

Regulation, stability and change: Reflections on the UK and Sweden

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Despite the impact of neo-liberal agendas, the issue of regulation remains central to our understanding of economic processes, and particularly employment. The concept of regulation is often reduced to a narrowly defined set of functions performed by the state. However, processes of regulation involve a much wider range of sites and actors, within and beyond the boundaries of the state. This paper presents a framework for the analysis of the panoply of regulatory actors and the complex relations between them, including the shifting boundaries between regulatory spaces. The paper concludes with some illustrative examples of shifting regulatory structures within Sweden.

This paper is about regulation: the mechanisms of governance and rule making that underpin social and economic reproduction – and which contextualise and underpin the relationship between capital and labour at the heart of the field of Working Life Science. There is a wealth of debates on the issue of regulation: from political economy, sociology, industrial relations and working-life science – it is not our intention to

attempt to summarise or synthesise these debates. What is interesting though are the differences in the operationalization of the core term. As Baldwin, Scott, and Hood (1998)

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This paper is based on a keynote address given at the 2015 FALF Conference in Landskrona, Sweden, by Robert MacKenzie. The talk was based on joint work by the paper's authors. The occasional use of the first person, "I", reflects content pertinent to the presenter and not the "royal I" sometimes used by academics in neglect of colleagues and collaborators.

pointed out, certain strands can be detected in these debates. There are those contributions that treat regulation in terms of "targeted rules", explicit laws and codes that must be obeyed, and which are enforced by some mechanism specifically designated with ensuring compliance – typically a public agency. It is these agencies that are often prone to or the target of deregulatory agendas of neo-liberal politicians, to which we will return. The second strand – associated with political economy approaches – takes a more abstract view of regulation as reflecting the institutions employed by the capitalist state in its attempts to manage the economy. There is a third strand though that considers regulation to be "all mechanisms of social control – including unintentional and non-state processes" (Baldwin et al., 1998, p. 4).

This broader approach allows the view of the panoply of socio-economic mechanisms that make up the landscape of regulation, which operate at various levels: from the actions of national (and even supranational) states in terms of employment legislation, labour market and welfare policy, to patterns of public ownership and public sector employment. In conjunction stand the levels of joint regulation between unions, employers and the state: from peak level concertation via established mechanisms of tripartite governance; through centralised mechanisms of collective bargaining; down to organisational level or workplace representation. These are levels of regulation that are interrelated and mutually informing. At the level of the organisation, in addition to workplace level mechanisms of joint regulation, the employment relationship may be regulated by open-ended employment contracts and other mechanisms associated with internal labour markets employers have established to regulate the supply of labour. Some of these examples may seem outmoded – talk of peak level concertation may seem like ancient mythology in the UK context – and has been increasingly subject to reform even in the Swedish context, to which some of us in Britain often look as an exemplar of a better option. This is the point: that regulation is prone to change. But there is a tendency within the literature to treat regulation as a zero-sum gain relationship between the dichotomies of regulation and deregulation – with a shift towards deregulation somehow meaning the absence of regulation. Perhaps this is due to the tendency to focus on regulation as pertaining to the activities of specific state agencies. But such change does not remove the imperative for regulation – "even the wild west needed rules", to quote Regini (2000, p 23) – it just changes who performs the role.

REGULATORY SPACES AND ACTORS

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. Regulatory need may trigger a regulatory solution: but the imperative does not determine the particular configuration of institutional response (Peck, 1994). New bureaucratic processes may lead to dysfunctional outcomes and actor capacity cannot be assumed to be absolute and unproblematic. In reality processes presented as deregulation often involve the transfer of regulatory function between actors (Majone, 1994, 1997; Seidman & Gilmour, 1999). The regulatory role continues but is performed by someone else; therefore the term *reregulation* may be preferable. Crucially by seeing regulatory change in terms of processes of transfer or reregulation, we are able to capture the significant historical changes in the regulatory landscape that were not driven by neo-liberal agendas – to which we will return later.

To build on this, we suggest we should view the panoply of regulation through an analytical framework made up of a variety of levels, spaces and actors; producing regulatory processes that are adjacent and at times interlocking, and both mutually supportive or potentially competing (MacKenzie & Lucio 2005, MacKenzie & Martinez Lucio 2014). The regulatory terrain is populated by a range of regulatory actors, such as state bodies, trade unions or management networks, to name some key examples – but also could include other non-statutory bodies, charities, religious organisations, civil society organisations, community groups, training bodies, employment agencies and so on. The list of actors involved, or potentially involved, in the regulation of employment related socio-economic activity is long and fluid. These actors operate and interact with one another within a given regulatory space – a recognised boundary of jurisdiction for the regulatory processes in question¹. 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 (MacKenzie & Lucio 2005, MacKenzie & Martinez Lucio 2014).

Various actors may intervene in the regulatory 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: a regulatory space that is fluid and contested by extant actors and may be prone to threat from new entrant actors

¹ Here we have built upon the development by Hancher and Moran (1989) of the notion of regulatory space offered by Crouch (1986), however we utilise the concept in a way goes beyond the formal, macro level spaces of formal regulatory processes.

– who may even pose a threat to the continued existence of these spheres of jurisdiction. 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. Returning to the example of joint regulation, relationships between actors within a regulatory space, i.e. 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 regulation. At any given moment a socio-economic agent – or what we like to call a person – may be subject to a multiplicity of regulatory processes operating within various discrete, interlocking, overlapping, regulatory spaces.

To provide a personal illustration, I was once a telecommunications worker: when I left school, I went to work for BT (the British equivalent of TeliaSonera). As I sat in the canteen eating my lunch and filling in university applications, little did I suspect that I was subject to such a complex web of regulation, comprising a multiplicity of spaces and actors. I was employed by the relatively recently privatised telecoms corporation, and therefore government decisions regarding the redrawing of the boundaries of the state meant I was a private sector employee rather than a public sector worker. The attempts to foster duopolistic competition meant that the material realities of my employment were subject to the influence of OFTEL, the state agency created to regulate competition and conduct in the telecoms sector. The decision to maintain a vertically integrated structure for the corporation meant employment in BT was still regulated by an extensive internal labour market, and centralised collective bargaining with the Communication Workers Union. However, the terms on which I was employed, on a temporary contract, meant that my relationship to these structures was more tenuous – but still preferable to my colleague who was employed via an employment agency, whose employment was regulated by this intermediary, with no access to the internal labour market or the terms and conditions established through joint regulation. My safety at work was also part of the regulatory space occupied by a state agency, the Health and Safety Executive, as well as the union and the employer. My safety in the canteen was partially covered by the Food Standard Agency. This is not to mention those aspects of reproduction outside the workplace: the education system that had prepared me for this job; the bus company that had made my journey to work harder since privatisation; or the recent growth of private housing agencies that had encouraged an upward spiral of rents in the city, which meant I was stuck in my low-cost accommodation for the foreseeable future. There I was: regulated from all angles.

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. The regulation of public transport I was just bemoaning, for example, had seen the transfer of responsibility from the local government (the Commune) to private companies. Alternatively, rather than being dominated by private accommodation agencies, elsewhere key regulatory roles in the supply of affordable housing may be played again by the state or by social institutions such as local community groups or even religious bodies – or a changing combination of these actors. 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. 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. Employers were therefore willing to tolerate union influence at the shop-floor level, especially as such containment did not lead to broader challenges to management prerogative in terms of corporate governance (Clegg, 1979). More extreme examples can be found in the criminology literature. In certain contexts, the state has been known to tolerate the regulatory role of organised crime in circumstances where its own presence was underdeveloped or limited, and where this expediency did not pose a threat beyond the boundaries of this regulatory space or zone of tolerance (A. Anderson, 1995; Beare, 1997; Block & Griffin, 1997). 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 (Ichniowski & Preston, 1989; Levy, 1989). These diverse examples demonstrate that formal and informal means of regulation should not be seen as necessarily mutually exclusive, but rather can exist in a symbiotic relationship. Should accommodation and linkages with the informal no longer be deemed effective, then actors may move to redefine this relationship. 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 (MacKenzie & Lucio, 2005; MacKenzie & Martinez Lucio, 2014). The point is that the boundaries between regulatory spaces may be fluid and contested. The regulatory responsibility may transfer between existing actors, or to new entrant actors. This process of transfer may be negotiated and consensual in nature or it can be coerced and based on a variety of interventionist measures – what we term “colonisation” (MacKenzie & Lucio 2005, MacKenzie & Martinez Lucio 2014).

Returning to the example of the informal workplace role of trade unions in the UK, the Donovan Commission of 1968 recognized that regulation existed at different levels and in different spaces, which could compete with the more formalized systems of bargaining and regulation (Donovan 1968). The recommen-

dation was the colonization, by the formal bureaucratic tiers of trade unionism, collective bargaining, employers and the state, of the regulatory space occupied by the informal. As the political context changed in the 1980s, Thatcher-led governments sought to curtail the regulatory role of unions, in terms of both joint regulation through formal collective bargaining structures and regulation of workplace relations through a mixture of formal and informal processes. The embracing of the HRM agenda in the UK reflected the broader assertion of managerial prerogative and the managerial colonization of regulatory spaces within the workplace previously occupied by trade unions (MacKenzie & Martinez Lucio 2014).

Whilst 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 (MacKenzie & Martinez Lucio 2014). 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 are pursued by the government impacts directly upon this. Returning to an earlier theme, 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. 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 – notably overseas multinational corporations. It has also impacted on centralised structures of collective bargaining, and the emergence of a non-unionised workforce within the sector. Both industries have also witnessed the growth in the use of subcontracting and agency work as alternatives to traditional internal labour markets in the regulation of the supply of labour (MacKenzie 2000). Again, these changes have meant new entrant actors – in the form of subcontract companies and employment agencies – and the effective exclusion of the role of joint regulation of the employment relationship by trade unions.

So in processes of regulatory change – or reregulation – we may see regulatory transfer between the actors occupying regulatory spaces. This transfer may be negotiated and consensual, or it may be characterised by coercion and coloniza-

tion – as is often the case in the UK (MacKenzie & Lucio 2005, MacKenzie & Martinez Lucio 2014). The question is then, is this the case for Sweden? Regulatory shifts have taken place in both countries but do the processes suggest different routes to change? If regulatory change in the UK has often been characterised by colonization, in Sweden has it been done by consensus? If so why? And is consensus necessarily the antithesis of colonization? We begin our exploration – with which we have a long way to go – by looking at the role of the three classic actors of the industrial relations: the state, labour, and capital.

REFLECTIONS ON REGULATORY SHIFTS IN SWEDEN

In the UK, much of the colonization of regulatory space we have witnessed has been facilitated by a political agenda, informed by neo-liberal ideology, which helped demonize and isolate trade unions and make their regulatory space prone to colonization. We have argued elsewhere that a key element in the process by which the state in the UK has facilitated the colonization of regulatory space since the 1980s has been the development of new expert knowledge. This process involved privileging ideologically informed think tanks and some selective engagement with sections of the academy, notably associated with the rise of business schools (MacKenzie & Lucio 2014). By contrast, in Sweden there is a strong tradition of engagement with social sciences in the policy formation process, for the development of expert knowledge underpinning a more scientific approach to policy (Bergh & Erlingsson 2009). Engagement with the social sciences and the role of government commissions are key aspects of a policy making process that is deliberative, pragmatic and consensus oriented (Anton, 1969). This gathering of expert opinion has been important in providing interpretive frameworks for understanding developments and policy challenges, thereby reducing uncertainty by narrowing the interpretations of these challenges (Bergh & Erlingsson 2009, p 83) and thereby circumscribing the limits and nature of the response. The role of commissions has been crucial, as a way of gathering evidence and setting the terms of public debate. Even the rapid period of reform associated with the centre-right government of the mid-1990s was based on information gathered in such a way (Bergh & Erlingsson, 2009). Does this mean that colonization as a route to regulatory change just is not in the political DNA in Sweden, or at least is more constrained as an option, as a result of these traditions? Despite belying the traditions of engagement with the social science through the closure of the National Institute for Working Life, even the centre-right “Alliance for Sweden” governments generally trod more lightly than the UK administrations led by Thatcher in the 1980s or more recently by Cameron.

Added to this, the regulatory changes associated with privatisation have been prosecuted in a very different way in Sweden, compared to the UK. Sweden liberalised its historic monopoly sectors earlier and more extensively than most other leading economies, certainly in Europe (Fölster & Peltzman, 2010) – with the exception of the UK. However, unlike the UK, in Sweden the state continued to play an important ownership and regulation role, retaining shares in former electricity and telecommunications monopolies (Bjuggren, 2006; Erlandsen & Lundsgaard, 2007). Interestingly, under partial state ownership, ex-public monopolies in both electricity and telecoms have internationalised their activities, which would have been anathema to the logic underpinning the privatisation of these sectors in the UK (Heald, 1984; Jackson & Price, 1994). Moving to the local level of state activity, since the 1990s there has been a general trend in Sweden for extending the privatisation of public services and bringing private suppliers into publicly funded areas of service provision. New actors have been introduced into sensitive areas of public service, such as care for the elderly and childcare (Erlandsen & Lundsgaard 2007). And yet failures of actor capacity – or market failure as some would prefer – due to considerable challenges associated with disparities in demand between regions has also seen local municipalities enter into new areas of business in which the state has little record of provision, such as bakeries, gyms, garden centres and sun-bed salons (Erlandsen & Lundsgaard 2007). There has been a reconfiguration of the local state towards being an actor directly involved in new areas of service provision. Therefore the Swedish state, at various levels, continues to operate in sections of the market in competition with private capital in the supply of services and goods at the local level and – through the partial ownership of internationally operating corporations such as Telia-Sonera – at the national and international levels (Fölster & Peltzman, 2010). The boundaries of regulatory spaces have been redrawn in both the UK and Sweden, but the processes of reregulation have taken very different courses, particularly in terms of the state as a regulatory actor within these newly configured spaces.

This brings us on to the role of labour. For this illustrative example we return to the telecommunications sector, not just because of a noted personal interest but because being often at the vanguard of government privatisation campaigns, telecommunications liberalisations have played a pivotal role in the liberalisation of other sectors of the economy (Belloc, Nicita, & Parcu, 2011). Internationally, state sponsored liberalisation usually followed the pattern of a reduction of barriers to entry; privatisation of incumbent monopolies; and establishment of a public regulator (Belloc et al., 2011). Since privatisation, TeliaSonera has undergone major restructuring, including the divestiture of the bulk of its engineering and technical staff (Bjuggren, 2006; Lindskog, 2004). In turn this has led to extensive subcontracting of network maintenance work. The model chosen for

organising the reregulation of the employment relationship (MacKenzie, 2000) led to the market entry of a large number of small-scale labour suppliers. The vertical de-integration and fragmentation of the regulation of labour supply through the shift from internal labour markets to a number of smaller firms and multiple contractors, has meant the exclusion of unions as a regulatory actor in this space and the loss of union membership. This generates a number of questions over the implications of this fragmentation of regulation. Does the loss of union involvement at this level have the same implications as de-collectivisation of regulation in the UK or does the Swedish industrial relations “model” mean that membership is less of an issue and that unions continue to assert a regulatory influence through the institutional makeup? Or have these workers been pushed beyond the regulatory reach of the traditional mechanisms of joint regulation that were at the heart of a Swedish model of industrial relations designed around large employers, such as TeliaSonera? Can existing models of joint regulation be relied upon to regulate new forms of employment in terms of the social protection of workers pushed beyond the boundaries of traditional national systems (Lillie & Sippola, 2011)? Longer term, what will this reregulation of the employment relationship mean for the availability of skilled labour for the maintenance needs of the telecoms sector – do new regulatory actors have the capacity to guarantee the supply of skilled labour? Similar questions have been generated by the reregulation of the employment relationship through subcontracting in other countries (MacKenzie, 2000, 2008), in each case – Sweden included – the unique configuration, and reconfiguration, of regulatory spaces and actors led to distinct outcomes.

Finally, moving on to look at the role of capital, in Sweden there has been an interesting historical role of organised capital as regulatory actors in the form of cartels. As essentially a specific form of inter-organizational coordination mechanism (Lubatkin, Lane, Collin, & Very, 2005), cartels performed a regulatory role within the Swedish economy until – and in some cases beyond – their prohibition in 1993, when Sweden fell in line with European competition law in anticipation of subsequent EU membership. In the 1920s there were over 200 cartels in Sweden, covering most areas of the economy, by 1990 there were around a thousand cartel agreements in Sweden (Fölster & Peltzman, 2010).

The Swedish approach reflected a historic divide in the treatment of cartels which existed for the majority of the 20th century between the liberal economies of the USA and UK, and continental Europe. Dating back to the late 19th century the USA adopted the principle of prohibition through a series of “anti-trust” laws, as cartels were anathema to the (inconsistently applied) doctrine of competition inherited from the UK. In Europe, with Sweden a key example, public debate accepted the idea that cartels could be socially beneficial by har-

nessing the efficiency implications of economies of scale, and technical development, through collaboration. Cartels were even represented in Social Democratic circles in the 1920s as representing a higher form of industrial organisation that could lay the groundwork for future socialisation of the Swedish economy (Lapidus, 2013). This produced the position that cartels were not inherently bad for the economy and therefore in need of prohibition, but rather it was the abuse of their market power at the expense of customers that needed policing by the state. Outside of this policing, the regulation of competition was effectively left to private capital (Karlsson, 2011). Yet cartels played a broader role in economic policy as part of the range of tools used to smooth the business cycle in pursuit of macroeconomic goals of stable prices and low unemployment (Ciarreta, 2012). At one level, this was a pragmatic response to the existence of incumbent regulatory actors: cartels were essentially seen as a conduit for regulation that the state could tolerate, whilst trying to engineer and steer their development. However, these regulatory actors were essentially displaced in the 1990s.

Interestingly, in the UK during the post-war era, the same imperatives tended to lead to more interventionist state regulation in the form of nationalisation – or the transfer of regulatory responsibility from private capital to the state. For example, in 1967 the UK government nationalised the steel industry, bringing the operations of 14 private sector companies under state control through the creation of the British Steel Corporation. This actually represented the second time in 20 years that a UK Labour government had nationalised the steel industry, after interim Conservative governments had returned the industry to the private sector. Nationalisation was the preferred answer to the perceived regulatory need for greater coordination between steel producers that otherwise operated on a more fragmented, market basis in the UK.

However, the steel sector is also a prime example of an industry historically regulated by cartels – at the national level in Sweden and even at a supra national level elsewhere in Europe. Interestingly, a generation before had seen steel cartels elsewhere in Europe displaced as a means of market regulation by the emergence of the European Coal and Steel Community – the forerunner of the EU. Regulation by private capital gave way to regulation by "semi-state authority" (Karlsson 2011, p 9) – which directly impacted Swedish exports to the new European Community. Therefore, in both the 1950s and 1990s, the steel sector in Sweden was impacted by the transfer of regulatory responsibilities from private capital to semi-state bodies.

CONCLUSION

All societies need regulation – the roles are just performed by different actors. The widely cited *Varieties of capitalism* (Hall & Soskice, 2001) approach recognises the inherent need for regulation in terms of its concern with means of coordination: liberal market economies mean different mechanisms of coordination, rather than assuming no-coordination exists in a “deregulated” market system. But as we know, *Varieties of capitalism* is somewhat of a blunt instrument: it is well documented that *Varieties of capitalism* assumes systemic characteristics are ubiquitous within each country, without paying attention to variation within each system (Allen, 2004). By looking at the transfer of regulation between actors and the regulatory spaces actors occupy at various levels and in various forms, utilising the framework presented in this paper, we can get a more nuanced picture of how regulatory changes take place.

In their expounding of the end of disorganised capitalism, Lash and Urry attached great importance to the role of organised labour in Sweden as a collective actor with the potential to shape the way in which capitalist disorganization played out (Lash & Urry 1987, p 312). Three decades on and the contours of change perhaps have not been as expected, in either the manner of capital reconfiguration or in the role played by organised labour. In Sweden, the changing roles of actors and the shifting boundaries of regulatory spaces have not diminished the role of unions, to the same extent as in the UK, and yet change has undoubtedly occurred in the way socio-economic activity is regulated. The application of our conceptual framework to the Swedish context has raised more questions than we have answers to at this stage. The Swedish examples presented here are intended as illustrations based on observations gleaned from secondary sources. These ideas represent the preliminary stages of a work in progress. We would now be interested in pursuing these observations in more depth, including primary research, and would welcome suggestions on where to look.

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