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Organizational Challenges to Regulatory Enforcement and Compliance: A New Common Sense About Regulation

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Introduction
(6101 words)

At the end of the first decade of the twenty-first century, following an escalating series of global financial and economic crises, we hear renewed calls for government regulation as a necessary, if not entirely sufficient, safeguard against the excesses of exuberant capitalism. At the same time as some policy advocates urge increased regulation, opponents claim that it is not capitalism nor the market that is the cause of these crises; instead, they argue, government regulation not only dampens market efficiencies and retards economic growth in general but specifically encouraged the predatory and fraudulent practices responsible for the current great recession.

For some observers, this contested account of 20th century government regulation is but one indicator marking both the zenith and decline of the modern nation state. After four centuries of what seemed like increasingly competent centralized governments, able to provide surer stability and security for their citizens¹, the rise and then fall of the regulatory state, perhaps more than any other indicator, is a sign of institutional transformations that reached their apex at the end of the last century. The active, expert-based government oversight and intervention that, in the U.S. had begun with the early twentieth century progressives, not only constrained industrial and financial hazards – such as industrial accidents and child labor -- but also produced, by the 1970s, the largest equalization of social status in historic record, including significant increases in longevity and literacy as well as general health and well-being. In reaction to the redistribution of wealth from the few to the middle classes that accompanied these improved living standards, neo-liberal policies of the last forty years reversed the historical trajectory, once again disproportionately concentrating income and wealth within a relatively small elite. Those neoliberal policies worked to concentrate wealth, and also systematically dismantled many of the regulations that had created structural safeguards to prevent the kinds of market failures that had culminated in the great depression of the 1930s. The 20th century pendulum of less, more, and again less government regulation (e.g. of finance, banking, insurance, communications, environment, and employment) has left in its wake an abundance of laws, regulations, rights, and organizational forms that instantiate a plethora of inconsistencies, paradoxes, and contradictions as residues of this history of contentious and erratic government regulation.

As citizens, scholars, and government officials seek to manage continuing economic, environmental, and social problems, we risk escalating crises by ignoring the lessons of this history. Although the circumstances in which we act are never quite the same, it is crucial to identify the conditions that distinguish regulatory successes and failures across history and cultures. The papers in this issue of *The Annals* analyze the bodies of scholarship on regulation as well as the empirical models and policy advice that have both fueled and responded to conventional public regulation by rethinking these paradigms from the perspective of the regulated organizations -- in all their diversity and complexity. Although the regulated subject –

¹ Acknowledge European bias, developed work bias

the organization or the person – has been a topic of inquiry in studies of regulation, it has too often been simplified and abstracted. The research we present puts the organized subject of regulation front and center to develop more subtle and empirically valid accounts of government regulation.

In this issue of *The Annals*, we begin that analysis, specifically looking at three features of the contemporary situation that demand new ways of looking at the processes and prospects of regulation: experiences with innovative regulatory models propagated as risk management; failures of organizational self-governance; and new forms of networked and dispersed global organizations. We suggest the elements of a new common sense about regulation that acknowledges the ubiquity of legal regulation, the global circulation of regulation that has transformed its scale, and finally the role of the organization as the locus of regulation.

Conventional accounts of regulation

Studies of government regulation have occupied scholars for a long while, often as part of efforts to describe macro economic processes and, yet more fundamentally, to describe the relationship between law and its consequences, law-on-the books and law-in-action. Taking the instrumentality of law quite seriously, that law is not merely a symbolic charade but a use of state power for organizing social relations and producing particular desired conditions, research has attempted to document the ways in which law succeeds or fails in its regulatory capacities. From its rise in the late nineteenth century through the present, there have always been some observers, policy advocates, and researchers ready to declare the modern regulatory state a failure, often invoking these failures to justify relatively unfettered reliance on markets to achieve the same public goods regulation seeks (e.g. safer working places, control of air pollution, access to public resources). Revision and reform have been features of regulatory regimes from their inception, and since its 1892 article on “The Basis of the Demand for Public Regulation of Industries” by W.D. Dabney (pp1-17), the *Annals* has followed and recorded this history of government regulation. Issues in 1911 and 1926 focused primarily on the need for increased safety while a 1928 issue addressed general economic, engineering, labor, and business associated with increasing standardization within and across industries, ranging from simplification of purchasing forms to music production, filing equipment, and farm products. Not surprisingly, during the height of the New Deal, the *Annals* published three issues devoted to the expansion of the government into the economic sphere (1939, 1942), including the need for improved government personnel (1937) and the pros and cons of public and private ownership and regulation of utilities (1939).

Although the normative and political preferences of authors varied across the spectrum from anti- to pro- government regulation, from concerns with administrative and procedural fairness to economic efficiency, from calls for increased public ownership to fears of encroaching socialism, a very general, abstract consensus developed nonetheless that things never quite work out as anticipated when legislation is translated into administrative enforcement. As a consequence, much research attempted to explain how agencies mandated to serve the public become ineffective or indolent, often ending up serving the very same interests they were meant to control. The explanations range from analyses of the symbolic nature of the legislative process that produces inconsistent, unclear, or even hidden mandates (Edelman 1964; Kolko 1965), accounts of the segmented structure of a system that encourages a division of the commonweal

among interested parties to the exclusion of the unorganized public (Lowi 1969; 1978), to empirical and logical dissertations on the inevitability of discretion (Davis 1972; Kadish and Kadish 1973). Looking closely at enforcement practices among low ranking, street-level agents entrusted with day-to-day enforcement responsibilities rather than law writers and legislators, researchers showed how, by choosing among courses of action and inaction, individual law enforcement officers become the agents of clarification and elaboration of their own authorizing mandates (Jowell 1975:14). It appears that in the process of working with and working out legislative mandates, organizations -- through their agents -- cannot help but affect the goals of the legislation and they are empowered to implement (Hawkins and Thomas 1984, Silbey 1980-81, 1984; Bittner and Silbey 1982, Lipsky 1980). Earlier studies would often describe these effects as subversion of regulation, while more recent literature would say modify regulations or find ways to achieve regulatory goals. The variations represent normative transformations in the political climate of the times, Thus, it has been argued that excessive and uncontrolled discretion impedes the efficacy of regulatory schemes and, more generally, undermines the rule of law because it leads to lax and inconsistent enforcement colored by non-legal, social considerations. These critiques of the ineffectiveness and inefficiencies of government regulation from across the political spectrum fed, if they did not directly drive, efforts to reign in and dismantle the regulatory state (Sunstein 1990).

Over the years, researchers and policy-makers have developed a copious repertoire of descriptive accounts of how government regulation actually works, and prescriptive recipes for how government regulation ~~should operate~~ought to work, sometimes merging the descriptive and prescriptive accounts without clear distinction. If conventional enforcement practices are criticized for their reliance on persuasion, warnings, and informal negotiation, efforts to limit discretion are attacked for being legalistic, too strict in the application of unreasonable regulations with immediate and destructively heavy sanctions for detected violations in a one-size-fits-all command and control model. If negotiated enforcement failed to achieve publicly touted policy goals, legalistic enforcement appeared to encourage increased corporate resistance. Companies would do the minimum that would be acceptable under the rules and also expend huge sums on legal teams who would actively resist through litigation and lobbying. Neither flexible nor legalistic regulatory enforcement seemed to work, according to the volumes of mainstream scholarship.

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In 1992, *Responsive Regulation* offered an important and synthetic advance on these overly instrumental, economic, and legalistic analyses by recognizing the role of interactive, interpersonal social relations that grounds both organizational performance and its regulation. “*Responsive Regulation* was, quite explicitly intended to be a decisive intervention in favor of a ‘third alternative’ to both the free market and government regulation in a political economic environment where the notion of regulation had come under threat from the neoliberal policies of Thatcherism, Reaganomics, and the Washington Consensus” (Parker 2013). With a model of enforcement relying on both persuasion and sanction, deployed through various stages of negotiation orchestrated with a cost-benefit/deterrence calculus, *Responsive Regulation* was meant, according to its authors, to be a recommendation for dynamic policy worked out in practice, on the ground, rather than a single recipe for successful regulation. *Responsive Regulation* offered “a pragmatic understanding of how regulatory discretion is and can be deployed in the everyday practices of real regulators” combined with a “savvy political understanding of how to make the idea of regulation politically palatable in a neoliberal age”(Parker 2013). In large part, *Responsive Regulation* was more normative than empirical, assuming without demonstrating that the

conditions for pragmatic, deliberative and collaborative regulation already existed, ready to be mobilized to serve the interests of the public writ large, citizens, firms, and government. Within the era of neoliberal politics, *Responsive Regulation*, provided sufficient leeway so that it could be used to justify a range of practices, including de-regulation, especially in banking and finance as well as telecommunications and pharmaceuticals, as well as more regulation, for example in intellectual property, medical and educational record keeping. By the beginning of the 21st century, the public discourse calling for better or less regulation, often found in combination, had quieted some, quieted until the financial crisis of 2008-2010.

A New Paradigm/ Common Sense for Public Regulation

The papers in this volume begin by challenging any notion that the neo-liberal policies of the last thirty years have done away with public regulation. “In recent decades,” David Levi-Faur and Jacint Jordana wrote in a 2005 issue of the *Annals*, “regulatory reforms have spread around the globe, accompanied by new institutions, technologies, and instruments of regulation that have had an enormous impact on the social and economic fabric... The current order is anything but free of regulation. For every regulation that in the past quarter of a century has been removed from the books, many new ones have been added” (598). Although public media align the political left as pro-government regulation and the political right as anti-public regulation, both left and right have promulgated and used public regulations to advance the programs and interests of their favored groups.

This cannot be a surprise to students of social history. The nineteenth century practitioners of European sociology recognized and described the central role of legal regulation in the constitution of modern societies. For example, long before contemporary accounts of the global spread of the rule of law, Emile Durkheim argued that law had become the embodiment of the collective conscience – the links and glue of human transaction -- in an age of interdependent connections. Within societies with an advanced division of labor, where social and functional heterogeneity rather than similarity prevailed, law displaced religion as the source of generally shared norms and expectations, providing the grounds for a new civic and pragmatic rather than religious ethic. He understood law, and regulation as the quintessential form of modern law (cf. Calabresi 1982) to be not merely an instrument of the state, nor only a formally codified statement of values and priorities supported by force. For Durkheim, “*law is ... [the] visible symbol of all that is essentially social*” (Hunt, 1978:65). Elaborating this insight, the American jurist Oliver Wendell Holmes also viewed the law as a great anthropological document. And, more recent authors claim that legal regulations constitute “a fundamental framework (a skeleton, if you like)” of all of a society’s “forms of association and institutions. If we know the law of any society, we have an excellent outline of the nature of the social system as a whole” (Fletcher, 1981:33, quoted in Cotterrell 1984:2). In these very basic understandings, law is not made only in legislatures, in courtrooms, or in legal chambers; it is produced, reproduced, and woven throughout the culture, in the streets, in the shops, in classrooms and in kitchens, wherever legal regulations become a part of the arrangements of everyday life. It is in this sense that “the law is all over” (Sarat 1990).

If legal regulation is the skeletal structure of social organization in complex heterogeneous societies, we cannot be surprised to find the signs of legal regulation are everywhere. The reader of this text sits in a room whose electrical wiring, receptacles, and lighting fixtures have been

specified through legal regulations.² The water flowing through the pipes in the building has been purified following recipes inscribed in legal regulations, and the pipes themselves have been installed following building regulations. There may be fire and smoke alarms, fire extinguishers, exit signs, warnings about what to do in cases of emergency. The reader may have eaten shortly before or will dine after reading this text; the food will have been produced under hundreds if not thousands of agricultural and industrial regulations regarding the safety of the ingredients and the conditions of production, including the rules specifying compensation for the laborers and the conditions of their work. That food, as well as other items in the office or home of the reader, will have been distributed in trucks and on roadways, rail lines and air transport saturated with legal regulations, and then sold in stores and markets where prices and conditions of sale will have been posted according to yet other regulations. The goods will have transferred ownership following some of the most ancient forms of law as well as some of the most contemporary forms of consumer protection. These regulations are so much a part of what we take for granted in our daily lives that we no longer see the regulations as legal forms but rather the very fabric of our lives. If the current political and economic order “is anything but free of regulation,” we need to rethink the way we talk and study regulation. It is not a matter of more or less but rather what kinds of regulation, its variable content and processes, as well as the consequences of these variations.

This collection of essays contribute to an emerging paradigm of closely observed description and analysis of regulation by emphasizing three features that should be explored more carefully in future research, constituting the beginnings of a new common sense about regulation: (1) the contexts and conditions of producing regulations are frames for interpreting regulatory necessity or performance, in other words, history and politics are inescapable ingredients of regulation; (2) the circulation of contemporary legal regulation within national and global production and distribution chains create regulation on a heretofore unprecedented scale; (3) the enactment and consequences of regulation cannot be understood without tracing their networks and assemblages within regulated firms and organizations.

Framing and interpreting the regulatory enterprise. We begin by cataloguing several fundamental insights. While there may be much to be gained ideologically and politically by arguing for or against the existence of regulations, the legal regulation of social transactions is a social fact: pervasive, almost universal, and without which we would not know how to behave as competent social actors (Durkheim 1982, 1895). There is, in essence, no social order without some form of regulation. What varies is the source: government or civil society. At the same time, there is no such thing as value free regulation. All law, i.e. government regulation (Weber 1947, 1954) or formal social control (Black 1976), promotes a broader or narrower set of values, whether it is simply to make state authority an available tool for private purposes (e.g. contract, Chayes 1959) or to promote particular ends (e.g. improve safety of working conditions, secure healthy food chains, set standards of environmental protection, or move automobiles in predictable flows).

Further, most regulation succeeds; that is, most people follow the rules most of the time (Ewick and Silbey 1998). This applies to the widest range of activities whether it concerns economic

² This paragraph reminds me of the popular econ pamphlet titled “I, Pencil”, in which a pencil describes the countless ingredients / complexities of its manufacture, and concludes that only the Invisible Hand could have been so capable.

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production, the education of children, or **the organization of traffic lanes**. Thus, law enforcement is normally directed to the few, often less than 5-10%, transactions that fall outside prescribed boundaries. Nonetheless, as I suggested at the outset, commonly circulating accounts have characterized regulation that works, especially regulation that serves the mass public of ordinary people – those neither rich nor powerful, the ‘have nots’ - as uncommon, only once in a while, what Carol Heimer (2012) has called ‘blue moon’ regulation. But, Heimer says, regulatory successes may be more common than we imagine, not quite as rare as a blue moon. Those successes go unnoticed, however, because “regulation has become thoroughly institutionalized, and does a lot of good for lots of people. It may, however, still favor the rich and powerful while benefitting everyone” (Heimer 2013). Because much regulation actually succeeds in one way or another, scholarship has misdirected our attention by focusing on regulatory failures rather than successes (cf. Sarat 1985; Sarat and Silbey 1988; Silbey 2010, 2012).

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A new common sense paradigm requires greater attention to the more **common-~~numerous~~** conditions under which regulation actually succeeds, perhaps becomes institutionalized, as well as more nuanced and critical analysis of why it fails. We might think about the mass of regulations that benefits the general public as a baseline that produces universal public goods, for example, clean water. Heimer (2013) suggests that “the alignments required to maintain these public goods can be precarious. Even well-institutionalized regulation that has become essentially background for our daily lives can be jeopardized when the interests of the weak and the interests of the powerful conflict.” Often, in addition, separate regulations, promulgated by different groups, through different organizational jurisdictions can bear on the same substantive area, for example, regulations for the quantity and flow of water managed by different entities. “The diversion of flows or the supplements to flows and reservoirs can end up affecting quality, not merely quantity (e.g. water used in mining or fracking).” In this case, Heimer writes, “a relatively well functioning set of regulations concerning water quality can be undone by pressure from the richer and more powerful interests seeking to use a resource for some other purpose than the regulations anticipated.”

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Jodi Short applies this approach to a particular regulatory form, corporate self-regulation, in the essay, “Self-Regulation in the Regulatory Void: ‘Blue Moon’ or ‘Bad Moon?’” She suggests that corporate self-regulation can successfully achieve public regulatory goals, but only under relatively limited conditions, when it is embedded in a robust but judicious government regulatory regime. She observes, however, that self-regulation is rarely adopted under these conditions, but is more often used to address weaknesses, or “voids,” in government regulation. She argues that self-regulation is unlikely to succeed under these conditions, especially when it is adopted into a regulatory void that has been produced and maintained by the concerted political opposition of regulated entities. In this way, she suggests that regulatory failure must be understood not only as a technical and economic problem, but a problem of politics and power. Here, Short, uses the term ‘blue moon’ to denote the rare alignment of the conditions for successful corporate self-regulation.

Fiona Haines develops this insight in her essay, “Three Risks, One Solution? Exploring the Relationship between Risk and Regulation.” She extends this focus on the conditions that produce blue moon regulation. Because production has associated costs or damages that some portion of the public seeks to constrain, public regulation is most often understood as a by-product of an essentially productive endeavor. In this sense, regulation is a form of risk management, where the unwanted by-products or externalities of production are to be controlled

through dedicated technical and bureaucratic effort, the preserve of those skilled in the assessment of probability and impact and accomplished in the design of effective – and efficient – regulatory strategies. Haines suggests that this interpretation of regulation misrepresents the complexity of risks that contemporary regulation attempts to address and thus leads to unsuccessful regulation. Because we live within complex webs of connection, risk is not simply physical or technological but essentially also social and political. She suggests that regulatory regimes confront socio-cultural risks (risks to the collective as embodied within circulating schemas, memes, and interpretations) and political risks (threats to authority and power of political actors) that are as much a part of the probabilities of successful regulation as are the material hazards. To the degree that socio-cultural and political aspects of regulation are defined as irrational, emotional, or unwarranted, regulatory regimes will be mischaracterized and misdesigned.

With a specific example in food production, Christine Parker, “Voting with Your Fork: Industrial Free Range Eggs and the Regulatory Construction of Consumer Choice,” also highlights the politics rather than technical considerations driving regulatory failure. In particular, Parker describes how privately promoted and monitored labeling and information disclosures are offered as consumer protective alternatives to what are seen by anti-regulation interests as onerous mandatory business regulation. In a detailed mapping of the production, distribution, marketing and consumption of what are touted as free range eggs, Parker discovers that eggs so labeled are not substantially different from caged-egg production in terms of animal welfare, public health, and agro-ecological values. The mapping exercise shows how the industry and regulatory choices to regulate or not regulate portions of the egg production process have created, through creative marketing and labeling, illusory consumer choices that reinforce the interests of large supermarkets and egg producers.

The scale, circulation, and connections among contemporary regulations. For several decades now, it has been commonplace to observe that we live in a new world order, a new -- some claim radically new -- organization of time and space and people and things. Vast temporal, spatial and cultural distances are bridged; social organizations based on similarity and proximity have been transformed into functionally interdependent connections among very different and very distant people. Not only has the qualitative substance of interactions changed, at the same time the quantity and pace of social interactions have increased geometrically. The everyday lives of the majority of people in most social classes all over the globe are constituted by more encounters, of shorter duration, over greater distances than ever before. How do the efforts to manage the unwanted by products of organization and production fare in this world of postmodern globalization (Silbey 1997).

Consider, Rick Locke tells us, the production of consumer electronics.

“Raw materials for electronic components are extracted, often under harsh working conditions, from mines in Asia and Africa. These materials are refined and processed in Asia and then sold to Western and Asian companies that manufacture component parts such as computer chips, batteries, cameras, and circuit boards. These parts are then assembled, primarily in China, in large factory complexes that employ hundreds of thousands of workers. The final products are shipped back to consumer markets that are located principally in developed economies. The shelf life of these devices is relatively

short, and the e-waste generated by consumers who dispose of their phones and other portable devices in exchange for newer models is, in turn, shipped back to Asia and Africa.

These new supply chains reflect a shift both in the geography of global manufacturing—from the advanced industrial states to developing countries—and in the organization of production. In the past, most brands relied on manufacturers and suppliers located within their home countries or else were vertically integrated multinational corporations that owned their subsidiaries in foreign markets. Today, lead firms are coordinating the production of thousands of independent suppliers located for the most part in developing countries.” (Locke 2013 Boston Review)

This new world of networked, yet dispersed production simultaneously challenges legal regulation by the nation state and establishes a new architecture of trans-national regulation and global governance (Koppell 2010). This new layer of regulatory controls is being forged by a diverse set of governmental, private firm, and non-governmental organizations, most with little public oversight or transparency. Some regulatory technologies are state enhanced, such as the formula for price cap regulation in industry monopolies, RPI minus X³; others “are voluntary, such as ecological labeling, and as such serve to enhance private regulatory regimes” (Levi-Faur and Jordana 2005,7).

In “Innovation Framing Regulation,” Cristie Ford describes three kinds of regulatory regimes, developing sequentially as attempts to govern a particular kind of financial innovation – securitization and the marketing of securitized assets on derivatives markets. These regimes vary by the degree to which they are explicitly innovation framing – that is, establish a scaffolding of high level abstract goals or performance driven rules, assume that financial innovation is generally beneficial, and are global in reach. She describes a sequence from the capital adequacy regime developed under Basel II, through the Asset-Backed Commercial Paper regulations in Canada, to the notice and comment rule-making process following the passage of the Dodd Frank Act in the US. She argues that explicitly innovation-framing regulation, such as in the Basel II regime, is intentionally open-textured and porous to private sector action, reflecting a normatively positive account of flexible regulation and private sector innovation. At the same time, each of these regulatory models also turns out to be unintentionally open-textured and porous to the influence of private sector innovation, in ways that reflect history, power, politics, and the broader social narrative about innovation itself. Challenging the notion that financial regulation “somehow sits outside innovation and can be untouched by it,” Cristie Ford calls for more nuanced understandings of particular innovations as well as the regulatory moments that intersect with them, consistent with our earlier observation concerning the importance of contextual framing, as well as the ubiquity and inescapable normativity of regulation.

The global scale of financial trading, as well as competitive cycling, prompts Nancy Reichman and Ophir Sefiha, to compare the state-enhanced regulation of collateralized debt obligations (CDOs) with the private regulation of performance enhancing drugs in sports in the

³ Price-cap regulation. Regulators, via a price-setting formula, determine the prices that can be charged by a monopolized industry. In its simplest form, the formula is $RPI - X$. This means that permitted price increases are determined by the percentage rise in the retail price index (RPI) minus an amount X, where X is the reduction in price required for the industry as a result of expected improvements in its efficiency.

essay, “Regulating Performance Enhancing Technologies: A Comparison of Professional Cycling and Derivatives Trading.” In this thought experiment, the authors note how the both CDOs and doping, the use of blood boosting drugs and technologies, seek to create openings for extraordinary performance in highly competitive global arenas. “The efforts to “turbo charge” their respective competitive spaces took place within complicated regimes of self-regulation that had strikingly dissimilar narratives about performance enhancement and, consequently, different technologies for control” (Reichman and Sefiha). Although the moral crusade against doping took a decidedly punitive, law-and-order turn, it would have been regarded as innovation rather than cheating, had it fallen under the financial regulatory regime. “Sports’ regulating bodies would defer to riders, teams, and race organizers. By prizing innovation, and the desire for increasingly spectacular performances, organizers would likely leave riders and teams to their own devices, assuming that they would evaluate and regulate the risks themselves and make rational calculations regarding the risks” (Reichman and Sefiha). Interestingly, the complex financial technologies are used to justify self-regulation, while the sophisticated biology and chemistry of blood doping carries no similar legitimacy for the autonomy of scientific expertise.

Looking within the regulated firms and organizations. Thus far, we have suggested that a common sense about regulation would acknowledge its ubiquity and contextual framing, that regulation despite its political origins more often works than does not, and that it is expanding in scale and complexity around the globe. Here we begin to look more closely at what this expanding network looks like on the ground. No matter how vast, technologically sophisticated, analytically complex, in the last analysis, regulations must become the common ground of organizational transactions. In our concluding section, we look at three examples of regulation "that seeks directly to promote the management of private firms in ways that meet public goals" (Coglianese and Lazer 2001:1). Although most regulation attempts to manage some activities of private firms, this strategy supplants more familiar policies that mandate either the use of specific technologies or specific levels of performance. This management based strategy locates the design, standard setting, and implementation of regulation within the regulated organization itself, creating a form of private management in the public interest, or what students of governmentality call regulation at a distance. The essays in this section offer examples of self-regulation ranging from success to failure.

For example, Salo Coslovsky focuses on sugar production, in the essay, “Enforcing Food Quality and Safety Standards in Brazil: The Case of COBRACANA.” He describes the particularly difficult challenges that increasingly strict product quality and safety standards, promulgated transnationally and locally pose for producers in developing nations. Nonetheless, COBRACANA implemented a system of audits that encouraged members to upgrade quality and safety standards, enabling them to compete in demanding business environments. The association succeeded, he argues, because new accounting methods monetized some of the differences in product quality, because the association enacted a set of low cost but high power incentives that subverted rigid hierarchies and empowered reform-minded middle managers within the targeted enterprises; and because external auditors acted as conduits of information and technical support rather than police agents. Instead of acting on producers as if they were internally-cohesive and self-sufficient entities, the regulations acted within producers and around them in a way that made it easier for them to comply.

In the essay, “Resilience in the Middle: Contributions of Regulated Organizations to Regulatory Success,” Carol Heimer also focuses on the middle level managers and actors who become the

informational conduits, fitting rules to the local organization while simultaneously representing the organizational conditions and practices to the regulators. These men (and women) in the middle become the means of aligning regulations and the regulated entities. Once we recognize the work of these middle level managers, Heimer suggests, we will be in a position to better understand regulation itself. Rather than something to be applied to and complied with, Heimer suggests that the regulated organizations themselves be understood as central participants in the regulatory process. "Much interpretive work," she says, "is required to decipher rules, adjust rules to local realities, and translate local practices into the categories of the rule makers. Such adjustments are especially required when regulators have an inaccurate picture of the structure of the regulated organizations and the physical and socio-cultural contexts in which they are embedded."

Huising and Silbey provide another ethnographic account of how such local organizational adjustments take place in "Constructing Consequences for Non-Compliance: The Case of Academic Laboratories." Specifically, they describe the challenges of balancing regulatory requirements and organizational interests in what seem to be intractable governance sites, that is, pockets of privilege that exist in many organizations – high status actors such as executives, high skilled experts such as physicians and high demand employees -- spaces that elude regulatory warnings and rules. In the effort to design a management system that communicates regulatory standards, develops compliance with the requirements and then attempts to respond and correct non-compliant action, Huising and Silbey describe how the university managers struggled to balance case-by-case discretion consistent with academic freedom and scientific creativity with the demands for consistent conformity, transparency, and accountability for safe laboratory practices. The central mechanism that enables management systems to become regulatory tools is the capacity for informational feedback and subsequent adjustment. Despite attempts to make faculty members accountable, that is, provide information on non-compliance and create consequences based on that information, Huising and Silbey show how difficult such informational feedback may be in an organization of privileged actors. They suggest that such pockets of intractability reside in many organizations and wonder whether the hierarchical privileges that create degrees of freedom, may nonetheless also sustain effective margins of safety.

In part, these examples of self-regulation within the organization respond to experience and learning by public regulators as well as accommodation to those who seek less government intervention. From the longer perspective we have suggested throughout this introduction, this strategy is symptomatic of an historical shift in social formations to what Anthony Giddens (1990, 1991) refers to as "reflexive modernization," a stage of modernity based on "the reflexive ordering and reordering of social relations in the light of continual inputs of knowledge." Giddens describes this historical shift as a series of transformations in the locus and objects of trust, differentiating modern from traditional societies. Trust is "a form of faith in which confidence vested in probable outcomes expresses a commitment to something rather than just a cognitive understanding." In reflexive modernity, trust no longer attaches to kin, communities, or religious cosmologies as it does to personal networks and abstract systems, especially expert systems, and formal organizations – places of work and production more than home (Hochschild 1997) Those expert systems are technical accomplishments "that organize large areas of the material and social environments in which we live" and work today." Knowledge based organizations and management suffuse our daily life and demand more intensive interrogation and scrutiny. Knorr Cetina (1981) describes these knowledge based organizations as epistemic

cultures, practiced and practicing knowledge. Food production, finance, professional sports, HIV clinics, and research laboratories are archetypal knowledge based organizations regulated, we suggest, with much more subtle, participatory mechanisms.

Rather than punishing bodies (as we did for thousands of years), or purposely rehabilitating personalities (as western societies did for the last two centuries), much contemporary regulation is exercised at a distance from the body or the mind by regulating space, including the organization as a space of production (Ewick and Silbey 2002). In this system that Foucault termed "governmentality," legal regulations identify the kinds of spaces that demand regulation (e.g. wetlands, airports, financial markets, corporate personnel policies, research laboratories, swimming pools, sugar, ethanol, sports competitions, HIV clinics). These are forms of production and exchange in which an organization then defines for itself and its members what shall constitute conformity or compliance. In this post-modern form of regulation "at a distance," organizational actors take on the mission of the law, align their interests with those of the regulations, and produce through this process "the content of the form" - of both organizational governance and regulatory compliance (cf. White 1987). Not only is this regulation less general because it is more directed, it may also be more efficient because it is more specific; it may also be more efficient because the firm/organization (or the person) becomes its own agent of enforcement - choosing to enter and conform or remain outside the regulated space (e.g. hedge funds, see Todd Bridges 2011).

The research presented in this volume, identifies a shift in the focus of regulation from the firm qua firm to the roles and performances of actors within the organization. This research challenges conventional accounts as much as it draws from them. It pushes us to recognize the conventions that divert discussion from democratic participation to technocratic complexity. It asks us to notice the normative and political valences that have claimed more or less regulation when the issues have always been what kinds of regulation and to what end? In his commentary on Cristie Ford's (below pages) essay, Matthew Desmond (below pages) raises all the important questions concerning the possibilities of democratic regulation of highly complex systems, offering an appropriate set of questions with which to conclude not only this introduction but this volume. What is the relationship between expertise and democratic governance? If some forms of productive complexity are beyond our capacity as democratic citizens to comprehend, Desmond suggests, this is not a knowledge deficit but a structural problem for the society. Is it possible, Desmond also asks, that high finance is really more complex than cancer or autism? If not, and surely not, complexity does not have to mute normative conversations about effective regulation.

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