

**Keeping Up or Starting Over?
Being CLEAR About the Public Interest**

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**Never ascribe to malice that which is
adequately explained by incompetence.**

Napoleon Bonaparte

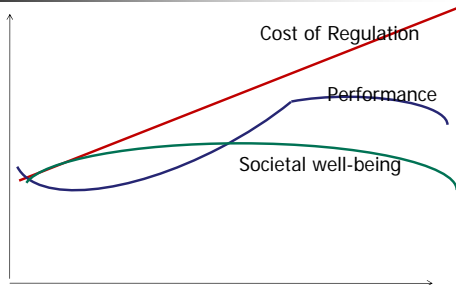
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What If This Is True?



What Is Regulation Supposed to Do?

- Reduce variation in *how things are done*
- Reduce variation in *performance*
- Enable valid *comparability*
- Provide essential information for *funders*
- Generate information to inform *client choice*
- Promote commitment to excellence
- Regulation is a vehicle for solving problems, not an intrinsic good

Regulation: Why It Developed

- Protect the public
- Sort the fakes from the genuine articles
- Promote comparability and mobility
- Create communities of interest and excellence
- Improve overall societal well-being



Regulation: Other Motivations

- Enhance prestige
- Protect markets and turf
- Prevent huge influx of new entrants
- Put new generation through the ordeals endured by older generations
- Secure resources for sector, e.g.
 - > More faculty
 - > Improved facilities and equipment



The Regulation Theology

- Regulation guarantees safety
- Regulation improves quality
- Regulation promotes continuous improvement
- Regulation reliably distinguishes high from low performers



The Consequences Over Time

- Standards proliferate and become more rigorous
- Credentials creep (or leap) upward
- Measurement and reporting requirements increase
- Costs of compliance rise
- Complexity increases



This Model Works If...

- Selected processes are good proxies for performance and outcomes
- Periodic inspection is a reliable measure of continuous performance
- Credentials matter a whole lot
- Accreditation and licensing scores/ratings are valid measures of true performance
- Even if imperfect, this approach is better than any available alternatives



Accreditation in Health & Education: Positive Outcomes

- Allows greater comparability
- Guarantees certain standards and qualifications
- Possibly guarantees minimum level of performance
- Facilitates mutual recognition and portability of qualifications, licenses, educational credits
- Protects public from dangerous or woefully substandard service



Regulation in Health & Education: The Not So Rosy Picture

- Accreditation process can be costly, time-consuming, and anxiety-producing
- Independent research shows little relationship between accreditation status and performance
- Many catastrophes have occurred in accredited facilities staffed by licensed professionals
- Some accredited facilities score in bottom 10%; some non-accredited ones score near top

What We Now Know About Performance That We Didn't Know Then

- Systems and environments influence performance more than individual characteristics
- Interactions among team members and programs are often the keys to performance
- Competency derives less from credentials and formal knowledge than from grounded process
- Continuous measurement, feedback, and adaptation are the keys to excellence
- Knowledge in some sectors has a short shelf life

Regulation Has Tried to Respond

- More comprehensive certification criteria
- Upgraded information requirements
- Greater focus on outcomes
- Changing standards more reflective of contemporary understanding of performance

Yet Questions Remain

- If licensure exam results reliably predict fitness to practice:
 - > why can't anyone write them?
 - > Why prescribe what educational programs should look like?
- If we have real-time, valid performance data, isn't that a more reliable guide to informed choice than accreditation status?
- Since huge variations in quality and safety exist among regulated and certified agencies and individuals, where is the added value?



What Makes Excellent Practitioners

- Do they seek and use data to enhance performance?
- Can they work in teams to solve complex problems?
- Are they good stewards of public or private resources?
- Are they ethically aware and responsive?
- Do they respond well to constructive criticism?



What Makes Excellent Institutions

- Do they monitor, measure, and report?
- Do they have goals and appropriate strategies for continuous improvement?
- Do they disclose and learn from error?
- Is there a culture of respect for workers and customers?



But Regulation Is About Necessary Conditions, Not Sufficient!

- True
- But what if a lot of conditions are unnecessary and impede the quest for sufficient?
- What if correlation is mistaken for causation?
- What if the costs of regulatory compliance leave too few resources to pursue creative innovation?
- What if there is no evolutionary path from yesterday's theories to tomorrow's?

Are You Saying That Regulation Is Worthless, Harmful, and Wasteful?

- Regulation prevents some harms
- Regulation is efficient in that it creates trust and eliminates redundancy in assessments
- It creates communities of interest and common languages of practice
- It roots out charlatans and creates penalties for cutting corners dangerously

However...

- It is not clear that the model adapt fast enough or fully enough to catch up to the changing knowledge base
- It may cross the line between valid requirements and indefensible protectionism
- The tension between the need for stable and consistent regulation and the world of constant change may be irreconcilable
- Its foundation may crumble as real-time performance data becomes the gold standard

That's All Amusing Enough, But What's the Solution?

- Move to an outcome-based, real-time approach wherever possible
- Abandon hard categorical judgments and pursue continuous quality improvement
- Sunset regulatory provisions and renew them only of there is evidence of effectiveness
- Pay attention to the performance literature and anticipate challenges to conventional wisdom
- Don't ignore the intangibles just because they're hard to measure



The Ideal Future State

- Leaner, more evidence-based requirements
- More permissive about means, less tolerant of variation in results
- Higher correlation between regulatory assessments and actual performance
- A tiered regulatory structure whereby those who have demonstrated historical excellence have greater latitude to pursue excellence (as in UK hospital trusts)
- Regulatory assets increase in value and costs diminish

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