
Contents

<i>Preface and Acknowledgements</i>	<i>page</i> xiii
<i>Figures</i>	xvii
1 Introduction	1
2 Theories of regulation	16
2.1 Introduction	16
2.2 Public interest theories of regulation	17
2.2.1 Welfare economics approaches	18
2.2.2 Substantive political approaches	26
2.2.3 Procedural political approaches	36
2.2.4 The role of law in public interest theories of regulation	41
2.2.5 Discussion questions	42
2.3 Private interest theories of regulation	43
2.3.1 Political private interest approaches	44
2.3.2 Economic private interest approaches	47
2.3.3 The role of law in private interest theories	51
2.3.4 Discussion questions	52
2.4 Institutional theories of regulation	53
2.4.1 Tripartism	53
2.4.2 Regulatory space	59
2.4.3 Systems theory	69
2.4.4 The role of law in institutional approaches	74
2.4.5 Discussion questions	74
2.5 Conclusion	75
3 Regulatory instruments and techniques	79
3.1 Introduction	79
3.2 Understanding regulatory instruments	80
3.2.1 Command	80
3.2.2 Competition	85
3.2.3 Consensus	92
3.2.4 Communication	96

3.2.5	Code	102
3.2.6	Classification and hybridisation	105
3.2.7	Discussion questions	113
3.3	Instrument choice	113
3.3.1	Prescriptive approaches and tool-efficacy	116
3.3.2	Politics, legal culture and institutional variety	132
3.3.3	Discussion questions	146
3.4	Conclusion	146
4	Regulatory enforcement and compliance	151
4.1	Introduction	151
4.2	The limits of rules	153
4.2.1	Discussion questions	175
4.3	The enforcement of rules and agency behaviour	176
4.3.1	Observational studies of agency behaviour	181
4.3.2	Normative approaches to enforcement	193
4.3.2.1	Normative prescriptions developed from empirical observation	193
4.3.2.2	Value-based critiques of enforcement practices and prescriptions	200
4.3.3	Discussion questions	203
4.4	Public and private enforcement	203
4.4.1	Civil and criminal liability	203
4.4.2	Enforcement rights	209
4.4.2.1	Economic analysis of public and private enforcement	209
4.4.2.2	Public discretion and private rights	210
4.4.3	Discussion questions	215
4.5	Conclusion	215
5	Regulatory accountability and legitimacy	221
5.1	Introduction	221
5.2	Levels of theorising	223
5.3	Regulatory accountability	228
5.3.1	Discussion questions	236
5.4	Varying logics of regulatory legitimation	237
5.4.1	Discussion questions	253
5.5	Regulatory legitimacy and democracy: Between expertise and pluralism	253
5.5.1	Discussion questions	279
5.6	Decentred regulatory legitimacy: Beyond and above the state	280
5.6.1	Discussion questions	298
5.7	Conclusion	299

6	Regulation above and beyond the state	303
6.1	Overview	303
6.2	Theories of regulation	306
6.2.1	Public interest theories	306
6.2.2	Private interest theories	308
6.2.3	Institutionalist approaches	310
6.2.4	Conclusion	312
6.3	Techniques of regulation	313
6.3.1	Command	313
6.3.2	Competition	315
6.3.3	Consensus	316
6.3.4	Communication	318
6.3.5	Code	320
6.3.6	Complex hybrids and the role of law	320
6.4	Enforcement	322
6.4.1	Problems with rules	323
6.4.2	Public enforcement of supranational norms	325
6.4.3	Private and civil society enforcement	326
	(a) Enforcement through law	326
	(b) Non-legal enforcement mechanisms	328
6.4.4	Summary	329
6.5	Legitimation	330
6.5.1	Varying logics of regulatory legitimation	330
6.5.2	Conceptions of democracy and the role of law	331
6.6	Conclusion: Law's role in regulation above and beyond the state	332
6.6.1	Discussion questions	334
7	Conclusion	338
	<i>Index</i>	345