

Regulation, Governance, and 'Capture'

Commentary on My Case Studies and Theoretical Trends

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1. Introduction

Hokkaido University Public Policy School (HOPS), which celebrates its 10th anniversary this year, was established on the concepts of (1) fusion of the human, social, and natural sciences, or of law, politics, economics, and engineering; (2) partnerships of academics and practitioners; and (3) 'glocal', or a combination of global and local perspectives. This paper aims to present the research that I, as a faculty member of HOPS, have been working on related to the above-mentioned concepts, place them within the recent theoretical trends of regulation, governance, and capture, and extract research agendas to be discussed in my future research.

Regulation, whether economic or social, is not a sanctuary from the recent trend 'from government to governance'. Scott (2001) defines 'regulatory space' as 'a whole regulatory system of policy process, institution, implementation, various actors, their norms, attitudes, ideas, and diverse mechanisms of control'. If we see standard-setting, implementation, and enforcement as in the 'regulatory space', regulation is also in the midst of a recent academic and practical wave of governance, and there is a certain need to watch a structural transformation of regulatory space and its background from a perspective of public administration (PA) (Murakami 2013a-b). As for PA, it is critical for regulators to prevent capture that ignores public interest in the world of dispersed and fragmented resources and information.

In this paper, I first review recent trends of theoretical discussion on regulatory space, governance, and capture in each chapter and comment on my related case studies in Japan. As for regulation (2), I review a framework of regulatory governance (2-1), a concept of regulatory capitalism (2-2), and a shift from simple command and control (2-3). As for governance (3), I discuss concepts of the governance network (3-1), meta-governance (3-2), and shadow of hierarchy (3-3). As for capture (4), I refer to a definition of the problems of public/private interest (4-1), a concept of 'corrosive capture' (4-2), and 'cultural capture' (4-3), relying on many previous works. In each part, I apply these theoretical frameworks to actual cases in Japan that I have been working on, such as regulations on wooden buildings (Murakami 2013c), automobiles (Murakami 2013d), electrical appliances (Murakami 2013e), ships (Murakami 2014), and others.

This paper is expected to provide a Japanese model and Japanese dynamics of 'regulatory space', as well as further research agendas to be examined, which will surely be productive for political science as a whole. If regulatory capture is commonly misdiagnosed and mistreated because of its staleness and detachment from practice (Carpenter and

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Moss 2014: 3), it should be meaningful to compare the conventional framework or theoretical reaching-point with real cases in Japan, so as to refine and develop them.

2. Regulation

2.1 Regulatory Governance

Some researchers who focus on institutional design and effective regulatory culture have established new regulatory governance, and some have noted a transformation from command and control style regulation to new styles. New regulatory governance promotes entrepreneurial cooperation between academics and practitioners in the emerging regime, in which various public and private actors, with various strengths and specialties, take part in social ordering, such as regulatory standard setting and enforcement. Regulatory governance provides a third means of fighting government or market failure; it can be placed somewhere along the spectrum of top-down and bottom-up approaches after a consideration of the causes of their failure.

Lobel (2013: 66) briefly mentions the following eight features of regulatory governance: (1) increased participation of non-state actors, (2) public-private collaboration, (3) diversity and competition within the market, (4) decentralization, (5) integration of policy domains, (6) non-coerciveness ('soft law'), (7) adaptability and constant learning, and (8) coordination.

Largely because of a dilemma between regulatory resource shortage and responsibility pursuance, government regulatory agencies involve private actors and various regulatory tools. Regulatory governance broadly contains substantial and procedural rules of governmental compulsion, dynamics of internal processes and organizations, and various forms of self-regulations. In the case of electrical appliances, a process toward regulatory governance is observed; as the market grows larger, not only government agencies but also various private and semi-private (non-profit) actors participate in standard-setting and implementation in the regulatory space. Besides traditional command and control (giving approval, license, prohibition, or penalty on violation), softer regulations such as industrial voluntary regulations, insurance mechanisms, and mutual accreditation between public, private, or agreed countries are utilized and added, explicitly or implicitly, to the regulatory system.

One of the next theoretical challenges of regulatory governance is its legitimacy. It can be supported by efficiency, specialty, and the participation of regulatory stakeholders. The problem may not be simply resolved by deregulation but often rather by re-evaluating the positive and systematic interrelationship between public and private, regulator and those who are regulated, and hard tools and softer ones.

2.2 Regulatory Capitalism

Although some predicted that in the trend 'from government to governance' privatization and deregulation would liberalize the market; others expected a re-regulatory society to come. In reality, 30 years after the first neoliberal administrative reforms under Thatcherism, Reaganomics, and the like in Japan, what we see now is 'regulatory capitalism', even though it is not a 'regulatory explosion' in the extreme sense. In a zero-sum world, deregulation and more dependence on the market would reduce governmental

discretion. However, if we premise the positive-sum, deregulation may result in a governmental challenge to enhance its discretion in quality, rather than simply in quantity (Murakami 2013g).

Murakami (2013c) notes that standard-setting and implementation of safety regulations on automobiles and electrical appliances, which always face high pressure toward international harmonization, are delegated both in form and in substance to manufacturers, engineers, and other private stakeholders who have specialties, act globally, and establish worldwide networks. It does not mean deregulation, however; government regulatory agencies do not give up their authority to coordinate policy negotiations between stakeholders, design various norms with legal techniques, and write rules of the selection process among plural public and private regulatory institutions including international agreements and voluntary ones of industry unions.

Under regulatory capitalism, the processes of privatization, deregulation, marketization in each country, and the emergence of various forms of regulatory institutions are not in contradiction with each other. Regulatory schemes—such as conventional regulatory schemes, global standards, and private self-regulations—have some publicness, efficiency, and legitimacy. They are established in a sophisticated, multi-level regulatory governance system at the international, national, and local levels.

It should be emphasized here that the selection or competition process among various regulatory institutions or schemes consists of regulatory capitalism, and that it is borderless according to the international community of specialists and engineers who have an interest in regulations. This phenomenon is especially notable in regulations on electrical appliances and ships.

For example, electrical appliances are subject to regulations to prevent electrification and other risks and failures caused by electromagnetic interference. The regulatory system has an aspect of domestic implementation of global regulations from the International Electrotechnical Commission (IEC) and Comité international Spécial des Perturbations Radioélectriques (CISPR), while there are also voluntary regulations introduced by industry unions in addition to the statutory regulations based on the Electrical Appliances and Materials Safety Act (EAMS Act) and the Radio Act. There is a 'division of labour' among them. They have their respective labelling or marks so that retailers and consumers can choose which labelling, or regulatory scheme, to rely on. Cashore, Auld, and Newsom (2004) discuss how labelling is designed to harness the market choices of consumers for the regulatory project. Regulatory capitalism partly means using the market as a regulatory mechanism, as opposed to the neoliberal schema of markets as the antithesis of regulation (Braithwaite 2008: 8). Recent deregulation in Japan has introduced third-party certification and manufacturer self-certification systems and even individual consumer certification systems. The rising importance of international regulations and advancement of science and technology may have reduced governmental discretion in policymaking. However, recent amendments to statutory regulations push governmental agencies to conduct on-site inspections and to wield punitive powers, by means of implementing the EAMS Act as an umbrella of the safety regulation system.

Murakami (2014) found three major aspects of discussions in the International Mari-

time Organization (IMO) on recent amendments to the MARPOL 73/78 and SOLAS conventions for ships; (1) to strengthen existing regulations in the Convention; (2) to implement the concept of the Goal-Based Standard, or multi-layered structure of public and technical private standards; and (3) to implement the Formal Safety Assessment (FSA) as a tool for assessing regulatory options. IMO regulation has several unique features. First, clusters of stakeholders are so diverse and multi-layered that regulatory disputes often become global issues, and political pressure concerning safety and environmental protection and regulation reinforcement tends to affect the regulation right away. Second, regulatory implementation or enforcement is much more difficult than just setting a target or standards. This is why some member countries have recently examined more effective regulatory methods, such as the improvement of Port State Control and additional supervision of ship operations or its human factors. Finally, probabilistic risk assessment, such as FSA, has been well designed and used in order to balance the social benefits that ship transport yields, and its potential risks that can be diffuse and complex. Such a technologically uncertain and hard-to-grasp concept of risk makes regulatory space more complicated and more vulnerable to regulatory capture.

2.3 Shift from a Simple Command and Control

Murakami (2013f) reported that structural transformation of regulatory space is the result of international harmonization, diversification, refinement, and specialization of regulated technology, the associated manifestation of conflicts of interest, and dispersion of regulatory capacity. In the regulatory space, a governmental agency, in order to carry out its mission, must examine the regulatory process from a distance rather than work directly on the policy, sometimes using conflicts of interest between other governmental agencies or private organizations as leverage, so it controls or manages the regulatory system as a whole. Regulatory agencies maintain their commitment by doing so and strategically enhance their roles and discretion. They procure technical information through cooperation with engineers, their communities, and the industrial unions behind them.

Regulatory agencies have some autonomy in relation to those who are regulated, such as in (1) arranging the regulatory process or the forum; how to set agendas (values to be conscious of) or the schedule of the policy process, and which stakeholders to invite into the decision-making process or who to join with to implement policy without difficulty, (2) establishing the 'social infrastructure' of the regulatory statute system; how to incorporate international technical standards and specifications into existing statutes, how far to extend the territory of governmental statutes or regulations, and how to build a 'division of labour' between public and private, and (3) choosing appropriate institutions and designations of regulatory implementation tools; how to make delegated regulation more effective by incorporating self- or third-party certification, or implementation process of voluntary regulations. Besides simple command and control, such as governmental certification, prohibition, or penalty for violation, as observed elsewhere, various tools for managing the regulatory space are actively produced under complex governance.

Regulatory agencies try to reduce 'agency slack' with private partners and to establish the partnership as a social management system. Their effectiveness depends on the quality of the regulatory space, where the idea that not only the regulator in a narrow sense but also private actors involved in regulatory implementation are responsible for safety and security, and they possess effectiveness and justification for their intension and skills

to carry out regulatory procedures, according to the abovementioned understanding.

3. Governance

3.1 Governance network

Governance network study has addressed the institutional legacy of neoliberal administrative reform in the 1980s; a large dependence on conventional hierarchical bureaucracy is replaced by more dependence on semi-market and network, and the following transformation of government is an issue for discussion. Global restructuring has intensified the tendency led by the activation of the global economy and the rise of regional integration, as in the case of the European Union. To make public policymaking and implementation more stable, organizations must become more dependent on others, and their relationships must therefore become more complicated. Regulatory authority or power is dispersed between the public and private sectors in the plural network that spreads physically and functionally.

There are several strands of thought within governance network study (Rhodes 2012: 34). The first is the 'Anglo-governance school', which began in the UK, which begins, against the conventional wisdom of the hierarchical Westminster model, with the notion of policy network or sets of organizations clustered around a major government function or department of the professions, trade unions, or big business. Secondly, Mayntz, Schapf, and their colleagues were among the first to treat networks as a mode of governance, not as an interest group intermediation (as briefly reviewed later). Thirdly, Dutch researchers such as Klijn and Koppenjan pioneered the concept of network management, which caught on rapidly and mutated to embrace partnerships and collaborative 'management'. Attention to the governance network turned from describing its growth in practice to the normative implications of democratic governance, such as how to participate in networks with legitimacy and accountability (Richardson (2002), Sørensen and Torfing (2009), and the like.). Fourthly, the American political science school caught up with the European trend with an instrumental view relevant to public managers, and brought its characteristic modernist-empiricist skill set to bear through large-N studies on the governance network, in contrast to the case studies favoured by Europeans.

Along with the emergence of the governance network, the concept of public administration has also changed, including in Japan, in the past several decades (Murakami 2015a). In the past, public administration was conceptualized as 'the role played by bureaucracy', and the discipline was characterized by a popular textbook, Nishio (2001: 47), as 'focusing on the collective actions of public bureaucracy for political investigation'. Recently, however, the approach to understanding public administration broadly as a provision of public service and not as a limit on the providers for bureaucratic groups has been rising. Soga (2013: 3) defines PA broadly as the discipline used 'to understand modern society through investigation of the division of labour and delegation between politics and administration, ministries, and agencies, the government and private sectors, the central and local governments or states, and international organizations, as well as the reasons for the division'. According to another textbook Morita (2000: 133), the change 'from unified governance by authority to mutual cooperation and multifaceted coordination by many independent bodies so as to establish stable society' has become a major research theme for today's public administration scholars. This change is called 'from

government to governance’.

Network, formerly discussed as a solution to market or government failure or the translation of the state-market relationship (like Samuel’s ‘reciprocal consent’) in the political economy school, has been recognized as a technique for public management and public governance (Goldsmith and Eggers 2004). Tsujinaka (2000) clarifies through empirical research that the hierarchical relations between Japanese government agencies and pressure groups has transformed into a horizontal, loose, open, fluid, and less frequent network of information after the period of stable economic growth in the 1980s and 1990s.

3.2 Meta-Governance

The emergence of a governance network means, in a sense, that government loses its presence, which has attracted some theoretical criticism. Some argue that transformation toward a governance network strengthens governmental control because government reconsiders a mix of policy tools. As a result, obligatory tools and regulatory commands and controls lose their importance and effectiveness, and softer ones are more broadly and effectively used. According to dominant theories such as Levi-Faur (2012), though, the private sector and the market are increasingly important; governments are still at the centre of governance, and they control governance by building relationships with the private sector at various levels; public administration is the mix of regulations of various forms and methods formulated and implemented together by governments and the private sector. Therefore, both government and governance are evolving, spreading, and increasing their influence on society.

A governance network, in contrast to a conventional hierarchical ‘government’, then, brings up another question: What is the role of government and what are its limits in the emerging horizontal network? Sørensen and Torfing (2009), public administration researchers at Roskilde University in Denmark, also examine this issue. They argue that, in the network, careful meta-governance, or ‘governance of governance’, mostly by politicians and public managers, is necessary in order to ensure that the network contributes to the effective and democratic governing of society. They also provide us with a systematic account of tools and methods for ‘meta-governors’ to deploy. Notably, their focus is on the impact of governance networks on what they broadly define as effective and democratic governance. According to them, the principal actors in the ‘governance network’ interact through negotiations, which possibly combine bargaining with consensus-seeking deliberation. When a governance network is first formed, there are no agreed upon norms, procedures, or constitution to predetermine where and how a legitimate decision is to be made. The on-going interactions among the network actors, however, will eventually lead to the formulation of a framework of rules, norms, values, and ideas that is both precarious and incomplete. The institutionalized interaction facilitates a self-regulated policymaking process that always proceeds in the ‘shadow of hierarchy’ cast by public/private meta-governors.

Bevir (2009: 131) describes meta-governance as ‘an umbrella concept that describes the role of the government and its characteristic policy instruments in the new governance, where the governing is no longer a government monopoly’. The role of the government has shifted away from the direct governance of society, or command and control, to the meta-governance of the actors, that is, the indirect steering of the actions and interac-

tions of the relatively autonomous stakeholders now involved in governing society.

Kohara (2015: 298) eruditely translates Murakami's (2013a–f) findings into 'meta-regulation', or 'regulation of regulation'; government agencies in charge of safety regulation have experienced significant pressure toward international harmonization of technical standards, knowledge dispersal in the regulatory space, and sophistication of principal-agent relationships among public and private actors. Although it appears that regulatory discretion shrinks in this situation, government agencies view the regulatory process from a seemingly neutral and distant position, and manage or control the whole regulatory system with various substantial or procedural regulatory schemes. Government agencies strategically expand their regulatory discretion in a qualitative, if not quantitative, sense on 'meta-regulation'.

3.3 Shadow of Hierarchy

Meta-governance, or meta-regulation, concerns the existence of informal government control of coordination, bargaining, or diplomacy in the space of governance. Although meta-governance takes various forms according to the governance network, a common factor in what many researchers mention on governance is that government steers the boat rather than rows it (providing public services directly in a conventional sense). Non-governmental actors do not only take on many facets of public policy implementation and service provision but also regulate themselves partly in response to public pressure. Governments govern organizations that govern civil society (governance of governance). Those organizations, like private, voluntary, or governmental organizations but separated from the executives, are unique, in that they have some autonomy from government, which is unable to manage them as it would internal organizations with tools that usually work within the governmental bureaucracy.

The way government controls or meta-governs civil society is to design rules for the governance game and let the actors play as they like. Rhodes (2012: 37) calls it 'shadow of hierarchy'. Héritier and Lehmkuhl (2008) refer to a similar concept, supposing two coexisting systems of (1) the territorially bounded democratic government and (2) sectoral governance in the governance sphere, as with the European Union. They find 'pure self-regulations', 'regulated self-regulations', and 'co-regulations' at the interface of the two systems, and that, in the 'shadow of hierarchy', there is a 'tug of war' of upward and downward pressure to alter the 'territory' of government and governance (Lane 2009). They illustrate how government threatens private actors by presenting the possible effects of taking legal regulatory action, of altering the informal relationship into a formal one, of constant monitoring, or of de facto influence through budget and personnel resources.

Rhodes (2012: 37) discusses tools of government by which government brings about institutional transformation and re-designation of the market. One is 'storytelling', with which government arranges dialogues, pulls out meanings and beliefs among the related actors, and attempts to transform their behaviour. 'Storytelling' could refer to any of the following: the bureaucratic power of extending a social campaign backed by the government's reputation, which Carpenter (2011) examines; 'reframing' of the regulatory context (from regulatory reform in wooden buildings as a safety issue to a policy for regional development with grown wood use and for reconstruction and retraining of an industrial community of builders and individual carpenters); policy coordination (as

when the automobile industry failed member manufacturers); and establishment of an ‘umbrella statute’ that covers and locates in regulatory processes most of the public/private substantial/procedural schemes of safety regulation on electrical appliances. Another example is ‘resource distribution’, by which government as a relatively neutral mediator allows actors to work across borders, tipping the balance in the governance network, makes judgments on disputes as an authorized judicial court, changes the constitutional mix, and takes action against governance network malfunctions. Government can use various tools in various situations in the meta-governance approach to public management.

4. Capture

4.1 Public/Private Interest

Carpenter and Moss (2014: 13) define regulatory capture as ‘the result by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself’. This definition is robust because it can accommodate both legislative and administrative capture. It is quite well known that industry, which can more easily organize itself for political mobilization than consumers, who are dispersed across regulatory space, is able to push, through the political process, politicians and regulatory organizations for favours. Stigler (1971) explained this process in terms of cost and benefit analysis; the marginal cost of large and senior companies to exercise political power is so small and their marginal benefit is so big that it is easier for them to put pressure on the administration to make regulations advantageous for them.

As for the above-mentioned definition of regulatory capture, a concept of ‘public interest’ should not be taken for granted, because it is one of the most disputable matters of argument in political science or society in general, with various risks. Carpenter and Moss (2014: 14) ask for a defeasible model of ‘public interest’ to find evidence of regulatory capture. Carpenter (2014, 61) considers four possibilities to grasp the concept: (1) a stipulated concept, on the basis of accepted theory or a broad range of empirical evidence, (2) a republican understanding, whereby long-run judgments of democratically elected public officials or aggregated public opinion suggest that the people’s judgment is superior (though somewhat biased) to that of any other actor, (3) a technocratic or scientific approach, which refers to clear evidence with partial or full information given by aggregated empirical studies from the scientific literature, such as medicine or public health, and (4) a procedural evaluation, or as he puts it ‘focusing on circumstantial evidence’, by trying to identify the special interests involved and examine those institutions and outcomes that would seem consistent with their having been advantaged.

Murakami (2013c–e) translates into ‘public interest’ a decrease in fire outbreak in wooden buildings, a decrease in the dead and injured in car and ship accidents, and a decrease in emergence of faulty products and consumers’ complaints. It is understandable enough that a serious accident at a nuclear plant is the result of a power company’s regulatory capture, as mentioned later. However, it is true that this is only ‘circumstantial evidence’, and it does not tell us causality of capture or regulatory outcome. Besides, public and private interest may not be as binary as before. Needless to cite CSR (Corporate Social Responsibility) linked to ‘enterprise value’ or reputation in the stock market, private actors have more or less responsibility to the public. Practitioners may answer our ques-

tionnaire that they do not push their selfish interests through the regulatory process. This is recognized as a limitation of interviews or oral history, on which quite many qualitative researchers rely when conducting fieldwork. One way to negate this problem is to find and compare interviews with other, objective evidence.

4.2 Corrosive Capture

Carpenter and Moss (2014: 16), who advocate for sophisticating capture theory through more systemized empirical research, emphasize that their definition of capture does not require a captured policy process resulting in more rent-enhancing regulation, as Stigler (1971) imagined. Previous research on capture following Stigler has mentioned that regulatory policy is largely funded by those most interested and able to buy it, and, as a result, newcomers to the industry find it difficult to join the competition. The 'entry-barrier capture', which put the reduction or weakening of regulation somewhat out of sight, is likely to be linked even to a policy prescription of recommending deregulation.

On the contrary, Carpenter and Moss (2014: 16–7) say that a capture policy process can also produce less public interest-serving regulation, which reduces the regulatory costs that industry has to pay. They call this kind of deregulation 'corrosive capture'. Particularly with the rise of health, safety, and environmental regulation, industry-specific regulators have become less common, along with industry pressure to reduce the scope of regulation (Moss and Carpenter 2014: 452). Deregulation, which previous studies have even recommended dealing with 'entry-barrier capture', is no longer a panacea for regulatory capture. Corrosive capture is described as potentially taking the form of reduced entry but is far more commonly observed in the reduction of costly rules and enforcement actions that cut into the profits of industry, or those who are regulated.

What interests me is that such 'corrosive capture' may be more common in Japan, as the National Diet of Japan's Fukushima Nuclear Accident Independent Investigation Commission pointed out in its report published in 2012: 'our investigation focused on the significant lobbying role taken by FEPC [The Federation of Electric Companies of Japan] on behalf of the operators, and scrutinized the relationship between the operators and regulators. The Commission found that the actual relationship lacked independence and transparency and was far from being a 'safety culture'. In fact, it was a typical example of 'regulatory capture', in which the oversight of the industry by regulators effectively ceases. We found examples of this in the neutering of revisions in the Guideline for Anti-Seismic Design and the improper discussions that took place on regulating severe accident countermeasures' (quoted from the executive summary, p. 43). It is true that the door to enter into the Japanese power market is still narrow (though institutional reform is beginning to separate electrical power production from power distribution and transmission), but the above-mentioned 'regulatory capture' is not likely to have contributed to entry barrier but to have brought cost reduction and some benefits for existing power companies.

Corrosive capture, I think, can also be explained by organization theory, or possible deviation in principal-agent relationships. In regulatory standard setting and implementation, the governance network, or the administrative guidance (or *gyousei-shidou*) system in Japan, may be seen as a mix of plural principal-agent relationships. The dilemma occurs when private partners (the agent), whose large discretion given through the con-

tract might have yielded much more benefit as a whole, seek their interest so much as to even reduce the benefit of the regulator (the principal). A study by McCubbins and Schwartz (1984) is also applicable—though they focus on the relationship of Congress as democratic principal and the executive branch as agent—to organization theory of the principal-agent relationship in general. Their prescribed model of ‘police patrol’ and ‘fire alarms’ are in need because the agent has a tendency to try to maximize his interest surreptitiously. This is why strategies and mechanisms for preventing capture are discussed in academics, some of which will also be discussed later on in this paper.

4.3 Cultural Capture

Kwak (2014: 78–9) names a phenomenon in which the regulated industry can shape policy outcomes through influences other than material incentives and rational debate: ‘cultural capture’. The capture is cultural because it operates through a set of shared but not explicitly stated understandings about the world, such as assumptions, lenses, and vocabularies. Cultural capture is also friendly to ‘corrosive capture’ because it is more likely to be deployed for deregulatory purposes in health, safety, and environmental regulations at the expense of citizens and consumers than for the creation and maintenance of entry barriers. Traditional capture relies on putting pressure on politicians, the ‘revolving door’, or, as a somewhat softer form of power, campaign contributions. Implicit *quid pro quos* are almost certainly more typical, and industry may find even implicit deals unnecessary when broader influence can be exercised, indirectly, through cultural capture. Some phenomena can also be seen in a sense as ‘cultural capture’ in Japan; corrosive capture of nuclear safety regulation is typical because the safety myth of nuclear power and inerrancy of nuclear policy or regulatory implementation are often explained to have been gradually created and established by regulators, power companies, and surrounding stakeholders, even though the origin is not clear. It might be difficult to pin cultural capture as a cause of corrosive capture, but the above-mentioned storytelling or reframing can be a factor, as Murakami (2013f: 1103–1104) suggests.

It should be quite natural to extend this discussion to strategies and mechanisms for preventing capture, although it is rare in political science. Moss and Carpenter (2014: 458–464) enlist, through empirical research, in the volume: (1) dividing power across multiple regulators so that competition among them can reduce the likelihood of collusion between individual regulators and a regulated industry by driving up the cost, (2) introducing and employing administrative procedures so that regulators are effectively given greater autonomy from legislators and the playing field is levelled across weak/strong interests by requiring greater openness, such as public notice and public comment, (3) media coverage and journalistic scrutiny so that capture follows the public will toward the legislature or alerts for the public to hidden problems behind the capture, (4) consumer empowerment and the promise of diffuse interests so that consumer interest, which is unlikely to be represented in the policy process, is counterweighted against concentrated industrial interests, (5) diversifying the sources of independent expertise, such as through an academic advisory board, so that regulators’ scientific expertise and technical competence heightens their legitimacy and autonomy, and (6) executive review of regulations based on cost-benefit analysis because an executive department, such as the White House Office of Information and Regulatory Affairs, creates an additional external check on agency behaviour and decisions through standardized analysis.

Some of these, such as the administrative procedure law, the consumer protection law, relatively open membership on the advisory commission (or *shingi-kai*), an independent regulatory agency (Murakami 2013g), and executive review through a policy assessment procedure (Murakami 2015b), have already been realized in Japan, but there is still much to be done to prevent legislative or administrative capture that does not contribute to public interest. In addition, it is important to find evidence for the causal relationships between various captures, weak and strong, and policy outcomes in the regulatory space.

5. Conclusion

This paper reviewed recent theoretical trends and new frameworks of regulation (regulatory governance, regulatory capitalism, and a shift from command and control), governance (governance network, meta-governance, and shadow of hierarchy), and capture (definition of public/private interest, corrosive and cultural capture). Then, it presented significant evidence for these processes as found in my previous case studies on Japanese regulations on wooden buildings, automobiles, electrical appliances, ships, and other products. In the Japanese unique (in a sense) system of governance network of public and private actors, or the *gyousei-shidou* system in the regulatory space, in which a regulatory agency sometimes willingly joins hands with those who are regulated to implement policy effectively, corrosive or cultural capture, which has been newly defined by Carpenter and Moss (2014), seems more likely to occur than conventional capture theorists assume. However, the further comparative testing of regulatory practice is still to be conducted.

My previous case studies are, I believe, not just followers of 'cutting-edge' theories and frameworks but also offer suggestions of curious agendas to be scrutinized. Firstly, a case study of technical standard setting and implementation, as mine implies that scientific technology, not just information as a regulatory resource in general, is a political factor and an important determinant of the regulatory space. The regulator and those who are regulated are interdependent in terms of technical knowledge, uncertainty, risks, research, and development and the policies that affect them. Secondly, regulatory implementation and enforcement take place at the local level, and the impact of regulatory capitalism, such as the TPP (Trans-Pacific Partnership), affects Japanese everyday life and especially rural districts, such as Hokkaido. My further research will continue investigating, with doubt and suspicion, Braithwaite's (2008: 73) proposition; regulatory capitalism is designed by city dwellers for city dwellers, and we must not lose sight of the fact that it has failed rural people.

Acknowledgements

This research has been supported by JSPS KAKENHI Grant-in-Aid for Young Scientists (B) titled 'Study on Public/Private Collaborative Regulatory System from the Perspective of Public Administration (No. 25780087)' and the HOPS grant. I would like to thank all the anonymous interviewees and the colleagues in my academic community, including Dean, Professor Dr Mikine YAMAZAKI, for their sincere cooperation and valuable advice. However, please note that I am responsible for all the information in this paper.

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(Titles in Japanese are omitted.)

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