Chapter 5
The Tripartite System: A Key in Polycentric Risk Governance: Lessons from Norwegian Offshore Industry

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Abstract This chapter presents the Norwegian tripartite system within a polycentric perspective. Developing multiple arenas among the parties has been a crucial factor in developing a mechanism for learning and adaptation within the regulatory regime. In the face of internal disturbance, new technology, and changes in the socio-economic environment, the regime has developed its capacity to enrol new actors and redefine their roles and behaviour.

Keywords Polycentric governance · Nordic model · Tripartite system

5.1 Introduction

Assessing the regulator–regulatee relationship in high-hazard industries, one option is that regulatory bodies develop a *learning mechanism* to be integrated into their regulatory systems by investing in monitoring and data analysis, and evaluating performance with the involvement of the stakeholders. In their assessment of risk and regulation within oil spills, nuclear accidents, and financial crisis, the authors point at Norwegian offshore regulation as an example, "…with a proactive regulator who is constantly on the lookout for problems and mediates solutions as they arise" (Balleisen et al. 2017, p. 560).

The tripartite system in the Norwegian offshore regime, with collaboration between the regulator, industry, and unions, is based on the "Nordic model". The model often refers to economic and social policies as well as typical cultural practices

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common to the Nordic countries (Dølvik et al. 2015). This includes a comprehensive welfare state and multilevel collective bargaining based on the economic foundations of social corporatism, with a high percentage of the workforce unionised and a sizable percentage of the population employed by the public sector such as healthcare, education, and government (Marklund 2017).

The purpose of this chapter is to assess the Norwegian tripartite system as a key factor in developing an adaptive and robust regulatory regime. The following two questions are used as guidelines: How does the tripartite system function within a polycentric context, (2) in what way does the tripartite system contribute to regulatory robustness?

The analysis and discussion are developed through the following four steps: (a) presenting polycentricity as a theoretical concept, (b) presentation of the Norwegian tripartite system, (c) highlighting tripartite arenas dealing with offshore risks and regulations, and finally (d) what are the lessons to be learnt.

5.2 Polycentric Risk Governance

The concept of polycentricity was initially introduced in an analysis of how most metropolitan areas in the United States are managed. Lacking a single dominant political leader, many local public authorities are involved, each of them pursuing their own aims in a seemingly uncoordinated manner. This situation was defined as polycentric governance, characterised as a self-organising system composed of (1) many autonomous units formally independent of one another, (2) choosing to act in ways that take others into account, and (3) through processes of cooperation, competition, conflict, and conflict resolution (Ostrom 1991, p. 225).

In the following years, polycentricity was adopted within political science and public administration as a concept of governing *collective goods*: "processes of selection, production, financing, and evaluation of collective goods, as well as the management of common-pool resources" (Stephan et al. 2019, p. 25). The late Elinor Ostrom (Nobel Laureate in 2009) used a similar concept, arguing that "Governing the Commons" (Ostrom 1990) can be seen as going beyond market failures and governmental regulations (Lam 2011; Ostrom et al. 2012).

The concept of polycentric governance includes multiple centres of decision-making, or multiple authorities, where no one has ultimate authority for making collective decisions, and the decision centres, to some extent, take each other into account (Carlisle and Gruby 2019). Stephan et al. sum up their understanding of the concept of polycentric governance in a paired definition (Stephan et al. 2019, p. 33):

> *Polycentric*: connotes multiple centres of decision-making authority which are de jure independent or de facto autonomous of each other.
> *Polycentric Governance*: governance that has polycentric attributes, where governance is a process by which the repertoire of rules, norms, and strategies that

guide behaviour within a given realm of policy interactions are formed, applied, interpreted, and reformed.

Furthermore, the regime coexists with other national and subnational authorities, and international entities. Polycentric governance can be seen as an intrinsic feature of democracy and Western capitalism that often leads to adversarial, fragmented, or abandoned decision processes when the key decision centres fail to engage or compromise or reach consensus.

To address this concern about the polycentricity of governance without compromising its democratic value, it is useful to focus on the need for structuring the engagement of key decision centres and managing their engagement. In this context, the Norwegian tripartite system provides an example. Applied to the Norwegian offshore context, the risk regulation regime involves multiple independent entities in the public and private sectors, including regulators, industry and professional associations, labour unions, insurers, standardisation organisations, interest groups in civil society (Lindøe and Baram 2020).

5.3 The Tripartite OHS Model in the Offshore Regime

Within the framework of the Nordic Model (Dølvik et al. 2015; Marklund 2017) a "Nordic Occupational Health Model" was developed, genuinely different from those found elsewhere in Europe. The OHS model also encompasses the regulation of working environment and the occupational health and safety standards and practices as a subset. In such a perspective, it became more like the Anglo-Saxon model in terms of higher degree of flexibility based on collective framework accords, which allow for individual solutions at the company level (Karlsen and Lindøe 2006). A common feature of the "Nordic OHS model" is its use of an in-house "occupational health and safety organisation" offering three different collaborating structures: (1) working environment committees providing opportunities for employers and employees to meet and discuss important issues, (2) independent and autonomous "institutions" such as Safety Deputies elected by the workforce, and (3) experts on occupational health and safety to be called upon in disputes, either as an in-house service or external consulting expertise (Karlsen and Lindøe 2006, p. 19).

5.4 Developing a New Regime

In the early stage of developing the Norwegian Shelf, three major accidents helped shape the offshore regime. The Alpha accident in 1975 initiated a process with the implementation of the Working Environment Act in the regime. One and a half years after the major fire on the *Alpha* platform, the new *Working Environment Act* was applied to all permanent installations on the Norwegian shelf.

The blowout at the *Bravo* platform (1977) resulted in a major oil spill and exposed the environmental risk to the public, both in Norway and in Europe. The accident became an incentive for the operator, Phillips Petroleum, to develop an internal safety system primarily concerned with reducing accidents, not just with meeting government requirements. The *Alexander Kielland* accident where 123 lives were lost became a "point of reference" for all stakeholders. The regulator enforced a process of "enforced self-regulation" with new rules; Licensees' internal control (1981) and Regulation of Internal Control (1985) where the 'tripartite system' based on the Working Environment Act was adopted and implemented.

Developing the tripartite system within the offshore industry has not been a harmonious process. After a pioneering period (1966–1978) with foreign companies and strong anti-union attitudes, organised oil workers established themselves in a strong position (1978–1983). The state supported the workers, partly through regulation and partly by forcing foreign companies to join Norwegian employer associations. In the following years (1983–2000) the tripartite system was used both to improve safety and to discipline unions not to breach national wage level targets (Ryggvik 2018).

Around the millennium shift, controversies concerning safety threatened the existing tripartite collaboration. After a period of intensive cost-cutting, industry representatives still claimed that health, safety, and environment conditions had never been better, whereas union representatives claimed that these conditions had eroded. The latter view was strongly supported by the regulator, as stated by the director of the Norwegian Petroleum Directorate in their annual report: "… it seems that a culture has been established where breaches of regulations and procedures have been incorporated as normal practice and accepted" (Lindøe 2018, p. 238).

The metaphors of "boxing" and "dancing" can be used to characterise the shifting patterns of adversarial and cooperative modes of tripartite partnerships during the first three decades in the Norwegian petroleum industry (Rosness and Forseth 2014). After the intervention of the political and regulatory authorities, a more cooperative climate gradually emerged from mid-2000. The tripartite collaboration was revitalised, and several new tripartite arenas were established.

5.5 New Tripartite Arenas

The Regulatory Forum was established in 1986 with representatives from companies, unions, and government, then revitalised in 2000. That leads in turn to stronger ownership of and consensus on final proposals for regulatory development and the mechanism became a model for other tripartite institutions such as the Safety Forum. The forum contributes to clarifying rules related to onshore and offshore operation, as well as adaptation to the European Union/European Economic Area and other international and national norms and standards.

The Safety Forum was established in autumn 2000, shortly after the period of mistrust among the core stakeholders. The industry, represented by the. Norwegian Oil and Gas Associations, was not enthusiastic at all. However, once they were enrolled, they had committed themselves to contribute to a process leading to less antagonism and more intensive cooperation. Even as the parties continued to draw on the same discourses in their dispute about the safety level, they took tangible action to revitalise tripartite collaboration (Rosness and Forseth 2014).

Regulatory Competence for the Petroleum Industry, a basic training programme, was founded with the purpose of providing familiarity with the structure and content of the regulations. Until 2021 the programme has adapted its teaching to more than 16,000 participants.

Working together for safety was established in parallel with the Safety Forum, bringing together representatives from oil companies, suppliers, contractors, unions, and employers. The NPD—later the PSA—was involved as an observer. Much of the work was pursued through working parties preparing recommendations for the industry by promoting the agreed use of industrial standards and best practices with better transparency on incidents and safe production as an output. The programme has prepared and revised more than thirty recommendations in every area covered by the safety and working environment regulations.

Risk level on the Norwegian Shelf is a monitoring program, meant to obtain trustworthy information and analyses, as a means to build consensus between the parties and secure commitment to future efforts of improving safety. In collaboration with Norwegian research institutions, the program has established a methodology of assessing trends in the risk level with emphasis on the statistical risk in terms of near misses, actual incidents and perceived threats by identifying a compromised set of indicators (Skogdalen et al. 2011; Blakstad 2014).

5.6 Lessons Learnt

A "cybernetic perspective" with three control components, setting standards, getting information, and modifying behaviour, could be useful in order to analyse *lessons learnt from* the tripartite system (Hood et al. 2001, p. 23):

> From such a perspective any control system in art and nature must by definition contain a minimum of the three control components… There must be some capacity for *standard-setting* to allow a distinction to be made between more or less preferred state of the system. There must be some capacity for *information-gathering* or monitoring to produce knowledge about current or changing states of the system. On the top of that there must be some capacity for *behaviour-modification* to change the state of the system.

Information Gathering: Over time the process of developing "Trends in risk level in the petroleum industry" has been an important collaborative network embracing research institutions, industry, employers and unions, and the government. The PSA

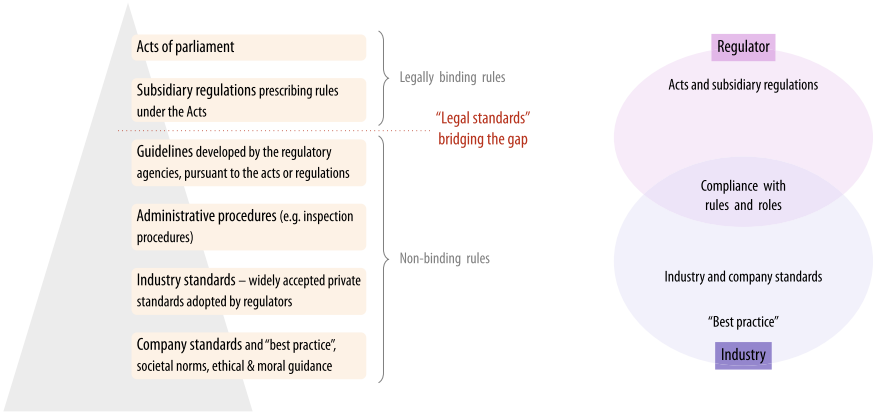

Fig. 5.1 Bridging gaps in the hierarchy of rules

is responsible for day-to-day operation, and in 2007, it was expanded to embrace land-based petroleum plants. The annual status reports made an important contribution to a joint understanding of changes in risk levels, thereby identifying measures to improve the level of risk and analyse the effects of corrective actions taken by the responsible parties. Involving all the important stakeholders ensures consensus over working methods and ownership of the consensus-based conclusions (Bang et al. 2014). The significance and legitimacy of the gathering and use of data became instrumental to the Safety Forum and PSA in providing knowledge and influencing the agenda for safety work in the industry.

Standard Setting: From a legal perspective, rules can be presented as a pyramid, ranging from *legally enforceable laws* at the highest level to non-legally binding rules, ending up with company standards and guidance at the bottom as presented at the left part of Fig. 5.1.

With acts and subsidiary regulations as legally binding, the largest and its less-visible part are the guidelines, industrial standards, performance-based rules pointing at "best practice". Other relevant company-wide standards and guidance, whose application is left to the discretion of the regulated entity, include those developed by each industrial actor for its operational purposes.

The right part of Fig. 5.1 illustrates a hybrid model, combining a harder approach with "command-and-control" from above with a softer bottom-up approach based on self-regulation (Lindøe and Baram 2020). With performance-based rules follow an ambiguity of purpose: on the one side such rules should not undermine governmental ability to hold a company legally accountable. On the other side, the regulator should provide aid in promoting non-legally binding rules within industries and companies involving complex evaluations and difficult decisions (Lindøe et al. 2014, p. 51):

> …many of which will be contested by self-regulators, industrial associations, and diverse stakeholders unless there is a high degree of trust between these parties. Conflicts erode the credibility of the regulator and the accountability framework and revive the legitimacy issue.

The concept of legal standards refers to norms and practices tying the "word of the law" to the ever-changing implementation of the norms and ideas embedded in that law. One example is the ALARP principle, meaning "as low as reasonably practicable". These principles unify the different interests of stakeholders and increase legitimacy as an integrated part of developing regulating regimes. In this borderline or mix of hard and soft regulation, the role of standards plays an important role (Lindøe and Baram 2020).

Behaviour Modification: Combining different modes of regulation opens some leeway, where the actors are able to test compliance with rules and roles. These issues are further developed and discussed by Ulla Forseth in the chapter "Power of dialogue" in this volume.

In Fig. 5.2, the three components: information gathering (IG); standard setting (SS); and behaviour modification (BM) in the control system operate in a framework with a different mix of rules and roles: Horizontally asymmetrical and symmetrical power relations between regulator and the regulatee, and vertically the implementation of legally and non-legally binding rules.

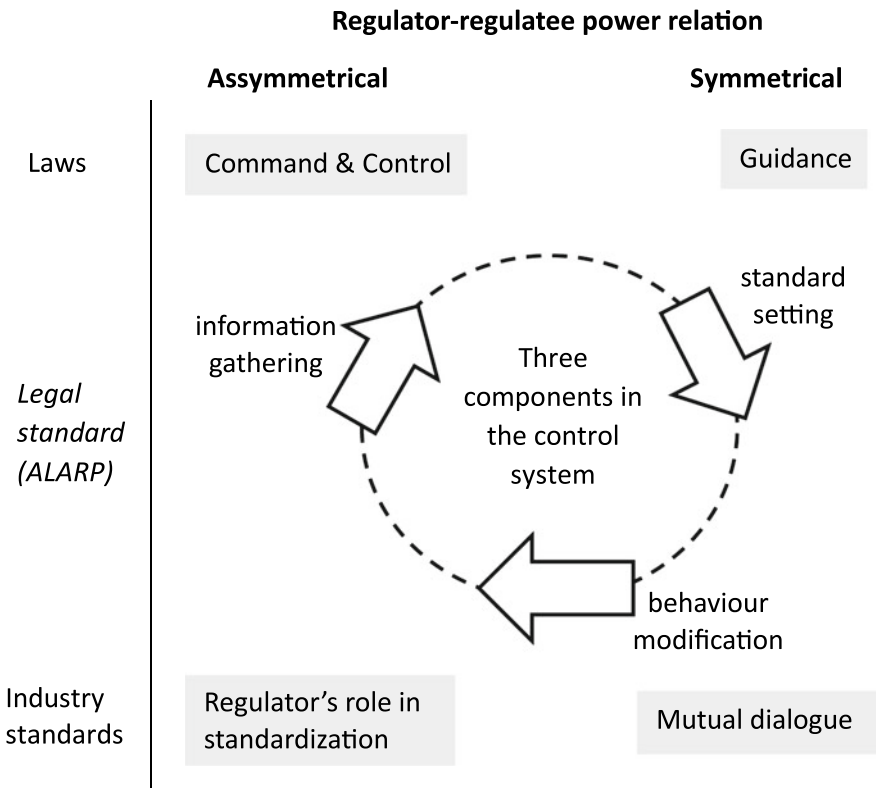

Fig. 5.2 Power relation between regulator and regulatee

Within this leeway, the pattern of behaviour between regulator and regulatee will work very differently. An asymmetrical power relation and legally binding rules will lead to "command-and-control" behaviours. If the regulator shifts towards the role of pedagogue in guiding the industry in implementing "legal standards" embedded in laws and regulations, the power relation became more symmetrical. This pattern becomes even clearer with a mutual dialogue on how to develop and use widely accepted standards and best practices. When the regulator engages in developing standards, they need to balance between different considerations where the outcome could be consensus as well as conflict (Engen 2020).

5.7 Conclusion

In his reflection on lessons learnt in advancing a robust regulatory regime, Andrew Hale concludes that the robustness of the Norwegian regime "has only happened because the regulator in particular, but also the other parties to the tripartite approach, have consciously managed that robustness in response to the challenges and made it a learning system" (Hale 2014, p. 421). A crucial factor in developing a mechanism for learning and adaption has been the tripartite arenas, providing new opportunities for behaviour modification where the parties have challenged each other with informal and pragmatic styles of interaction. Thereby, the regime has developed its capacity to enrol new actors and to redefine their roles and behaviour in the face of internal disturbance, new technology, and changes in the socio-economic environment.

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