

Putting Regulation Theory to Work in Industrial Relations

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Abstract

The main theme of the paper is that regulation theory is a valuable methodology for extending insights gained from studies in industrial relations to a richer understanding of complex societal change. The utility of the regulation approach is demonstrated through the use of a case study to highlight the changing role of the New Zealand state during restructuring in the 1980s. The specific case study is a series of industrial negotiations in the secondary school sector during 1987-1989 when state sector, industrial relations and education legislation changed radically. The analysis is then extended to encompass and elucidate some trends in education industrial relations at the present time. It is argued that regulation theory then serves to connect industrial relations to a wider social science research programme.

Introduction

Between 1987 and 1989 was a time of great change in the role of the state in New Zealand as a consequence of the Fourth Labour Government initiating wide-ranging economic and social policy reforms. A case study highlighting the complex industrial relations that occurred within the state sector during this time was selected for analysis (Simpkin, 1992) and will be reported in this article. The case study focuses on a series of negotiations between the State Services Commission (SSC) and the Post Primary Teachers' Association (PPTA) during the period 1987-1989. The negotiations were concerned primarily about education restructuring, which in turn was as a subset of both state sector restructuring and industrial relations restructuring. These waves of restructuring involved a shift in the governance structures of the state.

Walsh (1990) had earlier analysed these negotiations as well as those of the primary teachers' union, the NZEI (New Zealand Educational Institute) and noted that:

The negotiations for the primary and secondary teachers' awards in 1989, and their aftermath, were tortuous affairs, which ranged over a wide array of issues. The negotiations themselves unfolded in complex and halting patterns, punctuated by bursts of industrial action, offers of compromise, sometimes later retracted, and, above all, long and numbing bargaining sessions. They were marked by acrimony, by accusations of bad faith and on many occasions by a sense of genuine outrage on both sides that is not often found among professional industrial negotiators. (Walsh, 1990:8)

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In order to provide a sufficient account of the negotiations, the analysis needed to first, encompass discussion of the role of the state and a description of the process by which this shift occurred. Second, the analysis needed to explain the intricate interweave of industrial relations, state sector and education restructurings that threaded through the negotiations within the context of economic, political and social change. Third, during the negotiations, two separate economic and social discourses came into conflict across the bargaining table; one was a neo-liberal discourse and the other was the Keynesian Welfare National State (KWNS), (which was in the process of being replaced). The analysis, therefore, needed to encompass these discursive differences in some way. Fourth, as a group secondary teachers were opposed to the restructurings and thus the outcome of the negotiations meant that those teachers who were opposed to the reforms exhibited an entrenchment of values. Hence, the analysis also needed to be able to deal with agency. The combination of these requirements for analytical complexity proved a challenge for the efficacy of conventional approaches to industrial relations.

To portray the negotiations in greater depth, a theoretical tool was needed that could integrate a discussion of the economy and society and their change in a particular time and place. To analyse the institutional setting, to which the reforms were impacting on, the tool also needed to be able to take into consideration a longer timeframe than just the negotiations themselves. Some of the positions adopted at the table could only be explained by their evolution over time within a professional setting. The tool also needed to be able to consider value or belief systems. The final measure of success of the tool would be that it possessed some predictive power past the events of the case study themselves.

In the event, the application of the principles of French Regulation Theory to the case study provides a powerful tool for teasing out the complexities and allowing the interweave of different levels of analysis to arrive at a necessary and robust explanation of events at that time. Regulation theory provides an approach that emphasised the mutual interdependence of the economic, political and social changes. This meant that none took precedence and the case study demonstrated change as a complex matter involving agency that produces different outcomes in different places and different times.

Regulation Theory and Concepts

French Regulation Theory evolved from Aglietta's 1976 seminal work, *A Theory of Capitalist Regulation: The U.S. Experience*. It developed as a reaction against Althusserian Marxism. Althusserian structuralism rejected all idea of the subjectivity of individuals who could, through consciousness, reason and free will, affect social development. Although Althusser also rejected economic determinism, he substituted for it the concept of a complex structured whole that took causal priority over its economic, political and ideological parts. Individuals were simply passive supports for self-reproducing social relations (Althusser, 1971, 1996). French regulationists found Althusserian Marxism deficient in that economic structures were analysed as self-sustaining without effective social agency (Jessop, 1990).

Early regulation theorists engaged with economics from a neo-Marxist position but were mindful of the social processes that secure capitalist expansion within any

specific society. That is, there is not ‘one’ capitalism that needs explaining; rather there are capitalisms whose development “... is always mediated through historically and culturally specific institutional forms, regulatory institutions and norms of conduct” (Jessop, 1990:309). The close connection and the interaction of the economic, political and social dynamics within traditional Marxism is retained but the regulationist concepts of accumulation regimes and modes of regulation are produced by struggle and do not determine outcomes. Nor is there a simple correspondence between the economic and the institutions that exist alongside it. Institutions are created out of past, present and future struggles. In other words, the regulation approach tracks continuities and discontinuities embedded in this complex, dynamic interplay of the economic, political and social.

Jessop has applied the work of the regulationists to the state (1990) and to public policy and governance (1994; 1995). He rejects essentialist notions of the state (the state is an ideal collective capitalist) and also avoids treating the state as a simple instrument and/or an autonomous subject of capitalism. He argues that theories that view the state as managing the tensions and contradictions in regulation can be reductionist. Also, theories that describe the state as having to manage the tension and contradictions in order for capitalism to proceed can be functionalist. In his view, the state is part of the mode of regulation and must itself form an object of study.

Boyer (1990) discusses the method by which concepts of the regulation approach can be put to use in empirical situations. He suggests examining the social relations that display continuity and fall within the logic of existing forms and contrasting them with the discontinuities that comprise the constitution of new institutional forms in order to explore the possible transition between two regimes of accumulation. Boyer’s institutional forms act in three ways. First, through laws, rules, and regulations. Second, through reaching a compromise, after negotiations, and third, through the existence of a common value system or at least common representations of reality.

These principles proved useful in analysing the PPTA case study, in which Dale (1990) has reproduced the different levels of analysis in a diagram. The figure is an attempt not only to separate out conceptually the different levels of analysis which the regulation approach can give rise to, but it also attempts to place the study of education within each of the levels of analysis. Dale argues that little is known about the interconnection between the economy and regulation of it *and* education policy and the regulation of it. This gives rise to questions, such as how does change in one bring about change in the other? Why should institutional change tend to be all in the same direction? The state provides one explanation of a unifying factor. However, as the case study demonstrates, the state itself is not always coherent. At the end of the negotiations, the teachers who were part of the state remained committed to the values of the KWNS which were more entrenched as a result of their fighting to take issue with the reforms.

Figure 1: Levels of Analysis

A. The World	B. National Economic & Social Formation	C. National Politics	D. The Politics of Education	E. Education politics
A1. World economy. A2. International system of state. A3. 'Carriers', Multi-National Corporations: International organisations. A4. Regimes of accumulation.	B1. Modes of regulation. B2. Historic bloc.	C1. The political settlement: (a) The entitlement/provision balance. (b) Constitutional forms. (c) Modes of interest representation. (d) Modes of political rationality. C2. The role of the state.	D1. The sources of education policy D2. Education as a mode of regulation (social foundation of economic power). D3. The scope of education.	E1. The contradictions of education policy. E2. The pattern of education policy.
ABC: The terrain of the state. BC: The national settlement. CD: The education settlement.				

Source: Dale, 1990:34

Some explanation of the terms “the regime of accumulation” and “the mode of regulation” is necessary as these concepts are not necessarily mutually exclusive. For example, “the regime of accumulation” and “the mode of regulation” can be regarded as different lenses through which to view the complex interaction of the economic, political and social. Three excerpts from prominent users of the terms are included here to provide an overview of the terms.

Harvey (1989:121) succinctly portrays the interrelationship between the concepts of regime of accumulation and mode of regulation, as well as the comprehensive sweep of their scrutiny.

A regime of accumulation describes the stabilization over a long period of the allocation of the net product between consumption and accumulation; it implies some correspondence between the transformation of both the conditions of production and the conditions of reproduction of wage earners. A particular system of accumulation can exist because its schema of reproduction is coherent. The problem, however, is to bring the behaviours of all kinds of individuals – capitalists, workers, state employees, financiers, and all manner of other political-economic agents – into some kind of configuration that will keep the regime of accumulation functioning. There must exist, therefore, a materialization of the regime of accumulation taking the form of norms, habits, laws, regulating networks and so on that ensure the unity of the process, i.e. the appropriate consistency of individual behaviours with the schema of reproduction. This body of interiorised rules and social processes is called the mode of regulation.

Boyer (1990:35) defines “a regime of accumulation” as the set of regularities that ensure the general and relatively coherent progress of capital accumulation. The mode of regulation exists alongside the regime of accumulation and includes processes and individual and collective behaviours that serve to complement the regime. There is nothing determined about the mode of regulation, but for any regime of accumulation to exist, the historical institutional forms of the mode of regulation must be compatible, otherwise the forces of social interaction would not allow a system to become stable.

Amin (1994:8) uses less abstract terms in discussing the regime of accumulation and the mode of regulation.

[The regime of accumulation] includes norms pertaining to the organization of production and work (the labour process), relationships and forms of exchange between branches of the economy, common rules of industrial and commercial management, principles of income sharing between wages, profits and taxes, norms of consumption and patterns of demand in the marketplace, and other aspects of the macro economy. ... [The mode of regulation] refers to institutions and conventions which ‘regulate’ and reproduce a given accumulation regime through application across a wide range of areas, including the law, state policy, political practices, industrial codes, governance philosophies, rules of negotiation and bargaining, cultures of consumption and social expectations.

Analysing the Case Study

Teachers[†] confronted a situation of considerable complexity, structured by legislation in a context of the rapidly changing landscape of public policy under the Fourth Labour Government. Legislation followed the publication of proposed policy changes to the framework under which the pay and conditions of state servants were negotiated (Rodger, 1986). In education, the Picot Report (Taskforce to review educational administration, 1988) and the *Tomorrow’s Schools* policy document (Lange, 1988) led into legislated changes to the administrative framework of schools which altered the positioning of teachers in relation to the state. Each fresh piece of legislation forced teachers to negotiate radical changes to the environment in which they worked and to their pay and conditions. These negotiations lay at the centre of interaction of old and new ideas about the practice of education as part of the state project. Through the application of regulation theory to the case study, the process of change and the encounter of two different approaches to the proper involvement of the state in governance of the political economy are made transparent.

The PPTA experienced a number of industrial successes through the years 1984 to 1987, in the closing days of an education system located within the Keynesian Welfare National State (KWNS). The confidence these successes gave the union and the structures put in place to achieve them were then turned strategically into defensive industrial positions in the face of radical restructuring by the Government.

[†]The term teacher will be used to denote secondary teacher throughout the paper. This is in the interests of brevity and is not intended to subsume primary teachers as well. A similar analysis could be undertaken of the New Zealand Education Institute (NZEI) negotiations of the same period.

The series of negotiations in 1987-1989 between the SSC and the PPTA were associated with the discontinuity of legislation for new personnel and industrial relations regimes. The SSC was not only legislatively responsible for negotiating with the PPTA on the Government's behalf, but it was also responsible for restructuring the state sector in support of neo-liberal goals.

The particular case study was chosen because it possessed some distinctive features. First, it provided the opportunity to consider the response made by a group of professionals to a radical programme of state restructuring, underpinned by a neo-liberal agenda. Second, the PPTA opposed much of the policy reform from a discourse situated firmly from within that of the KWNS. It was outspoken in this opposition and either protested or mounted industrial action against many of the proposals. The initiating reforms were contested and the result was the outcome of a rebellious struggle rather than the imposition of an ideology on passive recipients.

Third, the case study entails a number of separate negotiations where the difference between two discourses was evident. The bargaining table in industrial negotiations is always the site of struggle between differing interests but those in this case study saw the negotiation and struggle in a material sense over the vision of education that would prevail in the future. The negotiations were a conflict over the education principles of the KWNS as expressed by teachers through their negotiators and supported by industrial action, and new principles of education as contained within the discourse of neo-liberalism, expressed by the SSC, the government's negotiating body. The bargaining table, therefore, became a means of deconstructing the discourse of each other. Because of the PPTA's opposition, the bargaining table served to highlight the magnitude of the differences between the old and the new perspectives.

Fourth, the case study was situated within the state and the process by which change occurred could be observed. All of these features could be drawn upon to address the question of how change could be achieved within the New Zealand state in support of a new project when, a short time previously, the project lay within the principles of the KWNS.

The analysis of the industrial relations environment did not mount an ideological critique of the negotiations. Rather, the process was observed in order to establish key continuities and discontinuities with the past. The reforms were not viewed as a sudden break with the past. That is, the teachers carried aspects of the past with them when confronting the reforms resulting in a different outcome from the intent of the reforms because of that interaction. The real differences between the interacting discourses, however, were not analysed, especially as the parties themselves did not resolve them.

There was a strong partnership in education between the Department of Education, the PPTA, and sometimes the Minister of Education at the beginning of the period. This was regarded as a positive part of education in the KWNS. The theory behind the policy reforms labelled this partnership as "provider capture", the result of self-seeking behaviour on the part of bureaucrats and teacher practitioners[‡]. The interaction of the two opposing views produced a shift in the form that education was

[‡] For a comprehensive analysis of provider capture, see Bertram (1988)

to take from that point on. Although the teachers did maintain theoretical and practical opposition to the changes and retained significant material ground in terms of pay and conditions as a result of the struggle, the outcome still represented a repositioning of teachers from central and influential players in education policy, to having only a marginal influence over education solely as employees of individual Boards of Trustees, with views confined to the classroom.

Figure 2: Structural Adjustment in New Zealand

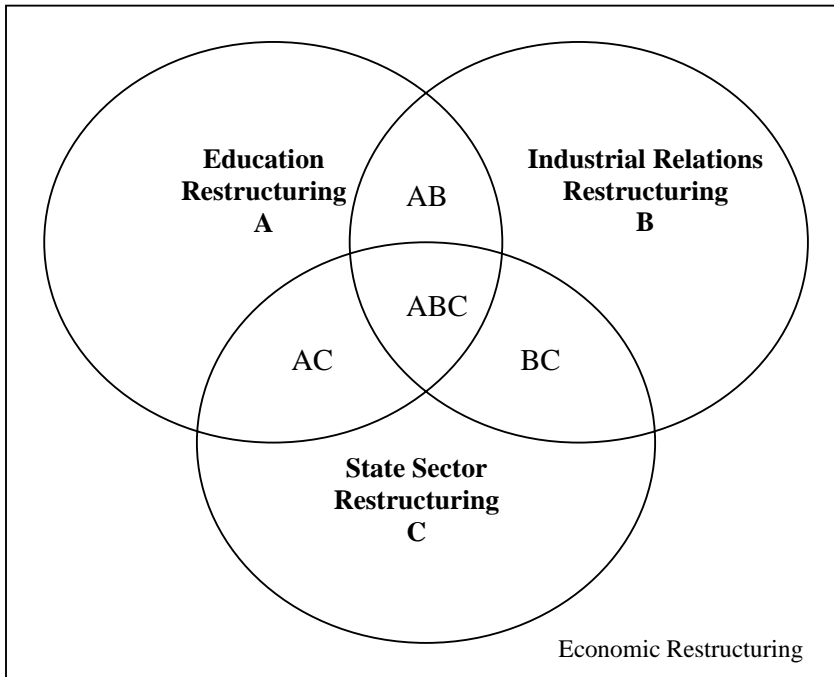


Figure 2 represents the interweave of analysis in which the three overlapping areas, A, B, and C, (the spheres of influence in the case study) are also represented in Figure 1. Each sphere contributed to the events of the case study and the analysis traced the historical development of each sphere of influence. The rules for conduct of the negotiations, the respective roles of the parties and their rights and responsibilities were all changed. Almost no aspect of previous structures and processes of the sites were left unchanged.

All the areas containing A represent the education area in which the PPTA had been influential and was regarded as its proper sphere of influence. The intent of the government's policy proposals was to confine the PPTA to a union role only in the AB area and ABC area, the overlapping part of education and industrial relations. After the *State Sector Act, 1988* had taken effect, the only relationship the PPTA could have with the rest of the state was in its role as a union and only over industrial relations matters. It is in the central point of intersection, ABC, that the full complexity of the case study is observed.

The Ideological Component

Boyer identified the need for a common value system as a requisite for stability. This was borne out in the analysis of the case study, which soon identified ideology/discourse as important elements in a number of ways. One way was the very strong theoretical justification for the reforms, initiated by the Treasury, which gave rise to policy documents from 1984 that displayed a neo-liberal discourse towards economic and social analysis that had not previously been part of official policy papers (Treasury, 1984, 1987). As noted above, the discourse of teachers was situated within the values of the KWNS. The interaction of these two discourses at the bargaining table was palpable and was more instrumental than pay and conditions considerations in determining the difficulty of arriving at negotiated outcomes. Thus, the institutional change in this case study was as influenced by discursive interaction as it was by the material practice involved in industrial relations. The greatest continuity through the case study was the continued commitment of teachers to the educational values of the KWNS. The cause of discontinuities arose from the changed discourse of official government bodies that enabled previously concealed tensions within education under the KWNS to become transparent and develop.

The KWNS is used here as a summary adjective for the discourse of teachers that pertained throughout the duration of the KWNS. For New Zealanders, the values of education in the KWNS have repeatedly been related to the well-known words of Peter Fraser, who, as Minister of Education, made his annual report to Parliament in 1939.

The Government's objective, broadly expressed, is that every person, whatever his level of academic ability, whether he be rich or poor, whether he live in town or country, has a right as a citizen, to a free education of the kind for which he is best fitted, and to the fullest extent of his powers. So far is this from being a mere pious platitude that the full acceptance of the principle will involve the reorientation of the education system.[§]

International research and literature in education, particularly those of the UK and the US, overlay this part of the discourse that arose from within the society itself. The major trends of educational discourse worldwide opposed the neo-liberal approach to education and were available to New Zealand teachers.

Thus, while a consideration of discourse was an essential supplement to the tools normally associated with the regulation approach, once embarked upon, its consideration worked well with the regulation approach and seemed to arise naturally from it. This pre-dated the use of the term cultural political economy by Jessop (2004).

[§] New Zealand Parliament. House of Representatives Appendices to the Journals, E1, pp. 2–3, 1939. Cited in Alcorn, 1999.

State Sector vs Private Sector Industrial Relations

The regulation approach, particularly in the treatment of the state, also elucidated the factors that make state sector industrial relations different from private sector industrial relations. State sector industrial relations treats public servants as conceptually outside the state in their employment relationship. This has acted to obscure their very real participation in the project of the state.

The application of collective bargaining to state servants involves pretence at conflicting interests of employer and employees. While this may be true over pay and conditions, it is counterproductive for the two to be in conflict over the project of the state. This plays out in a different way in the core state sector than it does in the larger education and health enterprises. Teachers are at an extra remove from their employer than are those in the core state sector. Since the 1980's, it has been possible for the bargaining representative of government to engage with the collective bargaining representative of teachers without explicit regard for the state project in which teachers are involved. The state is therefore in continual conflict over education because of the 'fictitious' employer status conferred on one part against the very employees that are entrusted to interpret and put into practice the state educational project. As a result of confining teacher input into education within the industrial relations arena since 1989, the New Zealand state has imposed on itself a continuing conflictual relationship between the government and teachers that is not capable of resolution.

The term 'fictitious' is used in a similar sense to the way in which it is used by Jessop (2002) to describe labour power as a 'fictitious' commodity. Labour power cannot be separated from the human to whom it is attached and as such cannot be a real commodity in the way this is commonly understood. Similarly, an employer in the state sector can be a 'fictitious' employer only. The employer in the private sector is a corporate entity. Only one of the functions of the firm is that of employment. The firm's *raison d'être* is to define its product, to balance its accounts taking into consideration all the costs of production and to create a profit. One of the costs of production is the wages bill. The employer in the state sector does not deliver a profit or, if it does so, can only do so within prescribed boundaries. Therefore, employees are not employed out of the profits of the organisation, nor does the realisation of value and its relative distribution apply to a state sector employer.

The case study highlighted the fact that teachers experienced bargaining as both a concentration of the pressures for change and the only forum in which they could express their outrage at the assault on the values they had previously assumed in support of the state project in education. The investigation examined changes in institutional forms during the period 1984–1989. It was particularly illuminating within the regulationist framework of Boyer and his categorisation of the three ways in which institutional forms work. Here we had a situation in which government changed laws, rules, and regulations in state sector industrial relations, in education industrial relations, and in the project of education itself. First, the *State Sector Act, 1988* introduced the principles of managerialism to the state sector. It also made all state servants subject to the same pay fixing legislation as workers in the private sector, the *Labour Relations Act, 1987*. Later, the *Tomorrow's Schools* changes to legislation defined teachers as employees of the local Board of Trustees. Some of the

components of the *Tomorrow's Schools* changes became items for negotiation, and also affected the context in which that bargaining occurred.

While Boyer did not intend the use of the term “negotiation” in the restricted sense of bargaining, this formal bargaining process provided an opportunity to view contestation in a tangible sense. During this bargaining, exchanges across the table demonstrated that two different and opposing value systems were operating, often resulting in industrial conflict. That it did so should not be surprising when the compromise of the KWNS was disintegrating.

While the negotiations during this period involved an ideological dimension, it was the negotiations of 1989 where the ideological battle culminated. The bargaining involved only four issues discussed over 34 days of formal negotiation. The matter of fixed-term contracts of employment for principals became non-negotiable for both the SSC and the PPTA because agreement could not be reached – the SSC supported it and PPTA opposed it. After this claim and the associated claim for flexibility of pay were removed from the table at the end of Stage 1, the PPTA was adamant that as much as possible of the previous system relating to teacher competence and discipline would be retained in their Award. These related to their professional project developed over thirty years. The SSC was equally adamant that as little as possible would be retained. That it was those four particular issues that became the focus was not accidental. For both parties, they were symbolically and materially representative of a different point of view towards education as a state activity. The SSC point of view stemmed from the principles of neo-liberalism. These assumptions were the self-interested nature of the individual and the need for incentives and sanctions to produce high performance. Also, teachers were defined as middle class capturers of the resources of the state. The PPTA point of view had been developed in the education settlement of the KWNS, with assumptions and principles stemming from that. The emphasis for them was on societal integration of workers into the total state project, with education as a societal good as much as an individual good.

The exhaustive and exhausting nature of the encounter demonstrated the utter incompatibility of the two approaches. The PPTA was prepared to forgo the usual rewards of bargaining in terms of pay and conditions in order to defend an approach to education fundamentally at odds with the one it had known. The two parties struggled to find some ground for compromise that is usually the stuff of bargaining. The fact that they failed provides evidence that the approach to the operations of the state implemented by the Fourth Labour Government was radically different from the one that went before. While this has been acknowledged from the beginning of the change, the 1989 negotiations between the SSC and PPTA provides an opportunity to appreciate the scale of the incompatibility and to look at the implications. At the conclusion of the negotiations, the Government legislated across the outcome of the properly concluded negotiations and introduced fixed term contracts for principals anyway.

Although this was a bitter blow to the PPTA, the values of secondary teachers were left intact. They positioned themselves to continue to fight against proposals that they believed would be detrimental to secondary school education as they knew it. In so doing, they not only opposed the new ideas, but also refused to reach any accommodation with them. By the end of the negotiations, the KWNS educational settlement was at an end along with the legislation and regulations that had supported

it. But the values of the settlement were not forgotten and entered the structures of *Tomorrow's Schools* with the teachers. While change was occurring in both the regime of accumulation and the mode of regulation, by the end of 1989, (the time period of this case study), stability was still a long way off.

The regulationist analysis arrived at a level of explanation that portrayed the complexity of events. The negotiation of pay and conditions was not a focus. The regulatory framework was. The outcome was not predictable. The shift was contested. Secondary teachers asserted their values through their professional organisation, the PPTA. The values that were expressed partly reflected those of the KWNS in which education had operated, and in part reflected the relative autonomy of the classroom from state interference. The tensions inherent in education were exacerbated by the project of the Fourth Labour Government. The result was not pre-determined. In this case, teachers encountered in industrial negotiations a proposed regulatory framework that had not yet become the future. They met it with the educational and social values of their present and past.

The implication of this for the development and shaping of a binding ideology for schooling was profound. Schools education, as part of the mode of regulation, was after 1989 cut off from regular contact with the new ideology that informed many other parts of the state. While the central agencies of the new educational structures were operating according to the principles of neo-liberalism, policy implementation was in the hands of school Boards of Trustees which of necessity relied on guidance from the principal and teachers. Teachers, with their different values, were not forced into "negotiation" initially with the new ideas on a daily basis. This meant that schools education for a time remained outside the alignment and mutually reinforcing coherency of the policy application elsewhere in the state.

In this particular case, the loyalty of the teachers was still towards the KWNS state project in education. The usefulness of this had been superseded by another regime and state regulation of it. The answer to the question of how does change occur in the state must be, in this instance, not all at once, it takes time, and the change may not be in the direction that was intended. For schools in New Zealand, the Fraser myth continued into the new regime, one that made it difficult for the myth to change due to the isolation of teachers in their new positioning.

Extending the Analysis

There has been continued turmoil and instability in industrial relations in the schools sector since 1989. Treating teachers as though they are outside the state and not part of the creation of the state project for education is problematic. In education this, combined with the creation of a 'fictitious' employer in a form distinct from the rest of the state sector, has produced a sector that is evolving away from the intent of the *State Sector Act, 1988*. While the ultimate destination is not yet clear, analysis of recent developments in the schools sector bears out this argument.

At the time the *State Sector Act, 1988* was introduced into Parliament, there was little if any debate in the union movement over the desirability or otherwise of placing state sector workers under the same legislative framework as private sector workers. This aspect of the *State Sector Act* was not contested, (although the politicisation of the public service was), despite the need for the *State Sector Act* to define what the

market proxy would be. Finding suitable market proxies by which the legislatively determined employer and union can enter into bargaining has been a focus for state sector industrial relations in New Zealand since free wage bargaining was introduced. The *State Services Conditions of Employment Act, 1977* used relativity with the private sector as the market proxy. Arguably, this, combined with the KWNS partnership between the Department of Education, the PPTA and the Minister of Education, was better suited to the state project for education than the present. This is not to say that the previous system had no faults or tensions. It did have tensions, not least the exclusion of parents from education. For the bulk of the state sector under the *State Sector Act*, the market proxy used has been that of Departmental budgets.

For Departments, the employer was defined as the Chief Executive Officer (CEO). In health, separate Health Boards were split off from each other under the employer, again the Chief Executive Officer. The government of the day gives the CEO of a Department the task of managing one of the services of the state within a budget amount decided by Government. The wages bill of employees must be one of the allocations against this budget line. The case of schools education was very different due to the devolution of control over schools to the level of individual Boards of Trustees, the delay in devolving teacher salary budgets to the level of individual schools, and the resultant continuation of national collective employment agreements for teachers.

As argued earlier, the ‘fictitious’ employer in schools has proved particularly difficult because the structures of education differ from those of other parts of the state. Schools did not become a bargaining unit, partly because teacher salary budgets were not devolved to individual schools. Bargaining over wages and conditions has remained national. The Government’s bargaining agent for the national collective agreement was the SSC for the larger part of the 1990s. It then shifted to the Ministry of Education in the late 1990s. Bargaining occurred under the provisions of the *Employment Contracts Act, 1991* through the 1990s. Unlike other unions in New Zealand at this time, the harsh nature of that Act had less effect on bargaining than did the exclusion of teachers from the education project of the state. During this period, comprehensive changes to the national curriculum and assessment took place. Teacher input to these policy changes was excluded. Policy development was the exclusive preserve of the Minister and his central agencies. There was only one forum therefore in which teachers could make their influence felt and that was in collective bargaining. Their ‘fictitious’ employer was either the SSC or the Ministry of Education, the central agency that coordinated other agencies over educational policy. Difficult and equally or more abrasive negotiations to those of 1989 have been a feature through the 1990s and the early part of the 2000s.

The last set of negotiations in 2004 for the renewal of the Secondary Teachers’ Collective Employment Agreement demonstrated that the Government was ready to recognise that an industrial relations regime for schools that excluded teachers did not work. The provisions that were being negotiated were related to educational issues and education policy makers were present at the table. While this is not yet a sign that the structures will be changed to allow for teacher input into the state project for school education, it is a sign of recognition that there may be advantages in bringing the state project momentarily into the industrial relations forum. The round was therefore appreciably more peaceful than it had been for over fifteen years.

There is an additional ‘fictitious’ employer in schools – namely the Board of Trustees. The local Board of Trustees was defined in the *Education Act, 1991* as the employer for teachers in areas relating to hiring and firing, disciplining and performance, and implementation of some, particularly non-financial, aspects of the national Collective Employment Agreement. However, they currently do not have control over staff budgets except for those of support staff. For support staff, the constraint of the operational budget supplied by central government acts as for other departments as a market proxy. For teachers, the powers of the Board of Trustees are limited to personnel management.

However, even those employer powers that the Boards of Trustees currently have are showing signs of erosion. The separate and increasing powers of the Teachers’ Council (TC), the New Zealand Qualifications Authority (NZQA), and the Education Review Office (ERO), combined with the increasing frequency of dismissal of Boards of Trustees by the Minister are undermining the employer powers that Boards of Trustees currently possess.

The NZQA has powers of recognition of all qualifications. Although the Teachers’ Council decides whether individual teachers shall receive provisional registration in order to enter teaching, the NZQA exerts control over the level at which particular qualifications are recognised and thus, whether they qualify the individual for consideration for registration. This particularly applies to the entry of those people with overseas qualifications. Boards of Trustees are therefore constrained as to who they can employ as a teacher as it is the NZQA who decides whether qualifications are at a suitable level. The TC then combines this with other factors in a decision as to whether or not to award provisional registration. Boards of Trustees may employ those who are provisionally registered only, except in circumstances that the TC may approve.

The Education Review Office (ERO) also exerts powers of control over quality standards in schools. The quality of teaching, the standard of what is taught and Board compliance with Governmental policies are all monitored and assessed by ERO. ERO can be asked to assist the Minister and Ministry of Education in reporting on standards before a decision is made as to whether a Board of Trustees should continue in control or not. This occurred in the recent case of Cambridge High School.

The Ministry of Education, however, still has primary responsibility for the interpretation and the administration of a large number of clauses in the Collective Employment Agreement. While nominally Boards have certain powers, for example, over approving leave for individual teachers, the Ministry still constrains these powers via administrative control over the relief teacher budget. Even in matters relating to performance, the professional standards criteria in use were decided and negotiated by the Ministry of Education.

The Teachers’ Council has been the central agency that has made the biggest inroads of all into circumscribing the powers of the Boards of Trustees to hire and fire. This is surprising, given that the Council is funded and nominally run on behalf of teachers. However, recent legislation has given wide-ranging powers to the TC to investigate and decide on disciplinary offences and competency matters, even if a Board of Trustees has dealt with the matter before. Thus, via the ultimate sanction of

deregistration, the TC, which stands outside the current Teachers' Collective Employment Agreements, can effectively dismiss teachers. The TC can override a decision by a Board, arguably the closest and most effective decision-maker over the behaviour and performance of teachers.

Thus, the 'fictitious' employer structure at schools' level seems to be in the process of being eroded. To claim back the powers originally devolved to the Boards of Trustees would require more political will on their part than they have ever exerted. To diminish the powers of the central agencies of NZQA, ERO, the Ministry of Education, and the Teachers' Councils would take political will on the part of a Minister of Education almost equivalent to the original restructuring. At the level of bargaining, the way seems to have been opened for the national collective employment agreement negotiations to be used as a forum for more than pay and conditions. However, here it would only take a determined Minister of Education to return to an environment where teachers are again excluded from discussing anything but pay and conditions. This would, however, mean a return to difficult bargaining rounds.

Conclusion

It has been argued that regulation theory was both a valuable and necessary tool in teasing out the consequences of the 1980s changes to the governance of education in schools through an industrial relations site. In particular, it drew attention to an ongoing instability in schools and associated industrial relations caused by teachers' ongoing commitment to the values of the KWNS and their exclusion from input into the state project for education. This is useful in analysing trends in the sector. The instability has resulted in strains on the structures set up by the *State Sector Act, 1988* and the *Education Act, 1989* and these have begun to undermine the employer powers of Boards of Trustees. The consequences for secondary education and industrial relations in the schools sector are still not clear.

Regulation theory was not only a useful tool in analysing this set of negotiations, but it also served to connect disparate political, social and economic influences with the industrial relations setting. The players in the negotiations were seen as embedded in political and educational contexts. The SSC was an arm of the reforming government intent on implementing a new discourse about public policy, including education. The PPTA's membership was committed to preserving the best in educational principles as they saw them. One was intent in effecting a rupture with the past, the other in defending education as they knew it. The specific set of negotiations was only one aspect of a more significant whole. Thus, the industrial relations event could be used to interpret other occurrences in society at the time, rather than just the event itself.

Applying the regulation theory sheds a different light on industrial relations. That is, rather than foreclosing on the case study and analysing just the players, events, issues and outcomes, it is possible to take a longer view of case studies and adopt a perspective whereby each case study has a history and a future embedded in the social relations to which the case study contributes. This is not to dismiss traditional industrial relations analyses but rather to indicate the potential for more complex analyses as opportunity arises. Regulation theory provides a tool for exploiting this and works two ways. One is that industrial relations can draw on and include insights

gained in other disciplines more directly. The other way is that other disciplines can benefit more directly by embedding industrial relations events in a broader social context.

In traditional industrial relations, levels of analysis are often artificially truncated in order to keep the field of focus narrowed. Using regulation theory, each level has its own richness of understanding which, if collapsed, loses that richness. If closure is the desired outcome, then obviously the regulation approach tool would prove unnecessary. The regulation approach does not negate other approaches, but can enrich them. In addition, although this particular case study was about education within the wider state sector, potential exists for its application to the private sector.

While space does not permit a comprehensive discussion of possible criticisms of regulation theory, it is important to acknowledge that this approach is not without its critics. One criticism that has been mounted is that the approach is a description, not a theory (Boyer, 1990). For this author, however, the theory provided a method of analysis that allowed for considerable complexity and layers and also provided a tool with some predictive power as well.

REFERENCES

Aglietta, M. (1979). *The theory of capitalist regulation: The American experience*. London: New Left Books.

Alcorn, N. (1999). *'To the fullest extent of his powers': C.E. Beeby's life in education*. Wellington: Victoria University Press.

Althusser, L. (1971). *Lenin and philosophy and other essays*. London: New Left Books.

Althusser, L. (1996). Translated by Ben Brewster. *For Marx*. London, Verso.

Amin, A. (1994). *Post-Fordism: A reader*. Oxford: Blackwell.

Bertram, G. (1988). Middle class capture: A brief survey. In *The April Report: Future Directions, Vol. III, Part Two* (pp. 110–170). Wellington: The Royal Commission on Social Policy.

Boyer, R. (1990). *The regulation school: A critical introduction*. New York: Columbia University Press.

Dale, R. (1990). Regulation theory, settlements and education policy. In L. Gordon & J. Codd, *Education policy and the changing role of the state* (pp. 33–44). Proceedings of the New Zealand Association for Research in Education Seminar on Education Policy. Palmerston North: Delta, Department of Education, Massey University.

Harvey, D. (1989). *The condition of postmodernity: An enquiry into the origins of cultural change*. Oxford: Basil Blackwell.

Jessop, B. (1990). *State theory: Putting the capitalist state in its place*. Cambridge: Polity.

Jessop, B. (1994). The transition to post-Fordism and the Schumpeterian workfare state. In R. Burrows & B. Loader (eds), *Towards a post-Fordist welfare state* (pp. 13–37). London: Routledge.

Jessop, B. (1995). The regulation approach, governance and post-Fordism. *Economy and Society*, 24(3), 307–333.

Jessop, B. (2002). *The future of the capitalist state*. Cambridge: Polity.

Jessop, B. (2004). Critical semiotic analysis and cultural political economy. *Critical Discourse Studies*, 1(2) 159-174.

Lange, D. (1988). *Tomorrow's schools: The reform of education administration in New Zealand*. Wellington: Government Printer.

Rodger, S. (1986). *Pay fixing in the state sector: A review of principles and procedures in the fixing of pay and associated conditions in the New Zealand state sector*. Wellington: Government Printer.

Simpkin, G. (2002). *Moments of rupture: Changing the state project for teachers: A regulation approach study in education industrial relations*. Unpublished Doctoral thesis, Victoria University of Wellington, Wellington.

Taskforce to Review Education Administration. (1988). *Administering for excellence*. Wellington: Government Printer.

Treasury. (1984). *Economic management*. Wellington: Government Printer.

Treasury. (1987). *Government management: Brief to the incoming government 1987. Volumes I & II*. Wellington: Government Printer.

Walsh, P. (1990, August). *Conditions of employment in Tomorrow's Schools: Industrial relations and personnel policies in the education sector*. Paper presented to the Second Research into Education Policy Conference, New Zealand Council for Educational Research, Wellington.