‘Understanding the (new) moral economy of regulating lawyers: reflections on developments in Australia and the UK’

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ANZLEC5
Monash University
4 December 2015
Moral economy (in case you thought lawyers’ ethics was an oxymoron…)

• From political economy, social history, anthropology, economic sociology, development economics
  – Andrew Sayer (2000): “the ways in which economic activities - in the broad sense - are influenced by moral-political norms and sentiments, and how, conversely, those norms are compromised by economic forces.”

• Hume: ethics as a mix of personal benefit/utility, personal commitments and sentiments extending our concerns for others

• Smith’s ethical economics: reading The Wealth of Nations through the Theory of Moral Sentiments
and the realignment of ‘regulatory space’:

• the study of the *dynamics* through which organisations gain, maintain, and sometimes lose their positions within a regulatory arena (Black, 2002; Hancher & Moran, 1989)

• the idea that resources and information are dispersed and fragmented among a group of constituents in an area of governance, and hence that power may be dispersed rather than concentrated [in the hands of government] (Scott, 2001)

• Context of “street level morality” (Cf Lipsky)
• Changing modes of regulation (external/internal; ‘hard’/‘soft’ regulation)
• Normative partitioning
• Re-categorising the ‘internal goods’ of the profession
The rise of a ‘consumerist-competitive mode of regulation’ (Semple et al, 2013):

• Competition between providers
• Consumer rights orientation
• Multiple legal occupations
• Co- or external regulation (+ regulatory competition in E&W)
• Tolerance of unregulated providers
• Regulation of individuals and entities
• Professional segmentation
• Deprofessionalisation
  – Liminality
  – Precarity
  – Scarcity/loss of ‘compleat lawyer’ roles
• Deterritorialisation of identity?
  – Increased mobility
  – FLCs
• De-moralisation and re-moralisation
• The ‘new’ virtues (eg)
  – Profitability
  – Performativity
  – Compliance
• The regulation of altruism (and the economics of regard)
Provisional conclusions

• Changing moral economy
  – Loss of individual and collective moral autonomy
  – Changing street level morality
• New regulatory dynamics/key players
  – External regulators
  – Clients
  – Firms
  – Insurers