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**Regulatory Character and Regulatory Reform: Exploring the nexus
between globalization and safety standards**

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Regulatory effectiveness remains a high priority but an elusive goal for many governments. Regulations change, often spurred by developments in other jurisdictions, notably Scandinavia, the EEC or North America, and justified by the epithet 'best practice'. An underlying assumption of such reform is that 'best practice' will provide an optimal outcome irrespective of the particular economic, political and cultural context within which the regulator has to work. Indeed, it is possible to argue that regulatory scholarship as well as regulation can be seen as part of the range of processes that are defined as 'globalization'. Scholars such as Nelken (1994) have challenged this assumption in his work comparing of Italian and British regulatory systems, arguing instead for the need to understand regulation as appropriate to cultural context. Scholars working in the Asian context, such as Jayasuriya (2001), are more strident in their criticism. They argue that regulatory reform cannot be effective if it remains at the level of 'technocratic management' and does not engage with the economic and political dynamics within the local context. A means of understanding the unique contribution of place in moulding both regulatory reform and its enforcement is sorely needed in order to assess the worth of reforms within a particular context. This paper explores the possibility of regulatory character as a means of understanding the importance of place. Regulatory character extends Selznick's (1992) concept of organizational character to a regulatory context. Regulatory character involves an understanding of culture, economic and political elements arranged schematically according to the dimensions of authority and social ordering. The paper outlines the construction of the grid and then uses the grid to understand the significance of regulatory reform and regulatory effectiveness in Thailand following the Kader Toy Factory Fire.

Introduction

This paper explores the importance of place in the debate on the impact of globalization on regulatory reform. It forms part of work on the aftermath of the Kader Toy Factory fire in Bangkok, Thailand which provides the context for the assessment of both globalization and regulatory scholarship. The 1993 fire was the largest factory fire in history, resulting in the loss of 188 lives and a further 469 injuries and was to Thailand what the Triangle Shirtwaist factory fire was to New York in the early 1900s. A major concern of this work is to explore the relevance of the findings on regulatory reform in Thailand to broader debates. This paper, in particular, asks what the Thai experience can teach regulatory scholars about the robustness of their ideas in a non-western and rapidly industrializing context.

These questions are not just academic. Through forums like the Organisation for Economic Co-Operation and Development (OECD), the World Trade Organisation (WTO) and the International Monetary Fund (IMF) the ideas of regulatory scholars, amongst others, are being debated and - in some cases - mandated through structural reforms which accompany financial assistance (OECD, 2000; IMF, 1999). Regulatory scholarship is then part of globalization in a very real sense, and as such deserves some scrutiny in the context of the globalization debate.

Globalization and Regulation

It is important at the outset, however, to recognize the ambivalence of proponents of global economic reform towards regulation. Advocates of neoclassical economic reform have always had a strong ambivalence towards regulation. Regulation, particularly social regulation should be viewed warily since it always has the possibility of 'regulatory capture' (Kolko, 1963, 1965; Stigler, 1975). 'Rent seeking behaviour' inevitably clouds the ostensibly social goals of regulation, so that regulations bend the rules of the market to benefit a particular group of businesses or in the international arena, states. Regulation advantages the powerful to the detriment of the powerless. Access to the market must be protected against special pleading and regulation assessed by its impact on competition (see for a discussion Trebilcock and Howse, 1999, Chapter 6). When viewed from this perspective, most regulation would be found wanting.

From such a viewpoint, industrial disasters and their regulatory impact are risky in that they threaten to divert enthusiasm from economic reforms that, in the long term, will create the greatest good for the greatest number. The best case scenario is where the disaster does not detract attention away from the benefits of free trade. Economic values are those that allow human values to flourish (Freidman and Freidman, 1996). As development proceeds, safety will improve – but through the working of the market, not through regulatory intervention.

Despite this view, regulatory development continues apace alongside economic reform forming part of what Giddens (1990) has termed 'global rationalism' or the exponential increase in rule making and rule dissemination at the international level (see Haines, 2000). As such, it is best seen as part of globalization, rather than separate from it. A first

task, then, is to ascertain the place of 'global rationalism' within the broader globalization debate.

Global rationalism is best understood as part of what Held, McGrew, Godblatt and Perraton, (1999) label the 'transformalist' view of globalization. Transformalists, Held et al (1999) argue, see globalization as a complex process comprised not only of economic and related political activities, but also communicative and social. Global rationalism forms part of the communicative and social aspect of globalization that accompanies the growth of the 'free trade' agenda and can be seen in part as the setting of the rules of competition.

There are, however, other aspects of globalization from the transformalist perspective that have implications for an understanding of regulatory reform in an era of globalization. Transformalists argue that the major change that is wrought by globalization is what Mittleman (1994) has argued to be relativization, namely that states can no longer view themselves as 'the world' but rather must position themselves in light of dominant international forces. They can choose to align themselves with international trends in the hope of reaping economic and developmental benefit, or they can reject the overtures of global hegemony as tainted or evil. This relativization goes to the heart of concerns about national sovereignty and identity that form part of the transformalist view of globalization. The nation state has been reconfigured to some degree with the demands of the 'free trade' agenda and on occasion the boundary of the state is breached by international policies which influence and even override national policy. Nonetheless, sovereignty concerns figure prominently on the national political agenda (Weiss, 1998).

This transformalist view of globalization needs to be seen as a response to what Held et al (1999) describe as the 'hyperglobalist' and 'sceptical' views of globalization that saw the process as predominantly economic. Both 'pessimistic hyperglobalizers' and 'sceptics' take a loosely Marxist view of globalization. For both it is the capitalist dynamic, not regulation, which has seen the increase in global inequality. For pessimistic hyperglobalists, global capitalism lies at the heart of the new world order where footloose capital can roam the globe in search of the easiest gains at the lowest cost. Low cost for the global rich is paid for in full by the global poor. Our current economic system, one premised on the benefits of free trade, systematically benefits the global elite.

Pessimistic hyperglobalists and sceptics differ in terms of the nation state, with hyperglobalists arguing that the nation state is rapidly becoming redundant through a global 'core/periphery' structure to society (Harvey, 1989). Both in terms of geography and in terms of labour market the networked nature of the 'core' can be contrasted with the tenuous - sometimes redundant - nature of the periphery. Sceptics on the other hand argue that traditional north south distinctions still hold, with powerful nation states such as the US and Europe wielding considerable power (Hirst and Thompson, 1996).

These diverse perspectives on globalization suggest the following questions in an analysis of the impact of globalization on regulatory change:

- What is the impact of economic change and the emphasis on free trade of regulatory reform? Is there an indication of a fundamental reorientation of economic relationships that alter how regulatory reform unfolds?
- How is regulation in the form of global rationalism best understood? Is it primarily characterized by adoption of standards and techniques from the international and/or global arena? If so, does this indicate an improvement in regulatory standards, or, following the neoclassical economic view, is it better viewed as regulatory capture that threatens the overall wellbeing of society?
- How does the need to establish sovereignty affect regulatory reform? Does sovereignty in a rapidly industrializing context inevitably result in a watering down of standards?

Juxtaposing a study of regulatory reform in the aftermath of a disaster such as Kader with current debates on globalization promises a rich study. There is certainly considerable scope in the three research questions mapped out above. However, it has a weakness in the combination of macro-sociological debates on the nature of globalization with micro-processes of reform following disaster. In particular, such a study could well fall foul of a confusion of levels (Mills, 1963) where macroscopic level dynamics are assumed to have a direct, unmediated impact on day-to-day decisionmaking. What may appear to result from global transformations may instead result from far more mundane considerations. In short, too much might be asked of country and case study specific illustrations and consequently little of value gained.

Regulatory Theory and Regulatory Context

To overcome this problem of ‘confusion of levels’ it is necessary to develop an analytical framework, separate from that of globalization, more attuned to dealing with ‘close up’ realities of disasters and their aftermath. It is here that the study of regulation and regulatory reform appears to hold promise. Regulatory scholarship has developed to provide relevant expertise on the most efficient and effective form regulation and regulatory enforcement should take. Such expertise appears useful as a source for evaluating the worth of regulatory reforms after disaster events in a globalizing environment, and a suitable complement to broader macro levels of analysis. Certainly, the aftermath of disasters is one juncture in which regulatory scholarship is in demand, as a means to fill the gap between the dynamism of the market and the political demand for safety and certainty (Haines and Sutton, 2002).

The challenge for regulatory scholarship is well defined - design a regulatory framework that can obviate the need for market failure, whilst retaining the dynamism of the market. Regulation, if designed correctly, it is promised can be the vehicle by which the public good and private interest of the market can be combined (Burk, 1988). In the pursuit of this goal regulatory theorists have ventured beyond traditional ‘command and control’ punitive regulatory forms deemed necessary by pessimistic hyperglobalists as an indication of progress (Ayres and Braithwaite, 1992; Grabosky, 1994a and b; Gunningham and Grabosky, 1998). Such a view is argued to be both too narrow (ie it

does not take account of the creative use of the market to regulate in the majority of cases) nor account for the overall development of societies as they reap the benefits of economic reform and free trade. The market can and does regulate, and can be encouraged to do so by third parties seeking to influence social outcomes of business behaviour. In the hands of skilled policymakers, the deficiencies of the market can be deftly healed through a plethora of regulatory techniques from meta-risk management to pyramidal enforcement strategies based on trust and assurance (see for example Ayres and Braithwaite, 1992; Gunningham and Grabosky, 1998; Baldwin and Cave, 1999).

Inherent in this work is a view of globalization that is primarily optimistic. Globalization is transformative. The interconnectedness of various societies means that the dispersal of 'best practice' is more easily assured (Braithwaite and Drahos, 2000). In short, the market can regulate well. Its inherent creativity and dynamism can often reduce risk in a manner that is unimaginable to the regulatory authority - and hence beyond prescriptive purview. Other private actors as well as third parties, including consumers, insurers and banks can stimulate the creativity of companies towards overall risk reduction and regulatory improvement. There is, then, a congruence between the aims of regulatory scholars and proponents of market reform. Indeed, some of the most creative work in the area has come from scholarship aimed at devising regulatory measures that ensure a competitive market.

In this way, regulatory theory has largely positioned itself as a scientific or technocratic endeavour and as such purports to be able to provide a yardstick for measurement of 'regulatory success'. In doing so, it has proved itself relatively transportable in terms of its ability to turn its relevance to a global, as opposed to international, order. The dynamics of the market can regulate in a similar manner to that within a state. As trade becomes global in its orientation, so too can regulation. Not surprisingly, work in this area has emphasized the possibilities of self-regulation with consumer oversight, and in particular the value of codes of conduct. Examples here include the work of Fung, O'Rourke and Sabel (2001) on Ratcheting Labour Standards, Gunningham and Grabosky (1998) on Responsible Care and Meidinger (2002) on Forest Stewardship. Analyses of Labour standards focus on differing forms of codes of corporate conduct, essentially forms of self-regulation, where consumers, unions, NGO groups or auditing firms take on the oversight role previously afforded by the state (see Diller, 1999).

Such regulatory techniques emphasize the importance of understanding market relationships in order to extend control. Consumer or buyer pressure is seen as central to improved standards. Market relationships between companies too can be exploited. Under the concept of 'chains of responsibility', the regulators demand that the major partner in any industry has responsibility for the safety and wellbeing of others in the contracting chain (Haines and Sutton, 2002). State oversight and monitoring of each company is reduced by transferring responsibility to the dominant market player. In conceptualizing good regulatory techniques in this way, regulatory theory resonates with hyperglobalist views of the transformation of markets - away from state control towards markets that are constructed around core and peripheral elements. Good regulation is that which can encourage the core to take care of the periphery.

This resonance of regulatory theory with hyperglobalism, though, is stripped of political orientation. The concern is on finding solutions, of rising above politics. However, this emphasis of regulatory theory on efficient and effective techniques tends to gloss over the very real influence politics has on regulatory reform, what techniques are acceded to and the reasons that lie behind adoption or lack of adoption.

Regulatory theory's foray into the global arena provides a useful example of how proposed techniques, rather than being neutral, have the potential to bolster the prevailing political order or conceptions of the public good. Corporate codes of conduct and consumer oversight of market behaviour have been cited by regulatory theorists as holding considerable promise for the improvement of corporate behaviour globally (Braithwaite and Drahos, 2000; Fung, O'Rourke and Sabel, 2001; Grabosky, 1994a and b). For Fung, O'Rourke and Sabel (2001), such codes are seen as the first step in a 'ratcheting up' process at work within labour standards regulation. To a greater or lesser extent, these codes see the state as relatively powerless, with little influence either to promote safety standards, or to stymie them. National politics is silenced in the debate. However, the potential for codes to be effective independent of a strong state regime is yet to be proven. Research in Australia suggests voluntary codes work best as an adjunct to, but not a replacement of traditional forms of government regulation (Gunningham and Johnstone, 1999). Yet, they are being promoted as a useful technique in the industrializing world as a method of improving behaviour in the absence of a strong state-based regime. There is little evidence to date of the effectiveness of this strategy, since self-regulation enforced by non-state actors has yet to prove its credentials. Indeed, many reports suggest considerable problems with compliance with codes of conduct by Multinational National Corporations (MNCs) (Diller, 1999; Murray 2001a).

Further, these calls for a greater role of MNCs in their own regulation through application of various codes of conduct, together with a variety of 'overseers', has tended to see even the international sphere as 'empty' of relevant regulatory influence (Murray 2001b). As Murray rightly points out, the regulation of working standards was amongst the first to have had a presence in the international arena - most prominently through the vehicle of the International Labour Organisation (ILO). There is a tendency for those advocating novel regulatory forms (such as company codes or mechanisms for 'ratcheting up' regulatory standards) to ignore or bypass the work of the ILO (but see Braithwaite and Drahos, 2000). In doing so there is the possibility of letting go previous hard won gains. Whilst there are clear problems with the ILO - not the least of which is bureaucratic inertia and lack of accountability by those nations ratifying various conventions (Cooney, 2000) - there are clear lines of representation and a rich history from which to learn. Central to the ILO paradigm, however, is the necessity for the nation state to be at the centre of any regulatory framework (Murray, 2001b).

Because of this paucity of political analysis there is then a mixed potential for regulatory theory to provide insightful analysis of the reasons behind and effectiveness of regulatory reform following events such as the Kader fire. Certainly, there would be a demand on behalf of regulatory theorists for any analysis to go beyond an analysis of 'command and control' regulatory forms. Also, such analysis would expect accelerated learning and uptake of solutions from other parts of the globe to be evident in the aftermath of

disasters in rapidly industrializing contexts. However, such theorizing is largely silent on why certain regulatory forms might be taken up, and what might be effective in a given economic and political context.

Studies of regulatory reform, in contrast, tend to emphasize the political nature of regulation in general and reform in particular (see for example Curran, 1993; Reichman, 1998; Paterson, 2000). This political quality of reform is particularly prevalent in the context of disaster. Dan Curran (1993) argues that regulatory reform following industrial disaster is dependent upon two elements: firstly a scarcity of labour coupled with industry dependence on a given source of skilled labour and secondly a strong union committed to safety reform. Further, effective reform remains elusive. Despite the apparent solid foundation for reform generated by the intense scrutiny after disaster, reform that does occur may not equal progress. Paterson (2000) in his analysis of the impact of successive disasters on regulation of the offshore industry in the North Sea, illustrates how political demand for reforms following one disaster can overcompensate for problems uncovered in post-disaster enquiries. Enquiries following subsequent catastrophic events implicate this overcompensation as critical to failure. Typical to this overcompensation is the pendulum that swings between detailed prescriptive rules and general rules.

Part of the reason for the failure of reforms may lie in incompatible views of what constitutes necessary change. Reforms can reflect the competing interests of law, politics and economic actors as they struggle to exert regulatory authority (Reichman, 1998; Haines and Sutton, 2002). Further, there may be miscommunication between different systems (i.e. legal, political and economic) as to the purpose of new regulations as each system then rescripts the regulation to suit their underlying world view (Teubner, 1998a; Paterson, 2000). This scholarship demonstrates that regulatory techniques are not exclusively tools for the reduction of risk and harm as conceived of by regulatory theory. Rather, they are political or bureaucratic manoeuvres aimed to entrench particular worldviews.

Studies of regulatory reform are perhaps then more promising in terms of understanding the micro-context of change. Here reform would be expected to be constrained by economic and political realities. In particular, following Curran (1993), reform would be more likely when the interests of the state would be served by reform, that is when assuring the safety of workers would assist the state in maintaining the conditions for capital. For example, a restriction on requisite labour supply would strengthen demands for reform. Paterson's analysis would also attest to the importance of economic factors in spurring or undermining reform. His analysis, though, would emphasize the importance of entrenched worldviews in either moulding reform or undermining its effectiveness (Paterson, 2000).

Reform and the specific contribution of place

Studies of reform, such as those by Curran (1993) and Paterson (2000) have taken place largely in industrialized western contexts and the extent to which they hold true in industrializing non-western contexts is less explored. Both studies of regulatory techniques and regulatory reform then need to be contextualized. Despite the level of

analysis (micro as opposed to macro) an argument could be made that the regulatory debate risks making the opposite error from theories of globalization, namely where theories of globalization tend to see specific behaviours as resulting from global (macro) conditions, theories of regulation assume that successful strategies within a specific context will be generalizable to the macro level.

Certainly, when reform is viewed within a 'best practice' paradigm the actual place, in this case Thailand, in which reforms take place appears irrelevant. Comparative scholarship may exacerbate this. Much of such scholarship aims to identify successful forms of regulatory regime from international research (see for example Gunningham, 1991; Gunningham and Grabosky, 1998) and once identified, promoted internationally. Where context is included, it tends to be in the form of generic variables, such as the mix of small or large companies, or the form competition takes within a market (Gunningham, 1991). Differences in regulatory styles between the US and Japan are often subject to this form of analysis, with the negotiated consensus model of Japan contrasted with the legalistic orientation of the US (Kitamura, 2000; Aoki and Cioffi, 1999; Kagan, 2000). Here, a primary concern for many scholars is to ascertain the most successful form of regulation and hence encourage its general application. In this way the regulatory literature tends to make assumptions about the intrinsic worth, or irrelevancy, of regulatory reforms and regulatory techniques. In line with its primarily positivist bent, regulatory theory is premised on the possibility of isolating techniques able to be used worldwide. 'Best practice', however, may not be so easily assessable in isolation from the economic, political and cultural context within which they are found. Such regulatory scholarship then shares with hyperglobalist accounts, of both optimistic and pessimistic varieties, a tendency to downplay the importance of place. There remains the possibility, however, that context is critical to understanding both how reform occurs, and how effective its outcome.

The importance of an intrinsic appreciation of a given setting is supported by an alternative stream of writing (eg Bierne, 1983). In particular the work of Nelken (1994) is relevant to regulation. Nelken (1994) argues that culture plays a critical role in the value of regulatory techniques aimed at controlling corporate conduct. He contrasts the prescriptive punitive regime of Italy in the case of corporate harms with the compliance, self-regulatory orientation of the UK. In contrast to other commentators, Nelken asserts that the value in such analyses is not so much to enable an evaluation of 'good' and 'bad' regulatory practice, but rather to develop an appreciation of how regulatory frameworks intersect with particular economic, political and cultural contexts. Caution thus needs to be exhibited in evaluative assessments of the 'worth' of the two regimes. In this case, 'best practice' is better understood as 'appropriate' practice. The punitive regime in Italy is better suited to combat financial misdealing and the persuasive more suited to the UK. It is not possible simply to transplant a regime from one context to another.

This caution would be supported by those who see real problems in so called 'legal transplants'. Bold assertions by analysts of the need for regulatory reform to follow 'best practice' are, in a different setting, viewed as yet another experiment in 'legal transplantation'. Given historical precedent, such transplants stand a good chance of being ineffective. For commentators such as Kahn Freund, (1974) success or rejection of

a legal transplant rests on the similarity between the donor and recipient political systems. Greater similarities between the two political systems are more likely to result in a successful transplant.

For many Asian nations, the phenomenon of and problems with legal transplantation are familiar. Much law in the East Asian region is based on the law of the colonizers. Differing conceptions of the role of the state and the purpose of law within the region (Cooney, Lindsey, Mitchell and Zhu, 2002) further complicate the success of these transplants. In particular, Cooney et al (2002) point to law in Asia as being seen as an instrument of the state, not a means to protect the individual from state abuse. The rule of law is rather the means of control. There are, however, different methods by which this is achieved. Cooney et al (2002) point to repressive laws where the will of those in power is imposed forcefully on the individual, versus legal frameworks which exert power through invoking corporatist forms of control. In this latter form, business and nominated labour groups are brought under the aegis of the state in the development of laws and policies ‘in the national interest’. Law making, the creation and reformation of law under such conditions is premised on the need for regime stability. The repression of independent unions is an oft-cited example where a particular government will invoke the need to maintain ‘political stability’.

The problems associated with regulatory reform within a western industrialised context are thus compounded within a non-western industrialising context. Cooney et al (2002), extrapolating from Teubner, (1998b), argue that legal reform in these cases should be viewed more in the vein of ‘legal irritant’. In their analysis, the system communication failures familiar within a western context are exacerbated within an Asian setting. An investigation into the content of law reform following disaster needs to be associated with an assessment of the nature of the ‘gap’ between the law and actual government and business practice. Such a gap may well take on a radically different contour than that experienced within a western industrialised context. As Cooney et al (2002) state ‘The impact of regulatory interventions in the field of labour law (within Asia) is likely to be considerably less predictable than in the west’ p561.

Exploring Regulatory Character

The concept of ‘regulatory character’ may provide a way forward in understanding the nature and effectiveness of regulatory change in a globalizing context. As outlined below, it is a means for understanding both the content regulatory reform and the influence such reforms have on behaviour (loosely the ‘law/practice gap’). Regulatory character is not concerned only with the regulatory framework (for example self regulatory or co-regulatory) or the nature of regulatory enforcement (punish or persuade), but rather attempts to capture the interaction between economic, political and cultural elements that influence regulatory reform and regulatory effectiveness.

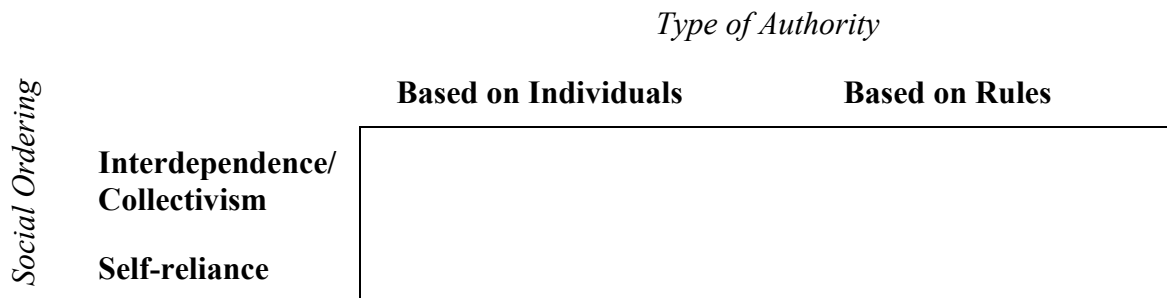
The concept of regulatory character borrows from and extends Selznick’s (1992) notion of organizational character. In Selznick’s view attitudes and beliefs, central elements in culture are moulded and shaped by the economic dependencies and the political environment within which the organization exists (see also Haines, 1997). The same can

be said of regulatory character. The form regulations take and the nature of their implementation depend upon cultural assumptions that are in turn shaped by economic dependencies and the political environment. In turn, economic and political elements of local context can be shaped by cultural evaluations of worth and ‘rightness’.

How then might it be possible to draw together economic, political and cultural elements of a particular context that are likely to have a material effect on regulatory reform and regulatory effectiveness? A potential means of achieving this is to frame regulatory character with elements of tension within a regulatory context: namely the form authority takes and the norms behind social ordering. Regulation, the means of controlling business and organizational behaviour to serve the public interest, has inherent within it an understanding of the means of control (ie the form authority takes) and contains normative assumptions of social order.

A proposal of how this might be achieved is to draw on traditional sociological theory, with Weberian (1971) insight into the form of authority and Durkheimian (1964) insight into the nature of social order. Authority may be vested primarily in individuals or in rules, as Weberian forms of traditional and formal authority attest. The tension in social ordering relates to economic, political and cultural influence that either results in an emphasis on an interdependent collective as the audience for regulatory control or alternatively self-reliant individuals. This can be seen to relate loosely to Durkheimian notions of interdependence and individualism. This can be captured figuratively as in Figure 1:

Figure 1: Dimensions of Regulatory Character



This framework is not seen as a vehicle for categorization of local contexts, but as a means of exploring the tension between elements of that context. Each element is ideal typical in that it acts to ‘pull’ regulatory reform and regulatory implementation in a particular direction. In understanding how regulatory reform and regulatory effectiveness ‘works’ in a particular environment, regulatory character has the potential to elucidate both what is unique to a particular context as well as what elements resonate more broadly to other locales.

Sketching Thai Regulatory Character

To outline how this might work in the Thai context, requires some familiarity with Thai economic, political and cultural context in order to flesh out the unique form of Thai

regulatory character. Several elements of importance need to be mentioned clustered around economic, political and cultural elements that are likely to have a material effect on the type of authority or nature of social ordering.

Diversity rather than unity characterises the forms of economic activity in Thailand with trade historically important, not merely of recent origin (Phongpaichit and Baker, 1995). Neither is trade restricted to relations with TNCs from the west, Asian as well as Thai conglomerates are also clearly part of the equation. Acknowledging the longstanding and prominent nature of the Sino Thai business sector in both large and small business is important. Indeed, small and medium sized enterprises within the Thai economy are also well represented (Phongpaichit and Baker, 1997, 1998) with self-employment and work in the informal sector a reality for many Thai people, particularly in the aftermath of the Asian Financial Crisis (Phongpaichit and Baker, 2000). However, the size of the business does not necessarily predict the nature of the employment relationship since temporary and peripheral forms of employment remain common (Hewison, 2001). There are many business relationships (such as chain of supply) linking the various strands of Thai industry together, although it is important to recognize that some forms of work, such as street vending, lie outside of this. The countryside remains attractive to many, although it can no longer sustain the economic needs of the population. This results in considerable internal migration in search of work, both from rural regions to the city, sometimes the reverse (Phongpaichit and Baker, 1998). The rural economy has historically been strong, and although this has altered somewhat, family and other ties see migration from the city to the country as well as the reverse.

Five elements of Thai political history stand out as important in their potential to influence regulatory character (Phongpaichit and Baker, 1995). The first of these is the historical role of the monarchy, particularly with respect to the reform of the state administrative and legal structure as a defence against the threat of colonization in the early 20th century (Riggs, 1966). The second element is the role of the military in replacement of the absolute monarch in 1932 and successive periods of military rule and military influence in government. The third element is the competing role of the civil elite in shaping Thai politics in the same period (Phongpaichit and Baker, 1995, Chapter 8). Fourthly, the nature of contemporary Thai politics, comprising multiple parties with an emphasis on individual personalities needs to be understood (Maisrikrod and McCargo, 1997). Politically, elements of the autocratic rule of the monarchy and the military remain alongside the technocratic rule of the bureaucratic elite and a complex and dynamic democratic sphere. The final element of importance is a recognition of labour history, including the role of protest in the political reform process that has resulted in a diverse NGO sector (Phongpaichit and Baker, 1995: Chapter 6)).

The task of ascertaining the influence of cultural norms on Thai regulatory character is, following Mary Douglas (1966), aimed at understanding a sense of ‘order and place’ within Thai society. Insight into this is provided by Niels Mulder’s (2000) analysis of Thai culture. He argues for the importance of understanding the dualistic nature of Thai culture. ‘Inside’ or ‘outside’ within the Thai milieu relates to different spheres of action, the ‘inside’ relating to the sphere of moral goodness (Khuna) and the ‘outside’ to power (Decha). Regulatory reform primarily takes place in the political and bureaucratic sphere

and is given effect in the business context and thus primarily in the 'outside' sphere. It is not possible, however, to conceptualize the political and bureaucratic context as exclusively in the realm of power, since whilst these spheres loosely relate to 'family' and 'other' there is considerable interpenetration. Mulder (2000) argues these spheres relate more to social distance. Close relationships are within the sphere of moral goodness, and distant relationships relate to Decha. Khuna is characterised by bakhun or moral goodness, gratitude and obligation (see also Woodiwiss, 1998). Decha at the extreme is characterized by chaos and immorality.

Mulder (2000) argues that power, however, remains both desirable and dangerous. To be in this latter sphere is to be vulnerable and to need protection, a function fulfilled either from religious symbols or patrons. In the broader society, order and hierarchy are seen as important elements as a defence against chaos. Further, hierarchy protects against danger, capriciousness and revenge. Whilst Thailand has been characterised as individualistic and loosely structured by some (Unger, 1998), Mulder disagrees. Individuals need to be understood in light of the broader society. Rather than individualistic, he argues that individuals are self-reliant, a skill critical to enable each person to understand their position in the broader society. The individual uses their skills in the recognition of the status of others and using status symbols and systems of patronage themselves in order to maintain or enhance their position. Mutual recognition of position, accompanied by appropriate presentation of the self, allows for smooth social relations.

How then does this economic political and cultural context frame regulatory character? In terms of authority in the Thai context reveals a tension between patriarchal authority and what might be termed formalistic authority, or authority of written law independent from the author. Thai regulatory character historically has greater emphasis on authority of the person within a largely paternalistic structure. This patriarchal structure depends on a self-reliance within the general population, where those who lack influence rely on systems of patronage and networks for survival. The employment relationship is often viewed in this light. Formalism as it relates to the authority of law independent from the author is tentative. Labour laws are subject to repeal when 'stability' is threatened (Phongpaichit and Baker, 1995, Chapter 6). Further, the law can function not so much as a method of redress or protection for those seeking justice, as to placate onlookers that there is a law in place (Riggs, 1966). The dualistic culture noted by Mulder may be expected to extend to regulatory character. In particular the traditional patriarchy/self reliance nexus has diverse potential with respect to worker wellbeing. One facet of regulatory character exhibits assumptions of morality, where authority and social ordering are seen as moral characteristics, whereas the second relates to power, where both dimensions relate to strategic use of social norms for the purpose of advancement. Nonetheless, this traditional view is contested. There is a robust history of popular protest against both military regimes and in demand for labour law sympathetic to the needs of workers.

It is important to reiterate here that regulatory character, particularly as it relates to the patriarchal/self reliance nexus, must be seen as ideal typical. As Weber stressed ideal types are never found in full splendour, rather they animate and shape behaviour. Thus, the purpose of exploring regulatory character is not to categorize, but to provide a

heuristic tool for exploring the dynamics within which regulatory reform and regulatory effectiveness are expressed. Further, departures from a characteristic response can then be more fully realized.

Figure 2 outlines features of regulatory character from the literature which exhibit interpenetration or a sense of mutual obligation. It must be remembered that the depiction is not a seamless whole. In particular, the agitation of various non-governmental organizations, including unions lead to tension in the law and a greater demand for democratic accountability.

Figure 2: Interpenetrative Regulatory Character

	Patriarchalism	Formalism
Collectivism	Nation, Religion, King Leader expected to exhibit paternalism.	Tension in law between reform which emphasizes on equality and democratic tradition and development of the rule of law and that which sees law as an expression of patriarchalism
Self-reliance	System of patronage. Importance of key relationships Acceptance of status quo, pride in self	Importance of smooth relationships, emphasis on form. Hierarchy as a social order in which individual finds his/her own place. Potential for conflict due to different beliefs, values and ideas and attitudes reduced. Reciprocation expected according to accepted norms

This tension is present also in strategic regulatory character, that is under conditions of external power. Under strategic patriarchalism, law is a means of extending control and entrenching power and status which is wielded by those in positions of authority. Consistent with Thai history, this control is occasionally repressively imposed, but more often exerted through corporatist methods. Those in positions of authority in business, government, military, and to a lesser extent unions, join to establish joint control. Self-reliance too is a means of getting ahead by those not in positions of authority by working within the status quo.

Figure 3: Regulatory Character and External Power (Strategic)

	Patriarchalism	Formalism
Collectivism	Domination of the population through corporatism. Positions of authority seen used for purpose of increasing status and social position. Corporatism a means of excluding those who threaten status quo, violent public confrontation.	Law as a strategy for extending control. This works in one of two ways: either as a protection against external criticism or reformed to entrench those in positions of authority. Law designed as a means of deflecting external criticism, but is designed so that it is unable to be used to protect individual rights.
Self-reliance	Nepotism characterises patronage, with individuals rewarded for their ability to extend control of those in authority. Those not in networks of patronage, or who challenge them repressed and exploited	Individual strategy aimed at increasing social position central to action. Knowledge of hierarchy and social norms central to strategy of improving position. Violent private confrontation possible if position is threatened.

Regulatory Character and Globalization

It is important not to see regulatory character as hermetically sealed off from globalization. Rather the impact of globalization is an interactive process one in which the effects of globalization may be very real, but are mediated by regulatory character. There are two potential points of entry of global regulatory demands into regulatory character.

Economic globalization, with its emphasis on competitive individualism, could be argued to be linked primarily with self-reliance within Thai regulatory character. The qualities of self-reliance, including a need to focus on survival in the short term are perfectly suited to an economic form that increases the uncertainty associated with ‘core/periphery’ styles of employment, such as short term contracts and casualization of the workforce.

Equally important to regulation, however is the interaction between global rationalism, the plethora of rules and standards that accompany trade and global interaction, and formalism within Thai regulatory character. In light of Thailand as a trading nation, it might be expected that drawing on international regulations and translating them to the Thai context may prove unproblematic. Nonetheless, following strategic character such rules may be put to strategic use in terms of increasing local authority and status as much as it is to improve standards.

For each of these two ‘entry points’, transformalists would argue that account must be taken of the way sovereignty is expressed. This, they argue either takes place as an alignment with global trends or an active rejection of it. Within a patriarchal regulatory character, it also seems likely that the emphasis on self reliance independent from patriarchal control would be problematic for those in positions of authority. Thus, it may be expected that there would be various ways of reestablishing sovereignty and patriarchal control over trade.

Regulatory reform following Kader

The second part of this paper will flesh out the concept of regulatory character through an analysis of the data on the aftermath of Kader Fire. The data reveal far reaching reform encompassing a wide range of regulatory arenas including, but are not limited to, fire safety, building standards, compensation regimes and health and safety standards. How reform developed in each area differed. For example, reform in building standards and fire safety tended to emanate from the bureaucracy and the elite whilst compensation and health and safety reforms resulted from much greater interaction between the activists, the bureaucracy and politicians. New building standards to be enacted were well developed and fire prevention were in the process of being updated and translated from US standards by the bureaucracy. It was compensation, though, that had the highest profile within Thailand and sparked considerable public protest. After a long and intense international campaign, Kader workers were paid the highest compensation in Thai history, paid not from the rudimentary government scheme, but directly from the company itself (Chareonloert, 1998; Dilokvidhyarat and Chaleonlert, 2000).

In terms of specific reform law reform both in compensation and health and safety did occur within Thailand. Worker access to the state compensation fund was broadened and measures such as health and safety committees and prohibition notices introduced. However, wide ranging reform championed by activist groups to simplify and centralize health and safety standards in a single health and safety institution reached the stage of a new health and safety bill, but then failed to get any further. An alternative health and safety bill, a counter measure introduced by the bureaucracy to stall more wide reaching reform, also languished.

The complex nature of safety regulation in Thailand meant that reform, partly instigated by the International Monetary Fund, to bring improved safety standards under a self-regulatory model was developing alongside more public and conventional reforms in the Ministry of Labour and Social Welfare. The Ministry of Industry had developed a health and safety standard, TIS 18000, along the lines of international standards such as the ISO 9000 and 14000 series. With this initiative, the Thai government was hoping to market itself as an ethical place to do business not just a cheap place with an acquiescent workforce.

How does regulatory character add insight into regulatory reform?

The data show three main areas of tension within Thai regulatory character that had a material impact on law reform following Kader and the effectiveness of that reform. The tensions were:

- The tension between patriarchy as expressed through interpenetrative and strategic regulatory character, ie the dualism within patriarchal authority.
- The tension between self reliance and safety awareness.
- The tension between patriarchal and collectivist visions of ‘appropriate’ safety reform and enforcement. This tension was played out through the formalisation process.

Dualism within Patriarchal control

Patriarchy, the importance of the person in positions of authority and their status is as argued above central to understanding Thai regulatory character. As outlined, this has two dimensions, interpenetrative and strategic. The data showed interpenetrative patriarchal authority was premised on service and benevolence and was woven into the fabric of how some members of the Thai elite viewed themselves. Certainly, it provided some opportunities for change and improvement in safety. Those from the elite who chose to champion change had access to bureaucratic and political elites that were denied to ordinary workers. The emphasis on personal relationships assisted this. For some bureaucrats too, their control over reform independent from ‘political interference’ could be viewed positively, provided those at the helm saw safety reform as a priority. This was because, for such bureaucrats, interpenetrative patriarchal control was seen as separate from politics, which was mainly viewed within a strategic frame, and as such, ‘tainted’.

For activists, though, it was the absolute nature of patriarchal control that lay at the root of the problem, since without public accountability reforms were unlikely to be effective. Reforms which emanated from an interpenetrative patriarchal frame, independent from the political process, could side-step the grounding of reform in a manner that was essential to its long-term effectiveness.

Further, interviews revealed many examples of control under strategic patriarchal authority that undermined reform. The status of individuals that assisted networking and change could also render reform ineffective. One such example was the way final policy recommendations emanating from some committees could relate more to the status of a committee member than their relevant expertise in health and safety. Strategic patriarchal control could be expressed in a repressive manner, with imprisonment (either of witnesses to a disaster or political opponents) occasionally used to silence dissent. A more usual form of patriarchal control was corporatist (Cooney et al, 2002), that is developing relationships with key groups of like minded others and excluding those who demanded more radical change. This included tripartite arrangements structured so as to extend control, since access to tripartite committees was manipulated by government (Thanachaisethavert, 1995). Whilst debate on these tripartite committees could be forthright, the outcome rarely challenged the status quo on a meaningful way. This was critically the case with enforcement, where intricate rules of responsibility meant that

prohibition notices subject to tripartite oversight were more likely to result in a lawsuit against the inspector, than an improvement in safety.

Control, though was not vested in a singular line of authority, since a critical problem for Thai health and safety lay in the divided nature of authority, with multiple bureaucracies responsible for health and safety outcomes. Consequently, there were many gaps and examples of redundancy and overlap. Attempts were being made by bureaucracies to communicate more effectively through memoranda of understanding, but each bureaucracy was keen to retain status and authority in a manner that suggests that genuine collaboration still has a considerable way to go.

The tension between self-reliance and safety awareness.

Self-reliance within an interpenetrative frame is a complex achievement. It requires survival and thriving within the norms and expectations of patriarchal authority. There are expectations of reciprocity within patriarchalism (cf Woodiwiss, 1998) that could bring with it demands of those in authority, such as the demand for compensation. Thus, whilst protest was necessary to achieve just compensation, there was a feeling that such compensation was deserved.

However, the shift to prevention and safety awareness inherent in a robust health and safety regime was much more difficult under a patriarchal regulatory frame. This was because self-reliance could best be achieved when the responsibility of those in authority was unequivocal, that is by signalling that you are *not* aware of the risk in the environment. Awareness of risk by workers brings with it the possibility that they would be seen to be responsible for avoiding that danger, even if avoidance was in reality impossible. As long as there was no awareness, there could be no expectation of taking responsibility. When something happens, there was recourse to notions of fate and karma to explain the event.

For safety and fire prevention this was particularly unhelpful and regulatory authorities recognized the need to raise awareness. However their response tended to emphasize the need to raise awareness through education campaigns without recognition that there was a real benefit for workers in self-reliant forms of not knowing. Further, education could reemphasize the difference in status by the form it took. Highly stylized seminars where 'experts' lectured and others sat quietly and listened reinforced the connection between awareness, responsibility and danger. The content of these seminars could thus be undermined by their form. Interpenetrative self-reliance was particularly vulnerable under strategic forms of patriarchal authority, since government philosophy had a clear priority of the need for investment first, not safety. In this environment, assuming work is safe is to take a gamble, albeit one in which the odds are better than the gamble of losing a job. As one activist put it 'workers have a choice - to work and die, or be unemployed'.

The very real skills required to become self-reliant also allowed considerable innovation when used strategically. Here resourcefulness allowed advancement in the status hierarchy - but not to change the hierarchy itself. Politics became a game of strategy in which others were pawns, not actors. But it was not party politics alone that could form

the basis of strategic advancement. Strategic use of Union and NGO connections for personal gain was also possible. NGOs and unions agitating for safety improvements needed to be astute in their dealings with others and in their recruitment to ensure ongoing integrity of their organization.

Self reliance also emphasized personal responsibility. This focus meant that deflecting blame and scapegoating were important qualities in strategic advancement. The purpose of this activity was to allow the basic structure to remain, whilst deflecting criticism. The way this worked was spoken about quite openly. However, the cynicism in the general population that resulted from such activity meant that getting commitment to policies that had the potential to be a genuine step forward, such as a comprehensive compensation scheme, was made more difficult.

The tension between patriarchal and collectivist visions of 'appropriate' safety reform and enforcement.

The tension between those who saw advantage in the status quo (whether for interpenetrative or strategic reasons) and those who pushed for it to change was played out through the law reform process. Activists were well aware of the need for change in the structure of the safety regulation within Thailand and lobbied hard for a change in the law that enshrined a change in structure. The long history of protest within Thailand had brought together a diverse range of people who, to varying degrees saw the need for change from a regulatory character which emphasized the patriarchal self reliance nexus to one in which the voices of workers, particularly those with illness and injury, were heard. Until this was done, activists argued, introduction of safety regulatory techniques would not lead to substantial safety improvement.

The struggle to realize a new regulatory structure, a five partite model of safety regulation within an independent health and safety institute that broke the control possible under tripartite models of regulation was played out through the law reform process. This was a challenging task, not only because of opposition from within Thailand, but also because it went beyond regulatory techniques viewed as intrinsically positive within the international sphere, such as safety officers, safety committees, prohibition notices and state based compensation schemes. International support for reform advocated by activists could be less than overwhelming.

Despite this, at one point wide ranging reforms looked like they might succeed. A bill was drafted in conjunction with activist groups which rationalized health and safety regulation into a single independent institute. The institute was itself under 'five partite' control with victims groups and academics added to the usual tripartite framework, a move to break the corporatist functioning of tripartism within Thailand (Thanachaisethavut, 1995). Safety regulation would also be rationalized, with compensation and enforcement regimes under institute control. However, the government pulled out of the reform process at the critical moment. The government and bureaucracy then introduced their own bill. On the level of regulatory techniques, both forms of safety regime envisaged looked similar. Both had a new health and safety institute and an

apparently strong focus on health and safety. On closer inspection, though, the government bill retained traditional Thai regulatory character by:

- Keeping the existing bureaucracy intact and simply adding a separate institute.
- Keeping the compensation fund under existing arrangements.
- Making the institute purely responsible for research and education with no enforcement powers. These were kept within existing bureaucracies. A memorandum of understanding between government departments replaced a radical restructuring of health and safety regulation.

Regulatory character and enforcement

Regulatory character influenced not only the shape of law reform following Kader but also the way in which reforms were, or were not, enforced. The effectiveness of new safety measures, such as safety committees, required a change in patriarchal forms of authority to one where workers had a voice, and that voice demanded implementation of safety measures. In the absence of this, safety committees amongst other reforms were either ignored or ritualised with adherence to the letter of the law but little sense of purpose. They looked good - but had little effect. One example here is the lack of use of the new safety committee structure, with workers preferring to look for a 'good boss' to air their safety concerns. The Thai expression 'Pak Chee Roy Nah'¹ or 'it looks good but it tastes the same' captured the reality of reform without implementation. Traditional Thai regulatory character not only shaped reform but also gave specific contour to the nature of the 'law practice' gap in how it was enforced or taken up by management and workers.

Globalization, regulatory character and reform

How then, did globalization affect both Thai regulatory character and safety reform following Kader? Globalization, with the emphasis on individuals and markets intersected with self-reliance within Thai regulatory character in several ways.

Regulatory reform consistent with both globalization and self reliance emphasized the focus on the market, using market mechanisms to raise standards. Market mechanisms comprised self-regulatory schemes, often developed by groups outside of Thailand. Groups such as Social Accountability International (SA 8000) and the Ethical Trade Initiative developed standards that aimed to use consumer pressure in northern markets to raise corporate standards. Notwithstanding the international activist underpinning of these initiatives, what makes them intriguing is the way they bypassed the state and focussed on the individual employees within a company, as well as the use of market mechanisms to raise standards. Government then became secondary, in this case to a role of promoting such schemes as the way of the future, compatible with opening up a particular industry to international market forces. The removal of textile quotas by the WTO in 2005, quotas that benefitted Thailand, was one example given of the need for a new marketing strategy

¹ Literally 'coriander on the rice'

to retain investment in textiles. These market-based initiatives to influence consumer behaviour were seen as a possible way to encourage safety improvement that was also able to stem capital flight to China. Social regulation was thus translated into the market language of competitive advantage.

Within the bureaucracy, there was also a tendency to valorize initiatives from overseas that demonstrated the need for change in the self-reliance of workers, without change in patriarchy. International precedents which fitted this agenda were popular. One example given was the fire safety awareness of one American woman and her daughter which saved their lives in a hotel fire in which many others perished. This woman became a role model for bureaucrats and others on the need to for the Thai public to increase their fire prevention awareness. However, structural reform aimed at enhancing the fire fighting capability of Bangkok was floundering as reforms requiring a shift in resources from the police to the Bangkok Municipal Authority (BMA) cut across status interests. The police was a more prestigious institution than the BMA and despite reforms aimed at move fire fighters from the police to the BMA, very few fire fighters were actually willing to make the move. Patriarchal norms tied to status interests remained an obstacle to effective reform.

The impact of globalization on Thai regulatory character, however, could not be restricted to analysis of the way international trade valorizes initiatives aimed at increasing self-reliance, or the actions of the Thai regulators in picking up elements that fitted their world view. There was the independent impact of global rationalism, the development and transplantation of rules to guide how both trade was to be conducted, what was allowed, and what prohibited.

Indeed global pressure, such as that from the IMF in its governance strategy (Jayasuria, 2001) and the activities of groups such as Transparency International, has shifted the emphasis in international business away from the importance of business relationships underlying growth towards the authority of commonly agreed standards and rules. Relationships within the capitalist market are increasingly becoming viewed as potentially or actually corrupt (as in notions of ‘crony capitalism’) and market-based institutions such as the WTO and IMF argue for a shift towards business and government accountability to the rules of competition. Influencing these international rules of competition was clearly important. At another level, global institutions would ‘sniff the wind’ of regulatory change and seek to influence its direction by developing rules for others to draw on. The ILO declaration of principles concerning Multinational Enterprises and Social Policy was specifically set up for this purpose and was subsequently drawn on by NGO groups. In this way, the ILO tried to maintain relevance in both the national and international sphere.

In terms of global rationalism influencing regulatory reform, standards and regulatory techniques were regularly picked up from a variety of overseas destinations and translated into the Thai regulatory system. However, they were then moulded to fit Thai regulatory character. Clearly, in some cases the result was little more than ‘pak chee roy na’. Fire standards would be copied from overseas (particularly from the National Fire Prevention Association in the United States) but then critical elements replaced so they

were rendered ineffective. Smoke detectors were replaced by cheaper heat protectors or cheaper fire panels able to be purchased from China, which lacked proper laboratory testing (fire standards). Accreditation regimes too were often referred to as ‘Thai style’ indicating a lack of rigour. In other cases, there was potential for changes to pervert the original intent of the standard. In fire prevention training there was some indication that a licensing regime was being set up to create a monopoly of provision, not as means for increasing standards, but for business and personal gain.

There were differences between companies in Thailand in their attitude to the letter of the law. Multinationals, particularly those well known to Western consumers were well aware of their responsibility to abide by the law. Such multinationals were seen by many to take their responsibilities, under Thai law at least, seriously. Thai professionals working within such institutions were then subjected to view regulation, such as fire prevention or safety standards, in a whole new light. These companies could be distinguished from some others of non-western origin where adherence to law - any law - was often lacking. Thai managers within these companies saw the effectiveness of international standards and could develop personal experience of and commitment to making those standards work.

It is in the translation of international standards to the national context that the interaction between globalization and the (re)assertion of sovereignty is played out. In the case of regulatory change, sovereignty was reestablished through the contours of regulatory character, including the tension in that character between the collectivist visions of activist groups and the traditional form embedded in the patriarchy/self reliance nexus. Whilst ‘Thai style’ was an epithet for problematic implementation of reform, reform needed to be seen as the ‘Thai way’, not some international implant.

Preliminary lessons for regulatory theory

What then are the lessons of this study for regulatory theory? What is important about this study is not that it demonstrates that reform is unique to context, or that it demonstrates that regulation can be abstracted to a set of ‘best practice’ forms that will simply need reiterating in each national context. Rather, the concept of regulatory character is a method by which both the uniqueness of context and its commonality with other locales can be explored. The reason it is able to do so is because it draws out the tension within the regulatory arena, in terms of the nature of authority and form of social order.

Indeed there are many examples of resonance between the Kader experience and broader challenges to regulatory reform in other locales. For example ‘Thai style’ regulatory compliance is resonant of notions of ‘Katcha’ within Pakistan and even ‘she’ll be right’ within Australia, although each has a different cultural gloss. Further, procrastination in reform and reform implementation due to the status implications for key players is not novel, nor exclusively of Thai, or Asian, origin. Finally, the use of regulations for strategic purposes unrelated to compliance with regulatory goals can arguably be seen as the reason for the push to deregulation and economic globalization in the first place.

Nonetheless, a grounded understanding of regulatory character is important and is well illustrated by the possible outcomes of ignoring it and focussing exclusively on generic component of globalization and regulatory change. Ignorance of Thai regulatory character in the aftermath of Kader would lead to a misunderstanding of why reforms were ineffective. It is not the failure of techniques per se - but in their disassociation from context that is problematic. Further, promotion of the best the world has to offer in a technical sense may lead to much money being spent for little effect. There is a real chance too of regulatory colonialism, of the imposition of rules without engagement in the political process that is the stuff of resentment. An adequate emphasis on regulation - and regulatory reform - as process is critical.

Regulatory character also highlights problems with unreflective use of the term corruption. The connection between regulatory character, patriarchalism and 'corruption' warrants much closer attention. Whilst it is relatively straightforward to make the link between strategic patriarchalism and corruption, the connection between interpenetrative patriarchalism and corruption is far more complex. Further, interactive patriarchalism may have some benefit for safe working conditions, yet tends also to be seen as 'corrupt'. What is needed is to make the distinction between strategic forms of patriarchalism and interpenetrative forms, a task difficult from the outside. It requires a substantive judgement that is complex and demanding.

Certainly, there are also problems with an exclusive focus on regulatory character, in isolation from an appreciation of the global regulatory context. As Braithwaite and Drahos (2000) have documented the international regulatory landscape provides rich pickings for NGOs intent on reform of entrenched government and business practice. However, examples of effective regulatory regimes are more diverse than the literature sometimes allows. The 'five-partite' model of safety regulation championed by Thai activists provides an example from which others might learn. Generic solutions gleaned from a global context may simply miss the point. This paper is a timely reminder on the need to preserve tension within our understanding of regulation and regulatory reform. Without this, regulatory scholarship that becomes too preoccupied with prescribing regulatory techniques may unwittingly become part of the problem - rather than part of the solution working towards a global system where disasters such as Kader become a less and less frequent occurrence.

References

- Aoki, K. and Cioffi, J. (1999) 'Poles Apart: Industrial Waste Management Regulation and Enforcement in the United States and Japan' *Law and Policy*, 21:3:213-245.
- Ayres, I & Braithwaite, J (1992) *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, Oxford.
- Baldwin, R. and Cave, M. (1999) *Understanding Regulation: Theory Strategy and Practice*, Oxford, Oxford University Press.
- Bierne, P. (1983) 'Cultural Relativism and Comparative Criminology', *Contemporary Crisis*, 7:371-391.
- Braithwaite, J. and Drahos, P. (2000) *Global Business Regulation*, Cambridge, Cambridge University Press.
- Burk, J. (1988) *Values in the Marketplace: The American Stock Market Under Federal Securities Law*, Walter de Gruyter & Co: Berlin.
- Cooney, S. (2000) 'Testing Times for the ILO: Institutional reform for the new international political economy' *Comparative Labour Law and Policy*, 20:365-399j.
- Cooney, S, Lindsey, T. Mitchell, R. and Zhu, Y. (2002) 'Labour law and labour market regulation in East Asian states: Problems and issues for comparative inquiry' in S. Cooney, T. Lindsey, R. Mitchell, and Y. Zhu, (eds) *Labour Law and Labour Market Regulation in East Asia: Themes and Issues in Comparative Law*, Routledge, forthcoming.
- Curran, D. (1993) *Dead laws for dead men: the politics of federal coal mine health and safety legislation* Pittsburgh, Pa, University of Pittsburgh Press.
- Diller, J. (1999) 'A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives' *International Labour Review*, 138:2:99-129.
- Dilokvidhyarat, L. and Chaleonlert, V. (2000) 'Economic Crisis, Trade Union Movement and Occupational Health and Safety in Thailand', paper presented at Asian Workers Institute for Occupational Health, Safety and Environment, Bangkok, December 6-7.
- Douglas, M. (1966) *Purity and Danger: An analysis of the concepts of pollution and taboo*, London, Routledge, reprinted 1996.
- Durkheim, E. (1964) *The Division of Labour in Society*, New York, Free Press of Glencoe.
- Freidman, M & Freidman, R (1996) 'The Power of the Market' in Agyrous, G. & Stilwell, F. *Economics as a Social Science*, Pluto Press, Sydney.

- Fung, A., O'Rourke, D. and Sabel, C. (2001) 'Realizing Labor Standards', *Boston Review*, 26: 1-20, accessed at <<http://bostonreview.mit.edu/BR26/fung.html>> July 19, 2002.
- Giddens, A (1990) *The Consequences of Modernity*, Polity, Cambridge.
- Grabosky, P.N., (1994a) 'Green Markets: Environmental Regulation by the Private Sector' *Law and Policy* 15: 419-448.
- Grabosky, P.N. (1994b), 'Beyond the Regulatory State', *Australian and New Zealand Journal of Criminology*, 27: 192-197.
- Gunningham, N and Grabosky, P. (1998) *Smart Regulation: Designing Environmental Policy*, Oxford, Clarendon Press.
- Gunningham, N and Johnstone, R. (1999) *Regulating Workplace Safety: Systems and Sanctions*, Oxford, Oxford University Press.
- Gunningham, N. (1991) 'Private Ordering, Self-Regulation and Futures Markets: A Comparative Study of Informal Social Control' *Law and Policy*, 13:4:297-326)
- Haines, F (1997) *Corporate Regulation: Beyond 'Punish or Persuade'*, Clarendon Press, Oxford.
- Haines, F. (2000) 'Towards Understanding Globalization and Control of Corporate Harm: A preliminary criminological analysis', *Current Issues in Criminal Justice*, 12:2:166-80.
- Haines, F. and Sutton, A. (2002) 'The Engineer's Dilemma: A sociological perspective on the juridification of regulation' *Crime, Law and Social Change*, forthcoming.
- Hancher, L and Moran, M. (1998) 'Organizing Regulatory Space', in R. Baldwin, C. Scott and C. Hood (eds) *A Reader in Regulation*, Oxford, Oxford University Press, pp 148-173.
- Harvey, D (1989) *The Condition of Postmodernity*, Blackwell, Cambridge.
- Held, D., McGrew, A., Godblatt, D. and Perraton, J. (1999), *Global Transformations: Politics, Economics and Culture*, Cambridge, Polity.
- Hewison, K. (2001) 'Thailand: Class Matters' Southeast Asia Research Centre Working Paper Series, No 8, City University of Hong Kong.
- Hirst, P. and Thompson, G. (1996) *Globalization in Question: The International Economy and the Possibilities of Governance*, Cambridge, Polity Press.
- IMF (1999) 'Progress Report: Developing International Standards' International Monetary Fund Policy Development and Review Department, March.

- Jayasuriya, K. (2001) Governance, Post Washington Consensus and the New Anti-Politics, in Lindsey, T. and Dick, H (eds) *Corruption in Asia: Rethinking the Governance Paradigm*, Annandale, Federation Press, Chapter 2.
- Kagan, R. (2000) 'Introduction: Comparing National Styles of Regulation in Japan and the United States' *Law and Policy*, 22:4:225-244.
- Kahn-Freund, O. (1974) 'On Uses and Misuses of Comparative Law' *Modern Law Review*, 31:1-27
- Kitamura, Y. (2000) 'Regulatory Enforcement in Local Government in Japan' *Law and Policy*, 22:4:305-318.
- Kolko, G. (1963) *The Triumph of Conservatism* New York, Free Press of Glencoe.
- Kolko, G. (1965) *Railroads and Regulation* Princeton, Princeton University Press.
- Maisrikrod, S and McCargo, (1997) 'Electoral Politics: Commercialisation and exclusion' in K. Hewison (ed) *Political Change in Thailand: Democracy and Participation*, London, Routledge, pp132-148.
- Meidinger, E. (2002) 'Law Making by Global Civil Society: the Forest Certification Prototype', electronic paper available at <www.law.buffalo.edu/eemeid> accessed July 19, 2002.
- Mills, C.W. (1963) 'Two Styles of Social Science Research' in *Power, Politics and People: the Collected Essays of C. Wright Mills*, edited with an introduction by Irving Louis Horowitz, New York, Oxford University Press.
- Mittelman, J (1994) 'The globalisation challenge: surviving at the margins' *Third World Quarterly*, 15:3:427-443.
- Mulder, N. (2000) *Inside Thai Society: Religion, Everyday Life, Change*. Chiang-Mai, Silkworm Books.
- Murray, J. (2001a) 'The Sound of One Hand Clapping? The 'Ratcheting Labour Standards' Proposal and International Labour Law' *Australian Journal of Labour Law*, 14:306-332.
- Murray, J. (2001b) 'A New Phase in the Regulation of Multinational Enterprises: The role of the OECD' *Industrial Law Journal*, 30:3:255-270.
- Nelken, D., (1994) 'Whom can you Trust? The Future of Comparative Criminology', in D. Nelken (Ed) *The Futures of Criminology* London, Sage.

- OECD (2000) 'Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance', paper prepared by Christine Parker, Kirsi Kuuttiniemi, But Klaasen, Jefferson Hill and Scott Jacobs.
- Paterson, J. (2000) *Behind the Mask: Regulating health and safety in Britain's offshore oil and gas industry*, Aldershot, Ashgate Dartmouth.
- Phongpaichit, P. and Baker, C. (1995) *Thailand: Economy and Politics*, Oxford, Oxford University Press.
- Phongpaichit, P. and Baker, C. (1997) 'Thailand in the 1990s' in Kevin Hewison (ed) *Political Change in Thailand: democracy and participation*, London, Routledge, pp21-41
- Phongpaichit, Pasuk and Baker, Chris (1998) *Thailand's Boom and Bust*, Chiang Mai, Silkworm Books
- Phongpaichit, Pasuk and Baker, Chris (2000) *Thailand's Crisis*, Chiang Mai, Silkworm Books.
- Reichman, N. (1998) 'Moving Backstage: Uncovering the Role of Compliance Practices in Shaping Regulatory Policies', in R. Baldwin, C. Scott and C. Hood (Eds.) *A Reader on Regulation*, Oxford, Oxford University Press, pp325-346.
- Riggs, F. (1966) *The Ecology of Public Administration*, New York, Asia Publishing House.
- Selznick, P. (1992) *The Moral Commonwealth: Social Theory and the Promise of Community*, Berkeley, University of California Press.
- Stigler, G (1975) *The Citizen and the State: Essays on Regulation*, Chicago, University of Chicago Press.
- Teubner, G. (1998a) 'Juridification: Concepts, Aspects, Limits, Solutions' in R. Baldwin, C. Scott and C. Hood (Eds) *A Reader on Regulation*, Oxford, Oxford University Press.
- Teubner, G. (1998b) 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences' *Modern Law Review*, 61:11-32.
- Thanachaisethavut, B. (1995), 'Trade Union Structure and Tripartite Systems in Thailand, Arom Pongpangan Foundation and Friedrich Ebert Stiftung, unpublished monograph.
- Trebilock, M. and Howse, R. (1995) *The Regulation of International Trade*, London, Routledge
- Unger, D. (1998) *Building Social Capital in Thailand: Fibers, Finance and Infrastructure*, Cambridge, Cambridge University Press.

Voravid Charoenloet, 1998 'The situation of health and safety in Thailand', Dossier no. 5, April 1998, Asia Monitor Resource Centre Toy Campaign.

Weber, M. (1971) 'The Three Types of Legitimate Rule' in M. Truzzi (ed) *Sociology: The Classic Statements*, London, Routledge, pp180-195.

Weber, M. (1993 first published in England in 1948) edited by H. Gerth and C. Wright Mills *From Max Weber: Essays in Sociology*. London: Routledge.

Weiss, L., 1998, *The Myth of the Powerless State: Governing the Economy in the Global Era*, Polity Press, Cambridge.

Woodiwiss, A. (1998) *Globalisation, Human Rights and Labour Law in Pacific Asia*, Cambridge, Cambridge University Press.