

The Regulatory Craft

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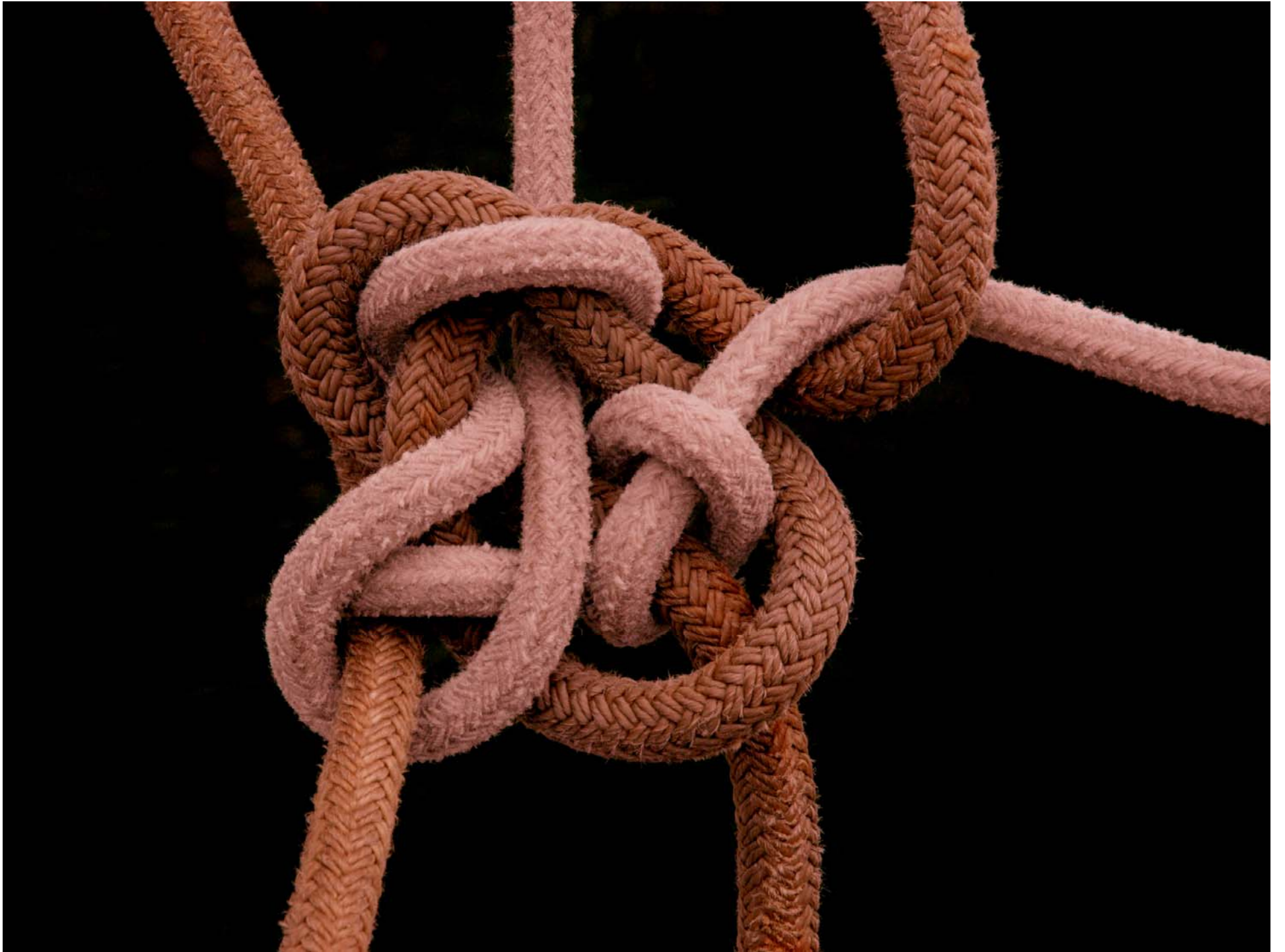
THE REGULATORY CRAFT

CONTROLLING RISKS, SOLVING PROBLEMS,
MANAGING COMPLIANCE



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paths to risk control:

political pressures for reform

Regulatory Style: Presented as Dichotomy

"Old Model"

- Enforcement
- Reactive
- Adversarial
- Incident-Driven
- "Hard"

"New Model"

- Compliance Assistance
Customer Service
- Preventive
- Partnerships
- Problem-Solving
- "Soft"

Effects:

- Schism within organization
- Enforcement Agents disenfranchised, demoralized
- Precipitous drop in enforcement numbers (the "Bean-Dip Bunker")
"We don't do enforcement any more"
- "Get the numbers back up"...

Regulatory Styles: Dichotomy (continued)

Strategic Innovation

- Risk-Orientation*

Tactical (Risk-Specific) Choices

- Tool selection/combination
- Regulatory style to fit audience
- Best time for intervention.

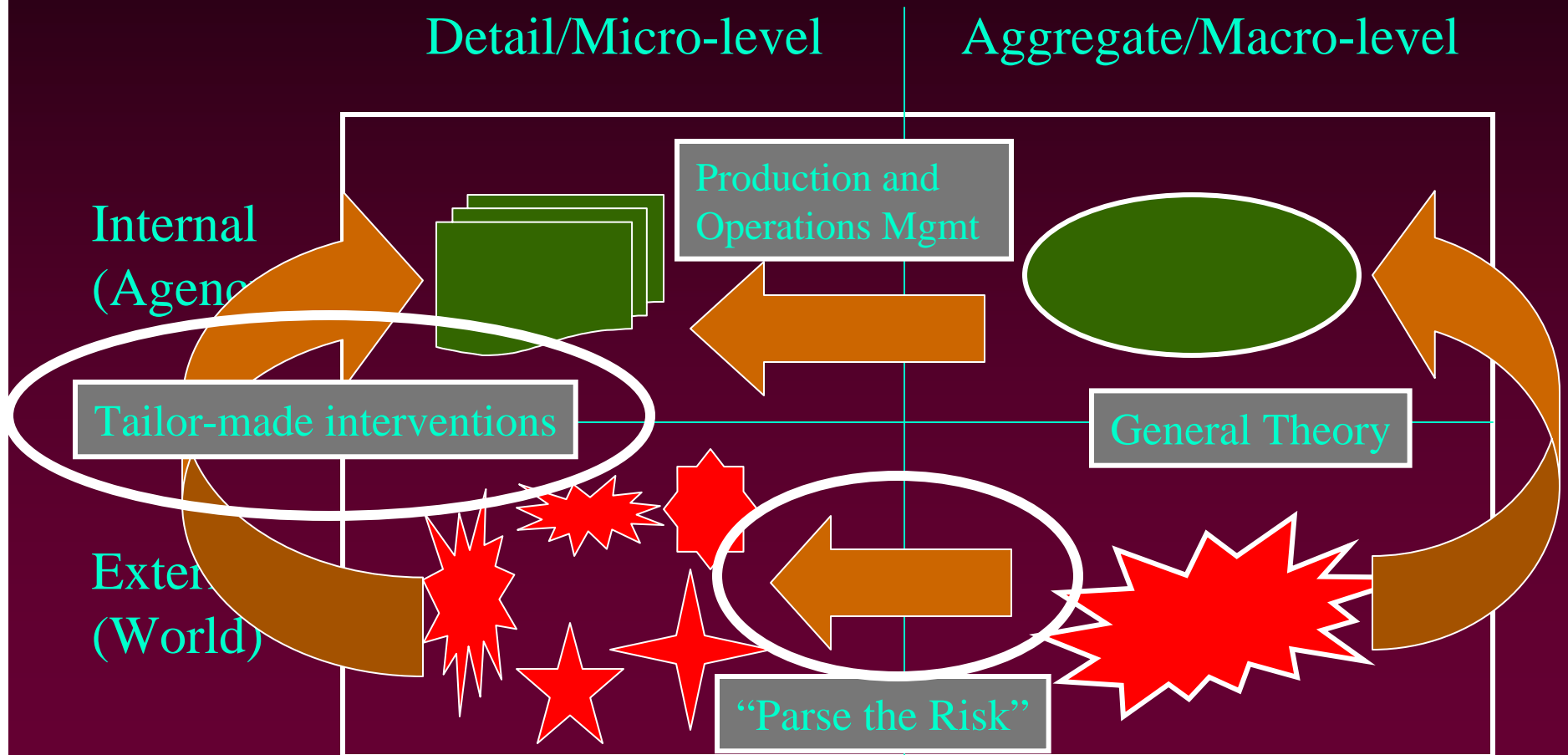
* Or “problem-orientation,” or “compliance-management.”

paths to risk control:

understanding innovations,
and innovativeness...

(summary version)

Theory of operations



Assessment of Current Position...

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Steps along the way...

- 1) Shaking loose...exploring broader range of methods, departure from traditional stance/style
- 2) Make significant shift in investments among expanded toolkit (often deliberately *less* of something)
- 3) Determine preferences among methods, and set the balance ("optimal mix")
- 4) Shift to task focus, understand craftsmanship, deploy tools around selected tasks...but in style of innovative projects
- 5) Institutionalize risk-mitigation approach, dedicate resources, learn skill sets, connect to other forms of work.

Implications: regulated community *should not expect*...

That adoption of a "risk-management" approach will:

- 1) mean "less enforcement"
- 2) raise tolerance levels for risks to health/safety/etc.
- 3) provide an escape from regulatory obligations
- 4) mean that all regulatory choices must be governed by rigid rules, scientific or analytic (by reference to which industry can hold regulator accountable)
- 5) guarantee higher levels of uniformity/consistency
- 6) limit regulatory discretion
- 7) preclude the use (by regulators) of randomness, mystery, unpredictability, and symbolic enforcement actions as methods for managing compliance/behavior.
- 8) completely align the interests of regulators and regulated
- 9) produce cozy regulatory relationships (leading to "capture"!)

Implications: regulated community *should* expect...

That adoption of a "risk-management" approach will:

- 1) provide regulators a **more rational basis** for allocating attention and resources
- 2) provide an **integrated managerial umbrella** for expanded toolkit (organize *tools* around *tasks*, rather than vice versa)
- 3) enable regulators to deal with **emerging and unfamiliar risks** (not aligned with existing structures and traditional programs)
- 4) enable regulators to see clearly when they need **new tools**
- 5) shift regulatory agencies along the spectrum from "legal" model to "**expert" model of conduct** (law becomes more *tool*, than *master*)
- 6) enable more **fluid and dynamic** organizational behavior, as risks wax and wane
- 7) **expand the forms of regulatory discretion** that must be exercised
- 8) shift performance emphasis towards **effectiveness** (compliance rates, risk-mitigation, behavioral change), & away from outputs/productivity
- 9) provide sound and defensible basis for **task-focused cooperation** (where interests of regulator and regulated align)

