



Functional and territorial jurisdictions: Regulating a globalized shipping industry



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ABSTRACT

Globalization undermines the effectiveness of state-based regulation and implies the need for alternative mechanisms. Regulatory control exercised by international or European institutions provides scope for understanding functionalist rationales when comprehending the construction of 'ocean space'. This paper contributes to appreciating effective functional forms of regulation by investigating the enforcement practices and control in the international maritime tanker industry. Through a study of shipping we explore the extent that functional regulation has been implemented and how this may inform regulatory formation in other industries/sectors affected by global variables. In general, the study suggests that in the context of the shipping industry functionalism has undergone a metamorphosis in terms of normative underpinning; rather than identifying peace as the basis of non-state regulatory initiative it is triggered by wider populist views regarding political ecology (ecopolitics) and environmental sustainability. 'Ocean space' and mobilities are constructed through normative considerations that rely on agencies beyond the nation-state and implementation of regulation through functional variables.

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1. Introduction

Functionalism involves mechanisms for international collaboration through organisations with designated specific tasks that evolve as functional needs change. The system incorporates the premise of peaceful co-operation and the outcome of a pluralist international community where national control is marginalised through functional linkages and rationality. 'Cooperation for the common good is the task, both for the sake of peace and of a better life, and for that it is essential that certain interests and activities should be taken out of competition and worked together' (Mitrany, 1975b: p112). Effectively, even though a normative perspective exists functionalism involves a process of political internationalisation where regulatory decisions are carried out at the most rational or functional level. Mitrany (1975a) considered the continent as the 'logical limit of coordination for rail transport (whereas) shipping would be administered in inter-continental terms, while telecommunications, broadcasting and air travel would be organised on an international scale' (p116). Indeed, the 'line of effective organisation (for shipping) ... at once suggests itself as international, or inter-continental, but not universal. A European union could not solve the problem of maritime coordination without the cooperation of America and ... certain other overseas states' (1975b: p107). This perspective advocates a quasi-internationalisation for shipping and this paper investigates the situation regarding the industry following developments in globalization and the European Union (EU). Through a study of shipping and the social construction of 'ocean space' this paper explores the extent that functional regulation or jurisdiction has been implemented and how

this may inform developments in regulatory formation and implementation in other functional areas affected by global variables.

Steinberg (2001) understood 'ocean space' as a social construction and considered that human conceptualisations of this space were central to 'the institutions and structures that govern their lives' (p191). Whether or not we are conscious of this process, conceptualisations of the 'ocean space' influence our socio-economic existence. Steinberg (2001) identified that it was necessary for oceans to be recognised as distinct social spaces. 'Ocean spaces' are perceived as 'resource providers' 'battlegrounds' and 'transport surface'. Indeed, the formation and regulation of 'ocean space' is normally premised on realist ideas that identify the nation-state as the repository 'of order and international relations ... characterized by archaic competition' (Steinberg, 2001: p17). In similar contexts mobilities theorists consider that transportation incorporates more than technological issues, but forms and 'forces the structuring of political and social life' (Cidell and Pryterch, 2015: p26). With a similar objective to transportation geography mobilities emphasise the underlying meanings relating to disputed transportation issues. Rather than concentrate on infrastructures, mobilities attend to 'political cultural and aesthetic implications and resonance of movements' ... the meanings ascribed to the movements and the embodied experience of mobilities (Cresswell and Merriman, 2011: p11). This study concentrates on the wider political institutions that govern movement and political interrelationships as well as regulatory structure and implementation.

With reference to 'ocean space' as social construction this paper distinguishes between 'functional jurisdiction' and 'territorial jurisdiction'

and the difficulties this poses for regulation at the international level, specifically regulation for shipping (Johnson, 1988: p8). Overall, we conclude that although the profit motive provides the driver for effective regulation functional international mechanisms enables effective regulation for shipping in one specific sector 'oil'. Fundamentally, ocean space and mobilities are constructed through normative considerations that rely on agencies beyond the nation-state and implementation of regulation through functional variables.

2. Functionalism: international and intercontinental approaches

Notions regarding functional jurisdiction can be found in the work of David Mitrany (1943, 1975a, 1975b, 1975c) where he concentrated on international institutions and perceived their existence as means by which international boundaries may be overlaid by inter-state agencies through which interests would gradually be integrated and international peace realised. There exists a normative perspective relating to peaceful co-existence that may be realised through functional regulation. Indeed, functionalism engenders international welfare which overcomes emotional attachment to the nation-state. Effectively, administration should be undertaken at the most logical level and enable efficient decision making. Organisational networks should be designed to meet a specific social, economic or technical objective. Functionalism provides change through 'linking authority to a specific activity and seeks to break away from the traditional link between an authority and a definitive territory' (Mitrany, 1975a: p125) as well as 'overcome the deep-seated division between the needs of material unity and stubborn national loyalties' (Mitrany, 1975a: p126).

In practice, functionalism is initiated at the intergovernmental or continental level either privately or through the initiatives of state(s) or supranational institutions. Industries with global reach and governments that are unable to deal with international business regulations single-handedly create functional organisations which incorporate international administrative institutions. Whether initiated by the state or supranational level the main impetus of organisational regulation is 'technical self-determination'. This incorporates the increasing autonomy of technical organisations in that 'administrative convenience and efficiency demand that an expert body is not unduly hampered in its investigations by the necessity of constantly new instructions and authorisations' or as Mitrany put it 'certain agencies are born with or achieve "functional autonomy" by virtue of the desirability of such an autonomous status' (cited in Sewell, 1966: p250–51). Functional 'needs' in the expression of 'demands' from social groups indicate social and structural goals and means by which these objectives may be realised; these objectives are adhered to by governments and experts, and emphasise common needs rather than individual power. In short, functionalism is about building communities through collective education, technocratic management and regulating beyond the confines of a nation-state.

In response to increasing cross border trade and economic activities involving a wider region this section examines evidence of functionalist approaches using regional institutions. The best example incorporates economic activity in Europe since the creation of the Single European Market (SEM). The SEM propelled individual member states to compromise regulatory activities (Non-Tariff Barriers) to facilitate cross border trade. Through businesses interacting with the regulatory institutions within the European Union (EU) competition gives way to greater cooperation.

Haas (1958) identified this process as neo-functionalism in which regulatory control transferred to new political community; this involved a variant of functionalism where sub-national actors 'in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states' (1958: p16). Fundamentally, sub-national interests shift their allegiance to a supranational institution. The 'establishment of supranational

institutions designed to deal with functionally specific tasks set in motion economic, social and political processes which generate pressures towards further integration' (Tranholm-Mikkelsen, 1991: p4). Through European integration and Europeanization a new political community is established that involves member states, EU institutions and sub-national actors developing regulatory structures. Indeed, with an appreciation of these theoretical perspectives regarding regulatory formation and implementation beyond the conventional state-based command and control in the next section we turn to the regulatory practices in the shipping industry with an emphasis on the tanker sector.

3. Regulating ocean space: the shipping industry and tanker sector

Until the turn of the 20th century the regulation of ocean space largely depended on individual states and initiatives of professional bodies to counter marine insurance claims (Boisson, 1999). However, the international nature of maritime business obliged the sector to look beyond individual state regulations and consider harmonisation at the global level. Common regulations on navigation signals and procedures on rescue in the high seas were early examples of international efforts to bring consistency to maritime regulation. The 1914 international conference on safety of life at sea (an aftermath of the sinking of the *Titanic*) and the formation of the Inter-Governmental Maritime Consultative Organisation in 1948 under United Nations (which since 1982 has been known as the International Maritime Organisation (IMO)) were major milestones in the development an international regulatory system. Indeed, the IMO stands as a prime example of where maritime nation states came together to seek a form of functional integration (see Gold, 1981 on the development of maritime regulation). Through the IMO, at least at the formation stage, regulatory functional unity can be perceived. However, responsibility for implementing and monitoring regulation is undertaken through individual nation-states (known in the industry as the flag states). This fails to conform to a pure functionalist perspective, which calls for linking authority to a specific activity without having to depend on the traditional role of the nation states. In this way, (until around 1960s) maritime regulation was based on the premise of functionalism but relied on state-based agencies for compliance rather than on inter-continental institutions.

The shipping industry provides a particularly illuminating critical case of globalization and experiences regulatory initiatives of different forms (Sampson and Bloor, 2007). Indeed, the discussion regarding functionalism is timely as state regulatory authorities are faced with considerable challenges in the wake of globalization and growing internationalisation of business activities (Giddens, 1999; Habermas, 2006; Hay and Marsh, 2000; Held et al., 1999). Current debates suggest an acceptance of a more pluralistic form of regulation which includes the functionalist perspective at the supranational, regional and/or global level (Habermas, 2006: p73). Questions need to be addressed regarding mechanisms for developing the regulation of 'ocean space' and relationships with the shipping industry. Indeed, in this context what form of regulation does the shipping industry develop? Does it reflect a form of functionalism and if so does a normative element exist? Furthermore, does the industry reflect a pure form of functionalism and to what extent does a state-centric level persist? Is it more accurate to explain regulatory development and deployment as a form of neo-functionalism? In the following sections of the paper we attempt to deal with these questions through investigating the workings of two forms of functionalism in the maritime tanker sector of the international shipping industry, one originated through principles involving the international dimension and the other using mechanism at the supranational level. A study of regulation formation in a distinct industry can provide an indication of how we may respond to developments of 'ocean space' and mobilities in a globalized world at the international and supranational levels and overcome deficiencies and limitations with territorial jurisdiction.

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