THE GEOGRAPHY OF REGULATION

Michael W. Dowdle

Contents:

I. Introduction: Regulation in the Periphery.................................................................2

II. The Regulatory Model and its Limitations: On the Fordist Predicates of Regulatory Governance ..................................................................................................................2
   A. Fordism and the Birth of the Regulatory State.......................................................3
   B. Limitations .............................................................................................................6
   C. “But if we build it, won’t they come?” Addressing Neo-Institutionalist Arguments 7

III. Towards a Regulatory Geography .............................................................................9
   A. Geography and Development...............................................................................9
   B. The “Regulatory Logic” of the Periphery: The Case of Business Licensing.........13
   C. Some Tentative Explorations into the Regulatory Logic of the Periphery ..........15

IV. Conclusion: Giving the Periphery its Due .................................................................19

* Associate Professor of Law, National University of Singapore. The author would like to thanks John Gillespie, John Braithwaite, Veronica Taylor, Cornelia Woll, Frank Upham and Michael Storper for their suggestions and comments.
I. INTRODUCTION: REGULATION IN THE PERIPHERY

Our understanding of the dynamics of regulatory governance is informed almost exclusively by the regulatory experiences of the advanced industrial nations of Europe, North America and Japan. These experiences, and the regulatory models they produce, are often treated as universal—developmental agencies, for example, reflexively refer to them in advancing regulatory solutions for the various socio-economic problems experienced by underdeveloped countries. In fact, there is good reason to suspect that these models are not universal. In this chapter, I will argue that structures of economic geography can often cause regulatory environments in the more peripheral regions of the Global South to evince socio-economic characteristics that render these regulatory models highly problematic. Moreover, since these geographical dynamics lie outside the reach of domestic regulatory systems, the regulatory problematics that they produce cannot be eliminated simply by creating the appropriate institutions. They are innate to the peripheral economic geography. And this means that the regulatory logics they generate will be different from those characteristic of the industrialized North. In sum, there is a geography to regulation, and our efforts to think about regulation in more globalized contexts need to begin taking this geography into account.

II. THE REGULATORY MODEL AND ITS LIMITATIONS: ON THE FORDIST PREDICATES OF REGULATORY GOVERNANCE

Today, the dominant paradigm for public governance is that of the “regulatory state.” This paradigm places the regulator above and outside the particular economic or social environment being regulated. It insulates that regulator from local interests (often referred to generically as “politics”) through bureaucratic specialization and through the attendant professionalization of the regulatory staff. It also requires the regulator to regulate primarily through use of transparent, formally-designated rules that are to apply uniformly, continuously and predictably throughout the regulatory environment—what is often referred to as ‘rule of law’. And to ensure uniform and predictable application of these rules, it subjects regulators to oversight by an independent judiciary.

The implementation and effectiveness of the regulatory state model clearly depends on its location in a larger national socio-economic environment that is both stable and wealthy (see also Braithwaite 2006). Uniform and predictable rules require for their regulatory effectiveness environments that are themselves uniform and predictable (what we will call “regularized”). The more diverse and fragmented the regulatory environment, the more likely that any particular rule will work to divergent regulatory effect in different parts of that environment. The more dynamically changing that environment, the more quickly any rule will begin to produce effects different from those it was designed to achieve. At the same time, training and maintaining diversity of a highly specialized and professionalized staff demands access to considerable public wealth, as such persons require significant specialized training and are likely to also be attractive to wealthy private firms.

Such regulatory environments are actually somewhat rare. In fact, they are characteristic primarily of only one particular kind of large-scale socio-economic organization—that of Fordism. This is the form of economic organization that began to structure the social environments of core economic-geographic regions of Western Europe and North American in the late 19th century. Its crucial feature involved a geographically-centralized ordering of what would quickly become incredibly wide-reaching Smithian exploitations of economies of scale. This facilitated the collection of historically-
unprecedented pools of private wealth, which governments quickly learned how to tap. The resulting expansion of market structures worked to regularize, standardize and stabilize human society on a scale that was similarly unparalleled. It was out of this development that the modern regulatory state emerged. And it is a development upon which the regulatory state continues to rely upon for its effectiveness. (See also Dowdle 2006a, p. 332-340; cf. Dowdle 2006b.)

A. Fordism and the Birth of the Regulatory State

The first articulation of a national “regulatory state” appeared in the late 19th century America (Skowronek 1982, p. 177-211). Prior to the Civil War, “governance” in the United States was primarily a local phenomenon (Tocqueville [1835] 1969, pp. 62-98). But in the forty years following the Civil War, the localized character that had defined antebellum American political society was effectively erased in an explosion of mass-production, managerial capitalism and industrialization—aka Fordism (Jessop and Sum 2006, p. 58-89; see also Chandler (1977) on “managerial capitalism.”). Economic firms were transformed from localized entities into nation-sized creatures of private industrial capitalism. This catalyzed corresponding transformations in American political society. Most importantly for our purposes, the formation of powerful, nation-sized entities and organized interests triggered the parallel creation of powerful, nation-sized administrative entities to regulate them (often at the behest of the private entities being regulated).

But if the regulatory state were inspired by Fordism, it was also dependent on Fordism for its effectiveness. The key to Fordism’s ability to catalyze economies of scale was standardization (Piore and Sabel, 1984, p. 49-54; Chandler 1977, p. 8). Standardized work responsibilities decreased the costs of monitoring large numbers of employees. Standardized financial accounting decreased the costs of monitoring geographically disperse economic activity and performance. Standardized firm structure allowed centralized firm administration to readily evaluate and assign responsibilities to employees in disperse remote locales. When tied into a Weberian bureaucracy, such standardization allowed firms to increase their size – and hence their income – without corresponding proportionate increases in operating costs.

And just as firm growth depended critically on standardization, so too did the development of the new nation-sized style of government needed to regulate them. Whether out of necessity (Rubin 2006) or simply lack of ingenuity (Sabel 1994), this new nation-sized style of government took the modern bureaucratic form from private industry. And in doing so, their regulatory effectiveness depended vitally on larger patterns of standardization that this new form of industrial organization introduced into American society.

Fordism did not simply standardize firm-based economic organization, it also standardized American society as a whole. Exploiting economies of scale meant that firm profits corresponded in part to the size of the firm’s market: the larger the market, the more profit could be generated by exploiting economies of scale. Firms therefore sought to create larger markets in part by standardizing market and labor activity – particularly terms of exchange, employment and risk allocation – across disperse locales ((Piore and Sabel, 1984, p. 55-65; Chandler 1977, p. 10-11, 212-14). Indeed, large firms often welcomed nation-sized government regulation because by standardizing governance in diverse locales, regulation promoted the large-scale social regularization that in turn promoted development of larger markets (see also Sklar 1988).

Economically-based firms could be proactive in regularizing society, because the cost of this regularizing could be funded by the profit gains from market expansion that regularization allowed (Piore and Sabel 1984, p. 55-65). But governments are not profit-
making institutions. They cannot so easily generate the funds needed to regularize their operating environments (so as to facilitate regulatory governance) simply by borrowing against the future efficiencies associated with that governance. Therefore, in developing and implementing large-scale governance along the lines used by private firms, government had to rely on the larger social and economic regularizations that had been generated by these firms.

A good example of this new, regulatory government’s reliance on a prior industrialized regularization of society is found in the vital role that pre-existing accounting practices played in the success of America’s early experiments with regulation. The single most important regulatory tool possessed by early regulatory agencies was the uniform system of accounts, developed by Milo Maltbie in the late 1890s. This required all firms within the regulated environment to keep uniformly detailed and integrated records of revenues, expenses and earnings for each part of their operations. The principal responsibility of early regulatory agencies was to prevent private firms operating in markets for public goods – like railroads and public utilities – from using the inherently monopolistic tendencies of these markets to impose unreasonable charges on their customers. The uniform system of accounts was crucial to effectuating this responsibility, because it allowed regulators to visibilize and generate evaluations and comparisons of pricing and profits across and within firms in the regulated industry in a way that could be defended against political attack (Miranti 1990, p. 186).

The uniform system of account was really just a tweaking of the already established industrial practice of cost accounting. Cost accounting, an accounting system in which firms itemize individual sources of cost, expenditure and revenue, had become a popular practice among the larger, industrialized firms that emerged following the Civil War. By making the corporate activities of local actors more visible to remote, centralized supervisors, cost accounting facilitated centralized control in these larger but more disperse industrial organizations. At the same time, the visibility benefits of cost accounting accrued not only to firm managers, they also accrued to suppliers of firm capital. Capital markets and bank lenders both began demanding access to these accounts as a condition for investing in the firm (Chandler 1977, p. 464; Littleton 1966, p. 366).

All this resulted in an explosion in the private demand for persons trained in integrated cost accounting systems. Such demand was met through a corresponding post-Civil-War explosion in the number of proprietary business colleges and public and private universities in the United States offering training in accounting. This, in turn, created a market for accounting textbooks. As increasing percentages of accountants received their education from these colleges or otherwise from these textbooks, accounting practices became more uniform (Chatfield 1977, p. 167). By the late 1870s, accountancy practices had become standardized and rationalized enough to support the emergence of accounting theory (Solomons 1968). One of these theorists was Henry Carter Adams, a professor of economics at the University of Michigan and one of the co-founders of the American Economic Association, who devised a cost accounting system specifically for railroads and public utilities (Miranti 1990, p. 184-5). It was from this system that Maltbie adapted his uniform system of accounts (Covaleski, Dirsmith and Samuel 1995).

A similar story can be told about the earliest successful workplace-safety regulatory regimes – workers’ compensation, railroad safety, and regulation of boilers. All of these piggybacked on existing industrial practices. Workers’ compensation piggybacked on the wide-spread establishment of private accident relief funds championed by U.S. Steel (Witt 2003, p. 30-5). Railroad safety regulation piggybacked on the railroad’s own efforts to reduce costs associated with workplace accidents (Fishlow 1966, p. 583-646). Boiler safety regulation piggybacked on efforts of the insurance industry to reduce payouts (Langlois,
Denault and Kimenyi 1994). By contrast, legislative efforts to promote workplace safety that did not take into account existing industrial practice had little significant effect on actual workplace safety (Rabinowitz and Hager 2000, p. 375 n.3).

Early regulation’s dependence on the prior existence of industrial standards and practices is further evinced in the “case-by-case” strategy that the ICC and other early regulators used to develop regulatory standards. A critical component of that strategy was a continuous dialogue between the regulator and the regulated community, manifested primarily in public and private hearings. Crucial to this dialogue was the pre-existence of private regulatory institutions – trade associations, labor unions, professional organizations – institutions that had originally spawned in response to the growing coordination problems associated with industrialization’s ever-more extended market networks. These institutions “gave voice” to their particular component of the regulatory environment, serving as the principal organizational interfaces through which the regulator and regulated spoke to one another (Skowronik 1982, p. 153).

Fordism was also critical to the financing of this new regulatory state. Prior to the onset of industrialization, public government’s access to wealth was limited, particularly at the national level. Organizational coherence of the government was maintained primarily through a patronage system known as “the spoils system”—a system in which promise of jobs in public service was the principal currency by which political leadership bought institutional coherence.

The spoils system was antithetical to the regulatory state, because it prevented specialization and professionalization of the civil service. But it was also a creature of necessity in pre-Fordist times. As famously demonstrated by Mancur Olson (1971), effective large-scale discipline has to be bought. And public government had limited access to wealth. The promise of placement in public office often was the principal resource by which political leadership could mobilize large-scale political discipline (Yearling 1970, p. 253-69). This is why even a strong, ideological opponent of the spoils system like Woodrow Wilson found himself wholly dependent upon that system for political effectiveness when in political office (Skowronik 1982, p. 196).

Particularly at the national level, the real death-knell to the spoils system came from the advent of a centralized, direct-tax system and the coterminous invention of modern campaign finance. The advent of a centralized, direct-tax system greatly increased the revenue the federal government could use to fund civil servants. Campaign finance provided political parties with an alternative way of purchasing party discipline that did not clog public service with patronage appointments. The overall effect of this was to cause civil servants to become better trained, more responsive to elected government, and less responsive to partisan political interests—to become, in other words, professionalized (Jones 1916).

Both these developments were only made possible by Fordism. As noted above, Fordism worked to concentrate large pools of wealth and income into a small number of organizations. This greatly reduced the monitoring and collection costs associated with a direct tax system, and this made direct taxation – in the form of income taxation – feasible at the national level. Moreover, the standardized and comprehensive accounting and auditing practices that Fordism engendered, as discussed above, facilitated the central government’s ability to observe, monitor and tax private corporate income flows. Fordism’s tendency to replace production-based sources of wealth with wage-based sources of wealth also facilitated taxation of individual incomes, which in turn greatly expanded potential tax base (Yearling 1970, p. 193-223).

Modern campaign finance, for its part, used the centralizing economic tendencies of Fordism to catalyze large-scale political mobilization. As industrialization concentrated wealth in corporate hands, it made it much easier for political parties to identify and target
productive sources for campaign contribution (Smith 2000, p. 52-4). This greatly reduced party dependence on the spoils system, which in turn made party politics more responsive to political issues and less responsive to personal loyalties (Jones 1916).

B. Limitations

Present-day evidence suggests that the effectiveness of the regulatory state continues to be highly dependent upon a prior regularization of society of the kind associated with Fordism. Ronald Inglehart (1997) has shown how Fordism – what he calls “modernism” – correlates with the emergence of societal values associated with modern government. It is also well recognized that there is a strong correlation between conformity with rule of law indicators and economic development (Peerenboom 2004, p. 148). And economic development itself correlates closely with Fordism.

Indeed, the outliers in this correlation between rule of law and economic development suggest that it is really Fordism, not economic development per se, that is doing the heavy lifting here. These include principally Japan, and several of the Middle Eastern oil producing states, principally Kuwait, Qatar, and Saudi Arabia. These outliers with regards to the correlation between national wealth and regulatory performance are also outliers with regards to the correlation between national wealth and Fordism. Although sporting the third largest economy in the world in terms of GDP, Japan’s systemic deviations from the regulatory model are well-documented: its government displays a pronounced preference for governing through non-rule-based “soft law” – most famously exercised through what is known as “administrative guidance” – rather than through hard-law regulations (Haley 1991). But many have also argued that Japan’s economy is distinctly post-Fordist rather than Fordist, and that it is precisely this post-Fordist character that gave rise to its distinctly non-regulatory form of governance (Jessop 2006). For their part, Kuwait, Qatar, and Saudi Arabia are also among the wealthiest countries in the world, but comparative standings with regards to “good governance” indicators (e.g., 60%, 74%, and 56% respectively with regards to “regulatory quality”) fall significantly below their comparative standings with regards to per-capita wealth (91%, 96%, and 75% as of 2008) (World Bank 2009; World Bank [undated]). Again, however, these Middle Eastern economies are non-industrial, and hence non-Fordist (see also Sabri 2008, 43-44).

The dependence of the regulatory state on Fordism for its effectiveness was also well evinced in recent international efforts to help Thailand provide social welfare protection to rural populations made vulnerable by the 1997 Asian Financial Crisis (see generally Pasuk and Baker 2001, p. 35-82, 97-104). Many in the international development community had attributed that crisis at least in part to a failure on the part of the affected Asian countries to adopt effective regulatory institutions. This, they argued, had allowed corruption and “cronyism” to corrode the efficiency of these countries’ economies and markets. For this reason, initial efforts by the Asian Development Bank (ADB) and the World Bank to assist Thailand in implementing social safety net for persons left vulnerable by this crisis were framed in rigorously regulatory terms—terms that provide detailed, rationalized, and transparent standards for eligibility, project structure, and fiscal monitoring. Such rigorous regulatory framing, it was believed, was necessary to prevent the cronyism and corruption that had allegedly caused that crisis from corrupting the effectiveness of these projects.

The resulting aid program, however, was a failure. In August of 1998, the World Bank instituted a “Social Investment Fund (SIF)” designed to promote local community welfare, conservation, and skill development projects. By the end of 1998, the fund had approved only 12 out of 836 applications. By June of 1999, the SIF had disbursed only 5%
of its available capital. In July of that year, the World Bank itself admitted that, as then structured, the SIF had been ineffective, and that the Bank would have to rethink its project.

The failure of the SIF program was due in significant part to the fact that rural Thailand – the part of Thai society most in need of social-welfare assistance – does not sport a modernized, Fordist form of social organization. Thailand’s economy is dominated by small enterprises and agriculture, rather than large enterprises and manufacturing (Deyo 2000; Pasuk and Baker 2001, p. 82). Industrial labor is primarily migrant and seasonal, rather than permanent. Such non-industrialized, highly fluid conditions made it difficult for centralized developmental assistance organizations to identify and target at-risk rural populations. We noted above how the success of early regulation in the United States vitally depended on its cooption of widespread, uniform accounting and managerial practices spawned by industrialization. The SIF’s stringent, rationalized application and monitoring requirements presumed pre-existence of such practices. But the vast majority of local, grass-roots social-welfare providers operating in Thailand’s largely non-industrialized rural sector had never had the opportunity or the resources to become adept at these practices. Consequently, few of the local welfare organizations that were best placed to identify and assist these at-risk populations possessed the experiences necessary to allow them to comply with the World Bank’s stringent application and monitoring requirements (Pasuk and Baker 2001, p. 80-1).

On the other hand, another international social welfare assistance program that had eschewed the classical regulatory organization, and simply dispersed funds directly and in a pro forma manner to rural leaders, proved much more effective in reaching Thailand’s rural populations. This was the “Miyazawa Scheme” that Japan set up in late 1998. In stark contrast to the SIF, the Miyazawa Scheme “abandoned all pretence of careful targeting [and] elaborate bureaucratic procedures,” and “disbursed funds through local government bodies.” (Pasuk and Baker 2001, p. 81.) But despite this lack of regulatory structure, the Miyazawa scheme actually proved quite effective in providing social welfare security to vulnerable populations than was the SIF program, much moreso than the SIF. Both the SIF program and the Miyazawa Scheme were given annual budgets of around 10 billion baht. Both sought primarily to provide assistance to rural welfare development. But whereas the SIF was only able to disburse some 5% of its funds in the nine months of its operation, the Miyazawa Scheme successfully disbursed most of its funds within the same time frame (Pasuk and Baker 2001, p. 81). And follow-up studies found that rurally-located Miyazawa-funded projects to have been quite effective and efficient at getting assistance to vulnerable populations. Corruption in the administration of these rural programs, or in the disbursement or use of funds, was minimal (United Nations Economic and Social Commission for Asia and the Pacific 2001, p. 57-108).

C. “But if we build it, won’t they come?” Addressing Neo-Institutionalist Arguments

Of course, a claim that there exists a positive correlation between economic performance and effective, regulatory institutions would strike many as uncontroversial. Neo-institutional economics (NIE) has been making a similar claim for decades. Where it disagrees, of course, is with regards to causality. I have been arguing that the effectiveness of regulatory institutions is primarily dependent on prior industrialization. NIE, by contrast, claims that effective regulatory institutions can promote industrialization, and economic development more generally (see, e.g., Rodrik, Subramanian and Trebbi 2004).
But as many have noted, such a causality is yet to be demonstrated by NIE studies.\(^1\) Such studies invariably focus on correlation, and presume that a demonstration of correlation constitutes a demonstration of causality (Glaeser et al. 2004). This is probably due in large part to the fact that successful examples of post-war economic development and transformation are exceedingly rare (see also Rodrik __) : indeed, the only region of the world to support significant economic development and transformation outside of the Euro-American world is that of East Asia. And the principal NIE study to look at the relationship between rule of law and economic development in that region, Katharina Pistor and Philip Wellons' *The Role of Law and Legal Institutions in Asian Economic Development 1960-1995* (1998, p. 111), actually concluded that “market / rule-based law might have a measurable effect on future economic development only after economies have reached a certain threshold of development.”

Further refutation of the causal connection posited by NIE is found in the case of Botswana. Botswana is sometimes pointed to as a prize student of neo-liberal, institution-driven development. Since gaining independence in 1966, it has enjoyed one of the fastest growing economies in Africa. It currently ranks as an upper-middle income country based on GNP, and enjoys the third highest per capita GNP in Africa (World Bank 2009). It success in this regard is routinely attributed to the high functionality of its regulatory institutions, particularly its clean government and stably democracy (see Acemoglu, Johnson and Robinson 2003). Transparency International's Corruption Perception Index (CPI) lists it as the least corrupt country in Africa (Transparency International 2008). Freedom House gives it civil and political freedoms ratings similar to those of Brazil (Freedom House 2009a, compare Freedom House 2009b). The World Bank lists is as the second best country in Africa (behind South Africa), and 38\(^{th}\) overall in the world, in which to “do business.” (World Bank 2008, p. 6.)

But can we really credit Botswana’s spectacular economic growth to its regulatory effectiveness? Botswana’s economy is dominated by diamond mining, and its take-off corresponds most directly with the sudden discovery of significant diamond deposits in the late 1960s (Mwakikagile 2009, p. 150, 158). These deposits were then developed by the South African diamond monopolist, De Beers, and Botswana’s subsequent, spectacular economic growth has been fueled entirely by the rents and taxes it has received from De Beers’ expanding exploitation of these deposits. Consistent with this, Botswana’s spectacular economic take-off actually begins in the 1970s, some 15 years before its anti-corruption regulatory reforms.

Moreover, if it were indeed the case that economic development simply follows regulatory development, then we would expect that the impressive efficacy of Botswana’s overall regulatory environment -- whose benefit would accrue to all aspects of Botswana’s economy -- would have triggered industrialization and development in other parts of that economy as well, not simply in mining. But this has not been the case. Even after almost 20 years of economic diversification policies, Botswana’s economic development and industrialization remain wholly confined to its diamond sector (Conteh 2008, see also Holm 2007). As noted by Gervase Maipose (2003): “[A]gainst a story of good governance, regular elections, clean administration and prudent management, there is a major challenge of diversifying the economy [and] turning wealth into jobs or economic activities that will have effects of alleviating unemployment and poverty levels.”

Take, for example, Botswana’s labor markets. One of Botswana’s most dramatic regulatory developments over the past 15 years has been in the field of education.

---

\(^1\) Several studies by __ suggest a true causal relationship in which institutions appear to be affecting economic performance over shorter time periods. . . .
Botswana’s labor force is now significantly more educated than it was in the early 1990s (Siphame 2008, 650). Such education increases the potential productivity of the Botswanan labor force, which should foster industrial development. Indeed, better public education is often promoted as a key institutional trigger for economic development. (See generally Siphambe 2008, p. 641-642.)

In fact, Botswana’s more potentially-productive labor force has not brought corresponding development to Botswana’s industrial organization (see also Siphambe 2008, p. 648). The new kinds of higher value-added work that are supposed to take advantage of this greater productivity are yet to appear: the jobs available to the Botswana workforce today seem largely the same as those that were available to it fifteen years ago (cf. Siphame 2008, 650; Siphambe 2000, p. 105); new jobs are not appearing (Siphambe 2007, p. 9, 11); and real wages have not been growing (Siphambe 2007, p.11). Unemployment remains very high – some estimate it at around 25% of the available labor force (Siphame 2008, p. 642). And all this despite the fact that Botswana’s institutions said to be very efficient at promoting new business start-ups (World Bank 2008, p. 6). All in all, despite its relatively developed labor-related institutions, Botswana’s labor market continued to resemble those characteristic of undeveloped economies (Siphame 2008, p. 648).

Nor have Botswana’s regulatory institutions triggered significant development in other aspects of Botswana’s everyday economy. Forty-five percent of the population lives below the poverty line, not much different from the African average of 50% (Maipose 2003). According to the UNDP’s Human Development Index (HDI) (2008, p. 11), Botswana’s overall, “human” development has not developed at all since 1990—in fact, it is slightly worse (in contrast to the rest of sub-Saharan Africa, whose human development on average has been slowly improving over that same period, see UNDP 2008, p. 11). Botswana’s human development today ranks it among the lowest 30 percent of the world’s countries (UNDP 2008, p. 26)—roughly equivalent to that of the Republic of the Congo, whose institutional development, as measured by the World Bank’s Doing Business surveys and Transparency International’s CPI, is in the bottom quartile of the world’s nations (World Bank 2008 p. 6; TRI), and whose per capita GNP is less than 1/3rd that of Botswana (World Bank 2009).

None of this is to detract from the impressiveness and importance of Botswana’s regulatory and economic accomplishments. But it is to suggest that effective, modern regulatory institutions will not by themselves trigger development, in the way presumed by NIE (although these institutions probably contribute to the sustainability of development). They are, instead, dependent on development – or more precisely, their structure and effectiveness is dependent on particulars in Fordist forms of industrial and social organization that themselves evolve from forces that are beyond the reach of regulatory effect. What this means for regulation in the generally non-Fordist systems of the Global South is the subject of the next Part to this chapter.

III. TOWARDS A REGULATORY GEOGRAPHY

A. Geography and Development

So, if institutions aren’t the primary cause of economic development and transformation, what is? The answer could be simple geography. Studies have consistently found that economic development and structuring are not randomly distributed through space. Development tends to clump (see, e.g., Arrighi, Silver and Brewer 2003; see generally Schwartz 2007). More specifically, the economic development of a particular region tends to
focus on and revolve around a geographical core. The farther away one is from this core – both in terms of physical distance and in terms of cultural distance – the less developed the economy. The result is a series of concentric rings of development. (See also Braudel [1979] 1992 p. 21-45)

Since it seems highly unlikely that geography affects the innate moral, social, or economic intelligence of a population, this distinctive geographical patterning of development suggests that geography is probably playing a more direct role in economic development – by affecting and shaping spontaneous, transregional structures of social interaction, for example – then our legal and economic understandings tend to recognize. And a number of geographical factors have been identified that appear to structure the distinctive core-peripheral geographic patterning of economic ‘development’ noted above. These include the special greater resource endowments enjoyed by coastal and temperate regions; transportation costs; agglomeration effects (also known as external economies); production chain dynamics; dynamics of transnational capital flows; and differences in state capacity.

- **Resource endowments**

Recent studies by Jeffrey Sachs, conducted with a variety of co-authors, suggest “that levels of per capita income, economic growth, and other economic and demographic dimensions are strongly correlated with key geographical and ecological variables, such as climate zone, disease ecology, and distance from the coast.”

2 This is due to a number of factors. First, as famously argued by Jared Diamond, industrial and societal innovation has been shaped primarily by needs and resources particular to temperate latitudes. Another factor, which we explore below, is that of the lower trade-transportation costs enjoyed by countries with access to the oceans. Finally, tropical geographies suffer from “higher disease burdens and limitations on agricultural productivity.” All of this would impose innate, structural constraints on the developmental capacities of many of the peripheral economies of the Global South.

- **Transportation costs and core-periphery patterning**

It has been well shown how simple transportation costs, in and of themselves, can generate the distinctive, concentric core-peripheral geographical patternings so common to regional economic ordering. Peripheral regions generate their revenue generally through interactions with core economic regions. But increasing transportation costs progressively limit the amount of revenue such interactions can generate. This, in turn, decreases the periphery’s capacity to generate wealth — resulting in lower wages, greater difficulty attracting skilled labor, and less borrowing capacity. Moreover, less access to skilled labor and less borrowing capacity restricts the kinds of goods that can be produced in such regions, inhibiting economic diversification and thus making the regional economy more vulnerable to economic shock.

- **Agglomeration effects (external economies)**

Related to the issue of transportation costs are agglomeration effects (also known as “external economies”). Complementary industries tend to clump together in a particular locale in order

---

2 (Sachs 2003. See also Gallup, Sachs, and Mellinger, 1998, 2000; Gallup and Sachs, 2001; Sachs and Malaney, 2002.)
to take better advantage of economies of scope. Such clumping allows participants to develop and exploit horizontal linkages among themselves to generate detailed local knowledge about relevant market(s) and production processes. This results in what Michael Storper has famously referred to as “untradeable interdependencies,” and according to him, these work to give the supporting region an absolute (as opposed to merely comparative) advantage in the industries involved. This, in turn, allows the region to engage in higher-margin, design-based competition rather than in lower-margin, price-based competition.

Such agglomeration effects are much less likely to occur in the more peripheral regions, however. As noted above, because of transportation-cost effects, peripheral economies are likely to have difficulty supporting the diversity of economic activity and skilled economic actors necessary to trigger such effects. This is confirmed in a recent study by Borello et al. (2008) examining for agglomeration effects in the automotive and steel sectors in Buenos Aires, one of the few studies to look at agglomeration in peripheral economies. That study found that:

From the perspective of production networks, one of the main traits of the firms studied in this survey is their poor interaction with agents and institutions. Isolation and vertical integration are a widespread characteristic of the firms studied, even in these relatively complex and mature networks such as the automotive and the iron and steel industry. The geographic reflection of that isolation and that vertical integration is the existence of geographic proximity with interactional distance. That is, firms in similar or related industries can be geographically close but may not have relations amongst themselves. Thus, firms do not realize the external economies which may be emanating from a close location.

- **Production chain dynamics**

Regional (geographical) economic variation can also be further catalyzed by transnational production chains. A “production chain” describes a production relationship in which a downstream firm controls the designing and final assembly of a product, but contracts-out the production of component parts to ‘upstream’ manufacturers, often located in other countries where the cost of unskilled and semi-skilled labor is less. Such production chains are able to increase a product’s dynamic responsiveness to changes in market demand (aka productive ‘flexibility’), and many argue that as demand in global product market become ever more volatile in the wake of advances in information technology and globalization, such flexibility is increasingly the principal determinate of a firm’s economic success.

Production chains tend to flow along core-peripheral economic gradients. Because of their comparative advantage in labour costs, upstream suppliers of parts tend to be located in peripheral regions. They also tend to be engaged in price competition rather than design competition; and they tend to be engaged in labor-intensive rather than knowledge-intensive

---

3 Storper, Michael (1997). *The Regional World*


5 Henry Yeung has correctly pointed out that such ‘chains’ are perhaps better thought of as ‘networks’. The added insight contributed by the ‘network’ metaphor is not particularly relevant to my analysis, however, whereas the ‘chain’ metaphor does help me highlight the point-to-point relationships that feature in this argument.
form of production. Downstream manufacturers tend to be located in core economic regions: they engage more in design-based competition, and tend to be knowledge-intensive rather than labor-intensive.

Production-chain relationships can asymmetrically shape core-periphery economic geography in at least two ways. One way, explored by Herman Schwartz, is by giving core downstream firms a negotiating advantage over peripheral upstream suppliers. This is due to asymmetric distribution of what Oliver Williamson has termed “hold-up power”. A firm’s “hold-up power” refers to its ability to unilaterally impede the market opportunities of some other firm with which it has an economic relationship. Such power gives the holder a superior ability to extract concessions from the other firm in their dealings. Schwartz shows two ways through which periphery-based firms are likely to enjoy less hold-up power than core-based firms, and thus be asymmetrically vulnerable to negotiation pressures from their downstream partners. First, upstream and peripheral manufacturing, as we saw, tends to rely less on knowledge-based or knowledge-intensive labor. This makes it easier for new firms to enter peripheral markets, since such entry is dependent primarily simply on access to the general labor pool, and not on access to more specialized knowledge or training. This relative ease of access makes it easier for downstream firms to find alternative sources for their component parts, thus asymmetrically buffering downstream exposure to upstream threat of hold-up.

Moreover, because downstream tend to be located in core economic regions, they have significantly greater access to capital (due to the higher value of their land, for example, and their larger income streams), which they can use to buy-out any upstream firm upon which they find themselves too interdependent. And this, again, gives them a counter to threat of hold-up that upstream firms do not enjoy.

The other way in which production chains asymmetrically shape economic geography is by working to asymmetrically distribute societal vulnerability to global market fluctuations. This is again particularly true in post-Fordist economic environments – i.e., environments that reward industrial flexibility more than simple industrial exploitation of economies of scale. One of the functionalities of production chains is that they allow downstream firms to focus on internal development of knowledge-intensive, design-based responsiveness to market fluctuation; and to ‘export’ innately less-flexible parts of their productive needs to outside (upstream) suppliers. But these upstream suppliers are also subject to the increased market fluctuations of globalization (as communicated to them by changes in their supply contracts with downstream firms). They respond to this primarily by institutionalizing flexibility in their labor forces — by hiring more workers when demand is high; laying them off when demand falls; and replacing existing workers with new workers when new sets of labor skills are needed — a practice that has been referred to as ‘numerical flex’.

But numerical flex promotes instability in employment, and thus effectively destabilizes a greater portion of the peripheral population. It forces less-wealthy local social actors to assume greater responsibility for providing social welfare and security — a security that in more core economic regions would be provided by the more stable employment relationships provided by the downstream employer. All this means that in peripheral economies, the greater fluctuations in globalized markets have a much greater disruptive effect on the local economies and populations in peripheral regions than they do on those in core regions.

- **Capital flows, or ‘Money flows like Mercury’**

The periphery’s greater social susceptibility to environmental flux and disruption is further catalyzed by the psychology of transnational capital. Simply put: peripheral economic
regions have less stable access to global capital. This phenomenon is well captured in a metaphor coined by Gordon Clarke (2005) that “money flows like mercury,” in the sense that transnational capital flows, like mercury, tend to “(1) run together at speed, (2) form in pools, (3) re-form in [new] pools if disturbed, [and] (4) follow the rivulets and channels of any surface however smooth it may appear to be . . . .” (105)

The psychology of transnational capital promotes peripheral economic instabilities in other ways as well. First, global capital has a strong natural preference for its home region of origin. Peripheral economies thus have to offer higher levels of return than core regions in order to attract such capital, and this forces them to engage in correspondingly more risky economic ventures. Second, global financial transactions invariably are denominated in American dollars, and this forces the peripheral borrower rather than the core lender to bear the disruptions caused by fluctuations in global currency markets.

- **State capacity**

The geographic-economic differentiations described above tend to be aggravated when they play across national borders, and conversely, can be mitigated when they play wholly within countries. National borders tend to reduce internal inequalities by delineating geographies of progressive wealth redistribution. But capacity for internal wealth redistribution is very much the product of industrialization. The economies of scale triggered by Fordism allow for the creation of national-market markets; they encourage development of standardized, nationwide practices of financial management and labor reproduction; and they also create stronger ties of economic interdependences among the production, commercial and financial sectors of the country. All this facilitates internal flows of capital and labor, which in turn makes processes of wealth distribution easier.

Peripheral countries, by contrast, are less able to capture the wealth-redistributive affects of national inclusiveness. Being less industrialized, they less able to generate the domestic industrial economies of scale that unify and standardize national markets and industrial and financial practices. Those sectors of the peripheral economic that are industrialized are often directed primarily to serving foreign markets, thus reducing their domestic unifying effects as well. Peripheral efforts to transfer wealth are further impeded by the more cash-based and hence less transparent nature of private economic activity. And without the regional and social interdependencies generated by Fordism, individual regions within peripheral countries also have greater incentive and capacity to engage in economic protectionism. All this serves to make local and private economic activity much more opaque to central administrators in the periphery than it is to central administrators in core, Fordist economies. And this makes it much more difficult to collect and redistribute wealth within the country.  

**B. The “Regulatory Logic” of the Periphery: The Case of Business Licensing**

As we explored above, Fordism is symbiotic with the regulatory state. This symbiosis results from something we might call the particular “regulatory logic” of Fordism. Fordism induces environmental stability and regularity that in turn allows one to exploit economies of

---


7 Sacks et al.

8 This particular dynamic could explain the short-term causal relationship between institutions and economic performance discussed in note __.
scale. The regulatory state is comprised of certain regulatory techniques that are able to make use of the innate stability and regularity of Fordist society in order to promote what we regulatory economies of scale. This allows for regulatory expansion, which in turn allows for market expansion, that Fordism can exploit through its distinctive mobilization of economies of scale. And while these Fordist regulatory techniques might be more expensive — due to their reliance on professionalization, specialization, and monitoring; this is not particularly detrimental to their added utility. By facilitating the expansion of markets, these techniques allow Fordism to generate more wealth via its innate exploitation of economies of scale. And this, in turn, covers their added costs. (See also Piore and Sabel 1984.)

What we are calling the “regulatory logics” of Fordism are those particular aspects of the Fordist environment that encourage or discourage, in an evolutionary sense, the adoption of particular regulatory devices and techniques. Rule of law, agencification, standardization — the core regulatory techniques of the regulatory state — are all regulatory devices that are able to convert the particular social and economic attributes of Fordism — namely its distinctive social regularity, stability, and wealth accumulation — into more effective regulation. We might say that they are, in other words, regulatory devices that respond to and are encouraged by the regulatory logic of Fordism.

The periphery, too, has its own regulatory logics—but these are logics that are different from those associated with Fordism. For example, as we saw above, peripheral economies may often have structural limits on their capacity to generate wealth — limits that operate beyond the reach of the regulatory system. For this reason, regulatory effectiveness in the periphery frequently will be more sensitive to issues of cost. And since the regulatory environments found in the periphery are also much less regularized and much less stable than those associated with Fordism, they will tend to reward regulatory devices that are able to operate in what we might call more ‘fluxative’ regulatory environments; and / or regulatory devices that tend promote environmental stability instead of regulatory expansion.

Of course, to a large extent, the particular regulatory logics operating in the periphery have already been recognized in the literature. But the problem is that these logics are invariably conceptualized in the negative — merely as obstacles to regulation. Our discussion above argues otherwise: that often, these logics actually represent alternative regulatory functionalities that are distinctly and affirmatively adaptive to the socio-economic structurings of peripheral regions.

Consider, along these lines, peripheral practices of business licensing. As analyzed by the World Bank in its annual Doing Business surveys, peripheral economies tended to impose more onerous application requirements for business-related licenses than do more economically-advanced economies. This, in turn, is widely thought to limit economic diversity, capacity for innovation, and hence economic growth in these regions. These reports have thus consistently urged that peripheral countries streamline business licensing procedures, and focus business regulation on ex post monitoring of on-going businesses activity rather than ex ante evaluations of suitability for entry. In doing so, they dismiss the periphery’s existing regulatory focus on ex ante evaluations as representing a simple absence of effective regulation. They reflexively dismiss the possibility that it might represent an affirmative response to the special regulatory conditionalities (regulatory logics) that are often found in peripheral economies. (See, e.g., World Bank 2006, p. 15-20.)

But are the authors of these surveys really justified in simply dismissing peripheral licensing practices in this way? A recent study by Anthony Ogus and Qing Zhang (2005, p. 131) suggests that ex post monitoring regimes can be quite expensive to maintain relative to alternative regimes that focus on ex ante evaluations. At the same time, we saw above that particularly in peripheral environments, the region’s capacity to grow additional wealth can often be constrained by factors that lie outside the reach of the regulatory system. This
means that the particular economic benefits associated with a focus on ex post monitoring – namely its ability to promote growth by facilitating easier business entry – would not necessarily accrue in a peripheral economy. Under such circumstances, the lower administrative costs associated with ex ante licensing would rationally recommend such a regulatory regime over more expense, ex post regimes, whose contributions to facilitating economic growth are not likely to be realizable.

Regime focus on ex ante licensing may also bring to peripheral economies other important regulatory benefits, benefits that would be lost in a shift to ex post monitoring. Recall that peripheral economies are much more susceptible to social disruption due to economic fluctuation than are core economies. Such fluctuations carry their own regulatory and economic costs — they threaten regulatory coherence; they increase costs associated with regulatory and economic planning; and they impose considerable burdens on local civil society. The regulation of this flux thus brings proportionally greater benefits to such regions. And there is good reason to suspect that a regulatory focus on ex ante licensing is better suited to this task.

As noted above, ex ante evaluation increases the cost of business entry. The World Bank’s Doing Business Reports see this purely as a negative. But one possibly positive regulatory consequent of this is that those who do indeed choose to enter the regulatory environment are more likely to be committed to longer-term timelines, since they will need to stay in that environment longer in order to recoup the higher costs of entry (Zanini 2007, p. 65; cf. Bennett and Estrin 2006). Similarly, robust ex ante licensing could also work to stimulate relational ties linking business with the inspectorate that would promote continuity in less-settled regulatory environments (Williamson 1985).

In this way, recognizing the distinctive regulatory logics that are likely to be operating in the periphery allows us to see how, contrary to the ex ante business licensing commonly found in the countries of that region could actually be more functionally suited to their more peripheral regulatory environments than the pro forma licensing advocate by the World Bank. Not only are ex ante licensing schemes are of lower cost in an environment in which wealth is relatively scarce, they can also serve to impart much needed resilience and stability to environments which are much more likely to be subject to disruptions. And the fact that they are less conducive to economic growth is of lesser concern to peripheral environments whose growth capacity is constrained by geographical factors lying outside the reach of the domestic regulatory structure.

This is not to argue the every – or even most – instances of ex ante licensing found in peripheral countries are actually providing an overall social good. But it is to show that some could be. And for this reason, we need to take this regulatory seriously and on its own terms, so that we may begin distinguishing when and how such a practice might be appropriate and effective from when and how such a practice is dysfunctional. The problem with the World Bank’s analysis is that it does not even try to do this. The Report fails to consider that peripheral economies are likely to have innate regulatory needs that are different from those found in developed economies, and therefore instead of considering ex ante licensing on its own terms, it simply dismisses this regulatory practice as an inferior form of business regulation as compared to what is found in the developed North.

C. Some Tentative Explorations into the Regulatory Logic of the Periphery

As noted above, the evolutionary dynamics that work to structure the broad ‘regulatory logics’ of the Global South are ultimately the products of forces that are both spontaneous and global. They cannot be dismantled simply via application of a more
advanced *domestic* regulatory system. Peripheral regulatory systems have no choice but to work with, rather than avoid, these logics. A useful first step in developing positive as opposed to negative understandings of ‘regulation’ as it manifests itself distinctively in the Global South would involved mapping the kinds of regulatory structures that respond to these distinctive logics.

What kinds of regulatory structures might these include? Below, we will examine a number of possible candidates. These will include what we will call ‘Foucauldian’ (as opposed to ‘Montesquieuian’) forms of constitutionalism; resistance to judicialization; regulatory piggybacking and relational governance; and a particular form of environmental adaptability that we will call “resilience”. As we shall see, most of these structures have in fact been well-identified in the literature on peripheral legal development. But they have generally been identified negatively — as deviations from and obstacles to ‘regulation’ rather than as alternative but nevertheless possibly affirmative regulatory responses to the distinctive conditions of the periphery *in their own right*. Understanding the distinctive regulatory logic that operates in peripheral economies allows us to see how at least in some cases these structures could possess important and affirmative regulatory functionalities, particularly in peripheral regulatory environments.

- **Peripheral Constitutionalism**

One regulatory environment that likely be affected by the different regulatory logic of peripheral regions is that of constitutionalism, i.e., the regulation of state behavior. The periphery’s greater vulnerability to destabilizing economic and social flux could easily cause the particular constitutional balance so famously articulated by Justice Brandeis between “efficiency” (as promoted by the executive) and “the [possible] exercise of arbitrary [executive] power”\(^9\) (as protected against by the courts) to be shifted towards the former in such environments. And at the same time, we also noted above how peripheral regions are less able to support the robust civil society institutions that in more central constitutional environments serve to buffer regulatory shock. Under such conditions, the Constitution would function less as a guardian *against* the state and more as a constitutor of the state, resulting in what is sometime associated with more ‘continental’ (as distinguished from Anglo-American) visions of constitutionalism.

Under this vision of constitutionalism, the relationship between society and the constitutional state would be thought of as primarily interdependent rather than as primarily competitive and antagonistic. This, in turn, suggests a distinctly ‘Foucauldian’ way of thinking about and conceptualizing constitutional power — one that sees such ‘power’ as residing in complex networks of interactions and mutual interdependencies rather than in Montesquieuian structures of autonomy and independence. Analytically, ‘Foucauldian’ expressions of constitutional power would primarily operate *ex ante*, by conditioning decisional rationality, rather than *ex post*, by imposing structural checks on executive behavior. Such ‘constitutionalism’ comes more in the guise of an epistemology than of a structural template; more in the guise of a framework of action rather than of a framework for *ex post* restrictions of action.\(^10\) It is a ‘constitutionalism’ that resonates more with that of Dicey and Bagehot than with that of Montesquieu and Madison.

---


\(^10\) Of course, as a descriptive methodology, such a lens is capable of offering at least partial legitimation to regimes that we may feel loath to legitimate. But constitutionalism is a scalar, it is not an absolute — political regulatory systems are more properly spoken of as being “more or less constitutional” rather than as being simply “constitutional” or “unconstitutional”. No state is monolithic (and recall that peripheral states are likely to be actually weaker in their ‘monolithic’ capacities than their core counterparts). Even within the most
Resilience to judicialization

In peripheral regions, court-centric regulatory structures are likely to have a significantly harder time propagating than they do in more core economic regions. Peripheral constitutionalism, as we have seen, places greater demand for proactive regulation, and such judicialization is innately reactive, it works against this particular logic. And at the same time, peripheral economies, as we have seen, generally lack the wealth necessary to develop and sustain the necessarily professionalized judiciaries and legal systems that provide the intellectual authority necessary to sustain intervention into proactive political action. For this reason, the constitutional role of the courts both as authoritative and normative resolvers of regulatory disputes and through that as ex post checks on proactive executive and parliamentary action is likely to be significantly constrained relative to their core-region counterparts.

Regulatory piggybacking and relational governance

One of the ways in which the distinctive state-society interdependence captured by peripheral constitutionalism is likely to most prominently express itself is through what we might call regulatory piggybacking. In demanding that a public regulating entity sit outside and above the private regulated environment, the modern regulatory state imposes a strict separation be maintained between public and private regulatory resources. But such separation is expensive to maintain, since designation as a ‘public’ or ‘private’ resource limits the uses to which that resource can be deployed, and thus requires a larger overall pools of social-regulatory resources. Lacking these resources, public and private regulatory systems in peripheral countries have greater inclination to ‘piggyback’ on one another: ‘piggybacking’, in this context, describes a condition in which public and private regulatory systems seek to promote their regulatory effectiveness by sharing resources across the public-private divide.

Such piggybacking would cause political regulation to constitute itself in more the form of intimate (i.e., not arms-length), relational networks. Relational governance is a well-recognized feature of the Global South. But it is generally regarded as a regulatory negative — captured by monikers such as ‘crony capitalism’, ‘political machines’, ‘clientism’, and ‘[state] corporatism’. But in environments that lack sufficient public wealth to sustain a professionalized civil service and that lack the societal rationalizations and standardizations that allow for arms-length, rule-of-law regulation; a reliance on relational (e.g., machine-style or gentry-style) governance is often likely to be the least-worst public-regulatory alternative. We need to remember that relational ties of patronage go both ways, and thus they can and do work at least somewhat to discipline patrons as well as clients (this is one of the insights that a more ‘Foucauldian’ lens of constitutionalism’ helps reminds us of). Moreover, as will be discussed below, relational ties are also more resilient in the face of social or economic flux.

Authoritarian of peripheral governments, significant pockets of proto-constitutional regulation are likely to exist—such as the Conseil d’État in Napoleonic France). For this reason, a Foucauldian lens nevertheless represents a significant improvement over impoverished visions of political economy that all-too-commonly presume that in the absence of formalized, structural checks like judicial review and separation of powers, state (executive) power must be completely absolute and completely unchecked. As I have shown elsewhere, at the very least, a Foucauldian lens can thus help us perceive dynamics of constitutional potential missed by our more Montesqueuian visions of political economy, dynamics that both normatively satisfying and more affirmatively reflexive (and thus more effective and sustainable) with those corresponding, social regulatory frameworks that are already in place for regulating the political state.
Thus, they are likely particularly useful in peripheral environments where such flux is a more common factor in political and social life.

For these reasons, these relational forms of governance can often in fact be a functionally affirmative regulatory response to the particular dynamics of the peripheral regulatory environment, and not simply the absence of legitimate public or constitutional regulation. In pre-Fordist US and UK, for example, not only were structures of relational governance (such as political machines and spoils-system patronage) absolutely vital for maintaining governmental coherence in the absence of significant public wealth, but historical studies show that such structures were often significantly more effective at promoting both political legitimacy and progressive distributions of public goods than they were typically given credit for by Mugwump opponents.

Contemporary conformation of the possibility of an affirmative regulatory functionality for what we are calling relational governance is found in the recent successes of the “Miyazawa Scheme” in Thailand and the World Bank’s similarly structured “National Program for Community Empowerment” in Indonesia. These social-protection and social-development programs controversially operated through direct block grants to local social elites, elites that combined and ambiguated public and private regulatory powers and roles in ways that are often interpreted by Northern observers as emblematic of corruption. Nor did these grants require these receiving elite to strictly delineate and separate their public from private capacities. Many therefore saw in these programs a recipe for mismanagement and graft. But in fact these grants turned out to be notably effective—much more so, in fact, than a similarly targeted program established by the World Bank that operated along more conventionally-structured, managerial and constitutional lines. The relational networks they made use of – state corporatist and machine-based in the case of Thailand; gentry-oligarchical in the case of Indonesia – while lacking the traditional attributes of ‘public accountability’ as defined by today’s modern managerialist standards, nevertheless proved surprisingly public-serving.

- Resilience

Throughout this chapter, we have noted how regulatory environments in peripheral regions are likely to be characterized by significantly increased susceptibility to flux. We also saw how some structures of the ‘regulatory state’, particularly those associated with ‘rule of law’, are premised on environmental stability. Such structures will thus have a difficult time propagating in peripheral environments. Peripheral regulatory systems will therefore tend to evolve alternative regulatory structures that can promote and maintain regulatory coherence in the face of environmental flux. We might refer to this as a tendency toward regulatory ‘resilience’.

Such resilience can be actuated in a number of ways. One way, as we already explored, is through ex ante licensing and other devices that promote cost of entry. Another is through the use of more vague rather than more precise standards and rules, similar to what Cass Sunstein has termed ‘incompletely theorized agreements’ in the context of American constitutional law. Still another is by focusing more on the development of long-term relational ties and networks rather than on arms-length bargaining, such as the ‘relational contracting’ famously identified by Ian MacNeil. Another way, albeit perhaps less recognized in the literature, is through ambiguation of property regimes.11

---

11 As suggested by studies of transitional Hungary (see, e.g., David Stark) and transitional China (Markus Taube, “Stability in Instability: China’s TVEs and the Evolution of Property Rights.” ASIEN. Vol 84 (July 2002). Cf. Greg Alexander.
Again, these features of peripheral regulation are well-recognized — but in the regulatory negative. They are seen primarily as mere obstacles to more efficient economic growth and development. But growth is not necessarily the only measure for economic-regulatory functionality. Stability and coherence also matter. And it is in these dimensions, rather than those of traditional institutional economics, that the real functionality of these regulatory practices is likely to lie.

A good example of this is found in the evolution, or more precisely the lack of evolution, of independent trade unions in post-Suharto Indonesia, as documented in recent studies by Michele Ford. Prior to democratization in 1998, Indonesia’s authoritarian government prevented workers from forming independent trade or labor unions. For this reason, labor interests tended to be advance indirectly, through domestic NGOs organized and run by academics and other social elites. Particularly within the industrialized North, such ‘virtual’ labor representation via elite-driven NGOs is widely regarded as an ineffective substitute for unionization, and it was therefore anticipated that, with the fall of Suharto and the subsequent legalization of collective bargaining, these NGOs would quickly be replaced by independent unions.

But in fact, this was not the case. Even with the legalization and international promotion of independent unionization, elite-led domestic NGOs have remained the principal vehicle for the political expression and protection of Indonesian labor interests. This is because within the fluxative context of Indonesia’s peripheral economic environment, these NGOs have significantly greater ‘resilience’ than independent unions. Unionization requires stable patterns of employment, as workers need time to organize and learn how to work together to promote their common interests. As primarily upstream suppliers in the largely post-Fordist East-Southeast Asian regional economy, Indonesian industries are heavily prone to numerical forms of flex. This results in workers having to constantly change their places and kinds of employment, and this structurally inhibits unionization. By contrast, membership in a university or social elite is not affected by the shifting employment patterns caused by numerical flex. For this reason, domestic NGOs can enjoy a permanence and stability – a ‘resilience’ – that independent unions so far have had a hard time gaining.12

We might also note that this distinctive regulatory logic of ‘resilience’ has particular implications with regards to Northern ‘law and development’ projects. From a systems perspective, legal development programs are simply another form of environmental flux. ‘Resilience’ would make domestic regulatory systems resistant to these kinds of disruptions just as they are to (other) kinds of flux that are associated with peripheral economies. Recent studies by John Gillespie mapping domestic resistance to international neo-liberal regulatory development efforts in Vietnam, for example, show quite clearly that the patterns of such resistance correspond very closely to patterns of practices of relational governance that are associated with regulatory resilience. In other words, a significant portion of the periphery’s curious resistance to international legal development efforts of all sorts – not just economic reforms, but also democratic and pluralist-liberal constitutional reforms – is likely to be innate and structural. It is not simply willful and political (e.g., a simple product of ‘corruption’), as tends to be assumed by much of the developmental literature.

IV. CONCLUSION: GIVING THE PERIPHERY ITS DUE

Recognizing and appreciating the distinctive regulatory logics of the periphery allows the regulatory experiences of this geography to finally enter into a meaningful dialogue with

the “regulatory theory” of the industrialized North. It allows us to recognize the South as a distinct source of positive regulatory knowledge. And we might note, along these lines, that the socio-economic structurings characteristic of peripheral regions are not unique to the periphery. As post-Fordism proceeds to dismantle the centralizing and rationalizing tendencies of industrialization, conditions of peripherality – such as labor casualization (Hyde 2006), informal economies (Sassen 1994), economic flux (Sherman 2005, p. 170-182) – are increasingly appearing even within the core nations of the industrial North. Who knows?— the South might just have a thing or two to teach the North about ‘regulation’ as well.

References:


Jones, Chester Lloyd (1916), ‘Spoils and the Party’, *The ANNALS of the American Academy of Political and Social Science* 64 (1), 66-76


