



The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search

<http://ageconsearch.umn.edu>

aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

No endorsement of AgEcon Search or its fundraising activities by the author(s) of the following work or their employer(s) is intended or implied.

Centre on Regulation and Competition

WORKING PAPER SERIES

Paper No. 3

GOVERNANCE-BASED ANALYSIS OF REGULATION

Martin Minogue
University of Manchester

October 2001

ISBN: 1-904056-02-4

Further details: Fiona Wilson, Centre Secretary
Published by: Centre on Regulation and Competition,
Institute for Development Policy and Management, University of Manchester,
Crawford House, Precinct Centre, Oxford Road, MANCHESTER M13 9GH
Tel: +44-161 275 2798 Fax: +44-161 275 0808
Email: crc@man.ac.uk Web: <http://idpm.man.ac.uk/crc/>

GOVERNANCE-BASED ANALYSIS OF REGULATION

INTRODUCTION

‘Where there are no rules the rich and powerful bully the poor and powerless.’ (DFID 2000a, p.20)

‘The more strictly we are watched, the better we behave’ (Jeremy Bentham, quoted in Hood et al 1999 p. 3)

The purpose of this paper is to examine briefly what we mean by regulation; what the current literature tells us about the developing nature of regulatory systems and regulatory reform; to attempt to place such arrangements in the pervasive context provided by public policy processes and institutions; and to argue that an explanation of the ‘governance of regulation’ is crucial to an understanding of the strengths and weaknesses of regulatory policy and practice. Essentially the paper gives an overview of the field of *regulatory* analysis; while the link between regulation and competition will be alluded to, the focus is on the concept and practise of regulation itself. (See Cook 2001 for a treatment of concepts and practice of competition). The paper begins by defining the range of meanings of regulation, then goes on to emphasise the importance of the framework of governance within which regulatory policy and practice proceed. The location of regulatory reform in contemporary debates on state-market relations, and related managerial reforms, is examined. Reference to this framework highlights the significance of the public policy process through which regulatory policies must be delivered, and the key role within that framework of political categories of analysis. But private governance and self-regulation is also a key concern of public policy.

The paper ends with an examination of the issue of ‘policy transfer’ between developed and developing economy systems, and presents an outline agenda for policy-relevant research into regulatory systems and policies in developing economies. Both the overall analysis and the proposed research agenda seek to reflect DFID’s concerns, as expressed in its White Paper *‘Eliminating World Poverty: Making Globalisation Work for the Poor’* (DFID 2000a) to promote

effective governments and efficient markets, and to help to create strong and effective regulatory systems at both national and international levels. The paper also takes account of the expressed aims of DFID's *Enterprise Development Strategy 2000* to improve 'the legal and regulatory enabling environment for enterprise at all levels,' and 'the capacity and competitiveness of service providers to respond to the needs of enterprise'. We also echo the strategy paper's call for 'a mix of interventions to strengthen governance and leadership', and its reference to the importance of 'rallying political support for reform' (DFID 2000b).

What is regulation?

'Concepts of regulation are ... legion.' (McGregor et al 2000,p.1)

'The variety of regulatory relationships is virtually endless.' (Jacobs, in OECD 1994 p. 25)

Regulation is based on **rules** which may give strict directives, or be broadly enabling in ways which permit further negotiation; rules may also be framed in ways which concede **discretion** over their detailed application. This is dealt with in the paper by Ogus (Ogus 2001). What emerges from his paper is that any enquiry into rulemaking must focus on clear questions:

-
- What are the institutions of rulemaking?
- Through what processes are rules designed?
- Who are the rulemakers?
- How are rules implemented, and by whom?
- How is compliance obtained, and by whom?
- How do public rulemaking and private rulemaking interact?
- What are the forms of accountability which surround (and promote) rulemaking?

This may seem a simple set of questions but in relation to the governance and policy processes of most developing countries they are questions to which we frequently do not have clear answers. It may be that the starting point for research into regulation in those systems must be to construct

a straightforward check-list of this kind, with the answers allowing us to construct some kind of regulatory mapping of what is, all too often, ill-defined territory.

But mapping implies a known starting-point, and the problem here is that there are different approaches to the notion of what constitutes regulation. As Ogus makes clear, much of the literature provides a formal and legalistic definition which focuses on the construction and application of rules. But for many economists, regulation is primarily the means by which private firms are constrained from anti-competitive behaviour. Corresponding to the legalistic approach is the traditional view of government as a command and control regime operating in a precisely defined public interest, while the second view leads to a focus on the way in which regulation creates the conditions for efficient markets, though a distinction is sometimes made between *economic* regulation and *social* regulation (e.g. Guasch and Hahn, 1999). The definition offered by a leading analyst of European regulation of ‘sustained and focused control exercised by a public agency, on the basis of a legislative mandate, over activities that are generally regarded as desirable to society’ (Majone 1996, p. 9) appears to take in both meanings, but is still too narrow since regulation is often derived from sources other than a legislative instrument, and because the definition still leaves a question mark about *who* makes formulations of what is regarded as desirable for society, i.e. the public interest. Since ‘regulation is seen both as a form of public policy and as a means of constituting markets’ (Wilks, 1996, p.536), we need an approach which on the one hand captures the multi-layered nature of institutionalised regulation, and on the other leads us into an exploration of the way in which ‘the dark world of politics sullies the purity of markets’ (McGregor et al 2000 p. 2). Even the narrower economic approach concedes that ‘because regulation redistributes resources and rents, politicians often use it to secure political gains rather than correct market failures’ (Guasch and Hahn, 1999,p.137)

Given these definitional complexities, it is tempting to rest on the simple broad definition of regulation as ‘the use of public authority to set and apply rules and standards’ (Hood et al 1999 p.3), then go on to set out the different ways in which such a definition is made operational.. A distinction may then be made between the *regulation of business* (the controls exerted over private, non-state activities) and *regulation inside government* (the controls exerted within and

between government agencies, and between levels of national government). We might also add *international regulation* (regulation of national governments by supranational mechanisms); *self-regulation*, constituted by less formal alternatives than legislative or administrative rulemaking; and *metaregulation*, which implies an overarching system for reviewing regulatory mechanisms within government policymaking processes. Finally, the notion of *deregulation* falls within the field of analysis because of the essential relationship to regulation, while *competition* provides a significant framework of objectives for regulatory systems.

Some of these categories will be explored further below while others are dealt with in other papers for this workshop. While this paper tends to focus upon regulation *inside* government rather than the more usual formulation of regulation *external* to government, it is evident from the literature that this is no longer the received characterisation of regulation. Recent debate focuses either on the distinction between the ‘positive’(traditional) and ‘regulatory’ models of the state (Majone 1997), or between bureaucratic(traditional) and post-bureaucratic (entrepreneurial) models of the state (Hoggett, 1996). The implications of these approaches will be discussed. Some attention will also be given to the process by which governments make and implement regulatory policy and design regulatory systems.

REGULATION AND PUBLIC SECTOR REFORM

It is worth noting at this point that regulation itself has been seen as a sort of by-product of neo-liberal economic strategies expressed primarily through privatisation and deregulation programmes. A conceptual problem here is that a narrow view *opposes* regulation to markets for this is seen as an intervention into normally self-regulating arrangements. Of course, some regulation does aim to interfere with markets, but other regulation aims to contribute to the process of constructing or constituting an efficient market: ‘markets and regulation are complementary rather than opposed ... both are means of delivering public interests rather than regulation being the only means of doing so’, so that regulation is ‘a process in which economics, politics and law are inextricably intertwined (McGregor et al 2000 p.3). If this is the case, we must develop a comprehensive analytical framework which allows us to embrace all the complexity of economic policy making and management by the modern state. In short, we must

look not merely at changes in the formal rules which govern relationships between public and private sectors, but also at changes in the relation of state and market, and at the wide range of institutional forms and relationships as well as informal processes which determine the operation and outcomes of these changes. This ineluctably draws us into a consideration of the whole range of liberalisation reforms. These are often taken to produce an inherently ideological determination of the boundaries of the state, reducing them in order to permit a wider dynamic for market forces. Yet they often also comprise an application to the state sector of the competitive disciplines of the market place. In other words efficiency is achieved not only by transferring hitherto public activities to the private sector, but also by introducing managerial changes which are intended to increase the economy and efficiency with which activities that remain in the public sector are conducted. (Lane 1997).

The former category tends to be categorised under the label 'privatisation' and one form of regulation relates to the continued controls exerted over these activities. This seems straightforward enough but is not, if only because of the very wide range of forms which privatisation takes, with an associated variety of new regulatory forms: see, for example, Pongsiri's discussion of public-private partnerships (Pongsiri 2001), and the growing literature on 'the contract state' (especially Walsh 1995, Mawson 1997). Since these reforms depart substantially from the traditional command and control arrangements they might be regarded as experimental in nature, thus requiring rigorous evaluation of their effectiveness. The inclusion of such hybridised forms as public/private partnerships or contracted out operations makes the evaluative profile more complicated. It is perhaps for this reason that the privatisation literature is still unable fully to adjudicate on the claims of liberalisation theory (Cook, Kirkpatrick and Nixon, 1999).

The introduction of so-called 'new public management' (NPM) reforms into the public sector has produced a host of contradictions. Not least of these is that designing and implementing reforms in the nature and structure of public policy and management requires substantial exertion of political will in support of a highly centralised reform strategy. This is somewhat ironic given that major assumptions of NPM reforms include the clear separation of politics from

management, and a related delegation of managerial and institutional autonomy in a variety of decentralised forms. A more minor paradox is the tendency within such reforms to call for deregulation within government and as a characteristic of public policy generally, while at the same time the move to delegation creates the need for new forms of regulation from the centre. Another obvious irony is that the two decades in which British government was pushing through privatisation, deregulation and decentralising reforms (1980-2000) saw a substantial increase in the output of statutory government regulations, with 3412 new regulations in 2000 (Page, 2001). We may note how in the British system the terminology itself has betrayed these contradictions, with a central Cabinet Office strategy unit originally described as the Deregulation Unit, then changed to the Better Regulation Unit, and currently labelled the Regulatory Impact Unit.

Interestingly, these changes in nomenclature appear to mimic developments in regulatory theory and exemplify the way in which the debate on regulation has moved on from the more simplified privatisation debate to the more complex discussion of what is coming to be labelled 'the regulatory state'. A particularly apt analysis is provided by Majone who refers to regulation as 'a distinctive mode of policy making' and 'alternative mode of public control' (Majone 1999 p.1). Commenting on the Europeanisation of British policy-making, he asserts that 'regulation is by far the most important type of policy-making in the EU' which is in turn 'an almost pure type of regulatory state' (p. 2) so that 'member states have been forced to develop regulatory capacities on an unprecedented scale' (p. 3). While this owes much to the distinctive nature of European institutions it is of some interest to note Majone's focus on the extensive delegation of policy making powers to what he describes as non-majoritarian institutions, by which he means the various new regulatory bodies but also judiciaries, tribunals and other regulatory and adjudicative agencies intrinsic to the public sector. His concern is that these institutions may become dangerously independent of the political process and so lack accountability (a concern echoed recently by a British constitutional specialist in relation to the rule-making powers of British judges under the new Human Rights Act, Gearty 2001). On the other hand Majone locates this development in a political logic which demands of politicians that they 'achieve credible policy commitments' (Majone 1999 p. 4). What he means by this is that policy problems require long-term solutions, but democratic political institutions have short time-scales, yet modern policies must affect behaviour on a large scale and over a long period, hence the

credibility problem. On this reading, 'delegation to independent institutions is an important strategy for achieving policy credibility at both national and European level' (Majone 1999 p. 6). But in turn, this produces the problem of what is described as 'agency costs' which 'arise because the agents [regulatory bodies] do not necessarily share the objectives of their principals [political leaders]' (p. 6). An important issue raised here is that 'democratically accountable principals can transfer policy making powers to non-majoritarian institutions, but they cannot transfer their own legitimacy', which may be a significant agency cost where in theory 'delegation is justified only if its benefits exceed agency costs' (p.7). Perhaps therefore a key insight is that 'independence from political control does not mean independence from public accountability' (p. 11). Majone concludes that in designing an effective regulatory state the key variables are

- i) the extent to which decisions are delegated to an independent agent rather than taken by the political principal
- ii) the nature of the structure of governance itself particular in determining the agent's degree of independence from the political process
- iii) the rules that specify the procedural framework e.g. reason giving requirements, consultative processes
- iv) the scope for political principals to overrule agency decisions
- v) the relative autonomy of financial resources
- vi) the extent of *ex post* monitoring, e.g. legislative oversight, judicial review, citizen's complaints procedure

What is striking here is the way Majone moves between the narrower conception of regulatory instruments and procedures, and the broader conception of politics. We may therefore usefully bring these two approaches together under the label of 'governance'.

What is governance?

'Rhodes declares that 'governance has too many meanings to be useful , but the concept can be rescued by stipulating one meaning and showing how it contributes to the analysis of change'(Rhodes, 1997, pp. 52-53). The 'governance of regulation and competition' must be taken to cover:

- the whole range of government institutions involved in rulemaking and implementation
- the public policy processes which involve this set of institutions
- the interactions of public organisations and actors with private organisations and actors
- the significance of political factors: political will and leadership; the interactions of political and economic elites; political interventions in rule adjudication (especially in the actions of judicial or other regulatory actors); and the use of political relationships either to achieve regulatory capture OR to build trust relationships which underpin effective informal regulation.
- the system of public values which provides the setting for regulation and competition.

It is at once evident , then, that a governance approach implies examination and analysis not only of the institutions and policies, but of the *politics* of regulation and competition.

Politics might be treated in two senses here, both as ideology and as practice. At the level of ideas, different political philosophies involve different views about the appropriate relationship between the state and the market, and between the state and society. The debate between the more extreme paradigms of state-economy-society relations may well be dead, but the ship of state remains stubbornly afloat, if now pointing in a different direction. One commentator suggests that it is ‘generally more appropriate to speak of shifting roles of government than of shrinking roles of government’(Kooiman, 1999, p.73).

This is doubtless because practical politics ensures that conflicting views over public-private boundaries are mediated through a process characterised by negotiation; that radical policies will be constrained by electoral cycles; and that substantial changes in rules (and especially in the structure of rulemaking) operate over long rather than short time scales. A recognised danger in these circumstances is that of ‘regulatory capture’ i.e. the effective control or domination of regulatory mechanisms by the interests who are the object of regulation. Both regulatory design and implementation may be seriously weakened by regulatory capture, which in developed economies is usually taken to refer to a situation where regulatory bodies are independent of government, but through lack of expertise , or resources, or information (or possibly inadequate

powers) come to depend too much on the regulated interests in the process of rulemaking and application . This might be regarded as particularly undesirable where regulators effectively exercise policymaking powers. In developing economies the phenomenon is less subtle, since it often involves the usurpation or occupation of regulatory institutions and positions by political networks tied in to the government leaders who have supposedly created arms-length regulatory structures in the first place. Political factors can also be significant in their effects on regulation between levels of government, where central and local political leaders cooperate to nullify the intentions of the regulatory system, or in the very different situation where different political authorities control central and sub-central governments, so that regulation becomes a weapon of political control, and a locus of political conflict, rather than a politically neutral instrument of efficient economic organisation. These issues are normally discussed under the rubric of ‘regulatory’ capture but might well be regarded as a type of ‘political’ capture, responding to a logic of political organisation rather than economic institutions. In developing countries, it is not uncommon to find that the boundaries between the two are blurred.

It is interesting to find that in the developed economy literature there is an emerging argument that the notion of ‘regulatory capture’ is too limited in helping us to grasp the complexities of the contemporary state in its manifold relations with the market, and that a more helpful idea is that of ‘regulatory space’: ‘ we need then to understand the nature of this shared space, the relations between occupants, and the variations introduced by differences in markets and issue arenas’ (Hansher and Moran, 1989,p.276) .

Regulation inside Government

This is the title of a recent study of UK regulation (Hood et al 1999); the subtitle ‘Waste-Watchers, Quality Police, and Sleaze-Busters’ indicates its adherence to the broad governance approach outlined above, laying emphasis on the extent to which the traditional model of government is committed to formal regulation, but also the ways in which two decades of managerial reforms have created a multiplicity of new institutional layers of regulation both inside and outside government. This complexity is increased by the extent to which many of these arrangements straddle the public and private sectors, making it difficult to establish a

definitional boundary between ‘internal’ and ‘external’ regulation. The points of more general interest to emerge from this study are:

- managerial reforms aimed at increasing delegation, discretion and autonomy have in practice *increased* the range of central controls; each attempt to increase managerial freedom has resulted in a corresponding need to create some new form of regulatory constraint on that freedom, in a process which is described as ‘mirror-imaging’. For example, between 1976-95 civil service staffing fell by 31%, while staffing of public sector regulators increased by 90%
- another effect of recent reforms has been to create a move away from traditional ‘compliance’ accountability towards ‘performance’ accountability
- control of the activities of public bureaucracies by other public agencies (this excludes courts or legislatures) is not limited to organisational or rulemaking forms; it is necessary to examine the operation of control through internal competition (eg market-testing, internal markets) and control through mutuality(peer group norms and values). However, the focus must be on bodies which are ‘organisationally distinct from their regulatory clients’(p.21)
- the scale of regulation inside government is substantial, ‘close to the total of private sector regulation and...far greater than that of regulation in the much-discussed public utilities sectors’(p.25). For example, the study identifies 135 separate UK regulators in 1995, a figure which rises to more than 200 if public utilities and administrative tribunals were to be included
- particularly neglected is any estimate of compliance costs in the public sector
- the management of regulation is itself a crucial issue: ‘the regulation industry within government was itself wholly unregulated as an industry’ (p.33).

This UK-based study provides a typology which might usefully be adapted for the purposes of ‘regulatory mapping’ inside government in other systems :

<i>Type</i>	<i>Functional focus</i>
Public audit bodies	efficiency and probity values
Professional inspectorates	performance and standards
Ombudsmanic agencies	grievances and good administration

Central agency regulators	central staffing and finance
Departmental regulators	executive agencies
Central regulators	local public bodies, NHS type agencies
Funder-cum-regulators	funding and monitoring of local agencies

In terms of the ‘distribution’ of regulation inside UK government an interesting finding was that 60% of organisations, 75% of staff, and 80% of expenditure was ‘devoted to the oversight of organisations outside the core of central government’(p.40). This suggests that regulation in decentralised forms of government may be a neglected area in other countries.

The public policy process

‘there can be no doubt of the powerful effect that markets are having on the behaviour of the vast majority of public sector employees’ (Hoggett, 1996,p.15).

To understand fully the ‘governance of regulation’, it is necessary to go beyond description and analysis of the formal structures and institutions of public management; we must also examine the characteristics of the public policy process. This means looking behind the institutional façade to grasp the ‘real world’ of public action. The orthodox model, with its emphasis on legal rules, formal structures of organisation, rational policy choice, and the assumed implementation of formal policies, has serious limitations:

- it oversimplifies the complex processes from which policy debates and decisions emerge
- it neglects the political discourse of rule-making and rule-application, notably the interplay of ideas, interests, and resources, and the ways in which these interactions determine outcomes
- it therefore fails to explain either policy and organisational failures, or policy innovations and successes

- it obscures the significance of relations of power and influence, and the extent to which public policies and their results are determined by conflicts and bargains between conflicting stakeholders, whether internal or external to public bureaucracies. (For a more detailed account of public policy processes see Minogue (1993) and Sutton (2000).)

Analysis based on process may be conducted in ways which focus on real decision scenarios; the factors which determine choice between policy options; the actions which define implementation outcomes, and deficits; and the relations between key actors. Such analysis helps to identify stakeholder interests and networks, and to explain both failed and effective policy changes, in particular by identifying winners and losers; and assists more realistic and feasible policy design, which in turn should produce more predictable and effective policy outcomes

This analytical model can be applied to any field of policy, and therefore has obvious value as a tool for improving and evaluating regulatory policies. It is an approach which has good potential for investigating the impact of new managerial reforms on regulatory design and practice

Corporate governance and self-regulation

The issue of effectiveness of regulatory policy is central to a literature which now stresses ‘the holy trinity of compliance, legitimacy, and trust’ (Wilks, 1996,p.542). While compliance is clearly necessary to effective regulation (Ogus 2001) there remains the question of how best to achieve it. Punitive enforcement may be less productive than a process in which rules are regarded as legitimate, and regulators are subject to transparent accountability regimes. But just as essential is the existence of relations of trust, leading on to forms of self-regulation and private market governance. The existing literature on regulation gives considerable attention to regulatory agencies, but much less to the targets of regulation (Wilks 1996). This is now changing; ‘private governance [is] becoming seen as an attractive regulatory form ... and it is now common to propose self-regulation as a more flexible alternative to regulation by public

authorities' (McGregor et al 2000 pp 12-13). This is a recognition that neither public authorities nor private organisations can monopolise the exercise of regulatory functions, though this approach raises fears of 'too many cooks in the regulatory kitchen' (McGregor et al 2000 p. 228). A key expectation is the ability to internalise regulatory norms rather than impose them from outside; but it should be noted that self-regulation, co-regulation, and voluntary regulation are regarded as *techniques* of regulation rather than an alternative to it.

The benefits of corporate governance are clear: flexibility, the capacity to utilise appropriate expertise, responsiveness to changing conditions, and lower institutional complexity. Equally clear are the costs: potential for abuse and bias, lack of transparency, and an orientation to private rather than public interest. Whether benefits outweigh costs, however, depends upon the existence of *trust*. Trust is a fashionable label in current discourse, but its behavioural characteristics make it somewhat intangible. At the broader level, trust is regarded as essential to the efficient operation of markets (Fukuyama 1995). At the level of regulatory institutions, 'trust is at the heart of regulation' (McGregor et al 2000 p. 234). Regulators must be seen as competent, reasonable, and credible while at the same time trusting regulatory targets to exercise self-restraint and to accept public interest values. Trust is therefore a two-way process (Wilks 1996 p. 553).

The spread of neo-liberal managerial reforms has created both opportunities and problems in relation to the creation of trust-based behaviour. On the one hand, a 'partnership' approach to regulation allows what has been described as 'conversational engagement' between regulators and regulated (McGregor et al 2000 p.335); while public-private partnerships of a more formal kind depend as much upon trust and informal negotiation as upon formal rules. On the other hand, a study of local government contracting in Great Britain compared 'transactional' (formal) and 'relational' (informal) characteristics of local authority compulsory competitive tendering contracts, and showed that both public and private parties to contracts preferred trust-based to transactional contracts. The implication is that such arrangements are more effective in achieving contractual objectives (Mawson 1997).

The discussion of trust is germane to analysis of differing economic and political cultures. Fukuyama has sought to distinguish between ‘high-trust’ and ‘low-trust’ societies (Fukuyama 1995). High-trust societies provide more effective regulatory systems while low-trust societies (characterised by fewer civil society associations, formalistic relationships, and primary social loyalties e.g. to family) exhibit an ‘implementation deficit’. Clearly, most developing countries would be ‘low-trust’ societies though examples of successful creation of trust-based public policy do exist (Tendler and Freedheim 1994). A central hypothesis, to be tested in research, is that the construction of relations of trust and values related to an ethos of public interest, are essential underpinnings for effective regulatory institutions and practise. There is some force in the view that the goals of compliance, legitimacy and trust must all be addressed as constituent and interactive elements in an effective system of regulation. (Wilks 1996 pp.554-555).

POLICY TRANSFER

The public policy mode of analysis is particularly useful for identifying the problems which arise when regulatory policies and institutional forms are ‘transferred’ from one policy culture to another. Policy transfer between national systems has a long history, but has been given new impetus recently through the use of conditionality by lateral and multi-lateral aid donors to impose policy and institutional changes upon the governments of transitional and developing economies. Since aid donors are likely to bring pressure to bear on developing country aid recipients to introduce regulatory systems and methods which characterise the economic policy systems of developed countries, issues of appropriateness and adaptability arise. These attempted transfers generally reflect donor values and preferences relating to economic structures and behaviour (structural adjustment policies), to systems of state management (new public management), and to types of political institution and regime (good governance). Taken together, these transferred ideas constitute an attempt to reshape state-market relations in the image of global capitalism, a process criticised as flawed (Minogue 2001, 2000), or even as a delusion (Gray 1998).

Policy transfer becomes a problematic issue once we accept that ‘regulation is embedded in distinctive cultural and institutional complexes ... [and that] it is an organic regime rather than an autonomous set of rules’ (Wilks 1996 p.549). The notion that regulatory models established

in developed economies can be transferred into a contextless environment is manifestly absurd. It is not even a question of designing a variant model for application in developing economies; clearly there is considerable variation between national, political and administrative cultures, so that an adaptive process must be specific to each national regime (Majone 1991). As well as the need to adapt to particular forms of the state, there may well be a need to adapt idealised models of regulation to particular forms of the market, since there are diverse forms of capitalism, and potential therefore for a variety of interactions of capitalism and regulation (Wilks 1996). Such complexity is inevitably daunting both for national decision-makers, and for aid donors concerned to promote more efficient economic policy and practise. The tendency for both to grasp at idealised blue-prints is unsurprising, but likely to produce the 'implementation deficit' characteristic of many public policies in developing countries. There is a clear need for research into such problems of adaptation and implementation in order to elucidate the probable constraints upon regulatory innovation including systemic weakness and political resistance. There may also be a prior question to explore; whether the 'model' being transferred is effective even in its own developed country context (Minogue 2001, Hoggett 1996).

Research implications

The literature demonstrates different analytical perspectives, leading to different approaches to regulatory reform. Metcalfe (1994 p.58) suggests the need to construct an 'architecture' of regulation involving the design of networks which ensure the development of appropriate capacities and reinforce organisational commitment to regulatory purposes. This requires a mapping of existing networks, a focus on key issues of co-operation and accountability, and an institutional focus on partnerships (customer-contractor; principal-agent; public-private; voluntary). A different approach suggests an examination of the integration of regulatory instruments involving relations of oversight, competition and mutuality (Hood et al 1999), and notes the problem of 'relatively fuzzy boundaries (page 11). For Majone, the emphasis should be on making regulatory agencies more independent, but also more accountable; accountability is regarded as an exercise in better institutional design rather than tighter political control (Majone 1999). Even in relation to developed economies there appears to be ample scope for further work in the conceptual field and for further empirical evaluation of regulatory innovations.

When we turn to an examination of developing countries, regulatory systems both internal and external to government appear to be weak in general. The reasons for this weakness need to be established, and are hypothesised to lie partly in low levels of government legitimacy, partly in government inefficiency and partly in 'political capture'. There is therefore a link between general public management reform and regulatory reform. Political factors may be taken to represent an opportunity for commitment to effective regulation as well as a potential source of inhibition, or resistance.

References

- Cook,P.(2001) 'Concepts and Practice of Competition' Paper for Centre for Regulation and Competition Workshop, February 2001, University of Manchester
- DFID (2000a): *Eliminating World Poverty: Making Globalisation Work for the Poor* London Cm 5006 , Department for International Development
- DFID (2000b) : *DFID Enterprise Development Strategy* London, Enterprise Development Division, Department for International Development
- Fukuyama,F.(1995): *Trust:The Social Virtues and the Creation of Prosperity* London, Hamish Hamilton
- Gearty, C. (2001) 'What are Judges for?',*London Review of Books* 23,2 pp.10-13 25th January 2001
- Gray,J. (1998) : *False Dawn: The Delusions of Global Capitalism* London, Granta
- Guasch, J.L. and R.W.Hahn (1999) 'The Costs and Benefits of Regulation: Implications for Developing Countries' *The World Bank Research Observer*, 14,1,pp137-58
- Hansher,L. and M.Moran (1989) : *Capitalism, Culture and Regulation* Oxford, Oxford University Press
- Harden,I. (1995) : 'Regulating Government' *Political Quarterly*, 66,4,pp.299-306
- Hill,M. ed: (1993) *The Policy Process: a Reader* 2nd edition, Hemel Hempstead, Prentice Hall
- Hoggett,P. (1996) : 'New Modes of Control in the Public Service', *Public Administration*, 74,pp.9-32

Hood, C., O. James, G. Jones and T. Travers (1999): *Regulation Inside Government: Waste-Watchers, Quality Police, and Sleaze-Busters* Oxford, Oxford University Press

Jacobs, Scott H. (1997): 'An overview of regulatory impact analysis in OECD countries' in OECD(1997)

Kooiman,J.(1999): 'Social- Political Governance: Overview, Reflections, and Design' *Public Management*, 1,1, pp.67-92

Lane, J-E. (1985) *State and Market: The Politics of the Public and the Private* London, Sage

Majone,G. (1999) : 'The Regulatory State and its Legitimacy Problems' *West European Politics* 22,1,pp.1-24

Majone,G. (1997) : 'From the Positive to the Regulatory State:Causes and Consequences of the Changes in Modes of Governance' *Journal of Public Policy* 17,2,pp.139-167

Majone, G. (1991): 'Cross-National Sources of Regulatory Policymaking in Europe and the United States', *Journal of Public Policy* 11,1,pp.79-106

Mawson,A. (1997) *Contracting in Ten Local Authorities* Inlogov, University of Birmingham

McGregor,L., T.Prosser,and C.Villiers eds:(2000): *Regulation and Markets Beyond 2000*, Ashgate

McCourt, W. and M. Minogue eds: (2001) *The Internationalisation of Public Management: Reinventing the Third World State* Cheltenham, Edward Elgar

Metcalfe, L. (1994) : 'The Weakest Links: Building Organisational Networks for Multi-level Regulation' in OECD (1994)

Minogue, M. (2001): 'Should Flawed Models of Public Management Be Exported?' in McCourt and Minogue (2001) pp. 20-43

Minogue, M. (1993) : 'Theory and Practice in Public Policy and Administration' in M. Hill (1993) chapter 2

OECD (1994) : *Regulatory Cooperation for an Interdependent World* Paris, Organisation for Economic Cooperation and Development

OECD (1997): *Regulatory Impact Analysis: Best Practices in OECD Countries* Paris, Organisation for Economic Cooperation and Development. Pp.5-30

Ogus, A. (2001) 'Regulatory Institutions and Structures' Paper for Centre for Regulation and Competition Workshop, February 2001 University of Manchester

Page, E.C. (2001) *Governing by Numbers: Delegated Legislation and Everyday Policymaking* Hart

Pongsiri N. (2001) : 'Regulation and Public-Private Partnerships' Paper for Centre for Regulation and Competition Workshop, February 2001, University of Manchester

Sutton, R. (2000) : *The Policy Process: an Overview* Working Paper No 118, Overseas Development Institute, London

Tendler, J. and S. Freedheim (1994) : 'Trust in a Rent-Seeking World: Health and Government Transformed in North Eastern Brazil' *World Development* 22,12, pp. 1771-91

Wilks, S. (1996) 'Regulatory Compliance and Capitalist Diversity in Europe', *Journal of European Public Policy*, 3, pp 536-559