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izations established in Germany (DIN), France (AFNOR), the UK (BSI), and the United States (ANSI) in the first quarter of the twentieth century, together with their more recent supranational counterpart, the International Standard Organization (ISO, established in 1946). The tendency to treat international regulatory bodies, whether governmental or non-governmental, as somehow "external" can also be countered by linking the regimes approach to ideas of regulatory space.

3. Modalities of Control

It is a weakness within the political science literature on regulation generally that it has paid closer attention to the emergence of regulatory regimes and the policy-making processes surrounding them, at the expense of investigating day-to-day processes of implementation which have largely been the preserve of sociolegal scholarship. In support of closer investigation of how regulatory regimes are implemented, the idea of regulatory space can be given greater analytical clarity by introducing conceptions of control which have been read across from cybernetics. This approach suggests that any viable regulatory regime should have each of the three identifiable components of a system of control (Hood, Rothstein, and Baldwin 2001). Within this analysis any control system must have some rule, goal, standard, or norm (director in cybernetics speak), a mechanism for monitoring or feeding back information about compliance with the rule, goal, standard, or norm (detector), and a means by which deviational performance is realigned (effector). In a classical regulatory analysis these components map onto rules, monitoring, and enforcement. This approach has two particular strengths. First it promotes an analysis which precisely identifies the dispersal of the three components of a regulatory regime around the various actors within the regulatory space. Secondly it encourages us to recognize modalities of control which either supplement hierarchical control (in hybrid forms) or wholly substitute for it. Thus community-based control operates through the emergence of norms in social settings with monitoring through mutual observation of actors within a community and realignment of deviant conduct through the application of social sanctions such as disapproval and ostracization. Within competition-based control, standards emerge through the rivalry of actors jockeying for position in markets or in other settings, information about compliance with the standards is fed back into the system through the implicit monitoring of performance, for example by buyers in markets, and deviant behaviour is realigned by the aggregated decisions of diffuse actors who use information about performance (for example buyers choosing to buy elsewhere, or parents choosing to send their children to different schools).

While the first three modalities of control, hierarchy, competitition, and community, are well established in the literature, albeit with a variety of labels, there is no consensus on the existence of a fourth modality, labelled "contrived randomness" in

the work of Christopher Hood (Hood 1998; Hood et al. 1999) and "architecture" by Lawrence Lessig (Lessig 1999). The former concept refers to the deliberate building into regulatory systems of uncertainty as to what the payoffs of regulatee conduct may be, for example by randomly rotating regulatory staff to different positions, or using unannounced inspection visits to detect infractions. Lessig's architecture category traces its lineage back to Bentham's proposals to increase the effectiveness and reduce the cost of incarceration through the design of a prison in the form of a Panopticon in which guards located in a central tower are able to carry out surveillance of all parts of the prison from a single location. More recent applications of the idea have sought to develop architectural solutions to the problem of crime control (Newman 1972) and in Lessig's own work (1999), the design of software code by manufacturers as a means to prevent users from engaging in certain forms of behavior. In each case randomness and architecture are self-enforcing mechanisms rooted in design. Randomness self-enforces through behavioral responses to uncertainty, whereas architecture self-enforces through physical inhibition—the classic example contrasts the efficacy of the concrete parking bollard with the uncertainty as to whether a parking attendant will show up and issue a ticket for an illegally parked car. The weakness of the concrete bollard is that it prevents parking at all times, whereas policy may only require parking restrictions during certain times of the day (the problem of over-inclusiveness).

In practice the "modalities of control" are often found in hybrid forms in particular regulatory regimes. Thus competition policy employs a combination of hierarchy and competition as a means to control the behaviour of market actors. Enforced self-regulation combines hierarchy with the capacities of businesses to regulate themselves. Mandatory product rules which require the implementation of design-based controls over user behaviour, such as automatic cut-out devices, combine hierarchy with architecture. A challenge for regulation scholars is to identify and incorporate into their analyses mechanisms of control which combine the modalities *other than hierarchy* and by doing so move beyond the preoccupation with hierarchical control within state-centric approaches to regulatory governance (Scott 2004).

4. Varieties of Regulatory Organization and Style

The emergence of regulation as an international field of public policy and scholarly enquiry carries with it the risk that regulation will be conceived of as a homogeneous and uniform policy instrument involving particular organizational forms and styles. There is much work to be done in building on the pioneering scholarship which has emphasized the nature and extent of variety in these dimensions of regulation. David Vogel's classic comparative study of environmental regulation in the United States

contrasted the characteristics of "secrecy, informality, and voluntary compliance" of the British regime with "the more open, legalistic, and adversarial styles of regulation adopted in the United States" (Vogel 1986, 146). Notwithstanding the striking variation in styles, Vogel was not able to detect much difference in the effectiveness of the two regimes, despite the observation that American standards appeared much stricter (Vogel 1986, 161–2).

Though the first of the great federal independent commissions, the Interstate Commerce Commission, was established in the 1880s it was the proliferation of agencies in the New Deal period which gave regulation a central position in American public management and spawned the early classic studies (Bernstein 1951; Cushman 1941; Landis 1938). The 1930s can perhaps be seen as a period of maturing of the regulatory form of governance. By the 1950s most European countries had assigned many of the activities operated through regulated private enterprise in the United States to government-owned enterprises of one kind or another. This was the position in respect of provision of telephone, telegraph, energy, railways, and airlines, for example. This observation was behind contrasting characterizations of the United States as a regulatory state and European countries, by and large, as welfare or provider states (Majone 1994*b*).

But this distinction between modes of governance is over-simple. The United States Interstate Commerce Commission was modelled on a British organization, the Railways Commission, which when created in 1873, was a landmark institutional reform because of the shift it represented from regulation by government departments and boards and the emergence of a doctrine of independence for regulatory agencies somewhat akin to the doctrine of the independence of the judiciary (Dimock 1933). The Railways Commision was, in essence, a tribunal applying legislative rules through processes of adjudication. But the British had developed other regulatory techniques earlier in the nineteenth century, introducing inspection into many areas of economic life, as with the factories inspectorate, as a means to promoting compliance with statutory norms. Some European countries had traditions of government inspectorates dating back to the eighteenth century—as with the well-known case of the Prussian Polizei (Raeff 1983). Viewed from the vantage point of the twenty-first century, European experimentation with public ownership as a distinctive form of provision may look like a relatively long blip in a history of state–industry relations in which the norm is regulated private provision. For example, the divergent policies and structures of France, Britain, and the USA for the pursuit of railways policy in the nineteenth century were each based on regulated private ownership (Dobbin 1994). The observation that European countries have long traditions of state regulation, and distinct "varieties of regulatory capitalism" (Levi-Faur 2005), suggests that any shift towards regulatory forms of governance is likely to be towards distinctively European forms rather than wholesale adoption of American models. The same arguments might be deployed for other countries such as those of north Asia. Kagan has characterized the American style of regulation in terms of "adversarial legalism" and suggests that Japanese regimes in domains such as

pollution control, occupational health and safety, and financial services have a deserved reputation for informality and flexibility in their implementation (Kagan 2000; but cf. Schaede 2000).

Taking one example of regulatory reform, it is easy to represent privatization as a withdrawal of the state from determining key issues of public service provision through transfer of ownership into private hands. But in many cases the central state exerted little control over public enterprises, which were frequently free to develop and execute their own policies. Policies of privatization pursued diverse motivations for governments. The UK government stumbled upon a policy which was initially "pragmatic" (and largely concerned with reducing debt) but became "systemic" in the sense of promoting a long-term shift in the balance of power from government to the private sector (Feigenbaum et al. 1999, 54). A central paradox of privatization is that where the policy has been accompanied by the creation of new regulatory apparatus, as with the utilities sectors in most countries, government may have more information about, and greater practical capacity for control over, privatized enterprises than it did over their public predecessors (Majone 1994*a*). Thus, Vogel's comparative study of regulatory reform found that privatization and liberalization processes in both Japan and France exhibited tendencies for central government to attempt reinforcement of its capacity for control over the applicable sectors (Vogel 1996, 257). This finding, and the contrast it provides with the disengagement strategies of the United States and (controversially) the United Kingdom, suggests that "the evidence does in fact contradict the popular wisdom that the overwhelming power of international markets has forced national regulators in a common direction" (Vogel 1996, 261–2).

The choice of institutional form for regulation over privatized industries has been a major public policy question. The general arguments in favor of independent regulatory agencies (IRAs) include the following: they reduce the capacity for dominant firms to exploit their de facto regulatory capacities to inhibit or reduce competition, a major factor behind the EU legislative policy which requires separation of regulation and operation of services in the telecoms, postal, and energy sectors; they tend to insulate regulatory decision making to some extent from the agendas of elected politicians. The rise of such "non-majoritarian" institutions for regulation has been a central theme of contemporary public policy approaches to regulation, offering as they do for some, a superior form of economic government for addressing highly complex issues in domains such as utilities regulation, financial services, and biotechnology (Majone and Everson 2001; Thatcher and Sweet 2002). Less attention has been paid to alternative organizational choices, such as the use of government departments or courts as regulators. Contemporary discussions of self-regulation, and in particular of co-regulation, suggest greater attention is now being paid to the question as to how the self-regulatory capacity of industry can be harnessed for public regulatory purposes (Steinberg 2001).

5. Regulatory Legitimacy

A focus on regulatory agencies as the main delivery point for regulatory policies has generated a substantial literature on how this organizational form can be rendered legitimate. A central problem is that of delegation from legislatures and/or from the executive. In some systems, notably that of the United States, delegations may be wide, including powers to make regulatory rules and to enforce penalties for breach. It is more common in the OECD to find agencies with more limited delegations, for example of monitoring and investigatory powers, with the application of formal sanctions reserved to courts and tribunals and rule-making powers reserved to ministers and/or the legislature. Given this variation in the extent of delegation it is unsurprising to find that the American literature is particularly concerned with the delegation problem.

A central concern of the new institutional economics literature as applied to regulatory policy has been to find ways to structure delegations to agencies in such a way as to reduce the potential for "bureaucratic drift" (Horn 1995). In other systems, such as the Westminster-type regimes of the UK and Jamaica, there is a pronounced risk of legislative drift, as changes in government create the potential for the rules of a regulatory regime to be changed (Levy and Spiller 1996). Within this literature the central problem of regulatory delegation is not so much the democratic one of how to hold agencies to the will of the elected politicians, but rather the more technocratic issue of creating the "credible commitment" to stability in a regulatory regime that firms proposing to invest can depend on. The point here is that governments cannot rely on coercion to secure their objectives, but rather need to create an environment in which investors are willing to take risks (Gilardi 2002, 875).

Credible commitment is a particular issue for developing countries seeking inward investment in their newly privatized utilities sectors, under conditions where the "institutional endowments" (the courts and the rule of law, stock exchange, markets) may appear to lack stability or reliability (Levy and Spiller 1996). Thatcher's study of delegation to agencies within the UK, Germany, France, and Italy notes the functional reasons for such delegation—permitting politicians to transfer responsibility for politically unpopular decisions, enhancing the credibility of decisions, and enhancing the technical capacity of decision makers in complex areas (Thatcher 2002, 130). But, he suggests that the institutional form chosen for such agencies in each country is the one best calculated to reduce "agency costs"—the risks that agencies will "shirk" or deviate from their missions. The precise patterns were shaped both by institutional learning, but also by the peculiar state traditions of each country. Credible commitment has also been identified as a problem for EU regulation, subject to a degree of supervision by the European Commission, under conditions where that organization is becoming increasingly politicized (Majone 2000). Majone suggests that the solution to this threat is to tackle the substantial political and legal obstacles to create independent agencies at the level of the European Union.

There is a potential for tension between conceptions of legitimacy which emphasize procedural matters and the structures for democratic and fair regulatory decision making, on the one hand, and newer movements which measure the legitimacy of regulation according to substantive measures of effectiveness and efficiency. The tensions are well illustrated by the Australian National Competition Policy (NCP), introduced in the mid-1990s (Morgan 1999). The policy involves a series of reviews by state, territory, and federal governments of all existing legislative instruments having regulatory effects for business, and is complementary to policies of regulatory impact assessment (RIA) for new policy instruments, common to most OECD countries. The NCP significantly cuts across the capacity of state and territory governments to maintain in force regulatory regimes for social and other purposes, by mandating that regulation of business may only be sustained where it addresses market failures.

The turn towards efficiency can, of course, be seen as a ratcheting up of the procedural accountability required within regulatory regimes. Most OECD governments have established central units of some kind charged with overseeing the review by initiators of new regulatory instruments, and this, it is suggested, complements the more traditional political and legal accountability of regulators to legislature and courts for their actions (OECD 1997*a*). Many find that these traditional accountability mechanisms are insufficiently robust to address the wide powers granted to regulatory agencies (Graham 2000, 85)

An alternative to the approaches which either suggest that formal accountability mechanisms are always likely to be impossibly weak, or that they should be ratcheted up, is to identify alternative mechanisms which are at least equivalent to formal accountability processes, embedded within relations of interdependence within regulatory regimes (Scott 2000; cf. Stirton and Lodge 2001; Wilks 1998, 140). An advantage of thinking in this broader way about accountability, so as to incorporate the day-to-day constraints on decision making and action which derive from interdependence, is that it provides a more ready means through which to consider the legitimacy of non-state and supranational actors who exercise regulatory power. Thus companies, though not subject to parliamentary and judicial oversight in the same form as public agencies, may nevertheless be subject to equivalent constraints through corporate governance regimes or market positioning. Onora O'Neill has introduced the concept of "intelligent accountability" to embrace the idea that institutions might be "allowed some margin for self-governance of a form appropriate to their particular tasks, within a framework of financial and other reporting" (O'Neill 2002, 58) This approach is the antithesis of the assumption that organizations, whether public or private, can be subjected to "total control" by regulation.

Regulation in public policy is defined in part by reference to its instrumental qualities. Regulatory regimes, organizations, and norms are targeted at delivering particular outcomes. The instrumental character of regulation is often contrasted with classical legal norms which are applied universally and lack the quality of being targeted (Parker et al. 2004). The claims to instrumentalism of regulation have come under sustained attack from a variety of different disciplinary sources. As noted above, the Economic Theory of Regulation has retained an assumption that

regulation can deliver intended outcomes, but suggested that it is instrumental for private rather than public purposes. Within the sociology of law, adherents to the legal theory of autopoiesis suggest that communications between the differentiated subsystems of politics, law, and economics are so problematic that it would be surprising if we often found sufficient alignment (or "structural coupling") between rules set by politicians as they are implemented in the legal system and understood in the economy for regulation ever to be coherent (Teubner 1984). Many variations have been offered on this central problem of control. Some studies focus on the inevitable fiascos and catastrophes associated with some aspects of regulatory policy (Moran 2001, 2003, ch. 7). Classic studies of unintended effects in regulation use the terms "fatal remedies" (Sieber 1981) and "counterproductive regulation" (Grabosky 1995).

One possible response to the problem of instrumentalism is to think of abandoning or scaling down the commitment to regulation, in the manner of the deregulation movement of the 1970s and 1980s. An alternative approach has been to suggest that regulation need not be inherently problematic, but rather that more attention needs to be paid to the difficulties of securing control, with a wider array of more imaginative solutions to the problems presented. Ayres and Braithwaite's theory of responsive regulation (Ayres and Braithwaite 1992) offers an agenda for "transcending the deregulation debate," invoking game theory to show how regulatory responses can be better targeted to the behaviour of regulatees. Other recipes are available for making state agencies more efficient and responsive in carrying out their tasks, invoking the popular public management language of reinvention (Pildes and Sunstein 1995; Sparrow 2000). Other approaches to the development of a "new instrumentalism" look beyond the state, examining the role of firms and trade associations in developing and implementing "smart regulation" (Gunningham and Grabosky 1998) and the potential for building on the compliance function such as to make firms the principal bearers of responsibility for regulatory implementation with an emphasis on "meta-regulation" (Parker 2002).

6. Conclusions

Where should the public policy literature on regulatory regimes go next? For some a central concern is to stimulate more empirical work so as to develop better data to test and inform the building of theories. Such empirical development would likely yield better understanding of the conditions under which regulatory regimes deliver the effects which are intended, but also give a better understanding of regulatory variety and the conditions under which regulatory forms might be effectively transplanted (or not) from one context (whether a domain or a country) to another. In pursuit of regulatory regimes this research should focus not only, and perhaps not mainly on national regulatory agencies, but seek also to encompass

government departments, non-state regulatory organizations, and the increasingly significant supranational regulatory organizations, both governmental and non-governmental.

Even if there were some consensus amongst scholars and policy analysts that the broad reconceptualization of regulation as a field of study set out in this chapter is desirable, it is difficult to imagine how institutions and decision makers might respond to a new agenda. On the one hand there is ample evidence of experimentation and innovation in regulatory governance in many OECD countries—the deployment of new instruments, the stimulation of co-regulation, innovative mechanisms for applying sanctions and rewards—some of which appear cognizant of the kind of capacities for regulatory governance which are located outside state organizations. On the other hand it appears to be the case that where issues reach high levels of political salience, often due to crises or scandals (such as the internationally important BSE crisis and Enron scandal), governmental responses frequently (or perhaps invariably?) involve the assertion or reassertion of traditional state regulatory power and the implicit claim that if the matter at hand is very important then it can be tackled only through traditional public regulation of some form—exemplifying the claim that the regulatory state in Britain is a reflection of "high modernism" in contemporary public policy (Moran 2003). Such responses fail to ask the question at to where the capacity to address the target problem might lie.

What kind of narrative can be constructed which might be effective in shifting the conception of regulation at the coalface of public policy closer to the image of effective and legitimate regulation offered in this chapter? One possibility lies in the development of the discourse of "meta-regulation." Meta-regulation is the process of regulating regulatory regimes and it is what governments are doing when they attempt to stimulate or steer self-regulatory regimes towards public ends (as with co-regulation) or when they seek to develop general instruments of control over public regulation (as with regulatory impact analysis and other processes of regulatory review). If the shift from public ownership towards regulation witnessed in many OECD countries exemplifies a shift from rowing to steering, then perhaps the next step in regulatory reform would be to adopt the idea that, as with rowing, some or much of the steering should be left to actors outwith the central state, and for important and politically salient problems and not just trivial ones. This would leave state actors to new modes for engaging in steering of steering, or meta-regulation.

It is not desirable or credible to propagate "the myth of the powerless state" (Weiss 1998), but rather to recognize the power of other key actors. A critical question is whether we should conceive the state as the intelligent and purposive core for any regulatory regime, delegating power (implicitly or explicitly) and continuing to steer other actors, whether non-state, supranational, or both, through processes of meta-regulation for public purposes. Or does the reconception of regulation argued for in this chapter remove the state from a special position, dooming it to compete with others for position and influence within regulatory space? Further thought and research are required to resolve this outstanding question.

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