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THE ROLE OF INTRA-INSTITUTIONAL FORCES IN THE CONCEPT OF INSTITUTIONAL REGULATION

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РОЛЬ ВНУТРІШНІХ ІНСТИТУЦІЙНИХ СИЛ У КОНЦЕПЦІЇ ІНСТИТУЦІОНАЛЬНОГО РЕГУЛЮВАННЯ

This article examines the range of problems related to the role of intra-institutional forces in the process of institutional regulation. We considered the nature of such strains of institutional regulation as institutional layering, perversity and self-referential approaches. Special stress is laid on endogenous processes that encourage regulatory change and adaptation within organization; we registered the inherent tensions that may emerge in the face of not only changing environmental requirements but also competing regulatory demands.

У статті досліджується проблематика ролі внутрішніх інституційних сил у процесі інституціонального регулювання. Розглянуто природу таких проблемних аспектів інституціонального регулювання як інституційне нашарування, викривлення і самореферентність. Особливу увагу приділено ендегенним процесам, що сприяють регуляторним змінам і адаптації організації; відзначено неминучість присутності у

регулюванні внутрішнього напруження, яке може бути викликане не лише змінами регуляторного середовища а і різноспрямованістю регуляторних вимог.

Keywords: *institutional regulation, intra-institutional forces, institutional layering, institutional environment, subsystems, interaction.*

Ключові слова: *інституційне регулювання, внутрішні інституційні сили, інституційне нашарування, інституційне середовище, підсистеми, взаємодія.*

Introduction. In explaining how regulation arises, develops, and declines, a number of broad approaches can be adopted. These approaches may set out merely to describe and account for regulatory developments, they may be prescriptive and offer a view on how economic regulation should be organized, or they may serve a combination of these functions. Similarly, accounts of regulation may constitute commentaries on regulatory developments that are delivered with detachment from the sidelines or, together with then proponents, they may participate on the field of play and, intentionally or otherwise, may themselves contribute to regulatory changes.

In looking at explanations of regulation, we can distinguish between those approaches that emphasize exogenous (external) factors that shape the evolution of regulation (such as the force of interest groups, dominant ideas, or the underlying nature of the economy) and those emphasizing endogenous factors such as institutional cultures. The last ones are in the focus of our study.

Problem setting. The wide bulk of the regulatory literature sees regulatory changes as driven by forces that come from within organizations. What unites these diverse accounts is an emphasis on self-destructive processes that partly emerge from a process of filtered responses to changes in the wider environment of the regulatory system. Institutional design matters and the widely proclaimed importance of path dependence does matter to some extent [1] - but only in so far as to generate largely unpredictable responses and ongoing changes. Economic regulation is therefore limited, if not inherently about non-control. Three particular lines of enquiry that emphasize this particular strain of regulatory thinking can be distinguished: institutional layering, perversity and self-referential approaches. This article considers each one in turn.

Results. *Institutional layering* accounts relate to a very traditional interest in the study of organizations, namely how organizations and rule-systems respond to changes in their institutional environment [2]. In contrast to accounts that suggest immediate adaption, layering type accounts suggest that processes of initial resistance and partial accommodation will be commonplace. For example, pressure for economic reform will initially be rejected, then partly accommodated and, if pressure is continuing, finally lead to overall transformation. Therefore, the expectation is that economic regulation evolves over time, not by radical change, but rather by incremental adaptation, leading to additions and extensions. These moderated processes of adaptation mostly reflect the biases of the organizations that are supposedly to enact demands for changes. As a result, organizations filter out the difficult or controversial, or focus on the popular and convenient, rather than the problematic. Over time, this leads to the emergence of economic regulatory systems characterized by competing logics and, thus, inherent tensions. These tensions, in themselves, will be a source of regulatory activity and changes.

Perversity accounts are related to ideas that focus on competing logics and incremental adaptation. These accounts follow an intellectual lineage that goes back to the seminal work by R. Merton [3], and they stress the limits of intentional action. Economic regulation, therefore, is at least as much about unintended consequences as about intended outcomes. It can be marked out seven reverse mechanisms that would pervert intended action (Table 1.) and all of them have direct implications for the study of regulation [4].

Table 1. Seven reverse mechanisms that pervert intended action

№	Type of mechanism	Main emphasis
1	functional disruption	regulation frustrates the functioning of the system, thereby worsening the overall outcome
2	exploitation	opponents succeed in achieving the opposite of the intended effects
3	goal displacement	the process of regulating drives out the overall objective of regulating
4	provocation	opposition and antagonism are mobilized, rather than compliance achieved
5	classification	labeling effects have reverse effects, such as when attempts at stigmatizing behavior become badges of honor
6	over-commitment	the resource intensity of seeking to achieve unobtainable objectives reduces the resources to achieve obtainable objectives
7	placation	the illusion of regulatory compliance distracts from danger signals

In sum, this list stresses the importance of inherent paradoxes and potential surprises that are generated by counter-learning

environments.

A similar diagnosis of the inherent limitations of regulatory interventions is shared by cultural theory accounts where the key interest has largely lain in the biases and worldviews that are incorporated into regulatory instruments and “styles”. Cultural theory, however, also points to potential limitations of each approach which are largely generated through exploitation, counter-learning, and cognitive limitations: individuals and organizations seek to filter out information that seems to suggest a rejection of favored instruments and underlying cause-effect relationships [5, 6]. In brief, egalitarian regimes suffer due to high degrees of “clubbiness”; “individualist regimes” suffer from encouraging selfish individualism, namely gaming and cheating; a regime emphasizing unpredictability suffers from encouraging distrust and therefore reduced “openness” and “collegiality”; whereas a hierarchical regulatory approach suffers from potential over-reliance on expertise. Therefore, an over-reliance on any single world-view invites side-effects and exploitation. In contrast, the careful “hybridization” of regulatory strategies is said to provide for more stable solutions [7]. Whether such “clumsy solutions” (as some cultural theorists call hybrids) do indeed offer such a stairway to a perversity-free and stable heaven of regulation is however still a matter of debate [8, 9].

Self-referential accounts of regulation have largely been influenced by the works of N. Luhmann [10] and G. Teubner [11]. The idea of self-referentiality involves an understanding of society that is increasingly differentiating into subsystems that are shaped by their own codes. Each subsystem (law, economy, politics, religion, etc.) is seen to have its own rationality, yet to be able to react with its environment so as to self-generate and reproduce [12]. Regulatory developments, accordingly, come to be analyzed in terms of the nature, compatibilities, and interactions of self-reproduction systems [13].

Communication rather than any theory of action is at the centre of these accounts. As subsystems communicate in their own “code”, direct intervention becomes increasingly problematic, if not impossible. The instruments of law do not directly translate into the language of the economy - therefore they require translation and “arrive” in the economic subsystem not only in translated (distorted) form, but also with significant time delay. Thus, control is inherently limited, the economic consequence of this being either completely ineffectual regulation (the attempt at intervention is being rejected) or overbearing regulation that destroys the viability of the respective subsystem. For G. Teubner, attempts at intervention and “transplanting” regulation is at best about creating “irritation effects” - with eventual outcomes being highly uncertain. He calls this the “regulatory trilemma”: when law seeks to relate to other sub-systems, law may either be irrelevant to the other sub-system and therefore may have no effect whatsoever (termed “mutual indifference”), or through creeping legalism law may inhibit the other sub-system, therefore constraining that other system's viability, or law's self-reproductive capacity itself may be harmed through being over-socialized by the other sub-system.

N. Luhmann is widely linked with the argument that denies the possibility of control and steering. In fact, he is associated with comparing attempts at economic policy interventions with the native's rain-dances or suggesting that the welfare state resembled an attempt to “inflate cows in order to increase milk supply”. In general, accounts stressing self-referential systems suggest that hierarchy is dead and attempts at linking different systems are problematic and, therefore, regulation is most likely to be ineffectual. Communication, on this view, achieves irritation and structural linking, but never purposeful communication [14]. Regulation is replaced by evolution [15]. Indeed, rather than simply stressing failure, the emphasis is on the non-instrumental character of knowledge and meaning [16].

Somewhat less pessimistic are the accounts by G. Teubner and H. Willke in that both acknowledge the possibility of control. In both these cases, the limited solution to this regulation problem is two-fold - contextual steering through proceduralization and/or encouraging self-learning within social and economic subsystems [17, 18]. In the former, reliance is placed on the importance of indirect steering through procedural devices that encourage sub-systems to steer themselves to desired outcomes without the negative side-effects of direct intervention. In the latter, the emphasis is on incentivizing self-learning capacity among differentiated sub-systems.

Conclusions. To summarize, intra-institutional approaches lay special stress on endogenous processes that encourage regulatory change and adaptation and display a shared emphasis on the inherent tensions that emerge in the face of not only changing environmental requirements but also competing demands. They also share, to a degree, a certain skepticism regarding the effectiveness of intended regulatory intervention in economics as a complex multilevel system composed of many subsystems inclined to self-regulation and self-reproduction.

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