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How Co-Production Regulates

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journals.sagepub.com/home/sls**Martin Innes, Bethan Davies***Cardiff University, UK***Morag McDermont***University of Bristol, UK*

Abstract

This article examines how and why regulatory influences tend to embed within the practices of co-production. Informed by empirical data derived from semi-structured interviews conducted with a sample of experts in co-production, the analysis seeks to illuminate some of the ‘soft’ and ‘interactive’ forms of regulatory work that are performed. In so doing, the discussion provides a ‘lightly’ critical reading of co-production and draws in Erving Goffman’s hitherto neglected use of the concept of regulation. Framed by this work, a distinction is drawn between the regulation of co-production and regulation by co-production. The analysis contributes to a growing literature on some of the subtle and sophisticated ways in which regulation is being conducted in contemporary societies and how these contribute to the governance of social order more generally.

Keywords

Co-production, governance, regulation

Designers of regulatory architectures typically seek to avoid two pathologies. ‘Over-regulation’ occurs when there is too much regulatory activity. It is to be avoided on the grounds that the ‘costs’ of regulating outweigh the benefits of any risk or harm mitigated. Overly intrusive regulation can also impede and intrude upon the area of social life that is its object. Conversely, ‘under-regulation’ arises when a regulatory regime is imprecisely configured or calibrated, lacking sufficient ‘grip’ upon any presenting risk or threat. The quest to navigate between these two potentials has shaped the conception of a number of

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new regulatory models, such as ‘smart’ and ‘responsive’ regulation (Ayres and Braithwaite, 1992; Baldwin et al., 2010). Promoted as more dynamic and adaptive than ‘top-down’ orthodox models of ‘command and control regulation’, where particular liabilities of over-regulation and under-regulation have been repeatedly diagnosed, these developments are part of wider and deeper shifts in the logics and rationalities of governance.

Regulation is a key and increasingly important instrument of governance, and as such, the growing accent upon regulatory responsiveness, is itself an inflection of a recognition that key processes of governance are increasingly complexly constituted. For instance, in recent years, several new policy frames have been brought forward with the intent that they should alter how public service delivery is conceived and performed (Jones et al., 2013; Le Grand, 2003). One example being the currently vogue-ish notion of ‘evidence-based policymaking’ and using systematic review and randomized control trial methodologies to directly inform the design and delivery of key public services (Breckon, 2015; Halpern, 2015). This ‘experimental governance’ effectively seeks to integrate a regulatory influence on the grounds that robust and rigorous research is assigned a role in steering activity towards ‘what works’.

Allied to but distinct from experimental governance has been the rising policy influence of ‘behavioural science’, colloquially dubbed ‘nudging’ (Thaler and Sunstein, 2009). This seeks to limit explicit and intrusive regulation, by manipulating the ‘choice architectures’ people are exposed to (Berndt, 2015). The idea being that by so doing, people will elect to act in prosocial or beneficial ways, absent any overt external direction or instruction (Dolan et al., 2012). Deploying social-psychological techniques to persuade and influence public behaviour has become an increasingly prominent feature across policy domains such as public administration, health and crime (Halpern, 2015).

A third set of innovations in the broader refiguring of public service delivery and governance has pivoted around the concept of co-production. The think tank New Economics Foundation (NEF) defining it as:

Co-production means delivering public services in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours. Where activities are co-produced in this way, both services and neighbourhoods become far more effective agents of change. (Boyle and Harris, 2009)

As well as featuring in debates around public service reform, similar processes have been advocated for knowledge generation. There is a shared commitment to the notion that by reducing the ‘distance’ between ‘authors’ and ‘users’, a higher quality, more resilient and more effective product should result (Sharp, 1980; Whitaker, 1980). Although possessing a considerable legacy, a distinct revival of interest in co-production has been evident in the context of public sector austerity, with multiple governmental actors advocating or expressing interest in its precepts (Durose and Richardson, 2016; Welsh Government, 2014).

Positioned in this way, co-production is of particular interest because it implicitly contends that by promoting a working closeness between authors and users of an idea or service, the need for regulation is at least minimized or potentially obviated. Indeed,

‘strong’ advocates of co-production assert it is largely antithetical to regulation, particularly in its more orthodox and traditional forms.

This article, however, argues for a more sophisticated and subtle rendering of the relationship between co-production and regulation. Informed by empirical data exploring the nature and processes associated with co-productive working, three principal claims are made. First, the empirical analysis illuminates how a range of regulatory mechanisms and influences tend to embed within co-production arrangements. It is argued these function as forms of ‘soft regulation’ whereby participants in co-production mutually steer and accommodate the conduct of those they are interacting with. So rather than seeing regulation as an anathema to co-production, it is an account that maintains the regulation of conduct actually occurs through some subtle and intricately interactive forms woven into the fabric of co-productive arrangements.

The analysis accents two principal ways in which co-production and regulation intertwine. These are conceptualized as the ‘regulation of co-production’ and ‘regulation by co-production’. The former focuses upon the external mechanisms brought to bear upon co-productive arrangements to steer them. Contrastingly, regulation via co-production is concerned with how the mechanics and dynamics of regulatory influence are woven into the fabric of the process of co-production itself. This conceptual distinction constitutes the second key claim.

The final claim is that at a more theoretical level, new insights into the conduct of regulation within the contemporary social order can be generated by drawing in ideas from the work of Erving Goffman. Goffman has achieved intellectual renown for his close readings of human behaviour and social interaction. He is best known for his work on ‘dramaturgy’ (Goffman, 1959) and for delineating ‘the interaction order’ (Goffman, 1983). The former is concerned principally with how the social identities that individuals project when co-present with each other are configured according to the norms and conventions of the setting in which they are situated. The allied but distinct notion of the interaction order attends in finely granular detail to the frequently ‘seen but unnoticed’ ways people mutually adjust their conduct, thoughts and emotions to take account of those with whom they are engaging. While these interactional dynamics are of direct relevance to understanding the conduct of regulation, herein we identify a far more direct and compelling connection between Goffman’s ideas and the conduct of regulation, than has been made hitherto. Framed by his understandings of the inherent drama of social life blended with insights into the micropolitics of social interaction, we show how his work keys into understanding how regulation is experienced. This is notable we assert, because of how, when compared with the volume of work on the activities of regulators, the ways in which regulation is experienced by those subject to it remain a relatively neglected topic in sociolegal studies.

The next section describes the empirical data collected and analysed, while also bringing forward some theoretical resources to help interpret these. This is followed by a more detailed account of the interactions between regulation and co-production. In the penultimate section, the preceding points are used to address some wider implications about the condition of concepts as they make the journey from a ‘pure’ intellectual form into something applied in practice with ‘real-world’ impact. Specifically, we contend that ideas (and their authors) are subject to ‘tarnishing’ and ‘muddying’ in order to

get them implemented and working within the situational contingencies of social, political and economic life. In this sense, they become ‘dirty concepts’. Thinking in such terms helps us to understand how and why mechanisms of co-production have increasingly integrated regulatory influences. The article concludes by considering the wider implications of these findings for understanding the conduct of regulation and co-production in the contemporary social order.

Design and Method

The empirical data reported herein are derived from a 5-year research programme, using a multi-method research design to explore and understand some key innovations in how regulation is conceived and conducted. This wider programme has framed the specific empirical and conceptual themes pursued, where a series of 14 extended semi-structured interviews concerned with the role of regulation in co-production are analysed.

Interview participants were sampled from three groups: representatives of think tanks and charities who had performed ‘moral entrepreneur’ roles in promoting co-production ($n = 4$), workers in local and national governments operationalizing co-production in some way at either strategic or implementation levels ($n = 4$) and representatives from community organizations engaging in co-production schemes, across a range of situations and settings ($n = 6$). Sampling around these categories was designed to capture a diverse range of perspectives, with access to interviewees negotiated via contacts involved in the wider research programme. There were a number of refusals to participate, in part reflecting how the research was conducted at the height of the UK government’s austerity drive and how acute cuts to public service budgets were being implemented. Negotiating access with the think tank and government representatives was especially time-consuming and complex and was facilitated via a specific gatekeeper. This accords with Mikecz (2012) who argues that elites are often surrounded by multiple gatekeepers and that access must be carefully negotiated.

Following the lengthy access negotiations, interviews were conducted between January and March 2016. Most were conducted in the participants’ workplaces in quiet meeting rooms. Utilizing a semi-structured interview schedule to steer the flow of conversation and make the most of the allocated time, the majority lasted around 1 h, with all interview interactions recorded and fully transcribed. They were then inputted into NVivo 11 (for Mac) and subject to thematic analysis.

Reflecting their status as part of a much larger data corpus and more wide-ranging theoretical endeavour, in terms of how they are treated herein, they are understood as the kinds of ‘exemplary evidence’ that Manning (2016) highlights as part of his ‘pattern elaborative theory’ (PET). The intent of PET is to deploy especially luminous data to foreground exploratory and tentative ideas that might subsequently be subject to more rigorous and robust empirical testing. Accenting a creative and inference-based approach, it is certainly coherent with the logics underpinning this article as it interrogates some of the subtle and intricate ways in which regulatory influences embed within the practices of co-production.

Decentring Studies

The rise to prominence of ‘responsive’ and ‘smart’ regulation perspectives was itself a refraction of a deeper set of epistemological and empirical shifts as scholars located in multiple disciplines sought to reconfigure their understandings of the arrangements between state and society. This involved them delineating specific roles and functions for a range of so-called intermediary and ‘hybrid structures’ (Powell, 1990; Williamson, 1991).

In terms of the implications of this shift for regulation specifically, an especially influential and insightful account was Teubner’s (1983, 1984) systems theoretic inspired discussion of the ‘regulatory crisis’ inflecting the role of law in society. He defined regulatory law as ‘a political mechanism of social guidance’ (Teubner, 1984: 381) which was, he asserted, continually having to negotiate a fairly fundamental ‘regulatory trilemma’. According to his diagnosis, there was a recurrent and ongoing need to negotiate and avoid three particular species of problem in the law–society relationship: (1) a basic incongruence of law and society, (2) the over-legalization of society and (3) the over-socialization of law. This is a theoretical framing clearly resonant with the pathologies of ‘over-’ and ‘under-regulation’ highlighted in the opening paragraph of this article. The tendency for these problems to arise and attempts to avoid them had a ‘structuring’ effect on the organization of law and its shaping and steering of human conduct and behaviour.

Teubner’s diagnosis is present in Black’s (2001: 104) analysis of ‘decentred regulation’, albeit she developed it rather differently. Echoing Teubner, she identifies both positive and normative dimensions to the decentring of regulation. For Black, however, the principal issue of concern is how governments do not, should not (and perhaps cannot) secure a monopoly over the conduct of regulation and how it inherently engages other actors without governmental involvement or formal approval. This conceptual shift from a state–society hierarchy to a landscape of ‘heterarchies’ induces the state’s role to become one of the mediators, facilitators and enablers. Thus, the contemporary conduct of regulation needs to be cast as fragmentary and involving multiple centres of power and sites of delivery.

Overlapping themes and interests can be detected in the more recent work of the proponents of ‘regulatory intermediary theory’ (RIT). Proposed as a way of more accurately rendering the range of relationships engaged in the conduct of regulation, they emphasize how many contemporary regulatory arrangements depend upon the involvement of third-party organizations actively mediating between regulators and regulatees (Abbott et al., 2017). However, from the point of view of this article, as currently configured, RIT accounts tend to be limited by their concern with the network effects deriving from relationships between regulatory actors, and their implicit understanding that power flows down, and regulation is devolved downwards through ‘chains of intermediation’ (Abbott et al., 2017).

Intriguingly, however, Black and her conceptual ‘fellow travellers’ in regulation studies are not the only ones to be accenting ‘decentredness’. Scholars across a range of disciplines, who study conduct and policy processes closely aligned with the activities of regulation, are all foregrounding ideas and data with more than a passing ‘family resemblance’ to one another. For example, the political scientist, Bevir (2016; Bevir and

Needham, 2017) has written about the salience of ‘decentred governance’. Accenting an avowedly ideographic mode of analysis, Bevir and Needham (2017: 626) suggest that the key impetus for such an approach is:

... that neither the intrinsic rationality of markets nor the path dependency of institutions properly determines whether policies are adopted, how they coalesce into patterns of governance, or what effects they have.

There are clear compatibilities and connectivity with the work of criminologists on ‘nodal governance’ (Shearing and Wood, 2003; Johnston and Shearing, 2003). There are affinities also with Garland’s (2001) concept of ‘responsibilization’, where he talks of momentum in the conduct of social control whereby state agencies have increasingly required other actors to take on the mantle of preventative policies and practices. Although their language and concerns are different, there is a fundamental consensus across these accounts that, in terms of how social order is routinely produced and reproduced, this involves auspices beyond those of the state.

A second similarity is potentially more problematic though. For although each of them has provided an important critique of the orthodox positions pertaining to their respective disciplines, fundamentally these accounts retain a focus upon the providers of regulation, governance and social control. Far less attention has focused upon how the products of these ‘decentred’ provisions are experienced by those subject to them. This is particularly pronounced in relation to the study of regulation, where there is a pronounced neglect of these more ‘existential’ considerations.

Theorizing Regulation Differently with Goffman

Reflecting upon the nature of this limitation, a potential alternative can be derived by drawing upon the work of Erving Goffman. Specifically, in his ‘Behavior in Public Places’, Goffman (1963) repeatedly invokes the concept of ‘regulation’. This is worth interrogating in some detail on two grounds. First, because of its potential in developing a more supple and subtle understanding of the conduct of regulation, reflecting the kinds of detailed insight Goffman’s methods and concepts afforded to other domains of social life. Second, although there is an extensive secondary literature inspired by Goffman’s scholarship, no one to date has picked up on his use of the concept of regulation (Ditton, 1988; Drew and Wootton, 1988; Manning, 1992; Smith, 1999; Trevino, 2003).

Goffman’s position on regulation has always been more implicit and presumed. It is undoubtedly there, given his sustained interest in how co-present interactions and encounters are navigated and negotiated, and especially how people actively work to make these viable and ‘repair’ them when rules and conventions are infracted. That said, his ideas and approach have directly influenced a number of those with more formal research interests in regulation. This is especially evident in the work of several members of what we might label ‘The Oxford’ tradition in sociolegal studies, who have collectively demonstrated an interest in capturing the detail and nuances of the enactment of administrative procedures of law and how they depart from the rhetoric of ‘law in books’.¹ Rock’s (1973) study of debt collection by the English Courts, for example,

utilizes several of Goffman's studies in working out a suitable theoretical frame. Rock's book was a direct influence on Hutter's (1988) ethnography of environmental health officers that foregrounds how regulatory outcomes are frequently the product of a process of negotiation between regulators and regulatees. In terms of its dominant conceptual themes, Hutter's work shares much with Hawkins' (2002) magisterial account, where he argues that regulating agencies typically utilize multiple negotiated and compliance-seeking strategies before they resort to formally invoking law.

McBarnet's (2003) work on public compliance with taxation policy was important in shifting the focus of attention from the work of regulators to regulatees. The key insight being that citizens retain a degree of agency in terms of how they respond to tax laws and associated directives. These were themes also present in Hutter's (1997) study of environmental regulation, which depicts a sequence of moves and countermoves between those charged with securing compliance and those subject to the regulatory standards, as they interactively negotiate an outcome.

Across these studies, albeit they are more or less explicit in acknowledging this, there are a series of conceptual themes traceable back to Goffman. Namely how the public appearances of regulatory action may belie a more complex set of arrangements that have been conducted behind the scenes, such that norms of conduct and behaviour, and not just formally prescribed rules, become an important influence upon what is actually transacted.

In *Behavior in Public Places*, Goffman talks explicitly about regulation, tying it to the functioning of social order as follows:

... a social order may be defined as the consequence of any set of moral norms that regulates the way in which persons pursue objectives. The set of norms does not specify the objectives the participants are to seek, nor the pattern formed by and through the coordination or integration of these ends, but merely the modes of seeking them. (Goffman, 1963: 8)

Elements of this definition are clearly consistent with a core feature of how regulation is commonly understood across academic disciplines, namely that it involves a steering of the process, rather than determining any outcome.

Later in the same essay, Goffman elaborates how norms of social conduct occasion defined and shared 'situational proprieties' that regulate social interaction, and that:

The code derived therefrom is to be distinguished from other moral codes regulating other aspects of life ...: for example, codes of honour regulating relationships; codes of law regulating economic and political matters; and codes of ethics, regulating professional life. (Goffman, 1963: 24)

In his posthumously published presidential address to the American Sociological Association some 30 years after the above, Goffman (1983) would refer to this domain of enquiry as the 'interaction order'. In so doing, he was clearly conveying a sense in which regulatory work is an intrinsic and necessary condition for how different modalities of social order are developed and sustained. Although he did not consistently invoke the concept of regulation, Goffman's work represents a sustained attempt to

foreground how various explicit and tacit rules of interpersonal conduct are navigated and negotiated across a range of settings and situations.

This element of his work is especially pertinent in what Manning (1992) describes as Goffman's 'ethnography of the concept of the total institution'. Informed by observations of the behaviour of inmates in an asylum, he draws out more general propositions about how those subject to 'wrap-around' and all encompassing regimens of surveillance and social control are able to negotiate and subvert these. Critically then, despite the imposition of procedures involving 'mortifications of the self' and the like, he demonstrates how those subject to such routines are able to identify crevices and gaps of active resistance.

Vitally, what Goffman's concepts and methods provide is careful attention to detail in documenting and describing how specific actions and interactions are accomplished and conducted, with all those engaged in such encounters actively contributing to what is transacted, and how features of setting and situation influence such inimicably social processes. Put another way, what Goffman attends to and inspires in those influenced by his work is a focus upon what people actually do to regulate their own conduct and that of others they are co-present with, rather than what they say they do when interviewed or surveyed.

Compared with the more orthodox positions on regulation in the literature, what can be distilled from Goffman's formulation is the import of attending to the micro-details of how regulatory influences manifest in practice and are experienced. These are qualities lacking in the more 'structural' orientations of the decentred regulation and regulatory intermediary theory positions. The idea that conduct is regulated and ordered by more than just formal rules, and that 'regulatees' are not just subjects of the regulatory process but actively engaged in how it unfurls, helps to illuminate how regulatory influences present within co-production processes.

On Normative and Instrumental Co-producing

Innes (2014) summarizes the key practices of co-production as involving: co-definition, co-design and co-delivery. That is, those constructing an issue, service or knowledge should work collaboratively with others directly, in terms of understanding what precisely the matter at hand is, how it should be responded to and then delivering the response. It is this 'end-to-end' quality that distinguishes co-production from other less intensive forms of partnership working and collaboration.

The term 'co-production' was first coined by Elinor Ostrom when researching US police work in the 1970s. Echoing concerns articulated by several other studies of policing from this period, Ostrom and her team found something missing when the police spent more time in patrol cars and were not so closely involved with the public, as occurred when on foot patrol. They inferred that it was actually the contributions made by the public when interacting directly with the police that effectively determined the efficacy of policing services (Boyle and Harris, 2009). Ostrom used the term co-production to refer to this relationship, defining it as:

The process through which inputs used to produce a good or service are contributed by individuals who are not 'in' the same organisation. (Ostrom, 1996)

She subsequently extended it as a more generalized critique of a tendency within public service provision. An agenda that was supported by others, including citizen participation in public policy (Cupps, 1977; Sharp, 1980), low productivity creating deficits in the public sector (Lovelock and Young, 1979) and public service reliance on the actions of policymakers, rendering them ineffective and inefficient during times of fiscal constraints (Brudney and England, 1983). Accordingly, the idea of co-production acquired increasing traction and currency. Whitaker (1980) advocated that co-production champions the service user's individual ability to accomplish desired changes with the help of the delivery agent. Importantly, he identified multiple 'types' of co-production (Whitaker, 1980), assigning particular importance to where citizens and agents work together to adjust the other's expectations and actions. Positioned in this way, modifying behaviour entailed joint considerations and decisions about a problem, with reciprocal, active participation facilitating desired changes.

A salient point made by a number of those interviewed for this study concerned how co-production in practice necessitates pragmatism and compromise. This was because, almost inevitably, none of those engaging in co-production are going to secure precisely the outcome anticipated at the start. For example, one policymaker reflected on their experiences as follows:

... I know that as a result of that co-design piece it doesn't look exactly as I thought it would when I was going in which is great. Learnt loads from people shaping it in a different way. (G1)

While not everyone spoken to was so enthused by the lack of control induced by such arrangements, this notion that interaction between participants clearly shapes the outcome accomplished clearly resonates with some concepts accented by Goffman. Moreover, there was a shared acknowledgement that it was important that those with power do not impose their wishes and expectations upon the process.

This requirement to equalize relations and accommodate the interests and needs of all partners was something mentioned by the majority of respondents. The following sentiment was fairly widely shared:

... So with the VCS stuff I'm trying to treat it as equal as it can possibly be. That I'm not going to turn round after six months of work and go, 'Oh by the way I've decided it's my money so I'm going to do something different with this. Never mind what everyone's told us or what we've talked about'. So I'm trying to get that much more equal. (G1)

A key feature of such accounts was that moving towards co-production was 'effortful' and not to be undertaken lightly.

Given that this is so, it is perhaps unsurprising that, in terms of co-production's policy transfer and importation into the United Kingdom, the timeline is rather hazy. Needham and Carr (2009) suggest that despite less evidence of co-production's rhetorical visibility in the 1980s, it influenced many reform movements and did not entirely disappear. Realpe and Wallace (2010) argue that Anna Coote introduced the co-production concept to UK health services around this time, as a device to understand relationships between

patients and clinicians. Also in the 1980s, in the housing sector, professional-driven ideals (Birchall and Simmons, 2004; Boyle and Harris, 2009) began to break down when professionals were forced to start consulting with policy-resistant homeowners negatively affected by relocations to council estates (Birchall and Simmons, 2004).

After a period where increases in public participation had been slow, small scale and met with resistance (Birchall and Simmons, 2004), the New Labour administration proactively championed active citizenship, participation and collaboration (Newman et al., 2004). Boyle and Harris (2009) later identified problems with the New Labour/‘third way’ methodology, arguing it failed to tackle the structural inequalities driving service demand. This was attributed to ‘narrow’, cost-focused models that did not afford sufficient local responsibility to allow social networks to develop and take strain off public services, and so did not see the rhetoric of ‘consumer choice’ transpire into real mutual solutions.

A more recent government White Paper reflects this critical view of previous approaches, highlighting the need for consultation and engagement with public service users as well as needing to be driven by public priorities (HM Government, 2011). Many argue that the social welfare system’s aim to tackle class inequality has been ineffective (Coote and Franklin, 2009). As such, co-production is proffered as the alternative to the problems and challenges previously experienced and premised upon the idea that service users can help professionals make permanent change happen (Stephens et al., 2008).

Infused by such narratives, looking across the interviews conducted as part of this study, two principal vocabularies of motive were offered as explanations and justifications for moving towards co-productive arrangements. First, there were ‘normative’ accounts premised upon the notion that it is the right thing to do. This is exemplified in the following quotation:

It doesn’t make sense for people not to...have some sort of real role and to shape services. (T3)

Framing co-production in this way didn’t really invoke any extraneous incentives or benefits. In this sense, it differed slightly from a more ‘instrumentalist’ conception of co-production, advocated on the grounds that it delivered its products more effectively and/or efficiently. This was evident in a number of discussions, but was especially neatly articulated in the following:

...you’re involving homeless people to help design services for the homeless...having people actually involved in designing the services that they know most about, they know a lot more about than somebody sitting in a darkened room writing a policy or designing a service from a local government perspective. (G4)

An especially intriguing aspect of the empirical data pivoted around the relationship between the normative and instrumental accounts. Nearly all of the interviewees went out of their way to acknowledge that co-productive encounters were frequently intricate and delicate, imbued with considerable complexity. Significantly, several proponents of the normative position used precisely these issues to argue why co-production should not be appraised on instrumental grounds:

Well this is the trust thing . . . to all of the people we worked with we were like, ‘how would you like to co-exist with us?’ And it’s like, we built trust by listening to them and then by working towards the things that we shared as aims . . . And the thing is, between bigger organisations trust is very hard. (C4)

Because co-production is not an easy process, for partners to work together willingly and effectively, finding ways to develop a sense of trust is key. As the above quotation highlights, there is a need to invest time to build and sustain relationships between partners, but this can present a challenge.

Expectation management was understood as vital for sustainable co-production by the majority of interviewees. There was a temptation, it was suggested, for those engaged to get swept along by the rhetoric and consequently aspire for too much. Especially those experienced in co-producing accented how it required all parties to moderate their expectations and to be willing to compromise to some degree. That said, this pragmatic disposition was itself counterbalanced by a clear belief that co-producing knowledge and/or services does possess the potential to unlock new capacities and capabilities that cannot be reached by more orthodox arrangements.

Co-production and Regulation

Traditionally conceived as ‘top-down’ and ‘command and control’ oriented, regulation seems to contrast co-production’s core values of engaging ‘outside’ parties and facilitating equality and reciprocity. The more recent shifts to decentred ‘responsive’ and ‘smart’ models of regulation soften and blur this antipathy somewhat. But what was striking about the interview accounts is how, although they did not necessarily talk about ‘regulation’ per se, the majority of interviewees acknowledged the presence of multiple regulatory influences in their co-production work. Especially for those describing the co-production of public services, one explicit mode of regulation emanated from economic issues:

. . . it’s like a community centre in a way, they shouldn’t be all designed to the nth degree, they should have some empty rooms that haven’t been purposed yet when they build them . . . because then the community will decide what they need to be . . . But that doesn’t fit council because they want to have it funded, ‘what are you getting the money for?’ (C4)

Funders’ desires to know what outcomes to expect as a return on investment clash with ‘pure’ co-production. Multiple interviewees recalled compromises and ‘trade-offs’ as part of their efforts to secure and sustain funding. This included a recognition that their ability to co-produce was constrained by the regulations and accounting requirements emanating from their funding sources. Equally however, and perhaps more subtly, they also voiced an expectation that funders looking to enable regulation must themselves engage in some ‘trading-off’ to avoid over-regulating the process. They must modify their usual behaviour to accommodate co-production, instead allowing the process to partially self-regulate and deliver unprogrammed outcomes.

An important permutation of the influence of economic considerations upon how regulation happens in relation to co-production was that it may flux temporally. Especially for government officials, there was a recognition that planning future co-production and making commitments become difficult in the months leading up to elections. Trading-off in this situation and context, perhaps doing less long-term planning, for example, would not necessarily benefit co-production, but would be a necessary compromise to proceed.

The accounts rehearsed above have a shared tendency to view the co-production–regulation relationship in terms of the regulation of co-production. For example, budgetary considerations shape and mould what it is that can be co-produced and how. In this sense, the regulatory work is implicitly conceived as lying outside of the co-productive arrangements. In the rest of this article, we focus upon regulation *by* co-production. That is how, in an often ‘seen but unnoticed way’, co-productive relationships absorb or integrate regulatory influences into their standard operating processes.

‘Soft’ and Interactive Regulation

During an interview with a community worker engaged in safeguarding young people deemed at risk of violent extremist radicalization, they discussed how several local schemes had been designed collaboratively with parents and young people from the communities believed to be affected. This was presented as an alternative to the inclinations of the government’s formally constituted ‘Prevent’ programme, widely perceived as a ‘tainted brand’ (Innes et al., 2017; O’Toole et al., 2016). Talking about one specific scheme, the community worker described how they had started working with local parents to help ‘skill them up’ in terms of their ‘digital literacy’. This was on the basis that:

What’s actually going on is that, you know, mothers don’t necessarily know how to track their children’s internet usage, things like that. (C2)

Here co-production was being harnessed to enable more effective parental regulation of young peoples’ potentially risky behaviour. The interviewee went on to explain how co-producing these activities affords constant dialogue and insight for community workers. This was not formal regulation in the traditional sense, but rather flowed out of the interactions between participants.

A common feature of such accounts was how, although the primary purpose of entering into these relationships was not to deliver regulation, this is nevertheless what happened. Through their interactions, mutual influence upon the behaviour and aims of the others they were involved with occurred. Especially where such relationships were successful, those involved also came to understand the constraints and requirements of their partners and factored these into their own conduct. Thus, the style of regulation engaged was largely tacit or implicit, operating interactively.

Where regulation is embedded within ongoing relationships, it often assumes a ‘softer’, more negotiated tone than where it is the primary objective.² For instance, one interviewee recalled how a lady in Cardiff opened her house as a space for local young people over a period of around 18 months. The young people came in and took part in a

range of activities such as learning to use her husband's DJ equipment while he was at work, becoming part of dance crews or just 'chilled out'. Decisions on donations and activities for this 'project' were made through co-production that took place between the lady and the community. This developed a sense of self-regulation among participating young people, but also interactive regulation through being involved in these negotiations with the community. Particularly interesting is how this approach in turn shaped relationships with other, more formal regulatory institutions, including youth services, schools and police. As the interviewee recounted, the project: 'regulated with regulators'.

Blending this line of thinking with an earlier theme, there is an interesting angle in terms of how effective co-producing was seen to involve constraining the potential to express power. As one respondent described it:

If the power isn't shared then sometimes it's quite hard to actually really co-produce. (G1)

And as another reflected:

... there's no point having something called co-production or co-creation or collaboration if there are inequitable power dynamics at play, and unfortunately there are lots of those around in this field. (C5)

It would be tempting to see such comments as suggesting co-production necessitates power being 'given away' by its 'owners' to their new partners. However, reading across the interview transcripts suggests a more subtle interpretation, involving a shift in the forms of power. This can be conceptualized as being less reliant upon 'hard' power and instead seeking to achieve similar aims through invocation of 'soft power' based upon influence and persuasion.

Indeed, this seems fundamental to how regulatory mechanisms get picked up and woven into the conduct of co-production. 'Harder' and more direct regulations would be inimical to the delicate configurations through which decisions get made under co-productive frameworks. But in a 'softer' form, they actually help to foster such arrangements, giving a sense of the constraints that are being worked to and within. In this sense, the integration of regulatory mechanisms into the processes of co-production had an influence in sustaining relationships in the face of the challenges that are often encountered:

I think in a way if there was one or two obvious brick walls, it would be relatively straightforward to tackle then. But what we're finding more is a series of trip wires... (T4)

As this respondent from a think tank that had invested in developing co-productive approaches identified, there is a susceptibility for co-productions to be diverted and distracted. In light of which, regulatory instruments embedded within the partnering arrangements afforded a potential for self-correction. Here then we can see how co-production has to navigate the issues of over-regulation. For as is indicated in this

account, over-regulation occurs not just through the obvious blockers and impediments, but manifests also in low-visibility issues that can derail intensive collaborations.

Drawing back from the specifics of discussing co-producing, this insight has wider significance for understanding some of the complexities involved in how regulatory work gets done in contemporary societies. It is not confined to institutions or agencies with a formal remit. It is more widespread than this and increasingly infused into key social relations. One especially intriguing aspect of which concerns the ways regulatory mechanisms were increasingly nested in layers of relationships, with the consequence that at some moments individuals and groups could find themselves positioned as regulators, whereas at others they would be the regulatees. For instance, the senior manager of a community centre, who had sought to foster more of a co-production ethos with parents in his decision-making regarding nursery provision, outlined how:

We're kind of constrained by Ofsted requirements and other things, but the parents do have a say in how things can be run. (C1)

He described a complex of regulator–regulatee relationships that are being switched between. In the latter part of this quotation, he implied how the needs and desires expressed by parents do influence provision. But at the same time, in foregrounding the role of Office for Standards in Education, Children's Services and Skills (Ofsted), he recognized that he has to act as a regulator upon the parental influence, on the grounds that he is himself subject to some superordinate regulatory considerations.

This also serves as an important reminder that the argument being constructed herein is not that 'harder' more formal kinds of regulation are disappearing or foregone, but rather that co-production tends to be a very particular style of 'soft and interactive' regulation. Indeed, because co-production intrinsically operationalizes a fluid and negotiated form of working, this soft and interactive quality of regulation seems quite important. This is evidenced by the frustrations expressed by an individual recalling their engagement with a research project employing a co-production methodology:

When I first engaged with [project] I hadn't got a clue and so the language being used was alien to me, I didn't really understand where they were going and they hadn't defined it. They hadn't bounded what we were doing. It was very loose and I found that incredibly hard to engage with. (C1)

In the language of this article, this exemplifies the problems of 'under-regulation'. There is a sense of 'anomie' in terms of the dislocation and disenchantment felt by the interviewee. As they went on, they described how all those involved in the work, including the academic 'authors' of the project as well as the 'users', came to an agreement that a more explicit regulatory frame was required, if anything of significance was to be accomplished. Indeed, in this case, a modest degree of albeit subtly rendered regulation was understood to be a sufficient, if not necessary, condition for ongoing successful co-production.

Echoing an earlier point about the complexities and difficulties involved in co-production and the role of power, for a number of professionals it was hard not to assume

responsibility for some form of regulatory oversight. As one interviewee involved in healthcare put it:

A lot of these professions we're talking about, they have been trained for years . . . you don't want to sit there and think . . . 'now my job is to coach someone or work this out together, like I'm the one who is the doctor, let me tell you what to do'. (T3)

Accounts like this, provide some insight into how and why over-regulation occurs. It was faster and easier for the healthcare professionals to assume responsibility and control of the process than to engage in a more convoluted and intricate process of co-production. But in so doing, the possibility of enabling more innovative and creative possibilities was forestalled.

Looking across the empirical accounts of co-production in action, as opposed to its description in books, there are certain compatibilities and points of resonance with the concepts of regulation. The first of these concerns how, when compared with other modes of social control, regulation attends more to the issues of process than outcome (Innes, 2014). A defining quality of regulation is its focus upon standardizing aspects of how something is accomplished (via technical modifications of procedure), rather than closely specifying the defined outcomes to be achieved. This is analogous with the ways co-production privileges the process of interaction and collaborative working over defining precisely in advance what the product is. Typically, partners enter into co-producing arrangements with a broad goal in mind, but the agreed outcomes and ways of working are shaped by the process.

A second defining quality of regulation is that it is codified, due to there being widely understood and shared understandings of the rules of participation and processes that are in play. Co-production's focus on new ways of working often induces pressures for codification: Methodologies and practices associated with working co-productively have been developed to cope with its challenges. These methodologies and practices are detailed in various catalogues, one such being a product of the People Powered Health programme (Penny et al., 2012). It was designed to provide:

. . . a series of learning products explaining why the People Powered Health approach works, what it looks like and the key features needed to replicate success elsewhere. (Nesta, 2013)

This distillation of procedures and practices that 'work' in this way implicitly attends to and recognizes that such matters are not straightforward.

In different ways, both co-production methodologies and regulatory instruments are in the business of behaviour modification, performed through a blend of incentives and sanctions. Particularly relevant to co-production are the range of normative and instrumental incentives, outlined in previous sections, that are often invoked to encourage certain forms of desired collaborative action. Cast in this way, behaviour modification is clearly a fundamental consideration for all collaborative working, including co-production, as organizational behaviour change is required to meet the respective goals

of all partners. The process of working collaboratively between participants is, we would argue, *always* intended to induce behaviour modifications in all concerned.

Co-production as a 'Dirty Concept'

In their 'pure' theoretical formulations, representations of co-producing are typically cast in relatively unproblematic ways. Theoretical discussions inevitably strip away the layers of contextual detail and subtlety to delineate principal components. But particularly for something as intricately fabricated as co-production, which involves multiple actors, organizations and interests, interpretations and practices of co-production differ and vary. Even more significantly, the reality of co-producing often departs in some significant respects from the core precepts. However, rather than being a problem, this should be understood as a necessary requirement for co-production as a practical accomplishment. In this sense, it can be understood as a 'dirty concept'.

A 'dirty concept' is one that, as it travels from being 'in books' to a form of practical action, becomes tarnished and distanced from its 'pure' conceptual origin. These compromises and amendments are necessary and inevitable if the 'pure' theoretical construct is to have practical utility and traction. For complex undertakings such as co-production, this means that what gets done in practice typically 'resembles' the theoretical model, as opposed to reproducing all its elements in detail.

This 'dirtying' of a concept can sometimes lead people to question, or deny, that what is actually being practiced constitutes the theoretical intent. For example, when discussing co-production one respondent said:

I think both at a service shaping and strategic level, there is an interest and people are happy to use the language of it. But actually it's being limited quite seriously when it comes to practice. (T4)

For this interviewee, the degradation in fidelity between the concept and the practice caused them to conclude that although the co-production label was frequently invoked, its actual implementation was relatively rare.

Potentially, however, this is to expect too much of research-based theories and models. As another respondent pointed out, this time in respect of the practicalities of committing to co-production from a government perspective:

At the moment we are very strictly in a position where we cannot make decisions that tie our hands to the next government . . . you don't want to come in and be told 'sorry Minister you will just have to do these things because the last government decided them all', doesn't go down very well at all. (G3)

If this analysis is correct, authors of such ideas and frameworks need to accept that they will become at least a little bit 'dirty'. There is a 'price to be paid' if ideas are to 'travel' and influence policy and practice. In the following extract from an interview with a respected and experienced community worker, some of these issues were surfaced:

So this is an example for me of where we started off with co-production in mind . . . The reality is there is only so much things [sic] you can actually co-produce . . . Now, if we were to open that up to the hundred or fifty plus young people that we interviewed and engaged with in terms of framing the priorities and what the service should look like, I think it's going to be a bit challenging because there's a finite resource. So there were certain things we were able to be honest about what we were co-producing with stakeholders at times, because it's not with everybody all the time. (C6)

A pragmatic willingness to accept that these kinds of edits will occur does seem important. For if the intellectual progenitor of a framework or model seeks to distance themselves when inevitable practical difficulties are encountered, then it is harder for others to justify why they should expend effort to work through any such tribulations.

An alternative strategy was to forego any explicit linkages. For example, one interviewee told how a large organization she was familiar with had made a 'conscious decision' to avoid the language of co-production. Another noted that one minister had a particularly strong dislike for the term 'co-production', because he feels it's something they've been doing for a long time anyway. Both of these accounts suggest how language matters in 'selling' ideas into new groups of potential users and also in sustaining their interest over time. For some, the language of co-production was decidedly alienating and to be avoided.

More concerning, however, were several accounts contending a more cynical intent underpinning the policy adoption of the idea of co-production. Adherents of this perspective speculated that the language of co-production could be used as a cover for service cuts:

... if that becomes sort of abandonment of issues by the public sector in the hope the communities will pick up the pieces, I think sustainability becomes an issue very very quickly. (G3)

I think it's really difficult to talk about genuine co-production in the landscape of where public services are right now . . . it can feel disingenuous when people . . . are genuinely cutting back on essential services (T3)

These interviewees were clearly concerned about the co-production rhetoric being used to disguise service cuts. Returning to some of the themes rehearsed towards the start of this article, this extends our understanding of the normative and instrumental justifications for co-production in a new and intriguing direction. Decreased government provision and increased public participation in service delivery obviously ring true with some of the co-production's guiding predicates. However, where co-production practices are only being used to replace and substitute for pre-existing costly services, interviewees see this as deceptive. In this respect, co-production is 'dirty' in a rather different way.

Other ways in which co-production was understood to have been tarnished and denuded in terms of its conceptual promise were as a result of it being misappropriated. For example, the following interviewees note how co-production can sometimes take place without being formally dubbed 'co-production':

... they work in a co-productive way but perhaps they don't call it co-production ... (G2)
 ... it's the DNA of what [we do] as a project. So we don't call it co-production,
 we just work with people in a certain way. (C4)

Such comments, supported by those of other interviewees, clearly echo earlier points about the role of language. Where they are distinctive though is in recognizing the difficulties of sustaining the idea that co-production nowadays is a 'clean' and theoretically 'pure' construct.

Across the interviews, examples cited as evidence of co-production clearly intimate some service areas are doing more than others, notably health, social care and education. As one interviewee put it, co-production seems to have *gained reasonable stickiness within health services* (T2). The reasons for this are not entirely clear, but it seems that these are services the public can take some responsibility for and contribute to. For example, someone who lives with a long-term illness might carry out the aspects of their care at home (e.g. medication administration, diet, exercises), independently of a healthcare professional, and therefore contribute to the management of their condition. This sort of self-management and shared responsibility would not apply as easily to all public services, where specific skills or authority might be needed.

Summarizing several of the themes brought forward in this section, one interviewee told how:

We found a whole load of people who were doing it completely below the radar, because they knew if they told people this was actually how they were doing their work, they'd probably get into trouble, because this wasn't what they were given permission to do. (T4)

That some practitioners might have gone 'rogue' to utilize co-productive methodologies implicitly conveys how, from their organization's perspective, this was a tainted and undesirable approach. Co-producing 'under the radar' in this way because management may not like it, has much in common with Goffman's accounts of how organizational life typically involves 'front-stage' and 'backstage' registers, where public presentation and what actually gets done can be differentiated from each other.

Conclusion

The principal claim of this article is that co-production frequently absorbs or integrates regulatory influences into its working processes. This is reflected in the conceptual distinction made between the regulation *of* co-production and regulation *by* co-production. For some advocates of co-production, the latter notion in particular would be anathema, as they conceive it as distinctly contrary to much regulation, but this is simply not the case. Indeed, informed by the empirical evidence marshalled by this study, there is an argument to be made that some form of regulation may be a necessary condition for co-productive arrangements to be sustained.

Conceptual supports for this position have been distilled from the work of Erving Goffman and those who have been inspired by his approach. In particular, we have

sought to draw out his underappreciated implicit and explicit interests in regulation. For what can be inferred from his work is how regulatory activities are not restricted to institutions and actors positioned in superordinate roles, but rather, can be threaded through the interactions and encounters between people and through the discourses and rationalities they draw upon in negotiating these encounters. Accordingly, the empirical analysis captures how there is frequent switching between the regulator and regulatee roles. At some moments in time, under co-productive frameworks, particular actors are responsible for overseeing the conduct of others, while their own performance is simultaneously being monitored and assessed. This is directly commensurate with the kinds of social dynamics that Goffman identified in his detailed studies of social interaction. In the context of scholarship on regulation, it develops a more nuanced and textured account of what it is and how it is accomplished. What drawing in the work of Goffman provides is a deeper understanding of some of the subtle and interactive ways regulation is conducted. Coherent with which, rather than talking of regulation in terms of its structures, systems, institutions, processes or mechanisms, the preference throughout has been to invoke the term 'regulatory influences'. This seeks to capture how, framed by logics and practices of co-production, regulatory work is frequently achieved through the specific techniques of framing and persuasion.

Seeing regulation as an intrinsic part of co-production is a significant departure from conventional definitions of both concepts. Although some of the co-production literature yields examples of 'guides' and 'self-management', *regulation* is rarely referenced. The empirical data also challenged the existing idea of an 'equal', 'reciprocal' and 'mutual' co-production environment – this is in fact something that rarely transpires so smoothly in practice. Here, we have a 'dirty concept'.

In part, the emergence of co-production as a conceptual methodology and the groundswell of support that it has attracted reflects the sense in which it was offering a potential to overcome the problems of over-regulation, situated in a moment marked by 'deep' reconfigurations in relations between law, state and society. It is certainly the case that where regulation is constructed at a distance from the actual authors and users of services, it can fail to acknowledge and be responsive to the kinds of situated contingencies that arise. However, it seems that, at least in terms of how it is rendered theoretically, co-production methodologies are susceptible to under-regulation. As a consequence and as catalogued herein, those engaged in implementing and operationalizing co-producing arrangements have displayed a tendency to integrate forms of 'soft' and interactive regulation into their practice.

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Notes

1. This label does not suggest that all of the work exhibiting these conceptual traits has been conducted at Oxford, but rather that a number of key scholars have had some connection with the Centre for Socio-Legal Studies there.
2. A quality it shares with other modalities of social control (Black, 1976).

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