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The Colonisation of Employment Regulation and Industrial Relations? Dynamics and Developments Over Five Decades of Change

Abstract

The concept of regulation is central to industrial relations. Deregulation, reregulation and the transfer of regulatory responsibilities have characterised five decades of reform projects. The concepts of 'negotiated' change and 'colonisation' are engaged as ways of understanding key moments of regulatory change in UK industrial relations since the 1960s. The stigmatising and undermining of trade unionism has been a key theme in modern British industrial relations, changing and developing since the 1960s. The paper explores five features of the way in which the regulatory spaces of industrial relations were colonised once the project of formalisation failed: strategies of marginalisation; strategies of containment; strategies of voice and legitimacy; the development of new expert knowledge; and the rise of new actors and boundaries.

Introduction

The question of regulatory change is central to our understanding of industrial relations. In the latter decades of the twentieth century we supposedly witnessed a move from a regulated regime of work, in the broadest sense of the term, to a deregulated context and approach to industrial relations.¹ In reflection of the problems associated with more 'market' oriented approaches, we have seen a shift in the focus of debate towards the discussion of the re-regulation of industrial relations and economic systems. It has become increasingly apparent that despite the impact of neo-liberal agendas the issue of

regulation has not disappeared but remains central to our understanding of economic processes, and particularly employment. Moreover, there is a need to look closely at regulatory change and begin to understand its broad dynamics and features, to avoid the attraction of thinking in such binaries as deregulation and re-regulation. Regulatory change is not just a case of withdrawing rules and institutions, as in deregulation, or inserting them, as in re-regulation, nor the unproblematic transfer of bureaucratic processes of intervention between social actors.² Regulatory change involves a variety of actors and relations that develop across time and which contribute to an experience of regulation based on alliances, networks and micro-political processes.³ In reality, regulation is dependant upon a range of processes and its transfer as a function between actors is not always clear, unilinear and ‘negotiated’. Recognition of these issues is of particular importance given recent debates around ‘new actors’ in industrial relations.⁴ The paper draws attention to the manner in which the literature has begun to discuss the complex articulation of regulation and different levels of development. Specifically, it will discuss the issue of regulatory transfer, the shifts between different regimes of regulation and how this takes place. It will also note that transfer and regulatory change can be varied, that it can have negotiated features but it can also be coercive in nature. The paper engages the concept of ‘colonisation’⁵ as a way of understanding recent forms of regulatory change and the manner in which industrial relations have been altered. The process of colonisation in a range of projects of deregulation and re-regulation will be explored and understood, in terms of a variety of both institutional and cultural practices. Observers often ignore the more coercive forms of transfer, manifest in the

marginalisation of regulatory actors and the aggressive colonisation of the 'regulatory space' of one actor by another.

The paper posits an innovative analytical framework for examining processes of regulation and change, then uses this framework to reassess key moments of regulatory change since the 1960s. Drawing primarily from the UK, the paper discusses the origins, development and tensions in regulatory change within industrial relations, and explores the shift from negotiated processes of change to more coercive approaches: without an evaluation of this past we cannot appreciate the realities, complexities and politics of regulatory change. The following section shows how we need to understand regulatory change as a dynamic and complex process and not simply a move from one regime to another. The final section addresses the issue of re-regulation from the 1980s onwards. It is argued that industrial relations have been going through a process of re-regulation in part through the colonisation of regulatory spaces by new actors and notably new managerial roles. This has various dimensions: Strategies of marginalisation, stigmatisation and containment, strategies regarding voice and legitimacy, the development of new expert knowledge and the rise of new actors and boundaries.

The paper focuses on these strategies by examining organisational practices and policies that have developed since the 1960s. That these developments have been shaped by different interests and political contexts is clear; the paper attempts to highlight the way the challenge to organised labour has been consistent and framed within a language which undermines the presence of trade unions in practical and ideological terms. It is

essential we understand the state and capital's relations with organised labour as working through various strategies at different times. These allow us to appreciate the strategic complexity of the act of de-regulation as being more than just the 'withdrawal' of the state.

Conceptualising Regulation

There are long standing debates on the concept of regulation across the range of social sciences. Arguably dominated by debates in the political-economy literature, the concept of regulation has also been central to the work and employment debates and in particular the traditional focus on institutional and workplace regulatory arrangements in the industrial relations literature. Often exploring the dynamic of capitalism at higher levels of abstraction, the political-economy debates have provided insights into the historical periodisation of this mode of production and broad-brush understandings of their regulatory underpinnings. The contribution of Jessop as a major exponent of the regulation school in the UK has been the exploration of the role of the state in economic, political and discursive terms.⁶ Original French regulation theory prioritised the economic context of change; the political served the economic. The French school explored differences in the mode of regulation - the socio-political and economic institutional arrangements - that underpinned particular regimes of accumulation. Regulation referred to the institutional arrangements that provided the regularity that allowed regimes of accumulation to function, like the monopolist mode of regulation that underpinned Fordism.⁷ This extended to a view of national regulation that was concerned

with the national political dimension.⁸ Jessop argues these insights should be synthesised with an appreciation of ideology and political discourse, and an appreciation of a Gramscian approach that allows for the way political projects emerge that try to strategically respond and shape regulation.⁹ Thus the political strategic element is important in any discussion of regulation,

The concept of regulation is perhaps best understood from the perspective of the purpose it serves. The purpose of regulation is to facilitate social and economic reproduction. Although this suggests some sort of logic to the role of regulation this does not imply functionalist reductionism, as the existence of such logic does not mean outcomes can be assumed. There are numerous contingencies that belie such reductionism; institutional responses to regulatory need are not predetermined especially as bureaucratic processes may lead to dysfunctional outcomes and actor capacity cannot be assumed to be absolute and unproblematic.¹⁰ Moreover, this must be set in context of a broader notion of regulation that goes beyond the privileging of legal enactment and rules.¹¹ In a survey of debates on the conceptualisation of regulation, Baldwin et al argue that three key strands in regulation can be detected.¹² The first views regulation in terms of ‘targeted rules’ ‘accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance’.¹³ A second view is to be found in the area of political economy, which conceptualises regulation as being coterminous 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...’.¹⁴ The paper draws inspiration from approaches that view regulation as consisting of a variety of

actors such as the state, interest associations and community institutions, as presented by Regini and his discussion of Polanyi.¹⁵ Polanyi pointed to the role of coercion as being fundamentally linked to the emergence of the market economy, such that the state's history is at the heart of that of capital. The point is that all economies need state intervention and rules: As Regini observes '... even the Wild West needed some rules ... Opening fire against some modes or levels of regulation may simply lead to their substitution by other modes or levels'.¹⁶ However, the consequent search for outcomes and economic effect leaves Regini's discussion of the complex processes of change under-developed.

To broaden our understanding of regulation it is useful to access the insights of a more diverse range of disciplines, for example accounting and criminology, which offer alternate perspectives on economic and social relations.¹⁷ The discussion of regulation in the accounting literature is in large part dominated by a concern with the creation of rules, or standards setting, and focused on the activities of professional associations and other formal regulatory bodies. It is increasingly recognised however that the development and implementation of rules is a negotiated process, and prone to a range of influences. Ultimately both the processes by which rules are developed, and the broader governance roles associated with accounting institutions, rely upon the interaction of a range of regulatory actors through co-ordinated networks and alliances.¹⁸ By contrast, the criminology literature deals with the role of an array of informal actors within regulation, which has some crossover with US industrial relations debates.¹⁹ Within these accounts we can witness the changing degrees of tolerance by the state and capital of informal

regulatory processes, and the different ways in which actors are accommodated. We can also see how these relations of accommodation break down and the ways in which regulatory roles can be appropriated by other actors. These alternative bodies of literature have led us to a reappraisal of how regulation functions and how it has changed.

To build on this, we view the panoply of regulation through an analytical framework made up of a variety of *levels*, *spaces* and *sites* that are adjacent and at times interlocking, both mutually supportive and potentially competing. This terrain is populated by a range of regulatory *actors*, such as state bodies, trade unions or management networks, to name some key examples.²⁰ The *site* represents the point of interaction between regulatory actors, where regulatory outcomes are arrived at through the interaction of actors, and often reflected in institutional constructs. The site of regulation is circumscribed by a regulatory *space*, a recognised boundary of jurisdiction for the regulatory processes in question. Various actors may intervene in the process within this space, and there may be an overlap between the boundaries of regulatory spaces, but within these spaces each actor will also operate within their own sphere of influence, or jurisdiction, within which they are the sole actor. For example trade unions and management interact within a given regulatory space, within which each traditionally operates their own sphere of jurisdiction (the fact that the boundaries are fluid and contested by extant and potential new entrant actors, who may even pose a threat to the continued existence of these spheres of jurisdiction, is key to the processes of regulatory transfer with which we are concerned in this paper). These spaces exist at various *levels*, from micro to macro dealing with operational, strategic or policy issues. These levels are

conceptually discrete but interlocking and mutually informing. Relations between actors within a regulatory space, for example management and unions at the level of the workplace, may be informed by regulatory processes in the form of regional and national bargaining structures, the policy processes of the nation state and, increasingly, supranational mechanisms of regulations.

This builds on the theories of Crouch, and Hancher and Moran who use the notion of *regulatory space* in more formal and institutional ways – and in relation to more macro economic and political features of nation states.²¹ This notion of regulatory space has also been usefully employed in the accounting literature by Young.²² The concept is used to demonstrate that the ‘space’ in which rules are established goes beyond the organisational boundaries of the regulatory body and thus allows for the influence of a range of other actors. To return to our schema, regulatory actors may operate across a number of levels, sites and spaces, and furthermore the actors that occupy given spaces of regulation may vary by location. The regulation of certain social and economic relationships may in one location be served by the local state, whilst in another this role may be played by capital, for example through the dominance of local communities by monopolistic employers in so called company-towns and in relation to social facilities such as child care. In other circumstances key regulatory roles may be played by social institutions such as religious bodies, local community groups or even the operations of organised crime – or a combination of these actors.²³ 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. Hence, the space is the broad arena around which

different actors coalesce, with the site being that actual interface between regulatory actors on the specific regulation of an economic or social issue. This approach has advantages because it allows for the political interplay and contestation between actors. In this way such an approach differs from the work of Streeck and Thelen, which focuses more on institutional regimes, the societal context and the pattern of rule making.²⁴ However Streeck and Thelen do point to the importance of context in historical terms and how these can frame developments as logics of action; these are created in specific moments of time but referenced in subsequent developments as actors jostle for position and thus resurrect previous practices that may have been inactive. Therefore specific discourses, institutional practices and relations may find that they are used in different contexts as part of this interplay - something that this article draws out. Institutional change is a question of re-ordering actors, relations and rules across time.

It is also important to recognise that the panoply of regulatory actors and spaces reflects the coexistence of both the *formal* and the *informal*, in terms of their social and economic relations. Hence, 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, plus social agencies and institutions. Ultimately actors can only operate within the limitations of their specific sphere of jurisdiction or legitimacy, therefore the relationship between adjacent regulatory spaces and the actors that occupy these spaces is a key factor. These relationships and linkages can be both formal and informal. Formal linkages may be explicit and even contractual in nature, and could include 'state license', contracts and collective agreements, or may take

the form of partnerships and collaborations between actors. For example, Suddaby et al employ the notion of a 'regulative bargain' between the state and other actors, in this case professional associations in accounting, in which autonomy is granted and monopoly defined over a given jurisdiction in return for self regulation and assistance in maintaining state authority.²⁵ However, linkages may not be formally articulated, but can be based on informal relations of tolerance and accommodation rather than any established regulative bargain. This may be due to issues of actor capacity, or rather the failure of actor capacity that may lead to the expedient tolerance of de facto regulators by the state and capital.²⁶ Examples from the criminology literature show that the state has been known to tolerate the regulatory role of organised crime in certain circumstances where its own presence was under-developed or limited and where this expediency did not pose a threat beyond the boundaries of this regulatory space or zone of tolerance. Within such regulatory spaces, capital in the USA, for example, has demonstrated a historic willingness to engage with these informal regulatory actors in sectors such as port-transport, construction and waste disposal.²⁷ Alternatively, examples from the industrial relations literature show that employers in Britain historically relied upon the informal role of trade unions within the management of production.²⁸ Employers were therefore willing to tolerate union influence at the shopfloor level, especially as such containment did not lead to broader challenges to management prerogative in terms of corporate governance. These diverse examples demonstrate that 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, and the actors may not have had their roles and functions recognised or formally endorsed by the state or its legal framework.

Whilst it may not always be the case that all aspects of actors' activities are going to be in harmony with others, so long as there is some congruence there may be accommodation. However, should congruence turn to divergence then a breakdown in this accommodation may occur. Under such circumstances there is no singular path of regulatory change. Should accommodation and linkages with the informal no longer be deemed effective then actors may move to redefine this relationship, but this may occur in a number of ways. The role of the informal may be formalised and incorporated by the formal, or alternatively the role of one actor may be appropriated by another. This analytical approach offers new insight into the issue of the transfer of responsibilities and roles between regulatory actors.²⁹ Such transfer of responsibilities has been the focus of much attention by analysts of social and economic restructuring such as Majone,³⁰ however, the potential problems with the process of transfer tend to be obscured and overlooked. As we will discuss below, the process of transfer may be negotiated and pluralist in nature or it can be coerced and based on a variety of interventionist measures – what we term 'colonisation'. Yet, any discussion of regulation which engages with the notion of distinct actors, sites, spheres and spaces, also needs to be sensitive to how these develop historically. The problem in industrial relations analysis is that it has often preferred to focus on the relations between actors and institutions but not the way their context is reshaped through the ongoing interaction and struggle to dominate their regulatory space and its rules.

Transferring Regulation: from social democratic reform to deregulation and colonisation

Changes in the regulation of industrial relations within the UK since the 1960s can be conceptualised as a move from negotiation to colonisation. The negotiated transfer of regulatory responsibilities operates within the established arrangements and relations that exist within a regulatory space. The state, for example, may respond to new regulatory imperatives by intervening to create a new set of alliances with emerging actors, which may include the formal and contractual delegation of roles. Within such developments there can be open or tacit negotiations between different actors in relation to their roles and responsibilities, as was witnessed in processes of workplace regulatory change in the UK in the 1960s and 1970s. These more negotiated forms of change may also involve attempts to legitimate certain actors as reformers and ‘change agents’. In the UK in the 1960s and 1970s this involved highlighting new employment issues such as productivity, performance or health and safety matters, thereby building new agendas that steadily shifted the onus of regulation within established regulatory spaces and between existing regulatory actors.³¹ Areas once reserved for management prerogative, such as the management of Health and Safety, increasingly became subject to the involvement of broader actors in the form of trade unions and state agencies. Under some circumstances the process of transfer may become problematic due to the *de jure* absence of legitimacy of the informal actors and the broader social relations that have underpinned the realities of regulation. For such transfer and realignment of regulatory behaviour to take place the ‘informal’ must first become ‘formal’, perhaps through the legitimisation leant by state

recognition as a regulatory actor, thus facilitating regulatory transfer in a negotiated manner. This echoes the language of the mid-to-late 1960s Royal Commission on Trade Unions and Employers' Associations, better known as the Donovan Commission.³² Much of the subsequent shifts in regulatory responsibility up to the late 1970s were characterised by a negotiated transfer.

The phase of negotiated transfer associated with the findings of the Donovan Commission was reflected both in the activities of the Labour Government of the late 1960s and in the slightly more coercive character of the obsession with formalising industrial relations demonstrated by the Conservative Government of the early 1970s. The significance of using a Royal Commission, and public evaluations by the state more generally, is that they serve not only to direct strategies of regulatory reform, but to also provide an expert language for understanding and constructing a problem. In the UK the regulatory reform of industrial relations was seen as a question of order, or disorder to be more exact.³³ The historical legitimisation of regulatory reform in the UK – even when articulated quite differently by distinct political projects – was the stigmatising of labour in the form of the 'British worker problem'.³⁴ Trade unions were seen as residues of a phase of industrial antagonism, which did not fit with the modernising discourses of the 1960s. Hence, organised labour began to be viewed as a challenge to the renewal of industrial relations.

Donovan, as a proposed project of regulatory change, was also concerned with the question of knowledge. Regulatory change, or proposed regulatory change, needs to be

based on an understanding of the object of regulation and its environment. It needs to map the relations and actors that constitute any given regulatory space. Rose references the centrality of expert knowledge in the development of state policy and intervention.³⁵ The emergence of expertise and knowledge is central in the re-crafting of regulatory relations. The Donovan Commission was underpinned by an array of research projects and academic constituents. To follow Rose, the state previously lacked the knowledge to monitor and regulate these economic and social spaces, and was thus reliant upon local expertise and hence tolerant of unofficial actors. However as the state developed the knowledge and expertise to operate in these regulatory spaces, its aim was to reduce dependency on unofficial actors and practices. In the first instance the strategy was to formalise these practices with the incumbent actors, however later the approach shifted to facilitating the colonisation of the regulatory spaces traditionally occupied by them.

The question revolves around the extent to which informal processes and actors within industrial relations were tied back into the formal mechanisms and activities of the state, employers and trade unions. It could be argued that, ironically, this failure to 'formalise' led to unions becoming constrained in terms of their influence. The failure of the project of 'formalisation' meant that the concern with trade union representation and the labour control became broadened into a concern with the role of labour in regulation per se, which was re-articulated by the New Right and later, ironically, the New Labour Governments after 1997. These informal levels were effectively 'set adrift' from regulatory processes, and challenged through initiatives by the state and capital to displace their regulatory roles and functions. The process of marginalisation saw the

adoption of new legislation that circumscribed and prohibited the activities of trade unions. Such action undermined the legitimacy of unions, and their ability to fulfil their range of functions, thereby contributing to their isolation and decline, and rendering their regulatory role more vulnerable to managerial colonisation.

Regulatory Change and Neo-Liberalism as Colonisation: the new drivers of ‘re-regulation’

With the perceived failure of social democratic reforms through incorporation and formalisation in the 1960s and 1970s, the objective for the post-1979 New Right governments became a more frontal assault on labour.³⁶ With this came an attempt to replace the role of labour representatives through a specific project of regulatory colonisation. As before, the manner in which this was done was multifaceted. There are five features to the manner in which the regulatory spaces of industrial relations were colonised once the project of formalisation failed: strategies of marginalisation; strategies of containment; strategies of voice and legitimacy; the development of new expert knowledge; and the rise of new actors and boundaries. It is essential we look at the state and capital’s relation with organised labour, working through various strategies at different times, in order to appreciate the strategic complexity of processes of regulatory change and their articulation through a myriad of practices and discourses.

Strategies of Marginalisation

The social context is important in moments of regulatory change in terms of the manner in which problems are constructed and actors stigmatised. If in the 1960s it was the

workplace trade unionist that was the object of disdain and ridicule, by the 1980s this had been converted into the trade union movement as a whole. The role of national industrial conflicts in the 1970s, the obsessive caricaturing of trade union leaders, and the manner in which social democracy witnessed an increased distance between party and trade unions, all contributed to the evocation of trade unionists as a national problem. Dunn noted how the understanding of the 'old industrial relations' became based on the metaphors of inflexibility, trench warfare and immovability such that its actors, and the study of them, were perceived as a barrier to change by those wishing to reform industrial relations.³⁷ Metcalf added some academic legitimacy to these views, presenting key features of trade unions as obstacles to improving economic productivity.³⁸ The influential theories of Hayek were promulgated in policy circles and business elites, not only attacking the economic impact of trade unions but questioning their legal and even moral legitimacy.³⁹ In Wedderburn's seminal critique of Hayek and his policy influencing acolytes, he reports the Director General of the Institute of Directors in 1985 deploring the way "collective bargaining tends to debase labour".⁴⁰

These views contributed to a wider agenda that politically located the notion of regulation itself (defined in a reductionist way) as a part of the problem – fettering market forces and leading to economic malaise. Hall used the term 'authoritarian populism' to describe this phenomena: the authoritarian nature of the stigmatisation and marginalisation of social groups such as the trade unionists was legitimated by reference to the rights of the individual versus the constraining role of such actors on the development of enterprise and free labour markets.⁴¹ The shift of relations within any regulatory space, as in the

cases of port transportation or the mining industry, required a weakening of the legitimacy and, as importantly, credibility of the incumbent actor – the union. After their election in 1997, New Labour administrations concealed industrial relations as a political topic, preferring to dwell on individual employment rights and to approach collective issues in a less committed manner.⁴² The general disdain for organised labour within New Labour characterised continuities with previous Conservative attitudes, and the preference for more marketised images of employment.⁴³

The election of the Coalition government in 2010 presented a variation on a theme. Although initially accommodating key aspects of New Labour's legacy, the return to the rhetoric of freeing up labour markets and repudiating various aspects EU employment regulation, from the Lisbon Treaty to the Working Time Directive, has sought to reassert the Conservatives as the only party of 'business' and ameliorate the strong residual Euro-phobic tendencies of the party.⁴⁴ In office, policy agendas have been tempered by the inconvenient realities of Coalition partnership with the Liberal Democrats; the tail has not wagged the dog but it has balanced its more savage instincts to some extent. While there was ongoing commitment to New Labour initiatives such as the Union Learning Fund, toleration of unions in the area of training has been weighed against the continued exclusion of organised labour more broadly. The reassertion of the illegitimacy of union involvement beyond a highly circumscribed agenda and a questioning of their impact on economic performance shows the ongoing stigmatisation of organised labour; the portrayal of trade unions as a fetter on economic recovery from the post-2008 crisis demonstrates such rhetoric still has currency. More generally, the coalition government's

policy rhetoric seeks to justify the accelerated withdrawal of the state from the provision of public services and counter the residual public commitment to collectivist ideals through “obtuse pronouncements about the big society”.⁴⁵ The stigmatising of public service providers, and their employees more generally, has played a key part in the process of justifying the need for new entrants into a range of social policy regulatory spaces.

Strategies of Containment

Another feature of colonisation within British regulatory change was the containment of the impact and influence of regulatory actors, notably through increased circumscription of the activities of trade unions. This was in part reflected in the emergence of a ‘strong state’ approach within a context of a ‘free economy’.⁴⁶ For example, in the UK, under the Conservative Governments of the 1980s, a strategy was pursued that used coercive and legal processes to restrict the role of trade unions and joint forms of regulation, both formal and informal. Informed by the Hayekian logic of stripping away the role of trade unions to point where they remained as no more the Friendly Societies,⁴⁷ it was not simply a case of exposing the labour movement to the ‘market’. The nature of the legislation introduced reduced the ability to strike, banned secondary action, and circumscribed the legitimate basis on which a strike could be called in terms of the content of disputes. Moreover, new legislation prescribed ballots for industrial action and a range of institutional arrangements, including leadership appointments, under the pretext of returning power to individual rank and file union members.. The leitmotif of emphasising the role of the individual over that of the collective ran on through

subsequent governments. The organisational reach and remit of trade unions was undermined and the fetters on collective action established in the 1980s have persisted since, notwithstanding the weak re-regulation in terms of voice mechanisms introduced by New Labour.⁴⁸ Paralleling this strategy in the 1980s was a greater emphasis on state coercion – albeit within a liberal democratic context – with the use of direct policing in major industrial disputes, in mining and printing for example. This strategy framed the manner in which trade unions were more heavily circumscribed in their regulatory spaces. In some cases the Conservative government supported the actual dismantling of regulatory processes, such as the abolition of the Dock Labour Scheme in port transportation.

However, the practices of stigmatisation and containment, running through these decades, alone are not sufficient for processes of colonisation to occur: they can set the basic political framework but they cannot in themselves lead to realignments of relations within regulatory spaces and between regulatory actors. Colonisation is not a simple unilateral act, as regulation is the outcome of shared relations and activities within any regulatory space. Limits on actor capacity mean that the state is ultimately reliant on other actors to contribute to economic and social regulation, through historically constructed processes of alliance and accommodation. This militates against the simple removal of regulatory actors without the presence of a colonising alternative.

Strategies of Voice and Legitimacy: the new regulatory politics of the workplace

Colonisation also consists of the establishment of a new regulatory politics at the level of the regulatory space and a redefinition of the roles of the actors that populate them. A favoured lever of change adopted by the governments of the 1980s – and since - has been to increasingly expose regulatory spaces and actors to market imperatives. After the realisation that reform from within the system of industrial relations appeared to be limited, and once it was realised that cultural habits would be difficult to change through the establishment of alternative codes and behaviours, the Conservative Governments increasingly saw virtue in exposing specific economic units, and thus regulatory spaces, to competitive pressures. The role of subsidy, economic support, and closed product markets in sectors such as steel and coal, and subsequently public services, were undermined in order to expose management and unions to greater competitive pressures. The imperatives of the market would act to create pressure on the social and cultural relations of work. This changed the dynamics of the regulatory space in which actors operated and by extension the behaviour of the actors themselves, thereby encouraging a change of roles. The basic tenets of this policy have not changed in recent years.

Within this context, management attempted to occupy the spaces unions were seen to be dominating through the creation of alternative voice mechanisms such as direct communication systems and teamworking, which were both ‘individualistic’ and ‘collectivist’ but with little autonomy from the firm (Bacon and Storey, 1996). Moreover, management since the early 1980s – to varying degrees of success - have tried to tie remuneration systems and welfare systems to the performance of the firm.⁴⁹ New managerialism in the form of human resource management programmes began to

aggressively colonise the regulatory space traditionally occupied by mechanisms of joint regulation, which had begun to decline in terms of their coverage and where they had persisted now faced a challenge to aspects of their role. Whether this occupation of the mechanisms of worker voice was consistent is another matter, as serious questions hung over the scope and effectiveness of such management strategies.⁵⁰ However, this development meant that the balance between actors in terms of the regulation of key issues within the employment relation began to shift. Whilst it must be acknowledged that the decline of articulating processes within British industrial relations, in the form of sector level and multi-employer bargaining, had begun prior to the election of the Conservative government in 1979, the fragmentation of the joint regulation at the workplace level for two decades after was a major challenge to trade unions. Again, this has been paralleled by a greater emphasis on individual rights rather than on collective mechanisms of representation, which has been reinforced under the post-1997 New Labour regime and the post-2010 Coalition government.⁵¹

It must also be acknowledged that this shift in voice politics was underpinned by a decline in the shared meanings of regulation, which had previously existed to some extent. Joint regulation relied upon an acceptance of roles, plus a shared understanding of an employment relationship based on a mutual commitment associated with the open ended employment contract. The agenda shifted away from this shared meaning and towards the employment relationship being far more contingent and one sided. From mass redundancy and high unemployment, to the growth of non-standard contracts and more recently the rhetoric of *employability*, employers have distanced themselves from

this shared meaning and absolved themselves of the responsibilities that went with it. The ‘meaning’ of employment is defined more in terms of the ‘market’ and not by notions of organisational belonging or mutual commitment. Part of the process of colonising the regulatory space occupied by unions has been to undermine faith in the meaning of what unions stood for, from notions of social justice being eclipsed by market ‘realities’, to the legitimacy and viability of collective organisation itself.⁵² Yet to some extent management appears to be striding ahead on its workplace agendas by default rather than by design, drawing on the social stigma of collective agency as much as any alternative marketised discourse.

The Development of New Expert Knowledge

The attempted colonisation of the regulatory spaces of work is not without uncertain outcomes, not least through loss of actor capacity associated with displacement. Therefore, a further feature of this complex pattern of regulatory change refers back to a permanent aspect of regulatory processes: the development of expert knowledge. As discussed earlier in relation to the academic dimensions of the Donovan project, regulatory change and re-alignment require new forms of knowledge, organisational mapping and institutional archaeology. As management since the 1980s has attempted to step into new areas in the regulation of the employment relationship then a whole new mapping of employment has been required. The growth of the business school phenomena was due to many factors: new forms of competitive management, new forms of human resource management, organisational factors in terms of a mushrooming management constituency, and institutional ones tied to the restructuring and

commodification of education. Underpinning this has been the fact that the greater degree of management intervention in the administration of businesses (and the social and cultural spaces of organisations) has required initiatives to address the inevitable cognitive gaps that exist in management knowledge. This dimension has become central to the mapping of regulatory spaces and the attempts to realign them.

Whilst the realities of what business schools 'do' can vary, especially in the light of critical academic traditions within British business schools, these educational and research institutes have been paralleled and supported by more direct intervention from consultancy firms who survey, prompt and legitimate organisational change.⁵³ These bodies have provided the new regulatory actors with knowledge resources, technical abilities and competences, and the degree of legitimacy required to colonise a regulatory space and undertake the associated regulatory role. An important aspect of this process has been the projects of professionalisation witnessed in various functions of management. This is a well documented process in areas of management with longstanding professional status such as accounting (Robson et al 1994, Cooper and Robson 2006) but is now apparent, to varying degrees, in other general and specialist management functions. Interestingly, Robson et al (1994) point to the ability of accountants to gain prominent positions in corporate hierarchies due to the absence of alternative forms of managerial qualifications.⁵⁴ In recent years Business Schools have been engaged in producing MBAs and other management qualifications to off-set this imbalance. We have also seen management associations such as the Institute of Personnel and Development pursue chartered status as part of a campaign to professionalise Human

Resource managers. The elevation in status has strengthened the hand of the Chartered Institute of Personnel and Development in asserting greater professional closure over entry into this managerial function and intervention in terms of university education and pedagogy in the field of Human Resource Management. The professionalisation of those most directly involved in many aspects of the regulation of the employment relationship is particularly pertinent in terms of the journey away from a past characterised by informal practices and towards a greater individualisation of rights and issues within workplaces. Such professionalisation projects can therefore be intrinsically linked to processes of regulatory change and transfer discussed previously. This is one of the ways the role of the informal may be formalised and incorporated by the formal, or the role of one actor may be appropriated by another, which in this case may be different cohorts of management.

The Rise of New Actors and the Re-establishment of Regulatory Boundaries

While the expansion of roles by incumbent actors represents a key aspect of the process, colonisation as a form of regulatory change has also involved the direct introduction of new actors and the re-establishment of boundaries between regulatory spaces. The state can play a key role in introducing new actors into a regulatory space thereby redefining the roles of different actors and the respective balance of power between them. In the first instance, it can formally transform ownership structures. For example, the privatisation and liberalisation of a sector may allow new entrants and stakeholders to emerge. The manner in which privatisation and liberalisation is pursued by the government impacts directly upon this. The decision to retain a vertically integrated

structure for the privatisation of British Telecom, for instance, and the pursuit of a duopoly policy in the early stages of liberalisation limited the opportunities for new entrants into the UK telecommunications market.⁵⁵ By comparison, the privatisation and liberalisation of the various elements of the UK energy sector saw the break-up of vertically integrated monopolies in electricity and gas. This facilitated the emergence of new entrants at various stages of production and distribution, particularly in the retail of gas and electricity supply. These new ownership structures meant a new delineation of regulatory spaces and the appearance of a new set of actors within their decision making processes. The telecommunications sector has subsequently seen greater de-differentiation with both the information technology sector and the media industry. Such change impacts upon the resources, legitimacy and knowledge base of existing actors, such the Communications Workers Union, in terms of participating in the processes of regulation within previously discrete regulatory spaces. Hence, when we discuss the development of new actors and the colonisation of any regulatory space we need to be wary of the fact that their roles can be influenced by the way boundaries of ownership and economic organisation are changed.

The support for the introduction of new actors through the transformation of boundaries between different sectors and regulatory spaces is often associated with state led liberalisation. We have seen how private shipping companies are taking a more direct interest in the employment processes of port transportation for example. These developments appear less interventionist than the privatisation of the national utilities cited previously but were still effective in changing the regulatory terrain. Other

examples can be seen in local government where compulsory competitive tendering led to the reorganisation of key services, which by extension meant the realignment of regulatory spaces. The subcontracting of waste management, for example, has seen organisations develop with new structures of national co-ordination. This has meant that the relevant regulatory space has been redefined and in a way that, for the employer, potentially enhances actor capacity through the co-ordination of activities and resources. This co-ordination facilitates the distinct physical, managerial and knowledge resources employers can mobilise. Privatisation, in its various forms, is therefore an important aspect of re-addressing the structure of actors and the relations they have in and between regulatory spaces. This means that state action can facilitate this process of regulatory colonisation by committing the resources of the state to one actor in preference to another. The increased domination of multinational corporations within privatised utilities, for example, adds a further dimension as individual corporations may operate and co-ordinate across previously discrete sectoral boundaries, thus distinct regulatory spaces, and even national (regulatory) boundaries. Energy, transportation, and waste management are examples where co-ordination within and between national boundaries affords a greater degree of resources to management – although how they use them and to what effect is another matter. This is not to say that organised labour and other actors may not be able to do likewise, although the challenges facing these ventures are considerable. This is particularly so when it comes to international co-ordination, due to competing patterns of national labour organisation and views of regulation. This obviously does not discount the possibility for union initiatives to deal with these changes. Notwithstanding this potential for union action, there have been significant

developments in the employer domination of regulatory spaces and these have been a recurring theme under Conservative, New Labour and Coalition Governments.

Finally, although the market entrance of transnational corporations in response to state liberalisation policies has major ramifications in terms of regulatory space and actors operating at the workplace level, there are other ways in which new actors have emerged that have not relied on such major restructuring. For example, the expansion in use of labour supply agencies and subcontracting may undermine the role of trade unions that have historically regulated the supply of labour in specific regulatory spaces. The use of labour market intermediaries in the form of agencies or subcontractors introduces a new actor into a regulatory space. This changes the dynamics of relations between incumbent actors and changes the regulation of the supply of labour, often removing the influence of unions in terms of the regulation of how this relationship is managed.⁵⁶

Conclusion

When discussing regulatory change – be it in terms of deregulation or re-regulation – we need to understand the array of relations and actors that underpin its development. We need to think in terms of how relations between regulatory actors are developed, aligned and re-aligned within the processes of regulating industrial relations.⁵⁷ We must also understand that regulation operates across different levels and spaces. The discipline of industrial relations has been aware of these complex political dynamics. This is reflected in discussions of formality and informality within regulation; in the comprehension of custom and practice; in the realisation of the limits of formal and state based systems of

regulation; and in discussions of how these systems have been changed and reformed. Importantly, the industrial relations discipline also demonstrates an understanding of social relations at work and how they underpin regulation. Any study of the work of the Donovan Commission during the 1960s demonstrates this and illustrates the rich complexity of regulatory processes in cultural and institutional terms. The irony is that the industrial relations community has lost ground in terms of conceptual thinking to other schools of thought.⁵⁸ The analysis of regulatory space and actors has been more common in political science and to an extent in critical debates within the accounting literature.⁵⁹

This article has shown how, within the UK, regulatory change shifted from an approach based on negotiation to one that we have described as colonisation – and which ironically includes both deregulation and aspects of current re-regulation. To say that developments since the early 1980s have been based on deregulation and the limit of regulatory processes does not tell the full story. The development of a ‘market’ system of regulation is as proactive, political and interventionist as the construction of a modern, centralised and state-led approach - as Gamble and Kahn reminded us recently, and Polanyi earlier.⁶⁰ In our own view it involves an amalgam of factors: a social and political context; the containment of regulatory actors through an assertive state role, including the use of legislative, cultural and coercive apparatus; an exposure of regulatory actors to external ‘market’ pressures; the support of micro level processes and actors capable of operating alternative voice and control mechanisms; the support of new ways of acquiring knowledge of the spaces and functions of regulation and its subjects; and finally the

facilitating of new actors, such as transnational capital, and new synergies between different regulatory spaces, such as distinct industrial sectors. Such developments underpin a process of re-regulation that is not necessarily based on negotiation or the support and tolerance of a plurality of actors and social relations.

The article does not suggest that the road to colonisation as a feature of new forms of regulatory change is inevitable and pre-determined. We are not suggesting the concerns of Donovan and 1960s social democracy inevitably led to the strategies of the New Right in the 1980s, the Third Way of the New Labour Government, or even the intensified neo-liberalism of the Coalition Government. These are different moments and elements that do not combine into an overarching strategy. The latter regulatory changes were, however, historically contingent and path dependent, but these regulatory changes across different periods were not part and parcel of a unitary project. Regulatory change has been the outcome of a range of projects. While these projects may in fact be contradictory, they can draw from each other's political and policy agendas even if the interests driving them may vary. Projects of regulatory change develop in relation to existing regulatory spaces, and in relation to previous attempts at change, both successful and failed. It is important not to neglect the extent of interdependence between separate moments of regulation and regulatory change. They may not be explicitly strategically connected but reform projects are shaped by the legacy of their predecessors and the way industrial relations reform is inherited. The colonisation of industrial relations through the redrawing of regulatory boundaries, along with the cultural underpinning of the

stigmatising of trade unions in various forms, has become a leitmotif that is central to comprehending British industrial relations.

These historical processes continue into the contemporary context. For example, taken at face value the Coalition government's notion of the 'Big Society' could see the entrance of new actors regulating the provision of service across a span of areas, from transport to social care.⁶¹ This of course presupposes the willingness and capacity of new actors to colonise these new areas of activity. The enthusiasm – which has been limited - for taking on new responsibilities, born of ideology or dissatisfaction with incumbent actors, does not guarantee the capacity to provide a credible alternative. Limitations in actor capacity of the new entrant actors may result in a crisis of provision, and subsequently their displacement from the regulatory space they had (unsuccessfully) colonised. The Coalition's desire to render the withdrawal of the state irreversible through a restructuring of public services that goes beyond those of the Thatcher administration⁶² would be confronted with the need to sponsor new regulatory actors or fill the role itself. Recent scandals over the standards of provision in private care homes have shown the problems the state faces in attempts to transfer responsibility and accountability to new actors,⁶³ and the renewed imperative for the state to re-enter a regulatory space from which it had sought to distance itself.

Regulatory change has been ongoing, and has involved regulatory transfer of both a negotiated and coercive fashion. It must be said that over recent years these processes of change have been at the expense of organised labour, as their regulatory spaces have been

steadily colonised by the state and capital. However, colonisation as a form of regulatory change - and as a project that synthesises many of these forms - is not omniscient. Like any imperial power in the 19th Century – or more recently for that matter – there are ‘obligations’ associated with colonisation: maintaining order, sustaining ‘effective’ systems of economic and social distribution, and dealing with demands for constructing forms of voice mechanisms that are perceived to have legitimacy. In short, colonisers have to provide an effective regime of regulation and demonstrate its superiority to previous or alternative regimes of regulation. In this respect any pessimistic conclusions need to be tempered as these are not simple objectives and, as any reflection on such a dynamic process should conclude, a steady end-state cannot be presumed.

Notes

¹ Regini, “Dilemmas Labour Market Regulation”.

² Majone, *Rise of Regulatory State; The New European Agencies*.

³ Martínez Lucio and MacKenzie, *Unstable Boundaries*.

⁴ Heery and Frege, *New Actors Industrial Relations*.

⁵ See MacKenzie and Martínez Lucio, *Realities of Regulatory Change*.

⁶ Jessop, *State Theory*.

⁷ Aglietta, *Theory of Capitalist Regulation*; Boyer, *The Regulation School*.

⁸ van der Pijl, *Making Atlantic Ruling Class*.

⁹ Jessop, *Accumulation Strategies*.

¹⁰ Jessop, *State Theory*; Peck, “Regulating Labour”; and Merton et al., *Reader in Bureaucracy*.

¹¹ Rubery and Grimshaw, *The Organization of Employment*.

¹² Baldwin et al., *A Reader on Regulation*, 3-4.

¹³ *Ibid.*, 3.

¹⁴ *Ibid.*, 4.

¹⁵ Regini, “Dilemmas Labour Market Regulation”; Polyani, *The Great Transformation*.

¹⁶ Regini, “Dilemmas Labour Market Regulation,” 23.

¹⁷ See MacKenzie and Martínez Lucio, *Realities of Regulatory Change*.

¹⁸ For a review see Cooper and Robson, *Accounting professions and regulation*; Young *Outlining Regulatory Space*.

¹⁹ Ichniowski and Preston, *Persistence of Organized Crime*; Levy *The Waterfront Commission*.

²⁰ See MacKenzie and Martínez Lucio, *Realities of Regulatory Change*; Martínez Lucio and MacKenzie, *Unstable Boundaries*.

²¹ Crouch, “Sharing Public Space”; *European State Traditions*; Hancher and Moran, “Organizing regulatory Space”.

²² Young, *Outlining Regulatory Space*.

²³ See Ichniowski and Preston, *Persistence of Organized Crime*; Levy *The Waterfront Commission*.

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- ²⁴ Streeck and Thelan “Institutional Change”.
- ²⁵ Suddaby et al. *Transnational Regulation Professional Services*.
- ²⁶ Migdal *State Power Social Forces*.
- ²⁷ Beare, *Corruption and Organized Crime*; Levy *The Waterfront Commission*; and Ichniowski and Preston, *Persistence of Organized Crime*.
- ²⁸ Clegg, *Changing System Industrial Relations*.
- ²⁹ See Martínez Lucio and MacKenzie *Unstable Boundaries*.
- ³⁰ Majone, *Rise of Regulatory State; The New European Agencies*.
- ³¹ Clegg, *Changing System Industrial Relations*.
- ³² Royal Commission Trade Unions.
- ³³ Darlington and Lyddon, *Glorious Summer*; Rose, *Government Authority and Expertise*; Shanks, *The Stagnant Society*; and Wigham, *What’s wrong with Unions?*
- ³⁴ This process of stigmatising labour in order to legitimise change found reflection in the popular culture of the 1960s and 1970s. The representations of industrial culture in British cinema and television reinforced negative views of British workers and British trade unionists. Mainstream cinema such as *I’m Alright Jack* and popular television series, from *The Rag Trade* to *On the Buses*, contributed to the cultural construction of the ‘British worker problem’. Workplace conflict was trivialised and its causes laid at the door of anachronistic workplace representatives, who remained as obstacles modernising discourses of the period. These cultural representations contributed to a serious process of stigmatisation of regulatory actors and their constituencies, undermining the legitimacy of the role of workplace collective representation, and (perhaps unintentionally) serving as a precursor or facilitator to the colonising of their space and roles.
- ³⁵ Rose, *Government Authority and Expertise*.
- ³⁶ MacInnes, *Thatcherism at Work*.
- ³⁷ Dunn, *Root Metaphor*.
- ³⁸ Metcalf, *Water Notes Dry Up*.
- ³⁹ Hayek, *The Constitution of Liberty*.
- ⁴⁰ Wedderburn, *Freedom of Association*.
- ⁴¹ Hall, *Hard Road to Renewal*.
- ⁴² Howell, *Trade Unions and State*.
- ⁴³ Martínez Lucio and MacKenzie, *Unstable Boundaries*.
- ⁴⁴ Williams and Scott, *Conservative Party Modernisation*.
- ⁴⁵ Grimshaw and Rubery, *End UK Social Model*, 105.
- ⁴⁶ Gamble and Kahn, *Free Economy Strong State*.
- ⁴⁷ Wedderburn, *Freedom of Association*.
- ⁴⁸ Perrett, *Worker Voice in Context*.
- ⁴⁹ Martínez Lucio and Simpson, *Discontinuity and Change*.
- ⁵⁰ Cully et al. *Britain at Work*; Legge, *Rhetorics and Realities*.
- ⁵¹ Howell, *Trade Unions and State*; Dickens, *Making Employment Rights Effective*.
- ⁵² See Wedderburn’s critique of Hayek in Wedderburn, *Freedom of Association*.
- ⁵³ O’Shea and Madigan, *Dangerous Company*.
- ⁵⁴ Robson et al. *Ideology of Professional Regulation*; see also Cooper and Robson, *Accounting Professions and Regulation*.
- ⁵⁵ Beesley and Laidlaw *The Future of Telecommunications*.
- ⁵⁶ See MacKenzie *Subcontracting Reregulation Employment Relationship*; MacKenzie and Forde, *The Myth of Decentralization*.
- ⁵⁷ See MacKenzie and Martínez Lucio, *Realities of Regulatory Change*; Martínez Lucio and MacKenzie, *Unstable Boundaries*.
- ⁵⁸ Kelly, *Rethinking Industrial Relations*.
- ⁵⁹ Crouch, “Sharing Public Space”; *European State Traditions*; Hancher and Moran, “Organizing regulatory Space”; Majone, *Rise of Regulatory State; The New European Agencies*; Regini, “Dilemmas Labour Market Regulation”; Suddaby et al. *Transnational Regulation Professional Services*; and Cooper and Robson, *Accounting professions and regulation*.
- ⁶⁰ Gamble and Kahn, *Free Economy Strong State*; Polyani, *The Great Transformation*.
- ⁶¹ Williams and Scott, *Conservative Party Modernisation*; Grimshaw and Rubery, *End UK Social Model*.
- ⁶² Taylor-Gooby and Stoker, *The Coalition Programme*.

⁶³ Grimshaw and Rubery, *End UK Social Model*.

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