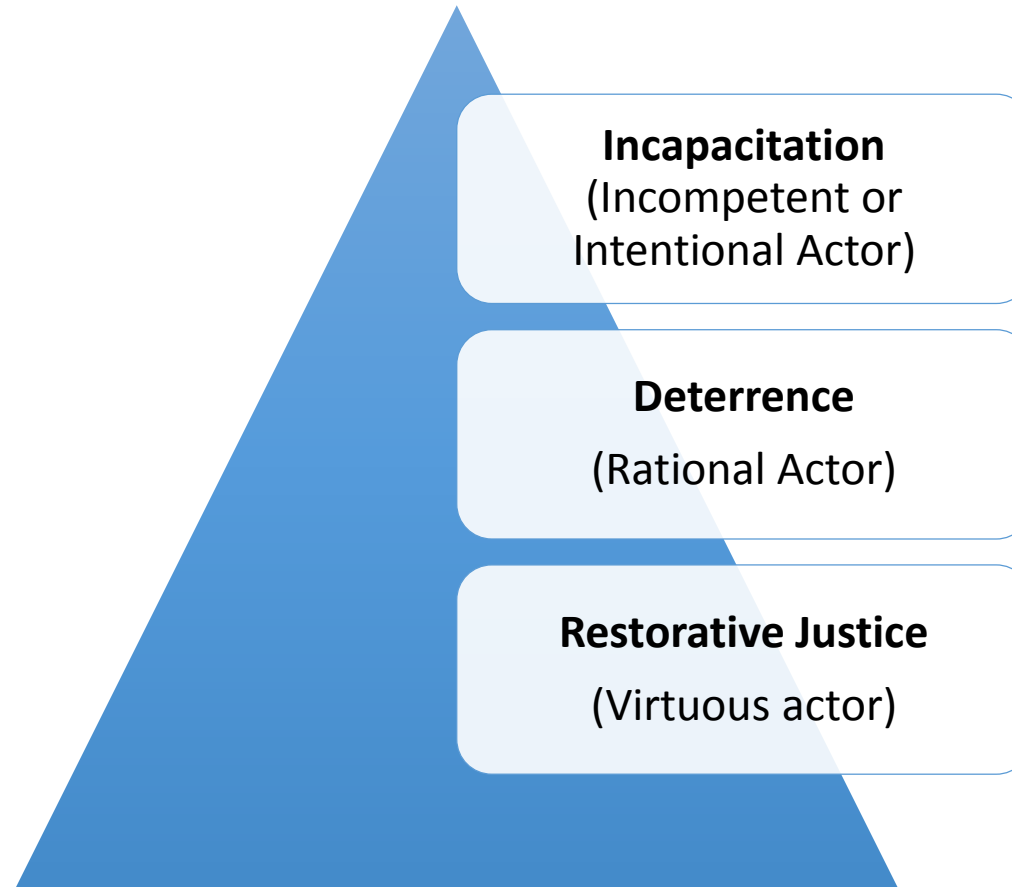
e.g. Richard Thaler and Cass Sunstein (2009) *Nudge: Improving Decisions About Health, Wealth, and Happiness*

- no necessary or substantial connection to law
- includes norms, social ordering, design and architecture
- harnesses behavioural economics

Australian contribution

- **‘responsive regulation’**
 - Ayres and Braithwaite, (1992)
- ‘Law enforcers can be responsive to how effectively citizens or corporations are regulating themselves before deciding whether to escalate intervention’
 - ‘law enforcers’ = not only the state, but civil society: shared regulatory responsibility
 - Normative values at the core

Regulatory Pyramid



Pyramid Regulation

- less costly, less coercive, more respectful options come first
- more legitimate
 - citizens can argue about injustice
- procedurally fair
 - coercion comes after dialogue
- more likely to lead to compliance
- avoids 'system overload'
 - reduces exploitation by rational actors

Abject regulatory failures

Income Management for Indigenous Australians



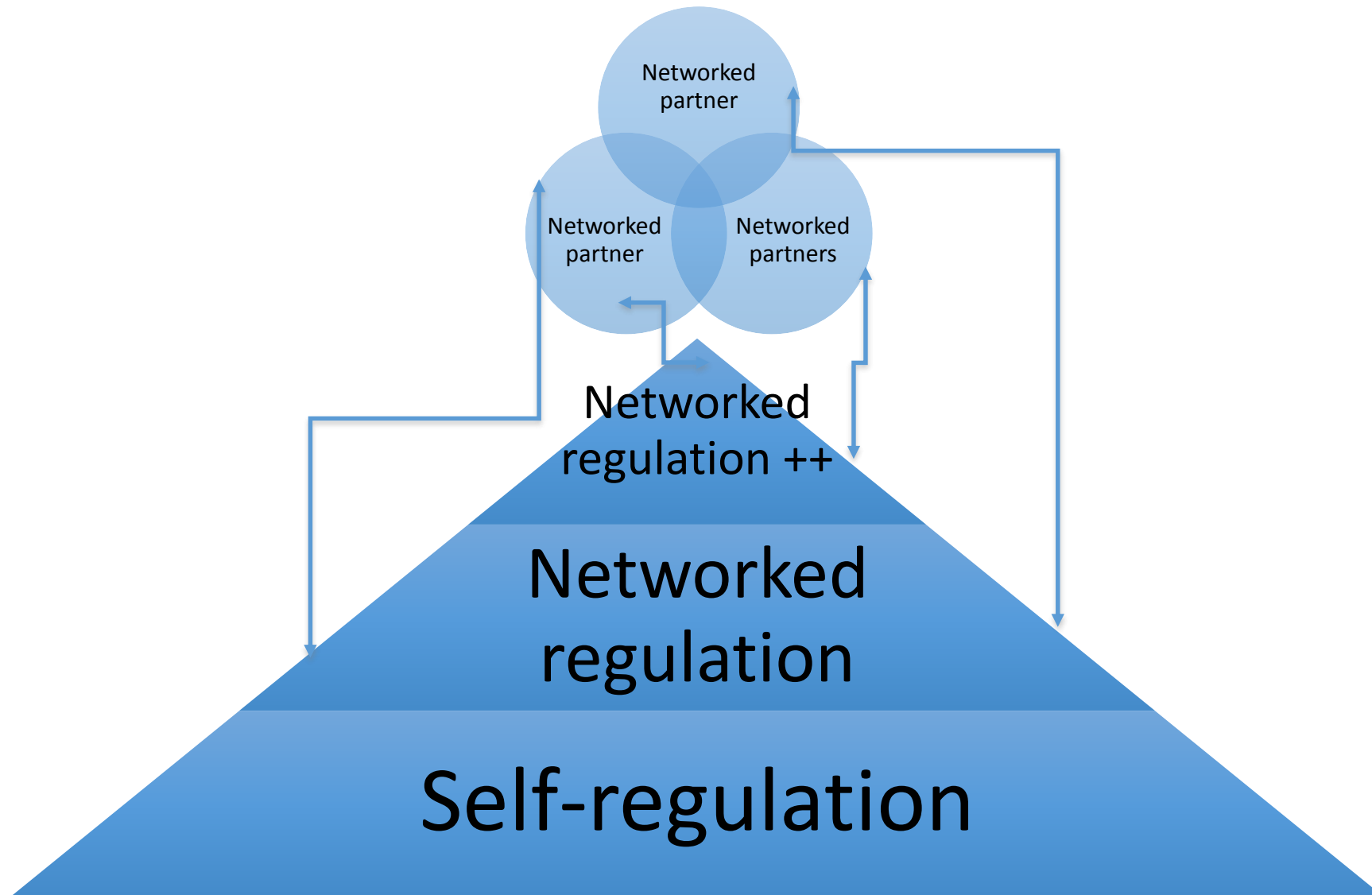
Editorial Cartoon by Angelo Lopez, Philippines Today



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Networked regulation

- Where state regulators lack capacity, other actors can be enrolled to help
 - Other states
 - NGOs
 - Certification organisations
 - Corporate players, including competitors
 - Trade unions
 - Faith-based organizations
 - Citizens and the middle-class

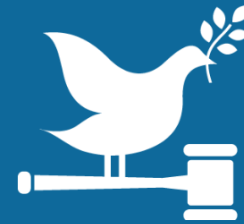


Sustainable Development Goals



SUSTAINABLE DEVELOPMENT GOAL 16

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels



- Significantly reduce all forms of violence and related death rates everywhere
- End abuse, exploitation, trafficking and all forms of violence against and torture of children
- Promote the rule of law at the national and international levels and ensure equal access to justice for all
- By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime
- Substantially reduce corruption and bribery in all their forms
- Develop effective, accountable and transparent institutions at all levels
- Ensure responsive, inclusive, participatory and representative decision-making at all levels
- Broaden and strengthen the participation of developing countries in the institutions of global governance
- By 2030, provide legal identity for all, including birth registration
- Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
- Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

PROGRESS OF GOAL 16 IN 2017

- homicide rate... people in some countries [in] Asia face increased risk of intentional murder
- opaque, burdensome and inefficient regulations and procedures nurture opportunities for corrupt officials
- independent national human rights institutions [ensure] that States deliver on their human rights obligations
 - 37 per cent of countries have a national human rights institution compliant with internationally agreed standards (the Paris Principles)

Source: Report of the Secretary-General, "Progress towards the Sustainable Development Goals", [E/2017/66](#)