

Success in Law (Hard & Soft)



Marc Saner, University of Ottawa, @MarcSaner
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Hard Law



Constantly
criticized

From within ...

From outside ...



Monday, May 14th, 2018

[News Election Act](#)

Feds' Bill C-76 privacy changes 'insufficient,' a missed opportunity to make long-called-for reforms, say critics

Hard Law: Do we know “success”?



(Previous Conservative Government, PM Harper)



Scorecard on Reducing Regulatory Red Tape

Table 1: Reform ratings for 2014– 15

Regulatory Portfolio/Entity Assessed	One-for-One Rule	Small Business Lens	Forward Regulatory Plan	Service Standards	Administrative Burden Baseline	Interpretation Policies
Aboriginal Affairs and Northern Development Portfolio		N/A				
Agriculture and Agri-Food Portfolio	N/A	N/A				
Canadian Heritage	N/A	N/A				

Success: in the Eye of the Beholder?



Picasso (1937): Portrait of Dora Maar



Soft Law: Definition, Hopes & Dreams

“Instruments or arrangements
that create substantive expectations
that are not directly enforceable”

(Marchant & Allenby, 2017)

Fix:

- Temporal:** **Pacing**
(anticipation & flexibility)
- Spatial:** **Diffusion**
(reach & enforcement)
- Balance:** **Stop-go**
(regulation-innovation pendulum)



'Substantive Expectations' & 'Success'

It has worked as an **INITIAL** rule (but no longer)

It has not worked at first, but then it **MATURED**

It has worked as a **BRIDGING** tool toward hard law (pilot & gateway)

It has not really worked, but it was instrumental to our **LEARNING**

It has promoted upstream engagement ("**RESPONSIBLE INNOVATION**")

It has **DEMOCRATIZED** science, technology and governance

It has promoted international **HARMONIZATION**

Rules



Information
Exchange

Opportunities for Success: Life Cycle Thinking (1)



Policy Development & Early Risk Identification

- Tools to engage upstream; foresight tools
- Shared definitions, protocols, standards
- Tools for international engagement
- Statements of policy principles
- Arrangements for capacity building

SYMPOSIUM

PROACTIVE INTERNATIONAL REGULATORY COOPERATION FOR GOVERNANCE OF EMERGING TECHNOLOGIES

Marc A. Saner and Gary E. Marchant*

ABSTRACT: This article provides a systematic checklist to guide proactive bilateral and international regulatory cooperation (in the sense of “alignment” or “harmonization”) in the context of emerging technologies. The article is structured along a life-cycle starting with preregulatory activities and ending with postregulatory processes. The background research is based on a series of interviews with American and Canadian experts carried out in late 2013 as well as studies of previous international regulatory alignment examples. Our aim is to inform the regulatory debate on how to best develop proactively aligned regulatory programs for emerging technologies in bilateral (e.g., United States-Canada) and international contexts.

Opportunities for Success: Life Cycle Thinking (2)



Regulatory Development & Early Risk Assessment

- **Sandbox projects on regulations**
- **Pilot projects on risk**

Compliance & Enforcement

- **Reconsider Soft Law**

Upshot

- If hard laws are rarely considered “successful”
- And if soft laws may be considered successful in so many ways
 - Pacing <> diffusion
 - Rules <> Information exchange
 - Pre-regulation <> post-regulation
- Then, comparatively, there are countless examples of successful soft laws
 - Should we be careful with “hard” vs “soft” distinction?

