Regulating Government in a 'Managerial' Age: Towards a Cross-National Perspective

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REGULATING GOVERNMENT IN A 'MANAGERIAL' AGE: TOWARDS A CROSS-NATIONAL PERSPECTIVE

Christopher Hood and Colin Scott

At a time when some commentators are writing about the 'regulatory state' (Sunstein 1990 ; Majone 1994; Loughlin and Scott 1997)) and others about the 'New Public Management State' (like Wettenhall 2000 forthcoming), the link between these two putative 'states' – the regulation of government - deserves to be explored. Accordingly, this paper discusses the accountability of modern executive government from a 'regulation' perspective. It aims to set the scene for a cross-national analysis of different styles of control and accountability in government from such a perspective. Such cross-national analysis is needed to bring out patterns of variety and change in the way regulation of government works in a small number of developed countries. It is needed to put the 'audit society' model highlighted by Power (1997) in comparative perspective and to focus on alternative ways of regulating government.

To set the scene for such an analysis, this paper is divided into three main parts. The first part aims to set out a 'regulation perspective' on government and to identify some of the different domains of public-sector regulation. The second part explores the significance of a regulation perspective for the various interpretations of public management reform across the world. The third and final part turns from theory and interpretation to the limits of empirical knowledge, identifying 'what we know we don't know' – or at least some of its main components - about comparative public-sector regulation.

1. SEVEN WORLDS OF PUBLIC-SECTOR REGULATION

(a) Regulation of Business and Regulation of Government

The term 'regulation' is conventionally used to refer to government intervention in markets. The term usually denotes a form of intervention that consists of setting and enforcing rules of behaviour for organisations and individuals. It thus contrasts with other forms of state intervention such as public ownership, taxes and subsidies or physical alteration of the environment.[1]

In developed states the totality of regulation in that sense tends to be dense and multi-bureaucratic. Firms and individuals face numerous monitoring, standard-setting and enforcement bodies (often making different and sometimes even contradictory demands) prescribing what they can do to their employees, their customers, their

[1] Though there is a French Marxist sense of 'regulation' that embraces all state activities in the economy to support a particular 'capital accumulation regime' and that usage is common elsewhere, for instance in the Latin-American countries (cf. Majone 1990 and Baldwin, Scott and Hood 1998). In practice, discussion of regulation in the narrow sense tends to run into a broader discussion of alternative policy instruments, particularly over regulatory reform (see Breyer 1982; Ogus 1995).

stockholders, other companies, the environment, even language and culture in some cases.[2]

There is a large and growing literature on regulation in this sense. Over the past two decades that literature has grown and spread well beyond the USA, where it was most developed in the recent past (cf. McCrudden 1999; Ogus 1995; Baldwin Scott and Hood 1998). No doubt some of this development involves the re-labelling of what had previously been studied under different names. But the academic boom in the study of 'regulation' links to some obvious changes in the environment as well. In particular, privatisation of utilities across Europe and much of the world has meant government has shifted from owner-regulator to that of regulator alone for many key industries like telecoms. So what a generation ago was commonly seen as a distinctive US policy style has become much more widespread. Regulation has grown substantially in other policy domains too (like financial services, equal opportunities, environment, health and safety at work), even and perhaps especially during times of fiscal squeeze. Hence the talk of the rise of a 'regulatory state' that was referred to at the outset. A regulatory state is one that puts heavy emphasis on rule-making, monitoring and enforcement (with most of the costs of compliance paid by regulatees in the first instance) rather than on subsidies, direct ownership or state operation of particular facilities.

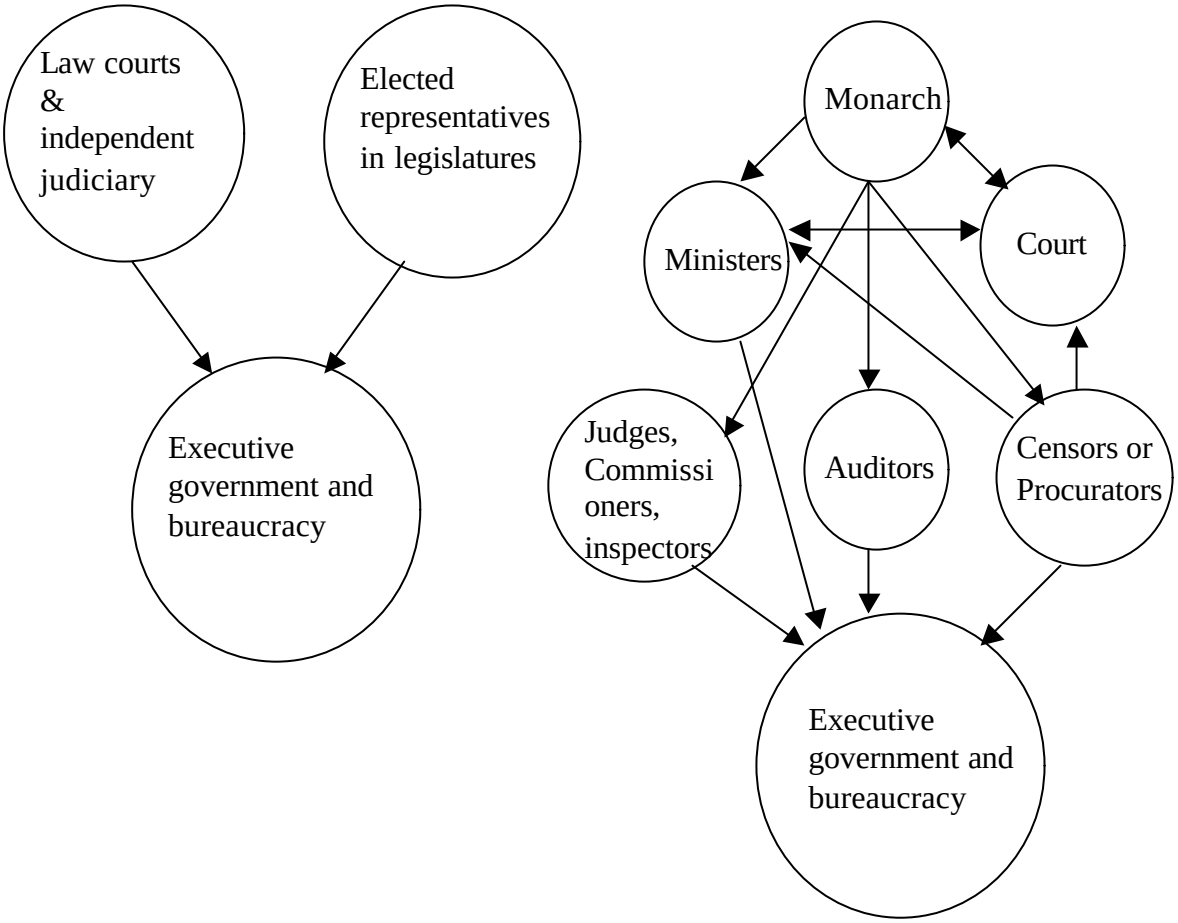
The idea that government itself might be 'regulated' in a similar sense is less widely accepted and discussed. In orthodox constitutional theory, the two classical institutional mechanisms for making executive government accountable and keeping it under control in liberal-democratic states are oversight by elected representatives and legal adjudication by an independent judiciary. These primary control mechanisms are depicted on the left-hand side of Figure 1. They are normally held to have replaced the controls over government associated with earlier monarchical structures (including royal auditors, censors or procurators, inspectors or commissioners), some features of which are portrayed on the right hand side of Figure 1.

However, anyone familiar with the workings of modern executive government will be aware of a range of secondary reviewers and monitors outside the two primary or classical forms depicted on the left-hand-side of Figure 1. Many of the forms of control associated with the earlier monarchical age have survived or re-emerged in a different form in Europe and elsewhere. But this secondary world of regulation beyond the two classical 'pillars' of control has attracted only fragmented attempts at descriptive mapping and normative or explanatory theory. The various reviewing, monitoring, grievance-handling and standard-setting mechanisms that exist outside the two classical forms depicted in Figure 1 have tended not to be considered as a set. Rather, most academic discussion in public law and public administration has tended to discuss each of those mechanisms as separate entities, with specialised literatures developing on ombudsmen (or complaint-handling bodies in general), public auditors,

[2] The extent of the web of regulation is a common theme both of textbooks and popular writing and humour. An example is the well-known joke that Noah would have no chance of building his ark in six months today. The floods would have covered the earth long before he had managed to obtain the necessary building permits, satisfy planning or zoning requirements, file environmental impact statements, meet equal-opportunity demands and arrange his tax affairs so he could leave the country (ELG 1999: 56-7).

FIGURE 1: CLASSIC CONTROL MECHANISMS OVER GOVERNMENT

LIBERAL-DEMOCRATIC **MONARCHICAL**



inspectors and other oversight bodies. The 'web of regulation' approach often taken to describe the various government controls on business has been little developed for the public sector.[3] And in contrast to the theories that have developed out of political science and economics about the behaviour of regulators of business, attempts at generic prediction or explanation of the operation of the various overseers of the public sector have been few and far between.[4]

There is something to be said for that approach. After all, ever-narrower specialisation is the normal method by which science is said to progress (by 'knowing more and more about less and less'). In this case specialisation allows each class of overseer bodies to be studied in depth, and such specialisation is needed for regulators of business too. Each class of overseer certainly has its own particular methods, institutional history and mode of discourse which need to be understood. Designating a range of different oversight bodies as 'regulators', without paying attention to those differences, could amount to no more than another superficial neologism.

But there is also a price to be paid for looking only at the parts of public-sector regulation without considering the sum. If we think of the various overseers of government (apart from the law courts and the elected representatives in legislatures) only in a fragmented or isolated way, privatim et seriatim, there is a danger of missing the wood for the trees. Hence, as began to happen at least in part a generation or two back for the study of regulation of business, there are also analytic advantages in taking a broader approach, looking at oversight of government in a generic way and considering the various overseers of government as a set.

In fact, such a perspective was adopted by James Q. Wilson and Patricia Rachal (1977) over twenty years ago, to ask whether government could regulate itself as effectively as it could regulate business. (Wilson and Rachal thought not: we return to that issue in the next section of the paper.) Paul Light's (1993: 17) study of the Inspectors-General created to oversee federal government departments by the US Congress in the Inspectors General Act of 1978, used 'regulation' terminology in stressing what he called 'an ever-increasing level of regulatory and reporting requirements on executive agencies and their employees'. Writing from a UK perspective, Ian Harden (1995) also used the language of regulation to claim the 'classical' constitutional mechanisms of control over liberal-democratic government (law courts and legislatures, as depicted in Figure 1) needed to be supplemented by a range of internal regulators,[5] to make accountability work. We used similar language and a similar approach in a book-length study (conducted with three colleagues) of regulators inside UK government in the 1990s (Hood, Scott et al 1999). The World Bank (1999) has also employed the language of regulation in its claim that intra-public service regulatory regimes are one of the critical success factors for the civil service reform efforts the Bank sponsored over the 1990s.

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[3] This disparity is all the more curious given that a substantial political-science literature has developed on policy networks or policy communities.

[4] A partial – but only partial – exception is the attempt to develop a general model of Congressional oversight in the US in McCubbins and Schwartz's (1984) well-known 'police patrols versus fire alarms' approach.

[5] A similar argument was in fact advanced by Sir Ivor Jennings (1959), though Harden did not note Jennings' contribution and indeed that contribution was generally ignored by UK constitutional lawyers.

(b) Three Generic Features of Public-Sector Regulation

Now the line between 'regulation' and other activities of government is admittedly a fine one, and a number of cases are bound to be hard to classify. In our earlier work we have suggested three elements distinguish regulation from those other activities (see Hood et al 1999: 8ff). These elements are summarised in Figure 2.

One feature is that one organisation (in most cases a public organisation) is attempting to shape the behaviour of other public organisations – to keep its state within some preferred sub-set of all its possible states. That is a necessary condition of a regulatory relationship. But it is not a sufficient one, because it does not distinguish regulation from simple advice or line-of command relationships, and indeed is a defining property of any control system. For the relationship between the organisation aiming to shape behaviour and the target organisation(s) to be counted as 'regulatory', at least two further conditions must exist.

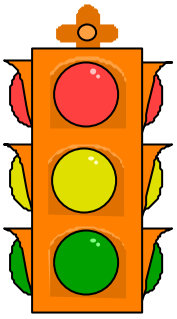
Accordingly, the second feature is that there must be some form of arms-length organisational separation between the target organisation and the unit doing the overseeing, and in particular that there is not a strict line-of-command relationship between the two. What distinguishes a regulatory relationship from a managerial one is that the overseer cannot issue ad hoc 'orders of the day' or redeploy the resources of the unit being overseen at will (for instance, in selective dismissal or appointment of top staff). Instead, it must issue general rules or standards, and rely on others for detailed action within the organisation (cf. Light 1993:17), making some attempt to monitor what the regulatee is doing and trying to correct deviations from the general rules or standards.

A third feature that distinguishes regulation from general lobbying or pressure-group behaviour that is that the overseer has some formal authority or mandate to scrutinise the behaviour of the units being overseen and to seek to influence or change it. Regulators in that sense are not self-appointed individuals or bodies pursuing their own idiosyncratic hobby-horses, but have authority for what they do rooted either in some formal legal instrument (order, statute, treaty, etc.) or at least in an executive act of government. This feature excludes most private or independent bodies seeking to shape the behaviour of public bodies by shaming, persuasion or other interest-group tactics, though such bodies form a key part of the environment of public-sector regulator. But it does not exclude all of them. For instance, private audit firms audit public bodies in many states and indeed public auditors (as in the EU) are often themselves audited by private firms. Another example is the way that self-governing collegial professional associations such as those for doctors and lawyers may regulate the way their members work across the public and private sector alike and discipline or strike off deviants.

(c) Seven Worlds of Regulation of Government

Following that general conception of 'regulation', we can identify several types of secondary oversight bodies outside the two classic controllers of government in

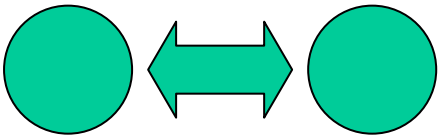
FIGURE 2: THREE CHARACTERISTICS OF REGULATION



ONE OFFICE OR ORGANISATION SEEKS TO SHAPE THE BEHAVIOUR OF ANOTHER

AND

+



FORMALLY THERE IS AN ARMS-LENGTH RELATIONSHIP BETWEEN THE OVERSEEING ORGANISATON AND THAT BEING OVERSEEN

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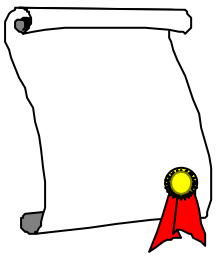
AND



THE OVERSEER HAS SOME SORT OF OFFICIAL MANDATE OR AUTHORITY FOR ITS OVERSIGHT

'REGULATION

liberal-democratic state theory, as together comprising a web of regulation over government. The seven shaded circles in Figure 3 represent a first attempt to depict some of the main components of that secondary structure, building on earlier work.

As Figure 3 indicates, one element of the web consists of international public overseers of government. Examples include the EU's OLAF (the European Anti-Fraud Office)[6] or its various Commission Directorates, the WTO, and the human rights regulators established by international treaties. A second element consists of the bureaucratic agents of legislators, like parliamentary auditors or the various watchdog agencies set up by the US Congress, including the Inspectors-General of the federal departments and the extraordinary US institution of the office of the Special Prosecutor.[7] A third set of regulators are those grievance-handlers outside the framework of orthodox public or general law courts which are not bureaucratic agents of the legislature in a narrow sense. A fourth part of the regulatory structure consists of officers or bodies that may be relatively independent both of the legislature and the regular executive structure (on a rough analogy with the US regulatory commissions, famously described by the 1937 Brownlow Commission as a 'headless fourth branch of government'(President's Committee on Administrative Management 1937)). Examples include some of the bodies that police merit in public appointments or standards of conduct in public life, like the Independent Commissions against Corruption that developed in several states during the 1980s.[8]

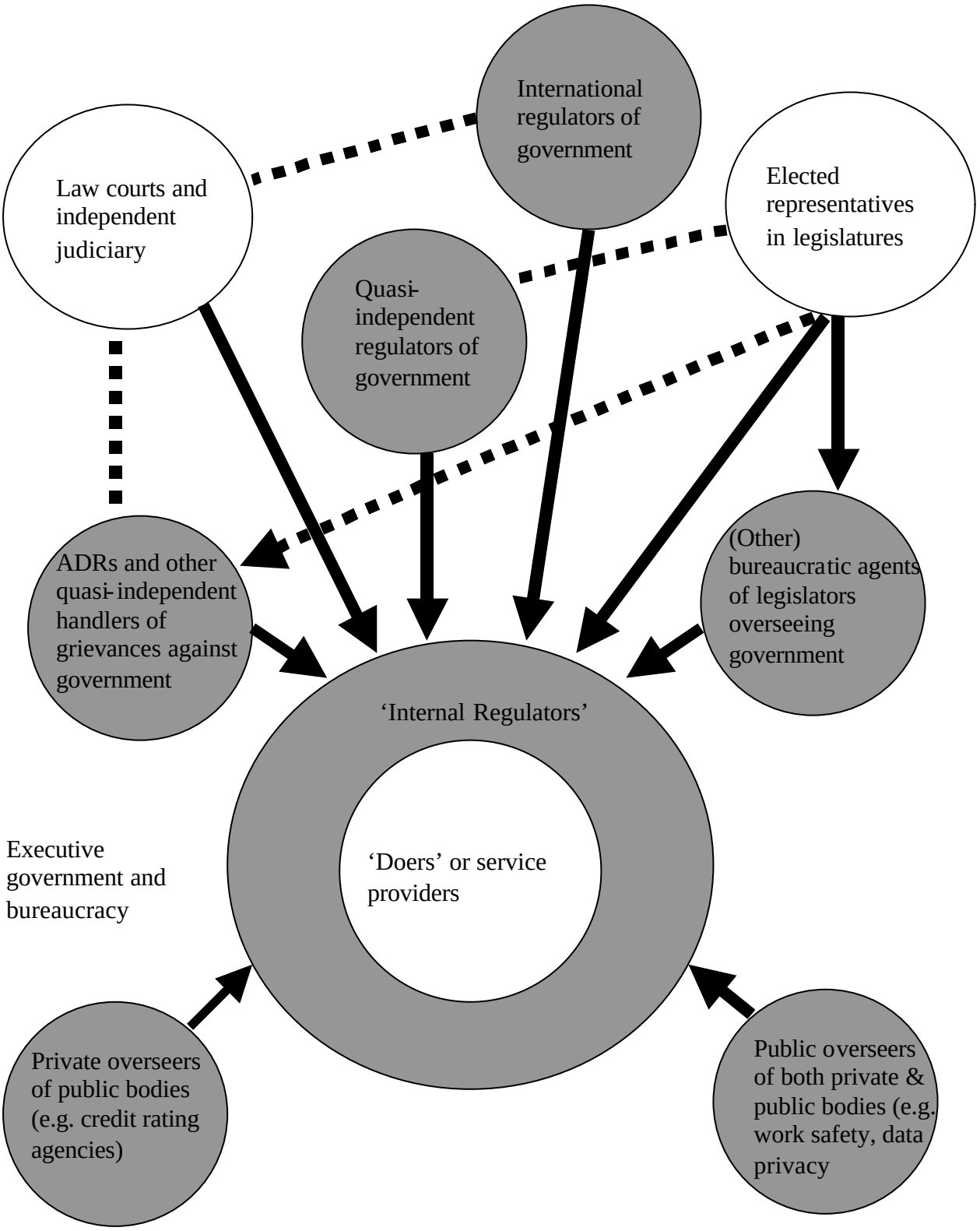
Moreover, within the executive government structure itself there will typically be a fifth set of units that function as regulators, setting and monitoring standards at arms-length, rather than as line-of-command units, policy advisers or technical support operations. Some such units may be quasi-independent from the regular government structure, like the UK's prison or education inspectors or the French inspections génèrales attached to most ministries. Others may be standard units with regulatory roles, like central government departments overseeing other levels or units of government (as in the classic tutelle role of central over local government, only recently abolished in France). Indeed, there was some observable tendency within the UK in the 1980s and 1990s for what had previously been line-of-command or managerial relationships inside the executive government structure to transmogrify into arms-length regulatory ones, both at central and local government level. In fact, Patrick Dunleavy (1991) has offered a well-known and much-debated theory of 'bureau-shaping', built on an assumed management-avoiding psychology of rational administrators, to account for such changes. But it is debatable how satisfactory either the administrative psychology or the basic theory is to account for a shift from hands-on management to arms-length regulation. The latter, particularly if it is expected to be conducted aggressively by a high-profile 'faultfinder-general' confronting his or her charges, can present much the same sort of stresses and potential isolation that Dunleavy gives as reasons why 'rational' bureaucrats try to avoid hands-on management.

[6] Formerly UCLAF, but in 1999 the EU's previously internal anti-fraud unit was 'externalized', formalized and re-named.

[7] An office established after the collapse of the Nixon presidency over Watergate, to watch for financial, sexual or other transgressions by the President. It became internationally famous through the impeachment of Bill Clinton in 1998 after the Lewinsky affair.

[8] Including the New South Wales ICAC that in 1990 brought down the state premier (Nick Greiner) who had set it up.

FIGURE 3: A MORE EXTENDED WORLD OF REGULATORS OF GOVERNMENT



An additional, sixth source of regulation over government consists of those bodies that regulate public and private-sector organisations alike. Examples include regulators of data privacy, health and safety at work, equal opportunities, or industry-specific regulators operating in markets where there are both public and private sector providers (such as prisons in the case of the UK). And, as Figure 3 indicates, we can tentatively add a seventh category, in the form of the various private or independent bodies that regulate government in some way. This last category is a slippery one, since there is a ragged boundary line between conventional pressure group activity and 'regulation' as something done by officers or bodies with acknowledged public authority (the third feature of the conventional definition noted in the previous sub-section). But some private or independent bodies do have such formal powers, as in the case of private auditors noted in the previous section. Somewhere on the boundary line are de facto private or independent regulators like international credit rating agencies (or other rating organisations like Transparency International). Beyond that are private or independent organisations that operate as a key influence on formal regulators or on public bodies more generally. As noted earlier, these organisations could be considered as a tertiary structure of regulation on top of the primary and secondary ones, and could be represented by another set of circles additional to the ones represented in Figure 3.

The organisations comprising the seven shaded circles in Figure 3 are in some ways very diverse, but they are all 'regulators' in terms of the three characteristics noted in the last sub-section. That means there are some features they all share and some problems they all face. At least three such problems deserve a brief mention.

First, regulators of government face issues about how to relate both to other secondary overseers and with the classical or primary controllers of government. For instance, they may conflict and clash with one another, battling over disputed turf or trying to pull the public bodies they oversee in contradictory directions. Alternatively, they may co-operate, hunting in packs or forming strategic alliances with one another. For example, international and national overseers often collaborate, as with the EU audit court and national audit offices. So do primary and secondary regulators (as in the case of audit or public accounts committees of legislators and their bureaucratic agents) and secondary regulators with one another, such as internal and external overseers. They may interact in other ways, for instance when grievance-handling bodies ostensibly designed as alternatives to formal court proceedings operate in practice as first-stage processors of cases for the courts. Or they may simply ignore one another and pursue their activities in isolation. We found all of these patterns in our earlier study of UK public-sector regulation.

Second, such regulators face issues about how to relate to other bodies, particularly campaigning groups and associations (like human rights groups or taxpayer associations). Again there are choices to be made over alliances, conflict or permeable boundaries. Third, such regulators face several issues about how to relate to those they oversee. One such issue is the degree of 'relational distance' between regulator and regulatee. 'Relational distance' (a term originally coined by Donald Black (1976) as a key part of his theory of law) denotes the social or professional distance between regulator and regulatee. That issue is fundamental to the design of regulatory systems. For instance, it is frequently claimed that 'former poachers make the best gamekeepers', and that idea is often embodied into organisational design and practice.

Effective regulation, it is claimed, requires regulators to come from the same world or milieu as those they regulate, so that they talk the same language and 'know where the bodies are buried'. Sometimes, on the other hand, it is held to be better to maintain a strict separation between regulator and regulatee, as in the classical case of the Chinese Imperial Censorate (whose members were only selected from those who did not have any close relatives in the bureaucracy the Censorate oversaw). We found both patterns in our earlier study of regulation inside UK government, as well as cases where regulators involved a deliberate mixture of high and low relational distance (for instance when the chief regulator was an 'outsider' but was assisted by 'insiders' lower down the regulator organisation, and vice-versa).

Another issue faced by regulators in their relationship with those they oversee concerns the formality and punitiveness of their operating style. Some public-sector regulators may approach their job like classic Weberian bureaucrats, with detailed rules of engagement, standard operating routines, and everything in writing. Others may choose to work in a freer, less determinate way in their dealings with regulatees. Some, as in the case of EU regulators, with their distinctive mix of legal formality and politics-centred enforcement, may combine elements of both. Black's theory of 'relational distance' (tested by Grabosky and Braithwaite (1986) for Australian business regulators and by ourselves (Hood, Scott et al 1999) for UK public-sector regulators) holds that the relational distance between regulator and regulatee is linked to the formality and punitiveness of the regulator's behaviour towards the regulatee. The closer the regulator is to the regulatee in social or professional terms, the more informal and sympathetic will be the behaviour of the former towards the latter, according to Black's theory.

A final and related issue concerns more general 'compliance' strategies pursued by regulators and the compliance climate within which they operate. Compliance strategies may include efforts to change the behaviour of regulatees by gentle persuasion, by patient attempts to re-educate, by threats, or by 'throwing the book' at errant regulatees. They may include close attention to the costs and burdens that demands for compliance impose on regulatees, or disregard of such costs. The compliance 'climate' may take a number of different forms too. In some cases public sector organisations may constitute a 'compliance culture', eager to respond to an overseers' every mild suggestion or criticism, perhaps even to the point of 'over-compliance'. In other cases they may constitute the opposite of a compliance culture - a 'defiance culture' resistant to overseers who are not respected and treated as unsympathetic and ill-informed (attitudes sometimes displayed by police organisations against civilian overseers, for example). Conceivably, regulatees may comprise an opportunistic 'amoral' culture, trying to evade the overseer's demands whenever they think they can get away with it or the expected costs of detected evasion are not high enough to deter evasion. Conceivably, too, they may represent a culture of ignorance or resignation, not knowing or caring what the regulator wants or why.

Most of these issues have been heavily discussed for business regulation, but rather less for regulation of government. That is because most studies of such regulation have tended to focus on individual classes of oversight bodies rather than at the set or system composed of the complex of such bodies or at comparative examination of how generic issues of the type identified above are faced. But in principle exactly the

same issues are central to the understanding of regulation in the public sector, and give us a way of describing and comparing some of the critical features of public-sector regulators. And the more central arms-length regulation of public-sector bodies is to a broad 'paradigm' of public management, the more crucial these issues become to the understanding or criticism of such a paradigm. The next section turns to those matters of interpretation.

2. THE SIGNIFICANCE OF PUBLIC-SECTOR REGULATION FOR UNDERSTANDING CONTEMPORARY PUBLIC SERVICE CHANGES

What is the significance of regulation of government and why should it be of interest for understanding contemporary public service reforms? Public-sector regulation can be claimed to be central to interpretations of what happened to control and accountability mechanisms in executive government during the much-discussed era of 'New Public Management'. Public-sector regulation matters for understanding contemporary public service changes for at least three related reasons. First, the regulatory entailments of a move towards more 'managerial' types of public service bargains may help to illuminate the link between regulation and managerialism. Second, the efficacy of arms-length regulation as an instrument for controlling public service delivery merits careful attention, in the light of the shortcomings associated with such a model of regulation in other contexts. Efficacy issues may be closely linked with what Maor (1999) terms 'the paradox of managerialism'. Third, looking at public-sector managerialism from a 'regulation' perspective raises some key questions about what the 'old public management' was like.

(a) The Link between Regulation and Managerialism: Regulatory Entailments of a Move Towards New Types of 'Public Service Bargain'

At the heart of many contemporary ambitions to reform public services is the idea of a new implicit or explicit 'bargain' between the executive heads of public service organisations and politicians or society at large. The idea is of a structure in which such executives have more opportunity (and more obligation) to plan strategically and use discretion to 'add value' to public services (in Mark Moore's (1995) well-known phrase). Moore himself sees the change as one that needs to take place more in the mental self-image and language of public managers than in any substantive alteration of oversight systems. But government reformers in other contexts (such as the UK and New Zealand) have gone well beyond Moore's subtle and cautious position. Much has been talked of new institutional arrangements in which public servants accept direct responsibility for service provision within defined policy settings, while elected politicians abjure hands-on control over operational issues (the central theme of 'managerialism' according to Savoie 1994). In those conditions there is seen for more emphasis in controlling public servants according to output and outcome rather than only on input and process, and hence more scope for 'results-based' approaches to public management.

What seems to be contemplated in such ideas is a new type of 'public service bargain' between heads of public-sector organisations and politicians or the society at large. A 'public service bargain' is a real or constructive deal concluded between public servants and other actors in the political system over their respective entitlements and duties, and expressed in convention or formal law or a mixture of both. Instead of an

exchange of loyal service for anonymity and permanence (the traditional British 'public service bargain' as conceived by Schaffer (1973)) or other types of public-service bargain (Hood 2000 forthcoming), politicians give up the right to roam at will within public servants' 'free managerial space'. For their part, public servants give up anonymity or the ability to escape responsibility for errors. Table 1 below indicates some of the features that distinguish a 'managerial public service bargain' from other types of public service bargains.

Table 1: Managerial Bargains Contrasted with Other Types of Public Service Bargains

	Other types of public service bargains	**Managerial bargains**
What society or politicians get	Social 'glue'; trustee focus; loyal service; administrative and professional competence	Public servants who are directly blameable for operational or regulatory errors
What public servants get	Share of power; permanent tenure; trust, status; limited blame	Operational autonomy or managerial space plus managerial status and perquisites
What society or politicians give up	Ability to hire and fire public servants at will; ability to shift blame to public servants for policy errors	Ability for ad hoc interventions or orders of the day within managerial space or delegated area of discretion
What public servants give up	Ability to criticise state or government policy in public	Ability to deny responsibility for errors within managerial space
Regulatory entailments	Variable; no need for rules to be formally enacted or regulators to be distanced from the regulated	Arms length regulation linked with information supply requirements for transparency and process rules governing abuse of discretion

As Table 1 indicates, the logic of the latter 'managerial' type of bargain is not one in which public managers face no regulatory oversight. Rather, the regulatory logic of the 'managerial' bargain is a set of conventions (which are likely to be at least as onerous as those involved in regulations focused on process rules) for transparent reporting and providing information to overseers. Without stringent transparency requirements and clear accounting obligations, there is no reliable way for the 'results' achieved by managers in government to be ascertained and benchmarked by comparison over time or across units of government (on Bentham's 'tabular-comparison' principle). Moreover, freeing up managerial space by easing up some process rules (for instance over hiring, pay, grading, contracts, financial virement) is likely to require other types of process rules. For instance, when management of staff becomes more than an application of a rule book, new process rules are likely to be called for over matters like conflict of interest, transparency in reporting,

discrimination, favouritism or bullying, or other potential managerial corner-cutting activities not deemed acceptable. Indeed, regulation of government can be expected to be more explicit (because more detached from day-to-day command-and-control activity) under a 'managerial bargain' than under a traditional type of public service bargain.

A loose analogy can perhaps be drawn with more explicit regulatory structures accompanying the privatisation of formerly state-owned utilities, as noted above. There is no regulation-free lunch in public management. On the contrary, the oversight entailments of the 'managerial bargain' seem to comprise a substantial development of new types of regulation. In our earlier work we have conceived that new regulatory type as a 'mirror-image' process, with the managerial discretionary space freed up by the easing of some process rules balanced by additional reporting requirements and different sorts of process rules policed by arms-length overseers (see Hood, Scott et al 1999). The 'mirror-image' analogy has its limitations, but we intended it to convey some of the opposite-directions logic bound up with public service changes. The analogy is with activities like mirror-dancing where as one partner moves to the left the other moves to the right.

The foregoing analysis is intended only to elucidate the underlying logic of a 'managerial' public service bargain to bring out its regulatory entailments. It says nothing about the various ways in which 'cheating' or quasi-cheating behaviour by one or both of the parties to the bargain can produce outcomes that are far from the intended effects of the process. Game theory aficionados will be quick to grasp the Prisoner's Dilemma possibilities in such bargain, and the importance of strategic interaction in driving towards outcomes that may be closely related to Maor's (1999) 'managerial paradox' of public sector reform. We turn to such issues in the next sub-section.

(b) The Efficacy of Arms-Length Regulation as a Method of Controlling Public Services

If the previous sub-section is correct in arguing that a 'mirror-image' logic of increased arms-length regulation is associated with the 'managerial bargain', the effectiveness of that regulatory process will be a critical success factor for the working of a 'managerial' state. A lot depends on the ability of arms-length regulatory structures to make a managerial public service bargain work. But that effectiveness can by no means be taken for granted. Indeed, there are a several reasons to believe that the efficacy of such regulation may often be problematic.

First, it is ironic that such faith should be placed in the effectiveness of arms-length regulatory structures in government at a time when the effectiveness of traditional methods of regulating business has been increasingly questioned. Failings or pathologies of business regulation have long been expounded (cf. Sunstein 1990; Grabosky 1995). They include the 'usual suspects' of regulatory capture and accommodation, information asymmetry between regulator and regulatee, and bureaucratic-behaviour factors that lead regulators to focus on what is doable or winnable, often at the expense of balance or substantive goals. The perceived inability of regulators to balance the social benefits of expansion in regulatory demands against the extra compliance costs imposed on regulatees by such expansion has also attracted

much debate and criticism in the context of business regulation. In principle, all of these familiar problems apply equally to regulation of government as against regulation of business (see James 1999). Yet their analogues in public-sector regulation have hitherto been much less discussed.

Second, some scholars have suggested regulation of government is likely to be even more problematic than regulation of business. As noted earlier, Wilson and Rachal (1977) have argued that regulation of government is likely to be less effective than regulation of business because regulators of government do not in most cases have prosecutorial powers to bring their errant charges into line. This hypothesis deserves to be properly tested, although (or perhaps because) regulators of government do not always lack prosecutorial sanctions and regulators of business do not always possess them.

Third, a number of studies that have appeared since the publication of Wilson and Rachal's valuable but sketchy article suggest further reasons for doubt about the efficacy of arms-length regulation of government. For instance, Michael Power (1997) has criticised what he sees as an 'audit explosion' sweeping across contemporary UK society, extending the model or metaphor of financial audit outside its source domain into other fields as a means of providing 'assurance' about organisational products or processes. He suggests such 'assurance' is likely to be as illusory as it is in the financial audit world, since it rests on rituals of 'controlling the control' rather than direct observation. Indeed, according to Power the audit explosion may even reduce the extent to which organisations are under effective control if the net result is to turn responsible self-regulating professionals into cheating regulatees. However, like Wilson and Rachal, Power has not provided systematic empirical evidence for these claims, and nor has he provided a comparative analysis to indicate how typical or special the UK's alleged 'audit explosion' is in cross-national perspective.

However, more empirically-based studies also suggest reasons for scepticism about the capacity of arms-length regulation of government to support the sort of 'managerial public service bargain' described in the previous sub-section. In a study of what happened to the Inspectors General created by the US Congress in 1978 and developed under the Reagan presidency, Paul Light (1993) argues that the process was not geared to creating effective managerial space. In spite of ritual intonations about 'judgement by results', he claims, the US politics of regulating government led instead to heavy emphasis on 'compliance accountability' (detecting violations of rules and standards) over capacity building in public organisations or genuine results-based accountability. He notes: 'Ironically, even as Congress began its hearings on ways to reduce the paperwork load imposed on the private sector by government, it signalled its willingness to impose an ever-increasing level of regulatory and reporting requirements on executive agencies and their employees. So, too, did Presidents Carter and Reagan, and their Offices of Management and Budget.' (Light 1993: 17). Donald Savoie (1994) also brings out the contradictions in the Reagan reform programme for the US federal bureaucracy, but argued the Thatcher programme in the UK was more consistent. Yet our own study of regulation inside UK government revealed exactly the same pattern of increasing regulation of the public sector accompanied by attempts to reduce the burden of regulation on the private sector (Hood, Scott et al 1999). In some cases we identified a 'double

whammy' pattern of regulation developing instead of the mirror-image pattern implicit in the 'managerial bargain' logic sketched out above (with relaxation of some process rules balanced by different patterns of regulation and accountability). Under the double whammy style, depicted in cell (1) of Table 2 below, public managers are subject both to more process rules and more regulation of other types.

Table 2: Arms-length Regulatory Oversight and Direct Central Control

	Arms length regulatory oversight	
Direct central control	High	Low
High	(1) 'Double whammy'	(2) Orders-of-the-day control
Low	(3) Regulated managerialism	(4) Managerial 'free-lunch'

We do not know how general such outcomes are. But there seems to be at least a prima facie case to answer. In a recent comparative study of public-sector performance evaluation systems in five countries, Christopher Pollitt and his colleagues (1999) also found a general pattern of compliance accountability – intensive process and output monitoring - crowding out truly result-focused approaches to improving public management in spite of a rhetoric of performance management. But if that is a typical or even common pattern, it undermines the conventional characterisation of New Public Management as a novel way of organising public services which works better than earlier methods because it moves from a rules-based process-driven tradition to a results-based approach. Rather, what in retrospect may turn out to be 'new' about New Public Management in many contexts is that it is even more rules-based and process-driven than before, even if there is a 'results' overlay on top of the process. And whether that tighter compliance monitoring turns out to be a formula for more effective public service delivery is at least questionable. Light suggests it may do the very opposite by undermining the fundamental no-blame foundations of Deming's well-known 'total quality' management philosophy (while stressing TQM rhetorically) and underplaying the potential of capacity building and performance accountability.

Further, in earlier work (Hood 2000 forthcoming) one of us has suggested that the 'public service bargain' is highly vulnerable to 'cheating' behaviour by one or both parties, since it has at least a partial Prisoner's Dilemma structure. For instance, politicians can easily undermine the bargain by exerting covert backdoor influence while shifting blame for the consequences of that influence to managers. And managers can undermine the bargain by politicising the evaluation of their performance. Hence, as in the standard Prisoner's Dilemma analysis, there may be a strong 'cheating dynamic' in the managerial public service bargain pushing the process into cell (4) of Table 3 below. Such analysis helps us to understand how at least some variants of the 'managerial paradox' highlighted by Maor (1999) can come about.

Table 3: Managerial Public Service Bargains: Cheat or Deliver?

Public Managers	Politicians	
	Deliver	**Cheat**
Deliver	(1) 'Co-operative equilibrium': high-trust public service arrangements	(2) 'Noblesse oblige management': managers resigned or fatalistic
Cheat	(3) Politician self-restraint: politicians distrust managers but do not change the system	(4) Politician-manager 'poker game': no stable public service arrangements

Such analyses suggest ways in which new managerial approaches to public service provision can – perhaps unintendedly or unwittingly – lead to more process rules than before without creating real managerial space. One possible way out of the outcome highlighted by Light and Pollitt that is currently in high rhetorical favour in the UK (in regimes for oversight of schools, local authorities and health trusts) is the notion of variable-geometry regulation or 'enforced self-regulation'. Regulation guru John Braithwaite and his colleagues (Ayres and Braithwaite 1992) see enforced self-regulation as the best way of securing results of central importance to public policy-makers without stultifying initiative and creativity by managers. The idea is closely linked with game theory ideas of co-operative enforcement (cf. Scholz 1991) and with deterrence theory in international relations. The idea of enforced self-regulation is that regulators leave regulatees to write their own rules except when the latter are seen by the former as delinquent or failing, and only at that point do the regulators step in with an increasingly powerful array of sanctions. Willingness to go up the sanctions escalator in the face of deviance or performance failure means there will be strong incentives to avoid them on the part of regulatees.

On the face of it, enforced self-regulation looks like a potentially attractive way for the regulatory entailments of the 'managerial public service bargain' to be developed in government without the potentially initiative-sapping potential and heavy compliance costs of one-size-fits-all regulation. But enforced self-regulation requires several basic cultural or behavioural conditions to be present. It requires a culture that can tolerate substantial discretion on the part of bureaucratic regulatees (a condition not present in the US federal government, according to Light). It requires a culture that can tolerate substantial discretion over the use of enforcement powers to quasi-independent regulators (a condition that seems rarely to apply in Europe to any kind of regulation). It requires a culture in which 'big stick' threats that are credible because the sanctions escalator cannot be stopped by political lobbying. In earlier studies of regulation in the UK public and private sector and of the EU we have found those conditions to be absent (Hood, Scott et al 1999; Hall Scott and Hood 1999). Whether they are readily found in other regulatory domains in the UK or other countries is a question that deserves investigation.

(c) Re-examining Old Public Management in a Regulation Perspective

Third, looking at government accountability through 'regulation' spectacles can give us a different and potentially sharper focus on what 'old public management' was like

in different countries and what exactly is the nature of the system that has replaced it. As noted above, the conventional 'story' told by exponents of the much-discussed 'paradigm shift' in public sector management is that old public administration was everywhere 'rules-based' and 'process-driven', while new variants are more 'output-based' and 'results-driven' (cf. Barzelay 1992; Osborne and Gaebler 1993). While that characterisation may faithfully represent some of the dynamics of contemporary public management, a more subtle and varied approach may be needed to describe some of the different jumping-off points. In some cases, as with the higher echelons of the British civil service, many of the key rules of the traditional system tended to be indefinite and often not formally enacted or written down at all. Examples included what exactly counted as conflict of interest and how it should be handled, just who had to be consulted over what, what were the limits of loyalty to superiors or Ministers, even apparently clear-cut matters like what counted as entitlement to a public-service pension. Rather, the culture was one that relied heavily on élite socialisation and reciprocal peer-group control through 'mutuality' for such matters rather than a thick manual of enacted rules. The system could certainly have been said to be 'process-driven', but many of the key rules were neither enacted nor definite. A similar culture could have been found in the upper reaches of the universities, the medical world and arguably in business and finance too. To the extent that such structures have been replaced, it has been in the direction of writing down the rules of the game and setting up more formal structures for applying them.

Indeed, to make sense of the subtleties of changing structures of regulation of the public service in the UK, our earlier work distinguished four basic types of social control in and over bureaucracy (which we linked to grid-group theory). We termed these types 'oversight', 'mutuality', 'competition' and 'contrived randomness' (Hood 1996; Hood, Scott et al 1999). These four types are depicted in Figure 4. Our argument was that the traditional control system of 'old public management' in the UK was best captured as a mix of these four basic types (with varying emphases in different contexts and levels) rather than as comprising any single one. It was not universally 'rules based, process-driven' in the normal stereotype picture of 'OPM' painted by contemporary observers. What characterised the emerging structure, particularly at the top of the public service, was an increased emphasis on formal arms-length oversight and new forms of competition being laid on top of traditional ones (like competition for recruitment and promotion). A simple way of summing up those changes in the UK is to see Figure 4 as a saltire cross, with mutuality and contrived randomness on one diagonal and oversight and competition on the other. Whereas the older public service structure placed more emphasis on the south-east/north-west diagonal (mutuality at the top, contrived randomness at the bottom), contemporary reforms have placed more emphasis on the south-west/north-east diagonal (oversight and competition).

In deviating from the 'rules based process driven' characterisation of old public management, the UK pattern may well be peculiar, and other sorts of transitions may well be observable. When we look carefully at how public services are regulated and how that regulation has changed historically we may find patterns of historical transition that are both subtler and more varied than the conventional stereotype of old public management allows for.

What these three issues show is that looking at government from a 'regulation' perspective is not a quirky offbeat angle of vision but a way of identifying some of the central contested or unanswered features of contemporary public service reform. Some of those issues relate to the direction of historical change in different societies. Some of them concern the logical or quasi-logical entailments of different conceptions of how public servants are to operate. Some of them are questions about the effectiveness or otherwise of approaches to oversight of government, and the success factors needed for particular types of oversight. These issues cut to the heart of contemporary interpretations of New Public Management – what it involves, how much commonality there is in different contexts, how it works and how well it works. So they provide strong reasons for attempts to answer a set of questions about how regulation works and has been changing in different states – questions that are challenging but not unanswerable riddles of the universe. The next section turns to the sort of questions for cross-national inquiry that are raised by a regulation perspective on government.

3. What We Know We Don't Know: Seven Sets of Questions

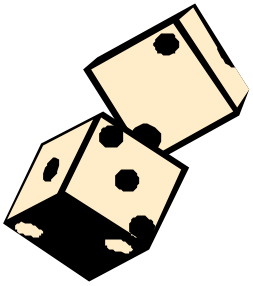
If public-sector regulation is central to contemporary debates about government accountability and changing styles of public management, it raises many empirical questions that have not yet been answered. We lack any systematic cross-national survey of regulation in government, although parts of the field (notably audits and ombudsmen) have been comparatively mapped to some extent. So we cannot say with confidence which states have been most and least exposed to 'audit explosions' and new ages of inspection. We do not know whether the pattern observed by Light (1993) for the US federal government and by Hood et al (1999) for the UK, of public-sector regulators upsizing while the rest of the bureaucracy downsizes, is observable in other cases or how far it constitutes an exceptional Anglo-American pattern. We do not know how 'relational distance' issues (discussed in section 1) are handled for public-sector regulation across different sorts of political systems, for instance in smaller states where scale means that social 'distance' can only be achieved by hard to achieve within the domestic setting, even in principle.

Nor can we say with confidence whether those states in which audit or other regulatory explosions have been commented upon are 'catching up' with a pattern well-established elsewhere, or doing something else. For instance, we do not know how far the traditional public-law countries have escaped the ombudsman explosion that has swept through many of the common-law countries. The creation of institutions like the French Mediateur and the German Beauftragen suggest the public law countries have not been totally immune (in spite of the argument that a public law system can act as a functional substitute for central inspection and the like). But we need to look more closely at numbers and extent of deployment to get a better sense of relative growth.

Such issues suggest many different themes that could be pursued in cross-national inquiry. But the state of comparative ignorance about this topic means we need to operate (like players of certain parlour games trying to solve a puzzle) by selecting only a limited number of initial questions. The questions selected must be those that promise the highest yield of information – that is, producing the biggest reduction in our uncertainty about comparative patterns. They must be tractable in the sense of

FIGURE 4: FOUR BASIC TYPES OF CONTROL OVER BUREAUCRACY

CONTRIVED RANDOMNESS



Works by: unpredictable processes or combinations of people to deter corruption, capture or anti-system behaviour
Links to: fatalism
Example: rotation of staff in multinational corporations

OVERSIGHT

Works by: monitoring and direction of people or organisations from a point of authority
Links to: hierarchism
Example: audit and inspection systems

COMPETITION

Works by: fostering rivalry within a set of units
Links to: individualism
Example: league tables of better & worse performers

MUTUALITY

Works by: exposing individuals to peer-group pressures
Links to: egalitarianism
Example: pairing police officers on patrol

being answerable in a limited time by experts on particular national systems (who if they do not know the answer will know where to look or who to ask). And they must be open-ended, not begging any of the key questions to be investigated (cf. Fischer 1971). In that spirit, we pose seven questions for cross-national inquiry below, each of which is broken down into three sub-questions.

1. **Benchmarking the Point of Departure: The Status Quo Public Management Style**

   One of the reasons why cross-national discussions of public management reforms are often inconclusive is that the point from which reforms commenced is not carefully documented in a comparative way. So it is hard to assess whether some states are catching up with others, converging or following different tracks. Accordingly, the starting-point to any comparative study of public-sector regulation needs to be – the starting point. Questions about the starting-point include:

(a) What was the traditional form of 'public service bargain', how important was formal regulation and oversight in the traditional bureaucracy (compared to mutuality, competition, random deployment systems and the like) and for what parts of the public sector?
(b) To what extent and for what parts of the public sector were detailed process rules dominant in the past (e.g. hiring/discipline/dismissal, pay/grading, contracts/procurement, accounting and record-keeping, conflicts of interest, data privacy, equal opportunities)?
(c) To what extent have such rules been relaxed in favour of ex post assessment by 'results' and to what extent have new process rules been added?

2. **Changes in Regulation of Government**:

   Having established the starting-point, we need comparative information about the scale of formal public-sector regulation and its growth or decline over recent decades. Even in very approximate terms (exact figures are likely to be difficult to obtain, and problems of exact comparability are bound to arise too), such information can help us to assess how far public-sector regulatory growth is a general feature of contemporary public service reforms. Comparative questions about patterns of investment include:

(a) What has happened to the resources invested in regulation of government (as defined by the shaded circles in Figure 2, less the international regulator units) over the past twenty years, in terms of (i) numbers of organisations (ii) staffing and (iii) real-terms funding (approximate figures)?
(b) What resources are currently invested in regulation in those terms (for the latest year for which figures are available)? How do they seem to be distributed among the various parts of government (e.g. for regulation of national/federal government, state/local government, public enterprise/quangos)?
(c) What old regulators have disappeared or faded, and what new regulators have been added? (Taking the main highlights). How do the gains compare with the losses? In what sectors of government has regulatory change been most marked? Is there any evidence of 'cheating' on attempts to create 'managerial bargains'?

3. **Compliance Costs**

Regulation in its nature imposes compliance costs on those being regulated, and those costs have been much commented on for regulation of business. But we know little about the compliance costs of public-sector regulation, in spite of assertions in some states that a 'compliance cost explosion' is being generated by increasing regulation of government. The following three questions are designed to establish what is known about regulatory compliance costs on a cross-national basis

(a) What if any information is collected and what is known about the compliance costs of regulators of government? (Compliance costs are most tractable if they are defined in a narrow sense as what it costs regulatees to interact with regulators in providing information, arranging visits, co-ordinating and rehearsing responses and the like, but not the costs of substantive policy or organisational changes (cf. Hood, Scott et al 1999)

(b) How (if it is known) do the compliance costs of public-sector regulation seem to have changed over the past two decades? Does the Majone 'regulatory state' argument (that regulation of business grows because its costs are largely paid in compliance by those being regulated rather than from the budget of the regulator) appear to apply to regulation of government too?

(c) What is known about the way public-sector bodies organise themselves internally to respond to the demands of outside regulators? For instance, do they create 'buffer units' or otherwise reorganise themselves internally? What internal units operate as allies of the regulators and what (if any) resist the regulators?

4. **Relational Distance**

We noted earlier that relational distance (the social distance between regulator and regulatee) is held by some to be a key variable for predicting the behaviour of regulators, and that regulatory debate often turns on whether regulators should be poachers-turned-gamekeepers or outsiders relative to those they oversee. The following questions are designed to gain a sense of comparative patterns

(a) What patterns of closeness or distance (in social/professional terms) can be found between regulators of government and their targets? To what extent do regulators follow poacher-turned-gamekeeper or other patterns relative to their regulatory charges?

(b) How if at all does that distance seem to have changed over the past two decades?

(c) Is relational distance a live issue of debate and, if so, who is arguing what?

5. **Enforcement Powers and Behaviour**

Closely related to the issue of relational distance is that of how regulators behave in relation to those they oversee – what weaponry they have at their disposal to persuade those they oversee to listen to them and how they choose to use it. The following questions aim to elicit comparative information about behaviour modification or enforcement.

(a) What if any enforcement weapons do the various regulators of government possess? How far does Wilson and Rachal's (1977) observation that regulators of government generally lack prosecutorial sanctions apply? What if any are the exceptions?

(b) What is known about how regulators use what powers they have in practice to modify behaviour? To what extent do they follow accommodative strategies of the kind generally observable in UK regulation (cf. Hutter 1997), tougher, more

confrontational approaches of the kind observed by Bardach and Kagan (1982), the enforced self-regulation approach of the kind depicted by Ayres and Braithwaite (1992), or something else?

(c) How does enforcement behaviour and strategy relate to relational distance? Is there any evidence for Black's (1976) proposition that stricter enforcement goes with higher relational distance, and vice-versa?

6. **Regulating the Regulators**:
Quis custodiet ipsos custodes? is a well-worn but important question that needs to be explored comparatively for the various regulators of government. What if any oversight regimes do those regulators themselves face and how do those regimes compare to the oversight of the regulators on their own charges? The following questions are aimed at elucidating cross-national similarities and differences over 'regulating the regulators'

(a) How are regulators of government accountable and what different patterns of accountability are there? What information are they obliged to provide to whom, and what do they choose to provide? How is their performance assessed and by whom?

(b) How, if at all, do the various regulators of government relate to one another, for instance over the contradictory demands they may make on public officials, conflicts over bureaucratic turf, or matters of common concern, such as enforcement strategies?

(c) Is the accountability of the various regulators of government a live issue and, if so, who is arguing what?

7. **Regulatory Effectiveness**:
Perhaps the fundamental question about public-sector regulation – and the one that is hardest to answer – is, does it work? The rationale for public-sector regulation is that it improves the performance of state organisations compared to what that performance would otherwise be. The following questions are designed to enable us to compare debates and information about regulatory effectiveness.

(a) What if any information do regulators of government provide about their own effectiveness, in terms of published performance indicators or other data?

(b) What if anything is known from other studies – official or independent – about the effectiveness of regulators of government? Is the pattern observed by Light (1993) and by Pollitt et al (1999) of a tendency to focus on compliance over processes and outputs rather than on broader results, generally applicable? Is a 'double whammy' pattern observable?

(c) Is the effectiveness or otherwise of the various regulators of government a live issue and, if so, who is arguing what?

It is said that it is better to know what you don't know than not to know what you don't know. (The difference, in philosophical jargon, is between parametric and systemic uncertainty.) And the exploration of public-sector regulation has at least reached the point where we know what we don't know about comparative patterns. But that point could be quickly passed by a relatively modest investment in international collaborative effort to answer the seven questions sketched out above. Some of the answers would be bound to be rough-and-ready and some might be disputed among different observers of the same country. Even if they were not, the seven questions laid out above by no means exhaust what deserves to be investigated

about comparative patterns of public sector regulation. But answering those questions could have a large payoff in reducing our parametric uncertainty about cross-national patterns of public-sector regulation.

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