Introduction

In today’s world the different forms of authority respected in modern societies seem more settled than they have in many years. With all its faults, democracy is seen widely throughout the world, with the notable exception of China, as the least bad way to organize politics. Despite the lingering aftershocks of the 2008 international financial crisis, the market too is seen throughout most of the world, including China, as the least bad way to organize economic activities. What, however, is unsettled across the world is the relationship between systems and the different forms of authority they represent.

This book discusses contemporary systems of authority and changes in the way in which they are being mixed and combined to reframe modern systems of governance. It looks at these changes through the prism of regulatory activity. This perspective has been chosen because regulation cuts across each of the different domains. For the purpose of organizing this discussion, the book uses the concept of the ‘regulatory space’. This provides a way to bring together the key facets of regulatory activity and to read across the different systems and relationships.

The picture and content of the ‘regulatory space’ is built up through the use of what is known as ‘social framing’. Social framing focuses on the social goals of regulatory activity in the different domains and opens up a different way of assessing the overall role and status of the regulatory space itself from conventional analysis. The discussion provides a way of drawing more general inferences about changing patterns of governance in modern democratic societies, about how far we should be concerned about the changes and what we should be concerned about.

1 The term ‘authority’ is used in this book to denote claims to exercise power that are justified or perceived to be legitimate and is distinguished from ‘power’, which refers to the capacity to make people act in ways that they would not otherwise do. The generic ways in which different systems of social coordination exercise power and the different ways in which they justify their claim to authority (legitimate power) is discussed in Chapter 9.
THE CHANGING MIX OF AUTHORITY

Systems of authority in modern societies are in constant flux. Societies can organize and coordinate their internal relationships in four traditional ways. They can rely on the authority of customary social norms from sources such as religious affiliation, family and peer groups. They can respect the authority of democratically elected politicians. They can turn to the pricing signals of the market to allocate resources and to respond to preferences. And they can observe the dispute settlement procedures of the law. In addition, in relatively recent times, each of these traditional means of coordinating relationships and ways of exercising authority has been pervaded by regulatory activity.

In modern societies, patterns of authority have to adjust to new challenges. The influence of social norms that reflect traditional ties and the ties of physical proximity seem to be weakening while, at the same time, social ties created through the connections of the digital age are increasing. Notwithstanding the critics of capitalism, markets still lack any serious rival as a system for economic organization and continue to expand their reach through such techniques as public/private partnerships. However, the twin pillars of the market – pricing and contract – are under challenge. Pricing is under challenge in respect of inter-generational issues involving the social costs of aging populations and the custodianship of

2 Definitions of a ‘system’ differ. It is defined in minimal terms by Anthony Giddens as referring to ‘reproduced relations between actors or collectivities, organized as regular social practices’ (Giddens 1984: 24). Chisholm states that a system ‘implies an interrelatedness of parts such that each can only be comprehended in terms of the others’ (Chisholm 1989: 4). Jervis provides a two-part definition: ‘We are dealing with a system when (a) a set of units or elements is interconnected so that changes in some elements or their relations produce changes in other parts of the system, and (b) the entire system exhibits properties and behaviours that are different from those of the parts’ (Jervis 1997: 6). A definition currently in use in the context of the UK’s ESRC-funded research into financial systems refers to a set of elements: (1) that makes reference to something or a central concept in a coherent fashion, (2) that imply meaningful relationships and (3) that evolve. The discussion uses the simplest (Giddens) definition in order to avoid prejudging the types of connection within and between systems that emerge from the analysis.

3 Coordination can take place in society at the individual or individual unit level without necessarily involving either power or authority relationships but is likely to involve both as relationships grow in number and variety. Chisholm notes ‘that under some conditions informalities are very powerful coordinating devices indeed’ (Chisholm 1989: 39). He also explores their limitations (ibid.: 192–7). Therefore, the terms ‘co-ordination’ and ‘authority’ are used interchangeably in reference to systems except in cases where there is a specific discussion of the relationship. Herbert Simon also discusses the relationship (Simon 1991: 38–42).

4 The term ‘social norm’ refers to a distinct method of social coordination rather than to social coordination in general. Elster defines the distinctiveness of social norms as norms that are shared by other people and partly sustained by their approval and disapproval (Elster 1989: 99).
the environment. Both older and younger age groups distrust price signals for allocating what they want. Contracts are also under challenge because the 2008 international financial crisis revealed that they could give false and misleading assurances about the nature of relationships within the market.

Political systems are also facing new challenges. Political parties no longer seem to aggregate preferences through the expression of broadly shared values as effectively as in the past but are fracturing along new ideological fault-lines – from the Tea Party in America to the True Finns in Scandinavia. The Internet age divides opinion as much as it brings it together. Moreover, the lack of competence of elected politicians to handle the complexity of the issues confronting modern societies seems more glaring than in the past. In some societies, such as Greece and Italy, experts have been appointed to run governments or finance ministries. The responsibility of elected politicians for monetary policy has been largely removed. The inability of politicians to manage fiscal deficits suggests that they are incapable too of handling their taxing and spending authority. Venality and corruption among politicians are widespread from Brussels to New Delhi to Chicago. Venality is not new but there appears to be less public tolerance for it.

The law seems to be expanding its role in areas associated with the assertion of claims based on ‘rights’. But it is a contested role and in other areas the role of the law is less secure.\(^5\) In particular, the procedures of the law, like those of politics, are not always well suited to investigating the evidence of the natural and social sciences. Moreover, the authority of the law remains one that is typically held in reserve. People rarely encounter the law in their lives. They do not want the costs and delays. They seem to continue to prefer methods that contribute to the negotiated settlement of differences, except possibly in cases of family courts, where family breakdown makes family disputes impossible to resolve through negotiation.\(^6\)

The regulatory space seems to have grown as a response or answer to the imperfections in these other systems of authority. Regulation responds to weaknesses in traditional means of social coordination and moves quickly into new areas of social concern that other systems of social coordination

\(^5\) Much of the contestation about the role of the law is embraced in debate about the ‘juridification’ or ‘judicialization’ of the law. Koopmans notes that the terms refer to the influence of the law in areas that were once considered the domain of politics. This refers not only to sensitive social issues where rights claims may be invoked but also to areas such as the judicial review of legislative and executive acts. See Koopmans (2003: 268–76).

\(^6\) Colin Scott (2004) lists a number of ways in which the capacity of the law seems to be limited in modern systems of social ordering. See also Hawkins (2002).
The new regulatory space

are slow to reach. For example, knowledge of the human genome holds out a promise to transform medical practice and the linking of ‘artificial’, computer-based intelligence with the human brain will increasingly remodel human capabilities. Both will raise novel practical and ethical questions for society. For these and other new areas of social concern, regulation often seems to be the ‘answer’. Regulatory procedures are better adapted to mobilizing the knowledge and information from the sciences that societies need to solve social problems. They draw in expertise that is seemingly more relevant than that contained within either the law or politics, better suited to and more willing to undertake the exploration of new policy areas.

However, the role of regulation and the source of the authority of regulators are also contested. Some political theorists see the authority of regulators as essentially ‘epistemic’. This means that it is derived from the way in which regulatory bodies approach the evidence behind public policies. They bring to bear disciplines of inquiry drawn from the natural and social sciences in an institutional setting that is at least one step removed from political pressures. Others see it as derived from politicians or from the support given by the law. There are complaints both about the scale of regulatory activities and its legitimacy.

In one sense there is nothing new about any of these concerns. Fears about the consequences of the erosion of customary social norms, about the instability and inequities of the market economy, about over-reliance on experts and about the fissiparous qualities of democratic politics all have a very long history behind them. Moreover, changes in the extent to which we rely on different systems of power and authority are to be expected. However this does not mean that current concerns simply should be dismissed out of hand.

PREVIOUS APPROACHES TO AUTHORITY RELATIONS

Past attention to authority relations across all domains has been described, not unfairly, as largely ‘sporadic’ or ‘partial’ in that studies focus on particular relationships (between say the law and politics, or between the market and the law, or between regulation and politics). The difficulties

7 The pioneering study of authority relations is that of Dahl and Lindblom (1953) based on the then decidedly premature assumption that the struggle between capitalism and socialism was over. Other significant contributions have come from Posner (1973), Eckstein and Gurr (1975) and Komesar (1994).
to overcome in approaching the subject across all domains are manifold. A first question is about how to characterize where the concern lies about changing relationships – if there is indeed a cause for concern. Is it a concern about elites versus the general public, about experts versus lay opinion, about the elected versus the unelected (including not only experts but the judiciary), about the ‘juridification’ of the political domain, about the relative efficiency of systems, about the stability of democratic arrangements or about the choice of the appropriate ‘technique’? A second area of difficulty concerns how to characterize the different domains. For example, should we characterize politics by using such concepts as ‘the state’, now under pressure both in a regional context such as the European Union and in the global context, or ‘government’ now out of favour in relation to the wider concept of ‘governance’, or use some other way of capturing the essence of modern democratic practice such as ‘majoritarian”? A third area of difficulty is how to encapsulate the vulnerabilities of modern systems of authority. Are they under strain because of the diversity of contemporary societies, or because of the complexity of system inter-relationships, or because of the complexity of problems created by scientific and technological change, or for all of these reasons and more? A fourth area of difficulty concerns what analytic approach to take – in particular there has been a difference over whether to focus on goals or structures. The appropriate level of analysis is also contentious. Should one adopt a societal or systemic view, or work up from the level of the individual actor or institution?

INTEGRITY

The key concern addressed in this book is about the ‘integrity’ of systems. This identifies the main underlying concern about changing patterns of governance as whether, in the process of change, the basic integrity of different systems of social coordination is being impaired. ‘Integrity’ can be defined in terms of the need to maintain the core functions and the core values we associate with each of the different systems of social coordination.

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8 Dahl and Lindblom refer to the choice of technique, Eckstein and Gurr focus on stability.
9 Dahl and Lindblom (1953) approach the subject through a discussion of goals, Eckstein and Gurr (1975) and Komesar (1994) through structures.
10 Komesar uses the methodological individualism of transaction cost institutional economics.
11 It was perhaps unfortunate that Dahl and Lindblom referred to the choice of alternatives as a choice of social ‘technique’ (Dahl and Lindblom 1953: 6). This appears to minimize the significance of choices made.
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It might seem incongruous to bracket ‘integrity’ with systems of authority. We are all too well aware of the venality of politicians and their trails of broken promises, of the greed of bankers that led the financial markets to collapse, and of the scandals attached to priesthoods that were once respected purveyors of social norms. At the same time we still look to such systems for their essential properties – we rely on the market for job opportunities and as a way of helping to meet our aspirations in life, we rely on electoral politics as a way of getting rid of politicians and governments, we fall back on the law when all else fails to resolve disputes and we look to peer groups for signs of social esteem or disapproval.

We can define the core properties of the different systems in different ways. For example, the law can be seen as a way of stabilizing behaviour in societies by establishing bright lines between what is legal and what is not. Alternatively, it can be seen as a way of handling disputes in society where settlements may be reached without resolution of the underlying claims about behaviour. What matters is not so much how we define these core properties as the agreement that, in one way or another, these systems offer something essential for social coordination that is unique to them and which we could not do without. This book tries to avoid taking sides on disputes about the core of any system with the exception of the regulatory space itself. Instead it characterizes the different domains in ways that capture some essential quality that nevertheless allows for different views about the core. For example, the law is discussed in terms of procedural values that are common to any conception of the rule of law. Similarly, democratic politics is discussed in terms of ‘whose voice counts’ in modern diverse societies – a question that is central to any conception of democratic politics.

Because we depend on the essential properties of the different systems of social coordination in whatever way we define their core, we need to be able to monitor changes in them. We have a justified reason to be concerned if the changes point to an erosion of what we perceive to be their core functions and to a loss of the values that we associate with that system. Thus, for example, if we look to a democratic political system as a means for bringing together different voices in society we need to be concerned if electoral politics is losing traction as a way of aggregating opinion and losing its authority as a way of settling differences. Similarly, if we look to the law as a way of stabilizing the normative expectations of society, we need to be concerned if it moves into the controversial and unstable waters of politics or if the judgements of regulators blur the distinction between what is legal and what is not. We not only need to be concerned, we also need to think about how to monitor such developments and to apply corrective measures if necessary.
The purpose of this book is to examine this basic concern about the integrity of systems and how to maintain their integrity when systems are being used in constantly changing combinations in modern democratic governance.

**THE ABSTRACT AND THE PRACTICAL**

The concern about how to maintain the integrity of democratic governance when system inter-relationships are always changing appears very abstract. At a practical level we deal with these changes as they come. If markets fail or falter, we look to government to expand its role, for the law to prosecute those who abused their position in the market, and we applaud a new spate of regulatory activity. However, we ignore changes in underlying relationships at our peril. The difficulties now faced in Europe because of the crisis in the Eurozone can be seen as flowing from a decision to advance with monetary union ahead of political union. This creates a disjuncture between integrating economic systems and un-integrated political processes while professionals with unelected authority, such as those in the European Central Bank or the European Court of Justice, are somehow expected to hold the ring. There are profound social, economic and political costs flowing from this imbalance and costs to the rule of law as well.

Where to draw the line between the role of politicians, expert rule-makers and the law is not confined to the Eurozone. How to define the boundaries of different systems of authority is relevant to all democratic systems of governance and all systems of social ordering. In order to get relationships right between different systems of authority, we need to be able to place our practical reasoning within the context of more considered views about the values we associate with the different systems of social coordination.

**THE REGULATORY SYSTEM AS THE ENTRY POINT**

The challenge of how to examine changes in modern systems of governance and the underlying normative concern about the potential erosion of the integrity of different systems of authority is huge.

The discussion in this book deliberately avoids any direct engagement with current global economic policy concerns and debates. In recent years these concerns have changed from a preoccupation with the international financial crisis itself, to the weakness of the recovery process in the real economies of those most severely affected by the crisis, to concern that
the world as a whole is entering a new and prolonged period of slower economic growth. Specific examples pertinent to changing relationships between systems of coordination are drawn both from the financial crisis and the ensuing period of ‘austerity’. However, the discussion tries to focus on features of underlying relationships between systems that will endure even in changing economic circumstances. If the world is indeed facing a prolonged period of slower economic growth, governments around the world will be under even greater pressure to experiment with different boundaries between what is decided in democratic politics, what is looked to from the market and what should be regulated. The examples of changing relationships discussed in this book will remain relevant.

In order to restrict the field of inquiry and in order to make it more tractable, the analysis in this book approaches the subject from the vantage point of the regulatory system. In particular it uses the concept of the regulatory ‘space’ as an organizing concept for the discussion.

There are three main reasons for organizing a discussion of changes in systems of authority by focusing just on the regulatory space and its relationships.

First, regulatory activity cuts across all other systems. Looking at what is expected from regulation in relation to other systems thus provides a way of analysing some of the key features and developments within all systems, the changing relationships between systems and in patterns of governance.

Secondly, the regulatory space provides a way of talking about the normative issues involved in different systems of authority – why we should value them and what is unique to each form of authority. The reason why regulatory activity highlights normative issues is that there is a long history of discussion, going back at least to Montesquieu and Adam Smith, where the decision to regulate is treated as an ‘inferior’ form of social coordination and with the potential to impair the workings of other systems. In this tradition regulatory activity is seen as a menace to the market, a less preferred substitute for the spontaneity of social norms, dealing with less important public policies than those debated and resolved through politics, and the less significant issues of justice and fairness compared with those settled through the mobilization of the law. Examination of the perception that the regulatory system is in some way inferior to other systems of coordination is thus a way of opening up a discussion of the values we associate with different systems and how to think about their integrity from a normative perspective.

Thirdly, our reliance on the regulatory system as a means of social coordination seems to have been growing faster across the world than our reliance on other systems. The recourse to regulation seems to be the ‘cuckoo in the nest’ – reducing the scope, or ‘crowding out’, coordination
through other systems. The growth of regulatory activity thus provides a way of thinking about the dynamics behind the changing ways in which we rely on different systems and how far we should be concerned about these dynamics.

THE PROMISE OF THE APPROACH

It is a new approach to authority relations to look at the changing mix across all systems through the prism of regulatory activity, to make use of the concept of the regulatory space as a means of organizing a discussion of cross connections and to use social framing as a way to explore the connections in greater depth. What the new approach promises, however, is substantial.

First, the approach promises to shed new light on the status of the regulatory space itself. It offers a different perspective on the question as to whether we should regard regulatory activity as ‘inferior’ to other systems – at best a useful supplement or add-on to other more basic systems of coordination – or whether instead we should regard it also as basic to the organization of contemporary democratic societies to be treated on a par with the other systems. It also offers a different perspective on whether we should treat the regulatory system as ‘dependent’ and subordinate to other systems or treat it instead as causally connected but distinctive. What comes out of the analysis is first the importance of thinking of regulatory activity as providing an adjustment mechanism between different systems of authority. It also challenges us to think much more about the importance of ‘adaptive bias’ (bias that systematically favours what is known and familiar). The regulatory space has a key role in counteracting such bias.

Secondly, the approach promises to shed new light on the nature of the challenges to the integrity of the different systems of authority. It is all too easy to attribute these problems to regulatory activity itself as it ‘crowds out’ different systems in different ways. The cross connections illuminated by the concept of the regulatory space suggest that what may be generalized as ‘crowding out’ involves distinguishing between several very different effects. The analysis challenges us to think about the sources of ‘universal dysfunction’ that afflict all systems and the role of regulatory activity in addressing them.

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12 David Baldwin distinguishes between two meanings of ‘dependence’. The first is a causal sense. The second involves a relationship of subordination in which one thing is supported by something else or must rely on something else for the fulfilment of a need (see Baldwin 1980). The different senses of the term are discussed later in Chapter 8.

13 The term ‘universal dysfunction’ is drawn from Etzioni (1961).
In looking at how far the growth of the regulatory space is a challenge to the integrity of other systems, the discussion of cross connections focuses attention on the process of change itself. The analysis questions standard accounts offered by political science of the processes of change. It puts the spotlight on the complex dynamics of the interchanges between systems and the question of how far we can regard system changes as likely to be ‘self-correcting’. If boundaries are self-correcting, the changing mix of authority is not a cause for concern as systems will right themselves if their integrity is threatened. If they are not, we are challenged to think about monitoring and correcting mechanisms.

Thirdly, the approach sheds new light on the structure of monitoring and correcting instruments available to modern democratic societies. In particular it promises a different look at accountability. It requires a move from thinking about accountability in terms of the responsibility of particular actors for particular acts to thinking about accountability in systemic terms.

Regulatory activity has been seen traditionally simply as a technique to address specific and discrete areas of social concern. It also needs to be seen in systemic terms. In modern democracies the regulatory system has become the main way in which we adjust and reframe relationships between all forms of authority. In an interdependent world where governing practices are spread internationally through emulation and through deliberate lesson drawing, how the regulatory space is perceived and how the changing mix of authority is viewed and monitored in any one country will have consequences for governance throughout the world.

ORGANIZATION OF THE DISCUSSION

The book is organized in three main sections. The first three chapters look at definitions and approaches to analysing the regulatory space. They explain how the concept of the regulatory space is to be utilized as a way of organizing discussion of the cross connections between systems, why ‘social framing’ is to be used as the way to explore these cross connections in greater depth and what frames are to be chosen in order to explore the character of the different domains and the relationship with the regulatory space.

The next four chapters look at the relationship of the regulatory space to each of the other systems of coordination. Each chapter contains a further

14 Colin Scott notes ‘the regulatory space conception encourages us to rethink the nature of accountability’ (Scott 2001: 337).
introduction to the frames deployed, followed by a discussion of the key connections between the particular domain and the regulatory space. Each chapter concludes by looking specifically at what light has been shed on the question of integrity.

The final chapters make use of this discussion to draw general inferences. Two of these chapters are about the status of the regulatory space. They examine the charge that the regulatory space is in some way ‘inferior’ to other domains and can be treated simply as an ‘add-on’ to other more basic forms of coordination. They identify the distinctive property of the regulatory space as providing an adjustment mechanism for changes in the way in which modern societies rely on different systems of authority. They look at the dynamics of change and at how we can protect the integrity of the different systems of social coordination in a world where systems cannot be assumed to be self-correcting. The concluding chapter summarizes to what extent this new approach succeeds in shedding new light on system inter-relationships, including the status of the regulatory space itself, and the vulnerabilities of contemporary patterns of democratic governance.