GOVERNING WORK AND EMPLOYMENT: INSTITUTIONAL CORROSION AND (RE)CONSTRUCTION IN AN INTERNATIONALISED, MULTI-LEVEL SETTING

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Constrained capacity of national institutions

From above
- growing internationalisation of economic activity undermined closure on which national regulation relied to be effective
- increased possibilities for employers to escape national regimes

From below
- political and economic pressures for decision-making to move downwards to regions, territories and localities and (within sectors) to firms
- regulatory impact of national institutions increasingly qualified

Focus on challenges of internationalisation, invoked by four types of cross-border flow
- capital, particularly multinational companies (MNCs)
- labour i.e. migration and posting
- goods i.e. trade in finished and semi-finished manufactured products
- services
corrosion of national-level institutions, and some long-established institutions at international level, and the construction of new institutions, and reconstruction of existing ones, involves:
- innovation and experimentation by new and established actors
- differing types of gradual change (Streeck and Thelen)

emergent and new institutional arrangements at international level are in addition to, and not in place of, existing institutions and regulation at national level
- gives rise to further complexity associated with multi-level governance (MLG) arrangements

identify four challenges confronting MLG arrangements in an internationalised setting
Illustrative reminders …

- capital mobility: concession bargaining in the face of MNC threats to relocate or offshore
- labour mobility: poor enforcement of minimum wages, collective agreements and/or health and safety laws e.g. low wage sectors in industrialised countries, construction of stadia for 2022 Qatar soccer world cup
- trade in products: conditions under which mass consumer goods for western markets produced in industrialising countries e.g. suicides at Foxconn in China, Rana Plaza disaster and factory fires in Bangladesh
- trade in services: disruption to national collective bargaining and industrial action conventions brought by European Court of Justice decisions elevating freedom to provide services (across borders) above labour rights

Regulatory purchase of national institutions progressively depleted → incipient ‘exhaustion’
Established international institutions (ILO, OECD, WTO, IMF) inter-governmental in character, with variable capacity to secure implementation and enforcement of regulation once agreed

- capital mobility: ILO and OECD initiatives on MNCs both mainly voluntary in nature; available sanction = ‘naming and shaming’
- trade in products: initiative to introduce a social clause foundered at the WTO in late 1990s, and removed from its agenda in 2001
- trade in services: WTO still grappling with multilateral rules to govern trade in services

Relative failure to realign modus operandi to changes which have internationalised the economic environment → exhibited ‘drift’

- Two exceptions …
IMF: routinely imposes conditionality when extending financial assistance to governments, including changes to labour law (reshaping national institutions)
- usually associated with developing and industrialising countries, since 2009 extended to southern EU countries (together with European authorities)
- substantial changes required to labour laws governing employment contracts, dismissal and collective bargaining
- ‘displacement’ under which traditional institutions pushed aside, but rather more rapidly than instances analysed by Streeck and Thelen

Institutional construction in global regions
- EU’s social dimension, involving new transnational institutions, to market and economic integration
- parallel trajectory emergent in Mercosur
- elsewhere, commitments in respect of labour rights and conditions at most extend to mutual enforcement of national labour laws (e.g. NAALC under NAFTA)
- European Commission as an ‘institutional entrepreneur’ (Crouch)
Response to growing ‘governance gap’ at international level involves a mix of:
- institutional innovation and reconstruction
- new and established actors

Illustrative inventory:
- capital and products: International Framework Agreements between MNCs and Global Union Federations, often covering first-tier suppliers as well as directly-owned operations (established actors)
- capital and products: multi-stakeholder initiatives to secure compliance with core labour standards (new and established actors)
  - particular cases with ILO involvement: Bangladesh Fire and Safety Accord; Better Factories in Cambodia
- labour: transnational labour networks to enable migrant workers to access employment protection and minimum standards (new and established actors)
- products: growth in social clauses in bilateral trade agreements since 2000, including between industrialising countries (established actors)

For established actors, innovation and reconstruction involves redirection to new functions or ‘conversion’
- draw on ‘redundant capacities’ (Crouch) to change path
Emergence of new institutional arrangements at international level (2)

In addition to, not instead of, existing national-level regulation:

- involves ‘vertical’ layering cf ‘horizontal’ layering analysed by Streeck and Thelen
- vertical layering gives rise to / increases complexity of multi-level governance (MLG) arrangements
Four challenges to MLG arrangements in an internationalised setting

- Coupling
- Forum shifting
- Optionality
- Status of Regulations

- characteristic response elaborated in MLG literature (e.g. Hooghe, Marks)
- the focus on efficiency rationale(s) fails to take account of power relations (Keune and Marginson)
- suggest potential remedies to governance challenges
Coupling

- interfaces: vertically between different levels, horizontally between different units at the same level. Tighter and looser coupling.

**Vertical**
- national regulation often anchored in hierarchical relations
- relationship between international and national levels more often non-hierarchical, also looser than at national level
- even where formal hierarchy exists (e.g. MNCs’ management structures) power resources at local level can mitigate effectiveness of regulatory initiatives
- *characteristic response under MLG* = benchmarking, peer pressure and evaluation, but well-documented shortcomings
- *remedy*? Tighten loose coupling and recognise two-way interdependencies e.g. mandating procedures prior to negotiation of IFAs; distribution of responsibility across levels to enhance legitimacy amongst interested constituencies
MLG arrangements entail multiple regulatory spaces which present a mosaic of possibilities for intervention

implications:
- mosaic not fixed, new possibilities can open up and there can be competition between initiatives addressing the same problem (example: Rana Plaza)
- forum for regulation itself becomes contested, between parties (e.g. employers and trade unions) but also amongst given parties (e.g. different groups of MNC)

result: patchwork of different forms of regulation

*characteristic response under MLG = none* (focus on efficiency properties of arrangements)

*remedy?* Mobilise public authority and public policy to constrain scope for regulatory competition by according preference to some initiatives over others
patchwork of regulation also arises from ‘optionality’, whereby international institutions and regulation only likely to emerge when national or local solutions perceived by key actors to insufficient or unavailable

example: national authorities no longer have competence to intervene in cross-border mergers and acquisitions in the EU (Erne)

example: Rana Plaza – relying on Bangladesh’s government to enforce H&S legislation possible in principle, but deemed by key actors to be insufficient

characteristic response under MLG = scope of governance arrangements should reflect the nature of externalities involved;
  - but presumes an efficiency rationale prevails (and no forum shifting); that potential to frame regulation at international level equivalent to that at national level

remedy? One possible template = European Commission’s proposal to provide an optional legal framework for the conclusion of transnational collective agreements at sector and company levels
Status of regulation

- shift from ‘hard’ to ‘soft’ regulation associated with trend to reflexivity (and emphasis on procedural rights), particularly pronounced at international level
- characteristic response under MLG = embrace legally or otherwise induced self-regulation (reflexivity)
  - result: disappearance of common, universal standards in favour of procedural rights
- remedy? Effectiveness of softer regulatory processes dependent on a fundament of hard regulation (Wedderburn)
  - gives trade unions security, and induces employers, to engage in softer processes
  - legitimises outcomes amongst wider society
- differentiate between universal and ‘development dependent’ labour rights?
- provide social (market-correcting) measures with equivalent status to the economic (market-making) measures that have hitherto driven agreements on cross-border mobility of capital, labour, goods and services?
In conclusion ...

- of the four types of cross-border flow, institutional innovation and reconstruction at international level gone furthest in respect of capital flows and trade in goods, less far in respect of labour mobility, and least in respect of services

- Streeck and Thelen’s framework gives analytical traction on institutional corrosion and reconstruction at both national and international levels
  - ‘layering’ can be vertical as well as horizontal
  - possibilities that redundant capacities offer established institutions to change path through engaging in ‘recombinant governance’ (Crouch)

- MLG literature offers conceptual insights into dynamics of institutional innovation and reconstruction in an internationalised setting, but lacks an appreciation of the role of power relations