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‘Unstable Boundaries?’:
Evaluating the ‘New Regulation’ within Employment Relations

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‘Unstable Boundaries’: Evaluating the ‘New Regulation’ within Employment Relations

Miguel Martinez Lucio and Robert MacKenzie

Abstract

The ‘emergence’ of the ‘market’ as the basis of economic and political decision making has become a main focus of debate within the social sciences since the late 1970s. Even whilst those opposing the growing centrality of neo-classical economics and market oriented political discourses remain a significant academic constituency, within their ranks there has been a growing realisation that regulatory mechanisms, and in particular the role of the state, have nevertheless been the subject of extensive changes. Alternative schools of thought have argued in terms of the way in which such mechanisms have been refashioned. Regulation has become in the words of Regini and Majone ‘transferred’ and the ‘boundaries’ between regulator and regulated ‘changed’: the regulatory process has been seen to shift at the macro/national level and at the micro/enterprise level. Whilst supporting the general argument that it is the *boundaries* of regulation which are to be discussed, not its *presence*, we nevertheless will argue that these changes are, if anything, more contentious and that a set of ironies emerge which politicize regulation even further.

Keywords: regulation, de-regulation, privatisation, employment, decentralisation, marketisation, state, boundaries

1. Introduction

The ‘emergence’ of the ‘market’ as the basis of economic and political decision making has become a key focus of debate within the social sciences since the late 1970s. The perceived exhaustion and contradictory qualities of the post-war state has been widely reported. Even whilst those opposing the centrality of neo-classical economics and market oriented political discourses remain a significant academic constituency, within their ranks there has been a growing realisation that regulatory mechanisms, and in particular the role of the state, have nevertheless been the subject of extensive changes. However, those who argue that the declining regulatory role of the state in economic and social terms should not be viewed in zero-sum terms have contested the hegemony of New Right ideas. Regulation, the definition of which we consider later, has not

‘disappeared’, but rather it has ‘moved’. Economies and societies require regulation and the question is *how* they are regulated, not whether they are.

Alternative schools of thought have argued in terms of the way in which regulatory mechanisms and the role of the state have been refashioned. Regulation has become in the words of Regini (1994) ‘transferred’, and the ‘boundaries’ between regulator and regulated ‘changed’. The ways the regulatory processes have been seen to shift at the macro/national level and at the micro/enterprise level are complex. This article will point to the way regulation has become not simply market-oriented but multifaceted, differentiated, and increasingly ‘shared’ by a range of public and private actors. This will be done by appraising what we term the New Italian School of Regulation. Whilst supporting the general argument that it is the *boundaries* of regulation that require scrutiny, not its *presence*, we nevertheless will argue that the changes in these boundaries are highly contentious. First of all, we maintain that the form of regulation is becoming much more complex and subsequently more politicised than may be expected, and that the movements across distinct points of regulation are multifaceted and even contradictory. The second point the article will make is that we need to understand that the shifts in the boundaries of regulation are based on uneven and unstable sets of organisational constituencies and resources. The actors being located at the key points of these regulatory shifts have not necessarily been constituted in a manner suitable to facilitate such changes. The third point concerns our evaluation of the sustainability and effectiveness of the outcomes of the new *modus operandi* of regulatory politics. Within certain European countries the acuteness of these outcomes has given rise to a new

transactional, performance driven political discourse, which governs the new and complex map of regulation through a 'numerical' view of social provision. This grates against the increasing interest in networking and informal relations, which are seen to be vital to the underpinning of the new 'shared regulation' and the emergence of a high trust regulatory environment. If anything, public authority is becoming increasingly organised around a politics of crude performance measurement and control. These final points are illustrated through the case of the telecommunications industry and the public sector in the United Kingdom.

2. Defining regulation

The meaning of regulation is operationalised in a variety of ways, there is no single dominant view of how regulation should be defined. In a recent survey of current debates Baldwin et al (1998) have argued that three key strands can be detected. The first views regulation in terms of 'targeted rules': 'regulation refers to the promulgation of an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules' (Baldwin et al, 1998:3). These authors also argue that there is a second view to be found in the area of political economy that conceptualises regulation as co-determinous with the state and its attempt to manage the economy. These two levels are considered to be the dominant ones utilised in the discussion of developments within the capitalist mode of production. However, there is a third view that considers regulation to be 'all mechanisms of social control – including unintentional and non-state processes...' (ibid.: 4). Baldwin does not exhaust the range of regulatory forms but it does at least manage to remind us that there are distinct

approaches to the subject. What is of interest is his third category because it could be argued that this encompasses both structuralist-Marxist approaches, with their view of a variety of institutions reinforcing the accumulation of capital and the role of the state, and post-modernist views that argue that regulation is a de-centred phenomena which relies on a network of actors, discourses and identities. The structuralist tradition, with its understanding of mechanisms that support and that 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 speaking into a less reductionist approach which highlights the need to understand the issue of co-ordination as an issue in its own right. The links between the different sites of regulation have required an awareness of the challenge of their ‘steering’ and co-ordination. In addition, the needs of their own reproduction let alone their role in the reproduction of the broader socio-economic system are highlighted (Jessop, 1995:314-5). These approaches have become more susceptible to the *Foucauldian* paradigm - although by no means dominated by them - by drawing attention to technologies of control and the manner in which they develop and link together. Miller and Rose (1990) are among the key exponents of this *Foucauldian* approach. They postulate that the economy is sustained by a range of agents who act together through a myriad of network relations, giving rise to both intended and unintended effects, and acting from a distance through a web of relations. Holding many of these relations together are a series of common discourses, which provide a shared set of understandings and objectives. The state relies on these relations and discourses, but does not necessarily organise them. Rather, these relations are the outcomes of negotiation and persuasion, ultimately relying on the development

and use of relevant technologies and expertise that are then harnessed and used in specific ways (Rose, 1993). Hence, what the Foucauldian approach has done is provide us with a broader map of the politics of regulation and the way *emphasis* shifts between the sites. However, this attempt to understand regulation as the outcome of a political process and set of engagements requires that we also view regulation as existing within a 'regulatory space' where there are competing engagements over a series of issues in terms of a play of power around diverse interests and agendas (Hancher and Moran, 1989: 277; Crouch 1986).

We sympathise with the view that regulation should be considered in terms of a functional logic that deals with ensuring the continuity and reproduction of social and economic relations through a variety of sites. That does not mean that such a view is necessarily *functionalist*. As Merton (1952) once reminded Weberians, we should not ignore the probable dysfunctional outcomes of bureaucratic processes, whether they are in the private or public sphere. In this respect we must regard the intentionality of action as being central, whilst also questioning the inevitability of outcomes. Furthermore, certain regulatory 'sites' may have greater effect than others; the function of regulation is not pre-constituted but constructed and open to re-organisation across these different sites. However this view is distinct from the Foucauldian perspective in that there is an imperative to establish *stable* and *regular* forms of regulation – and facilitate relations between the distinct sites of regulation. The nature of government is increasingly geared towards ensuring 'outcomes' and hence a need to manage and *regularise* the distinct sites of regulation and their inter-relations. The new dynamics of de-regulation which are

discussed in this article, for example, are actually organised in a quite formal manner with staged processes of regulatory transfer within the corporate economy, operating within quite institutionally confined spaces. In this respect, there is a need to understand the hierarchy of actors that constitute this game, and the manner in which they aim to ‘close it’, which may in turn be influenced by ongoing concerns with ‘outcomes’ and ‘targets’.

Regulation should not therefore be viewed as pertaining to one specific function – monitoring – or one or more particular institutional sites – the state. Regulation is executed across various sites for various purposes, according to the economic and social context, and according to the political projects that underpin it. Hence, Jessop (1990) is correct to argue that the form of the state that must be understood, along with the way that distinct spheres of regulation are developed and combined. As Torfing (1990) argues, there is a relational aspect to the way regulation emerges, shaped by the need to construct complementary and cohesive systems of state intervention. In this respect we must be sensitive to the way regulation is constructed. Unlike the more ‘de-centred’ views of regulation, there is a need to acknowledge that there is always a struggle to permanently locate and define an articulating, central feature of the regulatory process. Regulation is the object of politics and hence the desire for *closure* (the institutional belief in ultimately effective sites and actors), and not just *difference per se*, continues to exist because of the way political objectives can be established.

In terms of employment, the generic ‘post war’ model of regulation has been constructed across three distinct sites. These sites do not fit easily into the classic macro-micro

binarism, but can be seen to demonstrate the interrelation between these levels in the articulation of the functions of regulation. The first 'site' is the role of the 'centralised' state in providing a general framework of rules and governance processes underpinning industrial relations at the macro level. This was essentially based on the management of the direct and indirect wage through various institutional manifestations of the Keynesian welfare state. Central to this form of regulation was the process of concertation between social actors, albeit variable in nature across different national systems within the European context. Secondly, regulation has also been secured through the institutions of industrial relations. Whilst again differing across European countries, industrial relations have traditionally tended to be centralised and managed, with varying degree of success, by national level union and employer bodies through the processes of joint regulation, in particular, collective bargaining (Crouch, 1993). However, it must be recognised that the decentralisation of bargaining has been a ubiquitous, but crucially not homogeneous, experience across the national systems of Europe (Traxler, 1995; Hansen et al 1997). Thirdly, another major site of regulation has been the firm itself. Through measures to secure the internal reproduction of labour via the development of internal labour markets, the use of open ended employment contracts, and the maintenance of systematic employment rules such as seniority (Boyer, 1988; Herding, 1972), firms have managed to contribute to the overall aims and objectives of regulation in the post-war/Keynesian epoch. Therefore, before we talk in terms of change or deregulation, we must be sensitive to the way regulation was established, and located within different sites, as a consequence of political alliances and social relations (Jessop, 1990). Within the tradition of regulation theory this question is central because co-ordinating regulation requires specific political

and organisational projects in their own right. The main problem is the tendency to ignore the complex ways such processes emerged: complexity is not only apparent in the developments of the last twenty years but has characterised the architecture of regulation historically (Tomlinson, 1989).

The problem has been that various commentators discuss and view regulation from the point of view of de-regulation. The dangers of this approach are several. Firstly there is the danger that this reduces the conceptualisation of regulation to an inappropriate dichotomy viewed in terms of its quantitative absence or presence, which is insensitive to the multifarious ways in which the functions of regulation can be performed. Secondly, the dismantling of state mechanisms of economic intervention and governance – popularly conceptualised as deregulation - does not mean the shift to a condition where the necessity for regulation, more abstractly conceived in terms of economic and social reproduction, no longer exists. Rather it implies a shift in the form of regulation, or between sites of regulation. As Standing rightly suggests: “There is no such thing as the ‘deregulation’ of labour markets. No society could exist without modes of regulation” (Standing 1997, p10). Thirdly, focusing on the process of de-regulation assumes the preexistence of regulation, without consideration of the role and efficacy of such mechanisms, and the contingent processes by which they developed in relation to, and in the context of, other sites of regulation. This leads to the related problem that although the general direction of deregulation, conceived as a trend, can bring distinct developments from different national contexts into some form of equivalence, this should not obscure the often highly heterogeneous nature of these processes, and indeed their

outcomes (Hansen et al 1997). This also raises the need to conceptualise current changes within regulation in a multidimensional manner across these different sites, to note the way that different aspects of regulation are tied together or – as we will argue – are not. A dynamic approach is required in order to illustrate the politics of regulation and its underpinnings. A view that is sensitive to the interlocking mechanisms and qualities of regulation, and not one that privileges one site - or one logic – in isolation.

In this respect the third view outlined by Baldwin should not be reduced to the realm of functionalist necessity but should be viewed as one that posits regulation as a phenomena that raises serious issues of how its boundaries are constructed and reconstructed across time. We cannot understand one form of regulation without discussing it in relation to others. The three sites outlined above, which are central to post war regulation, will therefore be studied in terms of current developments in ‘de-regulation’.

3. Evaluating the market

The dominance of neo-classical thinking on the role of markets has been pivotal to the development of public policies that support de-regulation and privatisation (Self, 1993). The deterioration of public sector services, the perceived inefficiencies of the state, and the manner in which global markets have changed seem to have combined into a resounding rhetoric that suggest that post war, Keynesian inspired modes of regulation are increasingly inadequate. This turn in the economic thinking of the European states has been facilitated by the creeping tolerance of neo-liberal ideology that emphasises the role of market relations and unfettered individual economic processes (Self, 1993). There is

no need to rehearse this shift in public policy and economic thinking which views the state in negative terms and regulation, in particular, as a restraint on efficient behaviour.

In response to these views various schools of thought have contested the idea that regulation is problematic or has simply been replaced by the logic of the market. At the level of representation Berger and Compston (2000), for example, have argued that despite the trend towards liberalisation, the role of policy concertation and corporatist forms of decision making remain. Although much depends on national state traditions (Crouch, 1993) and the way in which labour and capital have been inscribed historically within public policy making and regulation. Others have pointed to the role of the state in terms of economic intervention. Whilst it could be argued that privatisation has in certain cases removed the role of public utilities from the arena of direct state intervention, the reality is that the state still takes up a sizable share of the economic sphere of most countries within the European Union (Hall, 1994). The role of the state in terms of the welfare function has not diminished regardless of the adoption of ‘market/ private sector’ techniques in areas such as health and education (Corby and White, 1999). If anything the state continues to renew its roles within such areas. That there have been changes in the manner in which this is pursued does not undermine the argument that public services and resources are still an integral component of labour and social reproduction.

4. New forms of regulation

More recently, the zero-sum analysis of regulation within the New Right and neo-classical perspectives have been countered by a series of positions that have noted the

changing pattern of regulation within European economies - and not its decline. The function of regulation has not been constrained, it has been shifted - 'moved'. The manner in which this has been done has been intriguing. The work of Majone is a good example of a renewed perspective on the role of regulation. Majone (1994) commences by noting the apparently negative features of regulation and their problematic role in a changing economic environment. Majone points to the fact that in such an environment the state can no longer be regarded as the isolated, magnetic pole of regulation. Changes in the nature of markets and economic actors are giving rise to a more complex institutional environment (Sabel, 1984). In such an analysis the development of globalisation and local fragmentation are seen to challenge the institutional and ideological capacities of the state. The process of privatisation, albeit rarely uniform, has steadily decreased the direct presence of the state in various key sectors. Moreover, the increasing organisation of larger units of capital within key economic sectors such as the 'former' public utilities has led to a greater actor capacity within capital in economic and political terms. However, such developments occur within a context where issues of accountability remain high on political agendas, regarding such issues as service delivery and organisational reach. Many point to the emergence of shareholder interest as a feature of contemporary capitalism and the so-called extension of the Anglo-Saxon model of corporate governance (Ferner and Varul 1999; Froud et al, 1999). However, this has to confront the uneven yet ongoing dynamic of public and consumer politics, which contribute to the need for socially-oriented economic outcomes. The ascendancy of the market model has been paralleled by the emergence of consumer politics, which does not

easily fit the neo-classical view of individualised and non-political consumption (Alonso, 1994).

The ‘move to the market’ of the last two decades is therefore not so clear, and Majone’s works draws from, and inserts itself within, a broad set of approaches that view the process of marketisation as complex and indeed contradictory. Through his observations of the dynamics of the European environment, the argument is posited that the state has been restructured in terms of its regulatory capacity. It has had to recast its role, and find new forms of representation and intervention in relation to socio-economic interest groups.

Majone (1995) posits a model of ‘traditional’ and ‘new’ regulation that can be outlined as follows – see table 1. He describes the emergence of the ‘regulatory state’ that represents a break from the direct economic role of the post-war Keynesian system of regulation, the ‘positive state’, characterised by nationalised industries, and ‘taxing and spending’ centred policy agendas. The ‘regulatory state’ represents a move to ‘indirect or proxy government’ (Majone, 1995; Seidman and Gilmour, 1986), with the establishment of semi-autonomous regulators, public accountability processes, integrative policy making, and reliance on rule making for the governance of economic sectors, forming the basis of this new state regime.

Table 1: Majone's Model of Regulatory Change

	Positive State	Regulatory State
Main functions	Redistribution, macroeconomic stabilisation	Correcting market failures
Instruments	Taxing (or borrowing) and spending	Rule making
Main Areas of Political Conflict	Budgetary allocations	Review and control of rule making
Characteristic Institutions	Parliament, ministerial departments, nationalised firms, welfare services	Parliamentary committees, independent agencies and commissions, tribunals
Key Actors	Political parties, civil servants, corporate groups	Single issue movements, regulators, experts, judges,
Policy Style	Discretionary	Rule-bound, legalistic
Policy Culture	Corporatist	Pluralist
Political Accountability	Direct	Indirect

Source: Majone (1995: 149)

The ultimate difference between the two is the position of 'rule-making', which becomes central to the role of the regulatory state. Whilst such developments vary in terms of their pace and form within the European Union, it is nevertheless argued that this is a model emerging within most countries (Majone, 1994). At the heart of this new logic of regulation exists the importance of co-operation and networking, which maintains itself through 'information and persuasion' (Majone, 1997). In this respect, the policy making process is dislodged from its traditional institutional confines and open to a broader, interactive dynamic which involves a range of players located at various stages of economic activity.

The essence of this new model is that, in terms of its representative dimension and interventionist features, regulation is 'moved' from the centralised, statist domain. Instead, the play of regulation is extended to a range of sites that are framed within a

centrally derived system of rules. Effectively, regulation is ‘shared’. The objective being to allow the ‘public’ and private actors a role in what is a more complex economic arena, and to provide regulation with a new legitimacy through social and economic inclusion (Majone, 1994). This logic of co-operation may exist at the social, national, or even transnational level, as in the case of the EU, and therefore is not solely a local or regional phenomena (see Martinez Lucio and Weston, 2000).

However, Majone (1994) is not devoid of concerns. He clearly outlines the risks of such developments. For example, he points to the possibility of new regulatory structures being ‘captured’ by the main agents that are supposedly being regulated. He also concerns himself with the ongoing problem of co-ordination that exists within such new, diverse patterns of control. The complexity of such developments means that the risk of losing sight of original objectives is high. However, these concerns apart, he clearly emphasises the importance and inevitability of this new logic of regulation, in the context of the changing environmental conditions. Regulation is not in decline, but is itself being restructured and ‘moved’ across the three sites of regulation identified earlier.

This issue of the transfer of regulatory capacities emerges within a separate yet related set of literature in the area of employment relations. In this case it is not so much the shifts in regulation between notions of the ‘public’ (state) and the ‘private’ (market) that are of interest, but the shifts across the different sites identified earlier. Regini (1991) argues that the role of regulatory processes is still important but that there has been a change in

the way this role is ordered within contemporary state-society relations, especially in the area of employment relations:

“...the economic adjustment of the 1980s was by no means based, everywhere, on a straightforward return to the ‘free operation of the market’. Indeed, in several countries it was helped by the existence of institutionally dense situations, which shaped actors’ strategies and therefore the ways in which these countries’ economies were restructured” (71).

However, this has not meant that there is an ongoing centralisation of state regulation and a continuity of the post-war model.

“So macro concertation is everywhere in decline... Nevertheless, the other side of the coin is that new forms of concertation have arisen in several European countries. Only in a few national or sectoral cases have the regaining of the initiative by employers, the decline of macro-national concertation and the shift in the centre of gravity of inter-actor relations to the micro-level led to extended deregulation. In some countries and sectors, of course, firms have taken advantage of the weaker unions by attempting to reassert the unilateral regulation of the labour force... But in other countries – especially Germany and Italy – the shift of initiative to the company level has brought to the fore various forms of micro-concertation based on pragmatic acknowledgment by the unions that companies

must restructure if they are to compete in more difficult and volatile international markets” (Regini, 1991: 79-81)

The argument here is that regulation is not ‘dead’, instead it has been ‘relocated’ (MacKenzie, 1998). Not only have the representative structures of the state been reorganised around a new, more ‘flexible’ logic of ‘corporatism from below’ (see Martinez Lucio, 1999), but the bureaucratic processes of intervention have also been ‘transferred’ (see Majone, 1994; MacKenzie, 1998, 2001). The issue is not merely one of continuity but of metamorphosis. In the case of Regini (1995), he applauds this new found role for labour and employers as a way of activating more detailed and efficient forms of regulation at the level of the enterprise. This sets Regini apart from those supporting the argument that such developments in enterprise trade unionism and industrial relations activity signify a decline in the traditional social actor role of organised labour (Amoroso, 1992; Giddens, 1994).

Schmitter and Grote (1997) summarise this approach in the following manner:

“Of course the real culprit - everyone’s favorite *deus ex machina* - was (and still is) *globalisation*. Sharpened international competition...(and) the overt threat to move to another site put great pressures on workers to make concessions... The upshot of these trends seemed quite clear to many analysts in the 1980s. At best ‘national corporatism’ had to shift from the macro to the meso level of aggregation.” (28-29).

In effect, what is being implied here is that as the work of joint regulation is pushed to lower levels, such as the firm, there is a decline in the role of other social actors as concertation gives way to an increasingly unilateral and management driven model. Regini is ambivalent and uncommitted about such developments in terms of their negative impact on trade unionism, but he views the move to micro-concertation as a reinvention of the state and regulation in a way that will make it more meaningful and effective in the hostile environment of the future. In some instances, he argues that it may indeed provide a new opportunity for labour organisation in terms of bargaining opportunities and relevance (Regini, 1994). Within such an analysis it is assumed that the new locus for employment regulation is the firm itself. The firm emerges not solely as an increasingly central player in social and economic terms, it also emerges as a 'political' player by 'privatising social rights' - internalising and carrying the social dimension of traditional industrial relations systems through a new historic role (Martinez Lucio and Simpson, 1992). This transfer of regulation does not just involve the transfer of actual regulatory functions or authority but can also involve the transfer of 'expertise' (as defined by Rose, 1996) or the inclusion across a set of actors of expert knowledge and communities.

It is notable that features of the leading contributions of this school of thought concerned with the shifts in regulatory practice have an Italian focus. This can be explained by a number of factors. The Italian state has been one that has rested on a new, and not always stable, type of labour compromise. The role of economic interest groups within areas of

state provision has at times been novel and unique. Whilst never a strong corporatist system (see Lehmbruch, 1984), it has relied on strategic relations, and the predispositions of labour and the state (Regini, 1984; Trigilia, 1991). The significance of Italy has until recently been downplayed due to the obsession with stronger modes of corporatist regulation, usually of a Nordic or Central European character, so its relevance to debates on regulation may have been underestimated. Originally Regini (1984) linked Britain and Italy as models of corporatism. However, since the early 1980s the image of Italy as a *weak state* has given way to an increasing emphasis on the importance of local socio-political networks who provide a flexible regulatory framework (Locke, 1996), albeit without national or even regional support at times (Trigilia, 1991). It has been one of the main sites of interest for developments in state-labour-management coalitions regarding flexible working practices at the local level of the economy (Sabel, 1984) Whilst this has been the object of a range of critical engagements, even the ‘myth’ of the Italian model has been important to the *attempted* re-conceptualisation of employment regulation (Pollert, 1988).

Hence there is a perceived shift in the orientation of regulation: however it is a move which is multi-faceted and multi-directional, as we will show. There are various ways to describe these new developments. They can be viewed as a new logic of regulation based upon an ‘indirect’ and ‘flexible’ manner of influencing economic decision making (see Martinez Lucio and Weston, 2000). They may even be seen as a subtle way of conditioning outcomes through the ongoing use of political networks that underpin the

way outcomes are arrived at. When discussing the emergent regulatory paradigm of the EU, Castells (1998) argues:

“The key element in gradually establishing the European Union’s legitimacy, without jeopardising its policy-making capacity, is the ability of its institutions to link up with subnational levels of government... the new form of state epitomized by European institutions [is] ... the network state.” (350-352).

Whilst Castells does subscribe to the thesis that within this new institutional equation organised labour is the weakest (almost non-existent) point, his work nevertheless does point to the processes discussed above as being not just a new national level pattern of regulation but the potential basis for a new form of governance at the supranational level. The mode of regulation of the future lies not in its content but in its form. It resides in the links established between different actors, and how their methods of action relate to each other through strategic alliances and projects.

Clearly such developments in regulation will vary in terms of their characteristics and pace. Much will depend on the way the state initially played a role in issues of economic and employment regulation and how public forces have consequently shaped developments (Lash and Urry, 1987). The role of the state in key social and employment relations, the structure of the state and how it relates to distinct social and economic arenas, and the sheer size of the state will all contribute to how new patterns of regulation emerge (Lane, 1989; Lash and Urry 1987). In many respects, the role of the state and key

spheres within it, both at the macro and micro level, may be significant within the networks and institutions which constitute the new economic context. Hence, the form of this new regulation will vary between contexts, as will its cultural content (Lash and Urry, 1994).

5. Contradictions and Ironies in the New Regulatory Regime

The developments outlined above are not only complex and varied, they are also contradictory in terms of the politics and tensions that emerge with regards to this nascent 'system'. There are anomalies in the way these shifts in regulatory practices are occurring, and in their social and political consequences. Therefore, any interest in the way in which regulation is being reconstructed must be discussed alongside the new issues and dilemmas that are subsequently emerging. The development of complex forms of economic regulation give rise to a series of problems and ironies which question the stability of such innovations.

One of the main assumptions that underpins the idea of 'relocating' and 'sharing' regulation at the macro, meso or micro levels is that there are a series of social and economic actors capable of taking on the role and function of regulation. There is an assumption that European society is constituted by effective peak institutions, strategic social actors, and willing economic units (in the form of the firm). However, the landscape of interest intermediation shows very distinct traditions and capacities between, and within national systems. As Lehmbruch (1984) outlined, there are a range of corporatist traditions within Europe. They vary in terms of the extent of social partner

involvement, their negotiating remit, and their ability to sustain agreements. In addition to the variability in the pattern of interest intermediation, there are also distinct political identities within Europe's 'social partners' and these continue to constitute a tapestry of institutional practices. For example, in the case of employers' organisations, the Confederation of British Industry (CBI) is renowned for its lack of interest in direct political engagement (Lane, 1994). This is visible in the way in which British firms lack a collective political voice beyond their support for traditional political activity and sectoral interest groups concerned with limiting regulation (Leys, 1981). Indeed, the antipathy towards regulation in general is a feature of various employers and their organisations, given the dominance of voluntarist and market oriented traditions (Nolan, 1989). In Spain, whilst the politicised labour movement in the 1970s and 1980s forced the development of employer bodies that had to respond to what was conceived to be a problematic tradition of industrial relations and labour market regulation, they were not known for their extensive resources or political effectiveness. Whilst the 1990s brought a more extensive set of roles within a more flexible experience of corporatism, employer involvement was never intended to be broadly developed or involved in longer term questions of supporting regulation – and in terms of employer discourse, quite the contrary (Martinez Lucio, 2001). These two examples illustrate some of the problems of assuming that the transfer of regulation will be met by willing or able economic organisations. Whilst many cite the case of the German system, where employers are seen as being more proactive and involved in the political management of a range of key issues such as training and development (Lane, 1989, Streeck, 1991), the assumption that peak organisations are willing, able or adequately resourced to share the role of the state in the

economy is questionable. This is also a problem when considering the varied traditions and degree of organisational capacity of trade unions (Rigby et al, 1999). The problem of authority structures within social actors, and the variable strength of national elites, may not always allow such bodies to effectively incorporate themselves into new institutional constructs to regulate economic and employment matters. Again this varies according to the national industrial relations system in question. To a lesser or greater extent, trade unions continue to play a role within neo-corporatist bodies throughout Western Europe, and this legacy has by no means been extinguished (Begren and Compston, 2000). However, the general trend of establishing new forms of regulation on matters such as health and safety, social security, and labour contracting, for example, require a significant set of strategic and organisational resources. It also necessitates coherent political strategies, which in some of the more fragmented systems of industrial relations may be an issue. Hence, the 'new system of regulation' will have to cope with the historical legacies and contours of social and political organisation that shaped the effectiveness - or otherwise - of 'traditional regulation'. This new system will have to deal with the issue of social capacity and the distinct ways in which civil society has been structured and organised. In this respect the social contours and political structures of representation may determine how regulatory capacities and roles are developed, secured and provided - and by whom. This is of relevance to Majone's fears over the problem of 'capture', and the abuse of new forms of regulation by groups with varying organisational, political and financial resource capacities. This is a problem that emerges from the uneven nature of power resources among the economic actors that are engaged in this new 'game' of regulation.

At the micro level there are likely to be similar problems. Regini's work points to the emergence of an enterprise based system of regulation, where managers and unions collaborate on a range of issues at the level of the firm, which were previously regulated beyond it. The emergence of productivity coalitions between labour and capital are seen as a new way of dealing with key issues within the employment relationship. However, it is too easy to ignore the micro-politics of this new level of activity. The main concern emerging from various quarters of the industrial relations tradition is that these new micro level arrangements may undermine the autonomy and effectiveness of labour representation (Garrahan and Stewart, 1992). Enterprise unionism may counter the more social and class based identity of the trade union movement, leading to a possible fragmentation and erosion of strategic capacity (Amoroso, 1992; Hyman, 1994). Much of this debate is fractious and contested to say the least, but a range of concerns emerge that suggest consequently trade union action may not be easily reproduced at the micro level as a lever for the effective regulation of the employment relationship. The ongoing fragmentation that such authors allude to threatens to undermine actor capacity and means that 'regulation' in this arena would become fractured and uneven, losing its overall strategic impetus.

Not only is there the problem of the way in which new forms of regulation will be configured and utilised, there is also a problem with the assumption that the 'location' of the new sites of regulation are stable and preconstituted. This is a major problem when accounting for developments at the level of the firm, as one of the actors inscribed in the

emergent processes of the third site of regulatory activity. It is assumed that regardless of the idiosyncratic contours of trade unionism and employer bodies, the corporation can enter as a main actor and play a specific role in the new networks of regulation, assimilating some of the main functions such as labour reproduction. However, this assumes that the boundaries and form of the firm are not themselves subject to the pressures and anomalies discussed earlier. The firm is not the static entity assumed in the arguments concerning transfer. Firms are increasingly subcontracting and divisionalising in order to deal with the changing nature of markets and employment issues (Shutt and Whittington, 1987; Purcell and Ahlstrand, 1994). They are themselves facing dilemmas in having to manage and negotiate new types of organisational boundaries and new types of relations with subcontractors and other agencies (MacKenzie, 1998, 2001). Maintaining quality standards, in terms of service delivery and labour supply, forces companies to try and deal with the anomalies emerging from the way such responsibilities have ‘migrated’ to supplier firms (*ibid*). The absence of the regulatory functions of integrated hierarchical structures and traditional bureaucratic forms of control, in terms of service delivery and labour reproduction, necessitates the development of alternative strategies (MacKenzie, 2000, 2001). In turn these strategies must compensate for the absence or retreat of traditional regulatory mechanisms, in terms of the role of the state (MacKenzie, 1998). Hence, the idea that firms may ‘receive’ the project of regulation from above, and enhance their own roles accordingly, ignores the internal political complexities of negotiating with labour and supplier firms over the boundaries of the responsibility and the achievement of ‘common ends’. The boundaries of the firm are therefore much more fluid and just as in need of academic attention as the boundaries of the state.

The telecommunications industry provides an illustrative case. The traditional model of regulation for this key infrastructure industry and major employer, was state owned monopoly, with a highly centralized, hierarchical organization of production, reflected in the regulation of the employment relationship by the reproduction of labour through the maintenance of traditional internal labour markets, and joint regulation through a strong trade union presence. To take the case of the UK, the newly privatised national carrier initially pursued this role through the maintenance of the existing mechanisms for the regulation of the employment relationship, continuing management commitment to joint regulation and the integrity of the internal labour market. Since the late 1980s however this commitment has been questioned by management initiatives to redefine and circumscribe the role of joint regulation (MacKenzie 1998). The reorganisation of production has seen an increased move away from the integrated hierarchical form associable with internal labour markets, towards outsourcing to subcontractors, and the regulation of labour within production through the terms of a commercial contract. This redrawing of the boundaries of the firm has a number of interesting implications for the function and mechanisms of regulation. This ostensibly relocated much of the responsibility for reproduction of labour to another discrete capital, or to even to individual workers, in terms of the maintenance of skills. However, given the previous monopoly of *supply* as well as demand for such labour, the existence of suitably skilled workers on the external labour market was in large part facilitated by the coincidence of major redundancy schemes by the patron firm. Therefore the ability to regulate the supply of labour through these new flexible mechanisms was reliant on the previous

reproduction of labour via the traditional internal labour market of the vertically integrated firm. The finite nature of this resource in time necessitated the development of new means of labour reproduction, through the instigation of training programmes within the subcontract supply companies. However, the high degree of involvement of the patron firm in the development, auditing and accreditation of these mechanisms suggests that the requisite regulatory role had been in part relocated, but also crucially redefined, and rearticulated through new contract arrangements (MacKenzie 2000). Similarly issues of regulation in labour supply, in terms of the quantity, quality and even the contribution of labour engaged within production (but operating beyond the formal remit of the internal labour market) were addressed through the development of appropriate mechanisms within the supply firms and even the relocation of the associated bureaucratic apparatus from the patron firm to the suppliers. The reorganisation of production in this sector has seen the regulation of the reproduction of labour shift from the responsibility of state monopoly, to vertically integrated private monopoly, and then to become shared between the patron corporate and a number of small supply firms, in each case with the development of the appropriate mechanisms of regulation being highly path dependent. Indeed the current role of the patron firm in accrediting the quality of labour produced by the training schemes it helped establish see it playing a dualistic role of patron and regulator, thereby both paying succour to the logic of the 'market' whilst maintaining a regulatory role inherited by the retreat of the state. Hence, although privatisation may have meant the *withdrawal* of the state in this area it has not reduced the need for a key regulatory actor, and yet we need to be sensitive to the ongoing

negotiation of boundaries between the new actors involved in the regulation of the employment relationship.

A final irony emerges, however, within the transfer of regulation. As the outcomes of new regulation remain unstable and problematic, we are in certain instances witnessing the resurrection of what Baldwin et al label 'targeted rules': 'the promulgation of an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules' (Baldwin et al, 1988:3). This can be illustrated through the case of the British public sector, where a persuasive culture of performance monitoring and measurement is emerging. The concern with unintended outcomes, quality oriented dilemmas, and the effectiveness of social provision has led to an increasing interest in the establishment of targets.

These ambiguous developments can also be seen across various levels of the British public sector, for example, where such developments are at their most advanced in comparative terms. At the first level, the use of benchmark indicators and the establishment of greater 'standards' within public service delivery have become pervasive. A range of measurement techniques for auditing administrative practices have developed which tend to emphasise the notion of 'good practice' and the fetish of targets. This has led to greater scrutiny and use of intelligence systems within the state. Secondly, at the level of employment, professional workers are increasingly being exposed to forms of administrative monitoring and measurement, which have contributed to a more transactional character within education, for example, in terms of workload systems and

performance objectives (Martinez Lucio and MacKenzie, 1999). Increasingly there is greater reference to judgemental factors as opposed to developmental ones in human resource management processes such as performance appraisal. Whether these developments have the desired effect of reorienting the work of public sector employees is open to conjecture. The third level refers to the use of the customer as a form of regulatory control. DuGay and Salaman (1992) argue that the ‘cult(ure) of the customer’ is central to the way employees are increasingly disciplined and controlled at work. Within the public sector the customer has been used, to varying degrees of success it must be added, as a way of highlighting operational problems and calling the employee to account (Kirkpatrick and Martinez Lucio, 1995). Hence, if we are to talk about regulation and its ‘transfer’ then we must look at the way a variety of bodies and techniques may enter this ‘game’ and share the function of regulation although, as stated earlier in questioning the Foucauldian paradigm, whether this leads to consistent outcomes is another matter. However, the extent of ‘mobilisation’ by the ‘centre’ is a characteristic of these developments (Du Gay and Salaman, 1992). In addition, one outcome could actually be a greater degree of *rigidity* in the manner in which employees respond to this complex form of micro level regulation, as rule making and ‘restrictive practises’ are increasingly asserted within the public sector. Corby and White (1999) noted how in the civil service extensive bureaucratic regulations in the traditional sense of the word have mushroomed on a range of human resource management processes since the early 1990s. In this respect, we find ourselves with a regulatory system that is more akin to Baldwin’s first dimension - the fetish of targeted rules – in sustaining the *transfers* we have discussed above. The British political context is in many ways now played across a range

of statistical encounters, with regards to the (in)ability of agencies and actors to ‘deliver’. In fact the restructuring of the state has been interpreted by some as more akin to a re-centralisation through reference to measurements and the use of cultures of blame (Hoggett, 1996). This irony may suggest that the new forms of regulation discussed above remain unstable. Furthermore, it appears that very traditional views and residues of state control continue to be apparent, even in some of the more marketised of regimes, due to the outcomes of new regulation.

Conclusion

The process of ‘transfer’, to use that label, is taking place in a context where the boundaries and roles of other actors entering into the ‘game’ of regulation are uncertain. It is not, however, just a question of *context*. The *process* of transfer is itself multifaceted and complex in terms of the movements across the different levels of regulation, and between them. There is no singular strategic decision and act that constitutes and crystallises this development. You cannot fix such changes in time and space and isolate them from the general changes taking place across a range of levels and institutional roles. The process of change is the outcome of a multiple set of decisions and transfers. The competing pressures on the state in the past three decades have led to a series of ‘transfers’. However, these have not only been partial and uneven, but often contradictory, in that the different actors sharing regulation are not clear in terms of their boundaries and their capacities – let alone their inter-relations.

So the general inscribing of economic actors into the politics of regulation is occurring at a time when the peak organisations are undergoing a transformation in terms of their internal systems of representation and organisational effectiveness. These peak organisations still play a central role within the rubric of European regulation, but they too are the objects of the pressures and processes that have been confronting regulatory mechanisms in terms of globalisation, productive fragmentation, and changing social expectations (Shutt and Whittington, 1987). These are significant areas of academic and political engagement and the authors tend to err on the side of caution with regards to any calamitous reading of change along such lines. However, the point needs to be made that the institutional sites deemed to be sharing regulation are not stable.

In fact, the horizontal transfer of regulation at the macro level, discussed earlier with regards to Majone's work, may be contradicted by coinciding vertical shifts. Such vertical movement can be seen in the emergence of the corporation as an actor that is endowed with an uneven and unstable power resource, and the move towards enterprise based systems of regulation that internalise and even obscure processes of control and regulation. In turn, this dimension of regulation - the firm - may in organisational and industrial relations terms be subject to increasingly unstable boundaries between its internal and external spheres of activity. In fact, the firm itself is not the stable arena that will allow its management elites to easily play such 'political' roles, due to the uncertainty and problems associated with these boundaries and management processes (MacKenzie, 2000). Hence there are tensions within and between the horizontal/vertical shifts and the internal/external regulatory functions - as perceived from the outcomes.

Ferner and Edwards (1995) argued when discussing the myth of the omniscience of corporations and their organisational control mechanisms, that the internal political processes of such firms are increasingly complex. They may develop very sophisticated and multidimensional governance strategies in order to avoid organisational fragmentation and internal managerial and labour conflict - but not always successfully. In this respect, the macro-corporatist debate within political science and political economy needs to be sensitive to debates within the management sciences and industrial relations on the question of the firm as a new actor within the political sphere, and on the way regulation is being 're-routed'.

It is for this reason that the discussion of new forms of regulation requires an analysis of the *form* of regulation, and the interface between its different sites and actors. We have pointed to three specific sites of regulation, and the shifts that have occurred within and between them. Such new regimes of regulation must be understood not just in terms of their different elements and inter-relationships but also in terms of the historical legacies that shape the contours and capacities of actors who are entering directly into the process of regulation. In this respect, sensitivity to the form, and context, of regulation. This has implications for the way we perceive the move away from 'traditional' forms of regulation. In the new marketised age of political discourse (left and right), which applauds the increasing role of capital within the process of regulation, it must be recognised that there are still political factors that shape such developments. De-regulation or re-regulation cannot be seen in zero sum terms: public/private, state/market. The move away from traditional forms of regulation requires us to appreciate the

organisational and social relations that underpin this new matrix of control. Failing this we will be unable to appreciate some of the ironic lacunas that emerge.

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