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The Realities of Regulatory Change: Beyond the Fetish of Deregulation

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ABSTRACT

The article argues that any discussion of regulatory change should be sensitive to the manner in which regulation was originally constructed and developed. Any change can only be understood by a mapping of the complex interrelation of spaces, spheres and actors of regulation. The act of regulatory change requires shifts and re-alignments across a wide range of fronts. This is because regulation involves alliances and linkages across a range of spaces and actors, contingent upon the peculiarities and limits of different states and their respective civil societies. The manner in which regulatory change may be prosecuted also belies any notion of unproblematic transfer of responsibilities between actors.

KEY WORDS

deregulation / employment / industrial relations / informal / regulation

Introduction

Issues of social and economic regulation, and importantly regulatory change, have preoccupied academics from numerous disciplines and theoretical traditions over recent decades. Increasingly there is concern not just over the impact of regulation, but also over how we view the process of regulatory change itself. The problem is partly conceptual in nature. The complexities of regulation in terms of heterogeneous manifestations, paths of development and processes of transformation are too often obscured by the

tendency to conceptualize regulation in zero-sum terms – regulation versus deregulation – or abstracted into functionalist typologies. Moreover, although discussion of the issues of regulation appear in a variety of social science sub-disciplines, such as industrial relations, criminology or urban sociology, for example, there is little apparent interface between these areas of debate. Industrial relations, in particular, is an area where regulation is at the heart of the identity of the discipline. However, in recent years, engagement with notions of regulation have been too narrowly defined, and the discipline has failed to locate the discussion of regulatory change in terms of any broader social context or theoretical frameworks.

It is argued within this article that the act of regulatory change requires shifts and re-alignments across a wide range of fronts. This is because regulation involves alliances and linkages between a range of sites, spaces and actors – both formal and informal – that make up the panoply of regulation, boundaries between which are constantly prone to change. Such regulatory arrangements are also contingent upon the peculiarities and limits of different states and their respective civil societies. This is why regulatory change must be seen as a political and contested process.

In pursuit of a more nuanced understanding of regulatory change, the article draws from debates on micro-political processes with the aim of showing how systems of regulation are tied together on the basis of alliances around the pursuit of economic and social outcomes. The article starts by attempting to conceptualize regulation in such a manner, tackling the problem of defining regulation by exploring its functions. In the following sections, it is argued that regulation should not be viewed solely in terms of a strict hierarchy of levels, as there is a multiplicity of regulatory sites, spaces and actors whose relationships define the pattern and efficacy of regulation. Moreover, relations and linkages between sites, spaces and actors are key to the operation and change of regulation. As notions of ‘deregulation’ often involve the movement of regulatory function between actors – hence our preference for the terms regulatory change or re-regulation – it is necessary to develop a nuanced appreciation of this complex panoply of regulation. To these ends, the article moves beyond an examination of the formal mechanisms of regulation by drawing on traditions of enquiry that address the informal, and even illicit, dimensions of regulation and economic activity. These contributions are not intended to stand as case studies, but rather as empirical illustrations of the panoply of regulation. These illustrations also demonstrate that such issues are being discussed in diverse but adjacent disciplines, recognition of which could help advance our understanding of economic and social regulation. As a consequence we argue that questions of linkages, coupling and congruence between these actors and spaces must be at the heart of our understanding of regulatory processes, and ultimately their change. Furthermore, transformation and change within regulation take different forms, which represent a political interplay that determine how dominant regulatory actors emerge.

The Problem of Defining Regulation

In a recent survey of current debates on the conceptualization of regulation Baldwin et al. (1998) argue that three key strands can be detected. The first views regulation in terms of 'targeted rules' 'accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance' (p. 3). A second view is to be found in the area of political economy, which conceptualizes regulation as being co-determinous with the state and its attempt to manage the economy. However, there is a third view that considers regulation to be 'all mechanisms of social control – including unintentional and non-state processes...' (p. 4).

All too often the concept of regulation is reduced to pertaining to one specific function performed by a narrowly defined set of sites, namely a monitoring role played by the state. However, processes of regulation may be provided by a much wider range of sites and actors, within and beyond the boundaries of the state. Regulation does not exist within a vacuum; it operates within an economic and social context. Within this the role of the state is obviously of great importance, and the way regulation emerges is shaped by the need to construct cohesive, consistent and complementary systems of state intervention (Torfing, 1990).

Furthermore, regulation has increasingly been conceptualized from a starting point of deregulation. This is particularly apparent in the industrial relations and labour process literatures, where the focus of analysis in recent decades has been on the employment and social outcomes of political changes from the 1980s onwards (see Martínez Lucio et al., 1997). This raises a number of issues. Such an approach tends to reduce the conceptualization of regulation to a dichotomy viewed in terms of the quantitative absence or presence of regulation, which is inappropriate as it is insensitive to the variety of ways in which the functions of regulation can be performed. The imperative of the function of regulation, in terms of economic and social reproduction, is not removed by dismantling the state apparatus of economic intervention and governance – popularly conceptualized as deregulation. Such reform implies a shift in the form of regulation, and the transfer of this function to another site (Majone, 1994, 1996, 1997; Seidman and Gilmour, 1986). As Standing rightly observes with regard to labour market reform: 'There is no such thing as the "deregulation" of labour markets. No society could exist without modes of regulation' (1997: 10). A further problem is that focusing on the process of deregulation assumes the pre-existence of regulation yet obscures the observation of the efficacy of these mechanisms, their operation in relation to, and in the context of, other sites of regulation and the contingent processes which shaped their development. This leads to a further problem. The obscuring of the contingent nature of regulation may be necessary if the object is to bring developments in highly diverse contexts into some form of equivalence to demonstrate the concept of deregulation as a ubiquitous trend. The danger is that this neglects the often highly heterogeneous nature of these processes and

their outcomes (Hansen et al., 1997). The concept of deregulation can be a blunt tool for the analysis of processes of regulatory reform. Whether discussing the withdrawal of the state from direct intervention in the economy or the dismantling of the traditional mechanisms for the regulation of the employment relationship (MacKenzie, 2002; Tickell and Peck, 1995), a more nuanced, multidimensional approach is required that is sensitive to the relationship between sites of regulation and the subtleties of the transfer of roles between these sites that are too often conflated under the rubric of deregulation.¹ This more inclusivist view of regulation would be consistent with Baldwin et al.'s (1998) third category of regulation. Such an approach does not conflate regulation with the role of the state and the practice of targeted rules. When conceived in this narrower way, the dismantling of state intervention, in the form of rules or institutions, becomes logically synonymous with *deregulation* and a shift to a *deregulated* situation.

Baldwin's third category of regulation is therefore of interest because it could be argued that it encompasses structuralist-Marxist approaches with their view of a variety of institutions reinforcing the accumulation of capital and the role of the state; post-modernist views that regulation is a de-centred phenomenon that relies on a network of actors, discourses and identities; and more radical pluralist approaches that emphasize the importance of complex institutional relations within regulatory processes. The structuralist tradition, with its understanding of mechanisms that support and underpin the role of the state in the economy, such as industrial relations institutions (e.g. collective bargaining) or social relations (e.g. the family), has been transformed within the regulation school generally into a less reductionist approach which highlights the need to understand the coordination of regulation as an issue in its own right (Jessop, 1990, 1995; Théret, 1994). Alternatively, Miller and Rose (1990), from a Foucauldian perspective, talk of a multiplicity of networks through which agents interact, sustained by a shared set of understandings and objectives established through a series of common discourses. This approach is interesting in that it provides a broader map of the processes of regulation and the way in which emphasis can shift between sites. However, to view regulation as the result of such a set of engagements also requires an appreciation of the 'regulatory space' within which these processes are played out, where competing interests and agendas are articulated through relations of power (Crouch, 1986; Hancher and Moran, 1989: 277).

We therefore concur with the view that regulation comprises a functional logic associated with the reproduction of social and economic relations, manifest in various sites (see Martínez Lucio and MacKenzie, 2004). This does not, however, necessarily imply a functionalist position in a reductionist sense, as the inevitability of outcomes cannot be assumed:

regulatory 'needs' trigger the quest for a regulatory 'solution': but do not determine the configuration of the institutional response. (Peck, 1997: 96–106)

The limitations of actor capacity can also act as a bar on outcomes in terms of the efficacy of regulation, and can render problematic the ready transfer of regulatory responsibilities between sites (Martínez Lucio and MacKenzie, 2004). Although it can be said that certain regulatory sites may have greater actor capacity than others, this is not to suggest that the function and nature of regulation are pre-constituted. This position is however crucially distinct from that of the Foucauldians in that it postulates an imperative to establish stable and regular forms of regulation, and relations between different sites, as opposed to the more decentred fluidity of the Foucauldian version (Jessop, 1990: 227–9). It is important therefore to understand the hierarchy of sites and actors that make up this construct, and the ways in which they interrelate.

The Levels of Regulation

Such changes in the location of regulation must be placed within the wider framework that has characterized the regulation of employment within Europe in the post-war period. The role of the central state provides the obvious starting point. Although there are important national variations, this has tended to reflect the various institutional manifestations of the Keynesian Welfare state (Tomlinson, 1989), often pursued through concertation between social actors. Corporatist concertation could entail the transfer and sharing of regulatory roles to other sites and the inclusion of other actors within a regulatory space (at a level) previously monopolized by the state. This may have reflected actor capacity problems of state bodies, due to finite resources and growing spaces of regulation associated with the additional demands of the Keynesian Welfare state over recent decades. Therefore, as we move to the next tier of regulation, which is provided by the institutions of collective industrial relations, we can see the interlocking and mutually supportive relationship between sites and actors operating across these levels. Although again there were crucial national variations, for much of the post-war period industrial relations institutions tended to reflect, to a greater or lesser extent, centralized mechanisms of joint regulation, usually in the form of collective bargaining between national level unions and equivalent employers' bodies (Crouch, 1993). The decentralization of bargaining has been a ubiquitous experience across Europe, although crucially not a homogeneous one (Hansen et al., 1997), which both provides a link to the next tier of regulation and demonstrates the divergent ways in which regulatory change and processes of transfer may occur. Another major tier of regulation has been at the level of the organization. Mechanisms of regulation in the form of open-ended direct employment contracts, internal labour markets and systemic rules of employment have served to secure the supply of labour and ensure its reproduction. The actors at this level, employers and unions, therefore ultimately contributed to the overall aims and objectives of regulation at the higher tiers of economic management within the post-war Keynesian epoch (Boyer, 1988; Herding, 1972). The boundaries between these levels and

the relationship between actors occupying these various sites of regulation may vary in terms of context and over time, but their interrelationships are vital to understanding the complete picture of regulation and its changing patterns (Tomlinson, 1989; Jessop, 2002: 61–8). Building on the schema above, further illustration may be useful.

The privatization of state corporations has been a widespread phenomenon in Europe, and is associated with regulatory change in a number of ways. Firstly, it represents the withdrawal of the state from the direct intervention in the coordination of economic activity within the sector in question. Secondly, it may be associated with the liberalization of that sector and the opening up of a state monopoly to competition – popularly presented as ‘deregulation’. This ‘deregulation’ in turn may be associated with the creation of a state agency to play the role of coordinating policy and policing the activities of private capital; in essence transferring the aspects of the regulatory responsibility previously held by the central state to another actor. At the next level down, the formal withdrawal of the state from direct intervention in the industry extends to the operation of the industrial relations mechanisms. Although government reform has reshaped the industrial relations of the public sector in many European countries (Ferner, 1994), the traditional model was one of highly centralized structures of joint regulation, which were commensurate with corporatist concertation and often utilized as a macro economic policy tool. As a mechanism of regulation, such arrangements are foregone.

The impact of change is also felt at an organizational level, in a number of ways. The state as the employer is no longer directly involved in the regulation of the employment relationship. The organization itself may remain largely intact, and the regulation of the employment relationship may continue in a similar fashion, with the same actors in terms of management and unions continuing in their respective roles. However, privatization in the UK has become linked to the challenge to public sector assumptions over joint regulation, the decline of union influence and essentially the redefinition of regulatory roles of management and unions (Ferner and Colling, 1991; Martínez Lucio et al., 2000; O’Connell Davidson, 1993). Furthermore, changes in the boundaries of the organization have impacted upon the regulation of the employment relationship (MacKenzie, 2000, 2002). Outsourcing, subcontracting and employment agencies have increasingly displaced the traditional mechanisms for the regulation of the employment relationship, based on open-ended employment contracts, administered through vertically integrated internal labour markets. Essentially the responsibility for the regulation of the supply of labour is migrated to another actor introduced into the regulatory space previously dominated by the internal mechanisms of the firm and crucially subject to joint regulation (MacKenzie, 1998). This represents the displacement of the regulatory role of unions from this area of employment, simultaneous to the introduction of a new actor, one that essentially represents an alternative source of managerial control – although this does not preclude the possibility that unions can reassert themselves within this area (Fairbrother, 1994).

Regulatory change exists at various levels, from the national political (macro level) to the management of the employment relationship, and changes at one level can impact upon others. However, it must be recognized that although privatization and regulatory change have been common experiences across Europe these processes are politically mediated and contingent upon unique sets of social relations and institutions. Therefore the ways in which they have unfolded and indeed the outcomes may be highly heterogeneous, shaped by political factors and the way in which the means of regulation were constructed historically.

Appreciating the Sites, Spaces and Actors of Regulation

Regulation cannot, however, be viewed solely in terms of a strict hierarchy of levels. Although these levels do exist, with their interrelations being central to national systems of regulation, within them there may be a multiplicity of spaces and actors. The boundaries between these spaces may be constantly renegotiated, and regulatory jurisdictions may overlap.

The function of regulation is ultimately to facilitate social and economic reproduction, which necessitates the conduct of regulation across various sites operating at various levels in an interlocking and often mutually supportive fashion. The site is the point of interaction between regulatory actors, often reflected institutionally, and can be considered to be a location where a regulatory outcome is arrived at through these interactions. Each site of regulation operates within a certain jurisdiction, creating a regulatory space where various actors may intervene in the regulatory process (Crouch, 1986). These spaces represent the boundaries of influence of these regulatory processes. Within this regulatory space each actor will have their own domain – their own ‘sphere’ of jurisdiction where they are the sole actor. For instance, management and trade unions interact within a regulatory space, but each has actor has their own sphere of jurisdiction. The boundaries of regulatory spaces may overlap. For example, in terms of social reproduction, the family is a key institution that operates alongside, and may at times overlap with, the education system, and indeed the boundaries between the two may shift over time, perhaps due to shifting social needs or changes in political agendas. Hence, any conceptualization of regulatory actors must be sensitive to multiple roles and the diverse spaces and spheres in which they operate. With this in mind, we have built upon, and extended, Hancher and Moran’s (1989) own development of Crouch’s (1986) notion of regulatory space. However, we maintain that these spaces are not just national and macro specific. These spaces exist and operate at numerous levels, and a variety of spaces interact with each other and overlap, with relevant actors operating across multiple spaces. Furthermore, contrary to Hancher and Moran’s position, the links between these actors may involve more than just formal organizations and social relations.

To break this down further, within regulatory sites the logic of reproduction is based on the establishment of order and regularity, in terms of establishing shared rules and sustaining consistent decision-making processes. It provides a stable environment, which provides predictability over the conduct of agents within that space. This allows the development of expectations regarding the behaviour of others, which provides the basis for social and economic interaction of those operating within the jurisdiction of this regulatory space. These rules and processes will contribute to two types of outcome. The first outcome is the ongoing reproduction of the regulatory process itself, its continued efficacy and the maintenance of the conditions achieved through the establishment of governance mechanisms. A second outcome may be specific regulatory goals, which may reflect a certain political agenda. The failure to achieve these goals may contribute to regulatory reform. These specific regulatory goals ultimately relate to broader issues of production and reproduction, which contribute to the legitimacy and toleration of one regulatory actor by another, and can act as a measure of actor capacity. Continuity of the regulatory actor may also be contingent on the successful achievement of these broader outcomes.

For example, the key institutions of industrial relations, operating at various levels, provide such regulatory functions and outcomes within the economy. If we focus on port transport (i.e. the docks) in the UK and the USA, we can see how trade unions within this sector historically fulfilled key regulatory functions in terms of the two outcomes discussed above (Levy, 1989; Turnbull, 1993; Turnbull et al., 1992). Firstly, in terms of continued efficacy, the trade unions contributed to the regulation of docks through such processes as collective bargaining with employers, and the collective administration and representation of the labour force. The intended outcome of this contribution was the stability of labour supply, consistency in systems of remuneration and predictability of the behaviour of workers. These were achieved through the mechanisms of controlling the supply of labour by organizing recruitment and administering the internal labour market in terms of seniority-based promotional systems and work allocation. Union roles embraced the hiring and utilization of labour, although this varied in other countries in terms of the extent of such a role; for example, in Germany, employers were the main organizers of contracting while in Italy it was the unions (Turnbull, 2000: 371). Such has been the extent of the union role in sectors such as the docks (and construction) in the USA and Canada that state attempts to displace union activity in terms of hiring halls unsettled long-established patterns of employment and workplace practices (Levy, 1989: 517–8; Sexton, 1989: 528). In addition, the unions have historically provided a means of conflict management with regard to disputes, and misbehaviour more generally, which may have varied in terms of organizational effectiveness but that used a variety of bureaucratic and democratic methods to mediate conflict. The regulatory role of unions was therefore central to the ongoing operation of the port transport system during much of the 20th

century. In the 1980s, the United Kingdom witnessed the emergence of a policy agenda that charged the regulatory actors within this space with the specific goal of reforming port transport along lines that were anathema to the existing processes and outcomes outlined above, ultimately leading to the dismantling of the union's influence and the transfer of these functions to management and the state (Turnbull, 1993, 2000). However, these historic features of regulation in sectors such as port transportation enrich our understanding of how regulation functions and operates.

The Formal and Informal Dimensions of Regulation

That regulatory change may involve the transfer of functions between actors necessitates the development of a nuanced understanding of the architecture of regulation and relations between actors. The boundaries between regulatory spaces may be subject to constant renegotiation, regulatory jurisdictions may overlap and the functions of regulation outlined above may be executed by a variety of actors. Individuals may at any one time operate within, and be subject to, a multiplicity of regulatory spaces and actors, both formal and informal in terms of the state, employers, mechanisms of joint regulation, firms, and social agencies and institutions. Therefore we cannot reduce these relations to formal, juridical terms, and even the actors themselves may be constituted on an informal basis

The regulatory actors that occupy given spaces of regulation may vary by location. The regulatory function served by the local state in one location, in terms of social and economic relationships, may in another location be played by capital, in terms of the dominance of local communities by monopolistic employers in so-called company towns, and elsewhere by social institutions such as religious bodies, local community groups or even organized crime – or a combination of these actors. In each case these actors provide a framework of stability, a space within which economic and social actors can act with relative confidence regarding the actions of others. The panoply of actors and spaces reflects the coexistence of both the formal and the informal in terms of their social and economic relations.

Returning to our example of port transport, in addition to the formal processes discussed above in the form of mechanisms of joint regulation, unions would also execute their regulatory function through informal relations (Turnbull et al., 1992). For example, custom and practice could take precedence over formal agreements in issues such as job allocation, and this would be recognized and tolerated by both sides as it facilitated the functioning of regulation. Furthermore, the regulatory sphere of unions co-existed with the regulatory sphere of the firm and the state. However, there are also accounts of the regulatory spheres of unions and management co-existing with a variety of social actors such as local community groups, ethnic constituencies, and local pressure groups; for example, the much lauded neighbourhood

associations in cities such as Madrid (Castells, 1983). Within the Spanish construction industry during the 1970s these communities played the role of communication channels regarding labour market information and assisted during moments of conflict through social support mechanisms (Martínez Lucio, 1989). Similarly, strong community relations have been important to unions in port transport in contributing to secure membership and providing a social constituency which has acted as a resource in terms of labour supply, and in moments of conflict with management (McConville, 2000: 395–6). In some instances even the structures of organized crime play a central role in such processes (Fiorentini and Peltzman, 1995). These informal regulatory actors may contribute to the fulfilment of certain functions of regulation such as labour supply and the regulation of ‘misbehaviour’. In turn, the regulatory sphere of such informal actors as might be associated with organized crime was not contained within the docks but extended to other social and economic activities (Block and Griffen, 1997; Jacobs and Thacher II, 1989). Hence, actors exist in a variety of spaces, drawing from a wide range of resources that support their role.

Although in the first instance to draw parallels between such organizations may seem peculiar, we must recall that just as the local state or large companies may dominate local communities, organized crime in certain countries has a history of regulating social and economic activity within a variety of communities (Hobbs, 2001; Scott McIlwain, 1999). Organized crime provided a social function that meant such activity was not ‘alien’ to ‘normal society’ (Beare, 1997: 156) but rather was central to the economy and culture of some working class communities (Hobbs, 2001). As Beare observes:

What must be emphasized and reemphasized is that something considered to be of value is provided by organised criminals – either in the form of goods, services, protection, assistance through an unwieldy system, and/or job security. Therefore even though organized criminals violate moral codes, notions of democratic rule, and fair competition (in addition to violating the law) organized crime becomes an integrated part of the economic and social fabric. (Beare, 1997: 156–7)

These actors occupy a regulatory space often defined along strict lines of demarcation in geographic and social terms, a ‘territory of influence’ within which they impose rules (Paoli, 2002). This also provides an example of a feature of regulation that can be applied across the various levels and spaces of regulation: that ultimately actors can only operate within the limitations of their specific sphere of legitimacy, whether that is defined spatially or ideologically – formally or informally. This is why the relationship between adjacent regulatory spaces and the actors that occupy these spaces is of such importance. The interrelationship between actors must therefore be addressed in more detail in terms of accommodation, coupling and transfer. Neglecting the finer details of regulation and the manner in which it changes in terms of its structures and breadth has been to date a feature of the broad school based on regulation theory.

The Role of 'Linkages', 'Coupling' and 'Congruence'

Spaces and actors do not operate in isolation from one another, but on the basis of a series and diversity of linkages. These linkages can be formal and even contractual relations between actors. Formal linkages would include 'state license', contracts and collective agreements between actors specifying the remit and jurisdiction of those involved, thereby providing the space within which formal and informal processes may operate. Such formal linkages may also take the form of partnerships and collaborations between social actors. However, such linkages may also be complex mechanisms of tolerance and accommodation that may not be formally articulated. In terms of issues of actor capacity, one actor may tolerate others due to the lack of their own capacity. The failure of actor capacity may lead to the tolerance of *de facto* regulators: for example, the state has been known to tolerate organized crime in certain circumstances where its own presence was under-developed or limited. Unwritten alliances, particularly at the local state level, were secured in the past essentially in acknowledgement of the limitations of state actor capacity (Anbinder, 2002). The relationship between the formal and the informal, the official and the unofficial, or the 'underworld' and the 'upper world' (Scott McIllwain, 1999) are well documented, indeed the legitimate political machinery has not been averse to using the resources of organized crime when issues of limited actor capacity deemed it beneficial to do so (Beare, 1997; Block and Griffen, 1997; Scott McIllwain, 1999). State officials and even the police have not been averse to turning a 'blind eye' for as long as it was expedient to do so, and the role played by these actors did not pose a threat beyond the boundaries of the accepted regulatory space (Beare, 1997; Levy, 1989). Indeed, explaining why organized crime has not been eradicated by the state, Beare suggests that a lack of resources may be a factor, but a more compelling reason is the continued accommodation of the 'basic latent functions' that such activity fulfils (Beare, 1997: 157). Similarly, capital has historically accommodated the unofficial regulatory role of trade unions due to the absence of the capacity to manage effectively without them. The willingness of capital to accommodate unofficial regulatory actors even extends to the structures of organized crime. Levy (1989) points to the historic willingness of employers to engage in collusion with unions and organized crime over the management of labour in the docks of New York. Similarly, within the construction sector in New York, the regulatory role of organized crime is perpetuated by its capacity to impose organization upon the industry in the absence of alternative mechanisms of governance (Ichniowski and Preston, 1989). Furthermore, as Ichniowski and Preston point out:

Demand for the alternative governance structure provided by organized crime arises because there are valued services that firms cannot provide legally without significant costs. (Ichniowski and Preston, 1989: 553)

While we can argue that there is a multiplicity of sites of regulation along the lines suggested above, and the presence of different actors within specific

regulatory spaces, we need to address the fact that there might also be multiple purposes and roles executed by these different actors. The issue is that connections between regulatory actors occur in terms of there being a congruence of specific regulatory functions and objectives, and the outcome of regulation may therefore be the by-product of other roles and relations. The primary *raison d'être* of these actors may be an economic rationale of profitability or simply survival, but the mechanisms that are developed to facilitate this, whether consciously constructed or not, can become the means of social and economic regulation. The primary roles by which actors are defined may not be related to the conscious regulation of economic and social activity – but so long as there is some congruence between an element of what they do and the objectives of another, perhaps adjacent regulatory actor, then accommodation can be achieved. From this, 'links' or 'coupling' may develop – although on occasions they may not, and accommodation may exist without formal coupling.²

Accommodation between regulatory actors does not in itself need formal articulation, as there can be a mutual acceptance due to a congruence of specific objectives. The formal can tolerate the informal as long as there is congruence in outcomes, and the costs of displacement in economic and political terms outweigh the benefits of maintaining the link between the two. However, should congruence turn to divergence then a breakdown in this accommodation may result. Focusing on the occurrence of such congruence is not to suggest a functionally reductionist process. To restate, the regulatory function may only be one element of the actor's role, and indeed may essentially be a by-product of the main *raison d'être* of the actor in question. Firms do not set out with the primary purpose of managing the internal labour market, but do so to facilitate the pursuit of profitability. Similarly, issues of actor capacity may undermine the efficacy of regulatory processes, and ultimately lead to their displacement. These issues of intentionality, and indeed unintended outcomes, refute any notion of crude determinism.

If we return to our example of port transport, the linkages between the actors within a regulatory space – outlined above in terms of management, unions and a diversity of other social actors – are not necessarily conscious or systematic. These linkages may have evolved on the basis of tacit agreement, a toleration of roles, custom and practice, and historical contingencies and compromises in terms of the control of labour supply, for example. Such compromises may have emerged to compensate for the lack of actor capacity and the need to supplement this capacity by tapping into the material and knowledge resources of other actors: for example, the ability to source labour or maintain orderly conduct within it (Levy, 1989). When discussing organized crime it is argued that it has on occasions been tolerated due to the fact that it substituted the role of the state (Anderson, 1996). So one regulatory actor tolerates, and even depends on another regulatory actor, due to the limits on actor capacity (and ultimately may seek to displace them in a context where such factors change). There may in fact be sector-specific characteristics that limit any one actor's ability to fulfil key regulatory and economic functions. For example, in

the construction industry in New York, the complexity of construction projects, the cyclical nature of economic activity, anti-trust laws, and the limits on a firm's ability to internalize transactions meant that in such a context there are ample opportunities for unions and organized crime to out-manoeuvre firms in terms of labour supply and even operational questions (Ichniowski and Preston, 1989: 551–2). While it may not always be the case that all aspects of actors' conduct are going to be in support or in harmony with others, as long as there is some congruence there may be accommodation. Therefore, formal and informal means of regulation should not be seen as necessarily mutually exclusive but can exist in a symbiotic relationship, although the boundaries of this relationship can be fluid and contested, as discussed in the final section.

Transformation and Change within Regulatory Processes: Negotiation and Colonization

Where the state has liberalized economic relations across the levels discussed above it has done so by shifting boundaries of regulation, creating and facilitating new macro-level alliances, altering the legal underpinnings of collective bargaining and joint regulation generally, and redefining a variety of organizational environments in commercial and labour market terms. Macro-level alliances have emerged that have stressed a less central role for organized labour in those countries that have most strongly propagated the discourse of liberalization, such as the United Kingdom and the USA. At the same time, during the 1980s such governments undermined key 'rights' of organized labour, with regards to recognition and representation. These political turns underpinned the relative ease with which regulatory constraints on firms as producers and employers are removed, when compared to countries that have not under-mined their alliances with, or ideologically stigmatized, organized labour (Coates, 2000).

These developments can be varied in terms of their impact on the regulatory spaces and actors outlined above. Many have required more systematic and focused projects of change, due to the specificity of their relations and contexts. This focus becomes further complicated by situations of accommodation between the formal and the informal – just as transfer or coupling becomes problematic due to the *de jure* absence of any legitimacy of the informal. Should accommodation and linkages with the informal no longer be deemed effective then the state may act to redefine this relationship, but this may occur in a number of ways. On the one hand, for transfer and a realignment of regulatory behaviour to take place, the informal must first become formal, perhaps through the legitimization lent by state recognition as a regulatory actor. On the other hand, this can be dealt with by the aggressive *colonization* of the informal by the formal. Effectively, either the existing mechanisms are formalized or they are removed by colonization. For example, in the United Kingdom the industrial relations literature does actually cover these issues of complexity in regulation albeit in an empirical manner. The Donovan Royal Commission of

1968 recognized that regulation existed at different levels and in different spaces, which could compete with the more formalized systems of bargaining and regulation (Donovan, 1968). The recommendation was the colonization, by the formal bureaucratic tiers of trade unionism, collective bargaining, employers and the state, of the regulatory space occupied by the informal. When this project failed then the onus moved to a more direct and authoritarian approach to the broader corpus of union rights and worker-led employment practices. The irony is that the industrial relations community has surrendered this focus of analysis to new schools of thought that reify complexity and assume ownership of ideas of regulatory articulation, such as the Foucauldians.

In the first instance, therefore, the state may intervene to create a new set of alliances with emerging actors. These alliances can be formal and contractual in nature in terms of delegating roles (also witnessed in the emergence of the voluntary sector in the delivery of public services). A whole new set of ownership patterns may emerge sustained by the legal role of the state, which changes the balance of social and economic actors in any one regulatory space. Activities such as training, indirect payments and labour supply may be transferred to a broader range of employers or new para-state bodies (as witnessed in the construction industry in Quebec in the 1970s, for example [Sexton, 1989]). Further examples of the emergence of new actors can be seen in the market entrance of transnational corporations since the liberalization of utility markets. However, a much broader range of political and organizational activities may underpin the process of transfer. The process of transfer may be based on the development of new managerial or organizational constituencies. New actors may enter into the space previously monopolized by another actor: for example, the development of labour supply agencies may undermine the role of actors who have historically supplied and organized labour in a specific regulatory space, such as unions.

This may be done in a negotiated manner or it may be done through a range of less congenial and more coerced processes of transfer. In addition, a case of regulatory change may witness the forcible removal of actors through changes in commercial law, or, as in the common experience of trade unions, the adoption of new industrial relations legislation that circumscribes and prohibits their activities. This undermines the legitimacy of unions and their ability to fulfil the range of functions traditionally played, thereby contributing to their isolation and decline, and rendering their regulatory role more vulnerable to managerial colonization. The isolating of actors through political discourses that stigmatize them has been common not only in the case of unions, in such contexts as the USA or UK during the 1980s, but also in the case of public sector professional groups such as social workers (Hall, 1988). Returning to the example of the docks, this political dimension in the form of Thatcherism in the UK facilitated the removal of the National Dock Labour Scheme in 1989 which oversaw labour supply and which, since 1947, had been jointly run by employers and unions (Turnbull et al., 1992). Ultimately, regulatory change may rely upon a process of coercion and the brutal removal of actors.

Conclusion

Social and economic reproduction requires mechanisms of regulation. Regulation cannot, however, be viewed in terms of a perpetual and predetermined hierarchy of levels. While these levels do exist, there is a multiplicity of sites, spaces and actors – both formal and informal – whose boundaries are constantly renegotiated and whose regulatory jurisdictions may overlap in the process of social and economic reproduction. These spaces and actors do not operate in isolation from one another, but on the basis of a diversity of linkages between them. Only if we understand the complex nature of these relations can we begin to understand the way regulation changes. The act, or acts, of regulatory change are the outcome of a multiple set of processes and interventions. The informal may become formal, perhaps through the legitimization lent by recognition as a regulatory actor, alternatively this can be dealt with by the aggressive colonization of the informal by the formal. Effectively, either the existing mechanisms are formalized or they are removed by colonization of the role they played within the regulatory space where they interacted with other actors and contributed to regulation. This may end in the complete take over of the displaced actor's regulatory sphere (where they had been the dominant or main player) and the denial of any autonomy of action or role.

The issue is to be sensitive to the redefining of regulatory roles and new alliances between actors. In that respect, formal policies of regulatory change may flounder because they discount both the need for regulation, and the tapestry of political relations that underpin economic activity and are not easily reproduced. The usefulness of the approach outlined above is that it allows for an appreciation of the unevenness of regulatory change and the continuities that may persist in terms of problematic outcomes. Projects of regulatory change have to occur on so many 'fronts' and require so many shifts in social and political relations, that they ultimately give rise to unanticipated outcomes and even further conflict. Understanding the conscious and informal links between these actors and spaces is also important. The literature on custom and practice, trade union roles in labour reproduction, and the role of non-work-place organizations of a legal and illegal nature in such areas as construction and the docks serves as a useful yet much neglected source for understanding the complex realities of regulatory processes.

Notes

- 1 This is not to assume such processes are unproblematic. Relations between sites may indeed be dysfunctional, which – as with issues of actor capacity – can render the issue of regulatory reform through transfer highly problematic.
- 2 By coupling we are not necessarily drawing on Jessop's use of Luhmann's notion of coupling which deals with how 'indifferent systems...form part of

each other's environments and so must co-exist and co-evolve in the same ecological system' (Jessop, 1990: 328).

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