

Regulatory Reform in Europe and Beyond

Scientific Report of ESF Exploratory Workshops: Oxford, May 25th-26 and Barcelona November 29-30th 2002.

1. Executive summary
2. Final Programs
3. Scientific Content (abstracts of paper presented)
4. Presentation of the main themes of the two books which will result from these workshops
5. Final list of participants in the network.

I. Executive Summary

The ESF exploratory workshops on *Regulatory Reforms in Europe and Beyond* were held in Oxford (May 2002) and Barcelona (November 2002). The number of papers presented in the two workshops was 32. The number of participants in the oxford workshop was 22 and the number of participant in Barcelona was about 40.

Three major themes were discussed both in Oxford and Barcelona. First, the extent in which the current theory of regulation (predominantly based on the American experience) is satisfactory when we try to understand the development of the regulatory state in Europe and the developing world. Second, how can we create bridges between political science analysis and the study of regulation (on the background of the dominance of economists and lawyers in the study of regulation). Third, how can we use diffusion models in order to promote our understanding of the spread of regulatory reforms across the world.

Workshops participants expressed their content with the quality of the papers, the aim of the workshops and the creation of a core group of scholars who will continue to pursue the study of regulation. The workshops led to a number of a following up projects:

First, an edited volume on the Politics of Regulation. It will be co-published by Edward Elgar and the Centre on Regulation and Competition, at the University of Manchester.

Second, an edited volume on the Internationalisation of Regulatory Reforms [is still under preparation]

Third, a follow-up workshop is to be held at the University of California, Berkeley in April 2003, hosted by the Centre for the Study of Law and Society, and will discuss the potential of diffusion models to explain the world-wide spread of privatisation and regulatory reforms during the past few decades.

Fourth, an effort to institutionalise the network through a grant application to the ESF.

Fifth, a collaborative research project with the intention of submitting a proposal to the European Union Research Program (6th framework).

The workshops were co-financed by the Department of Politics and International Relations and Nuffield College (University of Oxford), Department of Political and Social Sciences Department (Universitat Pompeu Fabra), The Spanish Ministry for Science and Technology, The Centre on Regulation and Competition (IDPM, University of Manchester) and the Generalitat de Catalunya.

II. Final Programs

II-2 Oxford's Program

Venue: Nuffield College, Seminar Room (Staircase D)

Saturday 25th May

11.00 Welcome, Introduction and Opening Comments: Jacint Jordana and David Levi-Faur

11.30-12.30 Nicolas Jabko (Sciences Po, Paris and Princeton) **The Political Origins of the Regulatory State**

12.30-13.30 Lunch Break

14.30 Atle Midtun (Norwegian Business School) ***Political Regulation or Market Based Self Governance: The Challenge of the Innovation Economy***

15.30-16.30 Iain McLean (Nuffield College, University of Oxford), ***History of Regulation in Britain*** Discussant Raphael Shapiro

16.30 Coffee Break

16.45-17.45 **Andrea Lenschow and** (Salzburg University) and Christoph Knill (Friedrich-Schiller University Jena), ***Regulatory Diffusion in the European Multi-Level System***

17.45-18.45 **David Levi-Faur** (CEPES and Nuffield College, University of Oxford, on leave University of Haifa) ***Herding Towards Regulatory Reforms: The Politics of Emulation and the Diffusion of Regulatory Reforms***

20.00 Dinner for the participants (Venue, Follows' Dining Room, Nuffield College)

Sunday 26th May

9.30-10.30 Andreas Busch (CEPES and St. Antony's College, University of Oxford), *Divergence or Convergence? State Regulation of the Banking Sector in Western Europe and the United States*

10.30-11.30 Fabrizio Gilardi (Université de Lausanne), *Regulation through Independent Agencies in Western Europe: Theoretical Perspectives* Discussant:

11.30-12.30 Brunch Break

12.30-13.30 Bronwen Morgan (University of Oxford), *All Talk and No Action? : Social Constructivism and Discourse in Theories of Regulation.* Discussant: Patrick Schmidt (Nuffield College and Centre for Socio-Legal Studies, University of Oxford)

13.30-14.30 Graham Wilson (University of Wisconsin-Madison), *On Spots and Leopards: The Malleability of Regulatory Systems.* Discussant: Jacint Jordana (Political and Social Sciences Department, Universitat Pompeu Fabra)

14.30 **Coffee Break**

14.45-15.45 Summary and Discussion and short presentation by European Science Foundation representative, Prof. Kerstin Sahlin-Andersson

II-2 Barcelona's Program

Venue: Roger de Lluria building (Ramón Trias Fargas, 25).

Friday 29th November

9.00-9.15

Welcome, Introduction and Opening Comments:, Jacint Jordana (Workshop Co-Director), David Levi-Faur (Workshop Co-Director), Paul Cook (CRC, University of Manchester)

9.15-10.00

Regulation and Modern Organizational State: The place of regulation in contemporary state theory: Volker Schneider (Konstanz Universität)

10.00-10.45

W(h)ither the Economic Theory of Regulation?: Anthony Ogus (CRC, University of Manchester)

10.45-11.15 **Coffee-Break**

11.15-12.00

The History of Regulatory State in Britain: Iain McLean (Nuffield College, University of Oxford)

12.00-12.45

The Post-Regulatory State: Colin Scott (Australian National University)

12.45-13.30

De-regulation and the Complex Interfaces Between Multiple Regulatory Arenas: Atle Midtun (Norwegian Business School)

13.30-15.15 **Lunch Break**

15.15-16.00

Regulatory Diffusion in the European Multi-Level System: Andrea Lenschow (Salzburg University), and Christopher Knill (Friedrich-Schiller University Jena)

16.00-16.45

The Political Fragmentation of Regulatory Regimes: Is there an overlapping positive effect?: Jacint Jordana and David Sancho (Universitat Pompeu Fabra)

16.45-17.15 **Coffee-Break**

17.15-18.00

Accountability and Transparency in Regulation: critiques, doctrines and instruments: Martin Lodge (London School of Economics)

18.00-18.45

Regulatory Failures and Regulatory Successes: The Case of US Electricity Regulatory Reforms: Eli Goldstein and Warren Young (Bar-Ilan University)

19.00–20.00

Key Note Address, Professor Christopher Hood (All Souls College, University of Oxford)

21.00 **Dinner for the participants**

Saturday 30th November

9.00-9.45

The Diffusion of New Environmental Policy Instruments, Kerstin Tews, Per-Olof Busch and Helge Joergens (Frei Universität, Berlin)

10.30-11.00 Coffee-Break

11.00-11.45

The diffusion of professional expertise: the European professional Federations in the regulatory state: *Julia Evetts (University of Nottingham)*

11.45-12.30

Moving away from the "race-to-the bottom" and "regulatory competition" theories: A proposed model of "regulatory co-opetition": Damien Geradin (University of Liege) and Joe McCahery (Tilburg University)

12.30-13.15

The Political Origins of the Regulatory State: Jakob Nicolas (Science Po, Paris)

13.15-15.15 Lunch Break

15.15-16.00

Learning and Economic Policy Choices, Covadonga Meseguer (European University Institute)

16.00-16.45

Divergence or Convergence? State Regulation of the Banking Sector, Andreas Bush (University of Oxford)

16.45-17.15 Coffee-Break

17.15-18.00

Regulatory Styles: The Diffusion of Adversarial Legalism?: Daniel Kelemen (Rutgers University and Princeton University)

18.00-19.00 Conclusions of the seminar and further directions of work, Jacint Jordana and David Levi-Faur

III. Scientific Content – Abstracts

Abstracts of the papers in the Oxford's and Barcelona's workshops

1: The Political Origins of the Regulatory State

Nicolas Jabko

Many scholarly accounts of the worldwide multiplication of independent agencies and regulatory authorities attribute this phenomenon to the evolving functional requirements of a modern economy – namely, the shift away from *dirigiste* policies and toward a more market-based model of public oversight of the economy (the “regulatory state”). Yet in most modern economies the practice of regulation by state actors is not new at all. What has changed recently is the institutional framework of regulatory practices – both the goals of regulation and the actors in charge of performing regulatory tasks. Based on a comparative analysis of new regulatory mechanisms recently set up in the European Union, this paper argues that the emergence of new goals and new regulators are the results of political manoeuvring, rather than evolving functional requirements. In sectors where market forces and technological modernization prevail, old-style regulators constantly have to adapt in order to defend their turf; therefore, would-be regulatory entrepreneurs are generally out-manoeuvred, and new regulatory agencies not frequently created. By contrast, regulatory innovation occurs often in policy sectors where technological evolution is so slow that significant increases in economic efficiency cannot come from incremental regulatory intervention; under certain conditions, the very inertia of this situation creates manoeuvring room for new regulatory-political initiatives. In sum, regulatory innovation is mostly a function of politics, rather than economic modernization.

2: Regulation and Modern Organizational State: The place of regulation in contemporary state theory

Voker Schneider

The paper will show that the theoretical "problematique" of regulation as a specific mode political governance is located in the intersection of the theory of the state and governance theory. The paper first is sketching out the theoretical landscape of state theory and the role of various forms of political governance that are related to the different theoretical perspectives. In a next step it will be shown that regulation is a very specific mode of governance, which emerged in the US at the turn of the century contrasting sharply with traditional administrative guidance. It will be argued that regulation co-evolved with the modern organizational state at a certain level of functional differentiation. This governance mode seemed to be a solution in a situation, where political control resources got increasingly dispersed within the different administrative organizations/ agencies of the public sectors as well as between the public and the private sector. The paper will also address the difference in the American and European

evolution of political governance based on a significant differences at the level of the administrative system, and different relations between government and administration.

3: The Origin of Regulation in the United Kingdom

Iain McLean

Regulation of natural monopolies in the UK goes back to the 1840s, with four notable railway regulation Acts. Of these, the Railway Clauses Consolidation Act 1845 is still in force and the Regulation of Railways Act 1844 remained a huge influence on regulation in both the UK and the USA throughout the 19th century. Regulation of safety arose through electoral pressure; regulation of price and quantity was a political initiative from an exceptionally determined minister (W.E. Gladstone).

The 19th-century pattern was of regulation of rates of return. This was too easily evaded to constrain regulated industries (although, consistent with the Averch-Johnson hypothesis, it may have led to over-capitalisation). For much of the 20th century, the debate about regulation appeared to be superseded by a debate about public ownership, although the underlying issues did not go away. Re-regulation of utilities in the UK was a consequence, but not an immediate consequence, of the privatisation programme of the Thatcher governments.

4: W(h)ither the Economic Theory of Regulation?

Anthony Ogus

In the 1970s and 1980s, the economic theory of regulation, with seminal contributions from Stigler and other members of the Chicago School provided some major insights into the origins and nature of regulation. The principal hypothesis that regulation benefited, and was therefore sought by, the regulated industries, rather than other interested groups was an important antidote to the familiar public interest models. The work was complemented by that of the Virginia School with its focus on rent-seeking behaviour. Clearly, the economic theory still has important normative implications for the procedural and constitutional framework of regulation. In particular, it helps to identify what democratic and process values should be incorporated into that framework. However, as positive analysis, it is not clear how well it has survived in an era of deregulation and regulatory reform. In this paper, I argue that the revitalised public interest approach to economic analysis, sometimes associated with the Yale School of Law and Economics, provides necessary tools for contemporary regulatory policy-making.

5: Political Regulation or Market Based Self Governance: The Challenge of the Innovation Economy

Atle Midttun

Economic regulation is today challenged on two frontiers: firstly by the globalising economy, which is not matched by global regulatory institutions; and secondly by rapid technological and organizational innovation which makes the target of regulation elusive and creates uncertainty about its effects. The paper explores how, in this situation, market based self governance may be used to supplement or substitute traditional political-administrative regulation. Theoretically, the paper integrates ideas from the Austrian school of economics with later theories of self regulation in the business strategy and corporate social responsibility traditions. These traditions are discussed up against the neoclassical tradition of regulation and market design and the Weberian tradition in organizational design.

6: All Talk and No Action? : Social Constructivism and Discourse in Theories of Regulation

Bronwen Morgan

This chapter explores theories of regulation that focus neither on abstract normative justification nor on rational incentives given a particular preference structure, but rather on the social construction of preferences and meaning within, and at the inception of, a regulatory regime. First, it draws on theories of regulation that emphasise the conditions and context of *regulatory compliance* (as opposed to the conditions under which regulatory regimes initially emerge). Secondly, it considers not just business groups as key to the constitution of norms and meaning in regulation but also civil society organisations and the structure of state institutions. The chapter organises social constructionist and discourse-based theories of regulation along two spectra: first, the extent to which a particular approach emphasises an *interpretive* or a *predictive* understanding of regulation, and secondly whether the approach is aimed primarily at explaining compliance with existing regulatory principles and standards, or the initial emergence of regulatory standards.

The general thrust of social constructionist and discourse-focused approaches to regulation emphasises processes of norm internalisation that shape actors' preferences (in contrast to rationalist emphasis on the incentive structure of an array of given preferences). At the more interpretive end, the focus is on exploration of shared understandings within bounded interpretive communities. Approaches here operate at micro, meso and macro levels of abstraction. Micro-level explorations include those of Kagan and Hawkins, highlighting the ways in which individual actors in regulatory regimes construct consensus, or that of Santos, which highlights conflict. Meso-level explorations such as that illustrated by Hancher and Moran, move up from actors to organisations and institutions. Systems theory approaches (Teubner, Lange) arguably fit here too. Macro-level theories increasingly centre on discussions of deliberative discourse, but again there is variety between emphasis on consensus (Black, drawing on Habermasian theories) and conflict (Santos, Dryzek). I suggest that studies of regulation at the national level tend towards the interpretive version of social construction in part because they grow out compliance-focused approaches. As such they basically study the social construction of meaning in the discretionary spaces 'between the rules' of existing regulatory regimes. The approaches that try to develop a predictive capacity for social

constructionism are becoming more prevalent at the international level, where standards in 'globalising' regulatory regimes are still emerging. These approaches more than any other may focus on discourse to the detriment of material institutional constraints, perhaps because the very fact that they emphasise the conditions under which regulation emerges means that the focus is on as-yet-unenforced norms (hence the 'all talk and no action' query encoded in the chapter's title). Thus there is an implicit evaluative slant to the presentation of social constructionist and discourse-based approaches to regulation in this chapter: the benefits that might be brought by adding a predictive dimension to social constructionism may be offset by the costs of losing its 'grounded context'. And arguably only a close appreciation of the grounded context of regulatory actors' choices and decisions will keep in view the ways in which incentives are not set in stone, but are capable of being re-envisioned and moulded by innovative regulatory design.

7: The Post-Regulatory State

Colin Scott

The shift away from welfare state forms of government (direct provision, public ownership, informal bureaucratic control, etc) to the 'regulatory state' form (involving separation of operational and policy activities, establishment of arms-length oversight units, greater formalism etc) has been well documented. Just as many OECD countries were placing greater faith in regulatory governance structures, considerable doubt emerged in a number of disciplinary discourses as to the efficiency, desirability and even possibility of effective regulatory control, characterized as hierarchical oversight by reference to rules. Thus responsive regulation theory has looked to more negotiated enforcement practices, participation of interest groups, subtle manipulation of states to escalate regulatory technique and greater involvement of interest groups in monitoring and enforcing. New institutional economics and positive political economy have questioned the capacity of elected elites to maintain control over policy directions in sectors characterized by extensive delegation to agencies. Autopoietic legal theory has raised doubts as to the very possibility of instrumental regulatory objectives set within the political system being effectively received and acted on by the legal system. Foucauldian analysis of governmentality has emphasized the 'range of multiform tactics' through which contemporary power is exercised and the partial nature of any inquiry into governance which focuses more or less exclusively on governments. This chapter investigates that skeptical literature, not only from a theoretical point of view, but also with an analysis of evidence of alternative, post-regulatory control mechanisms being deployed and being effective within the OECD. Alternative forms of control are characterized by their exploitation of diffuse sources of power and authority, a tendency to marginalize the central state, and a tendency to work with the grain of the activities to be controlled.

8: *On Leopards and Spots: The Malleability of Regulatory Systems*

Graham Wilson

We have long been aware that regulatory systems differ significantly from one country to another. These differences include but are not limited to factors such as the degree to which there is reliance on voluntary cooperation or on law, the degree of conflict or cooperation between regulators and the regulated and the degree to which the technology required to address problems are specified or are left to the discretion of the regulated. Political scientists have captured these differences by talking about "national styles of regulation."

National styles of regulation themselves require explanation particularly as they do not correspond to the general image that people hold of a country or its politics. The United States, for example, long regarded as a bastion of capitalism, has a regulatory style that is less cooperative, more legalistic and more prescriptive than regulatory systems found in countries with a stronger social democratic tradition. Numerous factors have been suggested as shaping regulatory styles. One explanation that has been offered for the adversarial nature of the American regulatory system, for example, is that American political culture welcomes the vigorous assertion of self interest and accepts conflict readily. Another argument that has been advanced is that nations with more broadly encompassing interest groups structures, for example an employers' organization and trades associations that recruit all potential members (such as the Netherlands), are able to create effective but collaborative relations with regulators more readily than those that do not have such interest group structures (such as Britain.) Others have suggested that the structure of the state itself determines the degree the regulatory style; collaboration is more likely in political systems in which power is concentrated (giving the regulated a powerful inducement to compromise) than in systems in which power is diffused (giving the regulated hope that they can find an institutional venue somewhere in which they can win.) It should be noted that all the factors seen as shaping national styles of regulation are relatively deeply rooted. Political culture, institutions and interest group systems do not change easily or rapidly.

In recent years, however, many countries have attempted to change their regulatory systems. These attempts are often rooted in attempts to accommodate to increased competitive pressures, perhaps as a result of globalisation. In general, these reforms have been intended to increase cooperation and decrease conflict, to rely on informal rather than legal approaches to enforcement and to encourage the achievement of performance that go "beyond compliance." Political scientists would presumably argue that these attempts will fail because countries are not free to choose regulatory systems; regulatory systems are shaped by deep seated, slowly changing factors. None the less, serious attempts at change are to be found in many advanced industrialized countries. This study draws on examples from North America and Europe to assess the degree to which countries have been able to adopt regulatory approaches that differ markedly from their established national style of regulation.

9: Regulatory Failures and Regulatory Successes: The Case of US Electricity Regulatory Reforms

Eli Goldstein and Warren Young

The Federal Energy Policy Act of 1992, which required electric utilities to permit customers' access to other utilities and to a growing number of independent power

producers, signalled the beginning of a new era of (state level) competition and regulatory reform in US electricity markets. In the light of this Act, half of US States have reformed their electricity markets' regulatory framework. However, regulatory framework designs vary among the reforming states. Consequently, differences in reformed regulatory frameworks caused differences in reform's outcomes (e.g. California vs. Pennsylvania and Texas). In this paper we survey some of the theoretical reasons for failure and success of regulatory reforms, focusing on the theory of regulatory design and on the broader institutional, political and technological frameworks, which determine which reform process will be successful and which will end as a regulatory failure.

10. Explaining the Diffusion of Market-Oriented Reforms, Covadonga Meseguer Yebra

I explore whether governments embarked in market-oriented reforms as a result of learning from others' experiences. I assume that governments are Bayesian learners, that is, that they update their initial beliefs about the effectiveness of alternative policies with all available experience in the past and elsewhere. I also assume that governments choose policies on the basis of their updated beliefs. This model of learning is applied to four policy choices: the decision to grant independence to central banks, the decision to liberalize trade regimes, the decision to privatize and the decision to enter into agreements with the IMF. I further explore whether convergence toward neo-liberal economic policies has resulted from external imposition or emulation. I find that learning, in isolation or in combination with the other mechanisms, explains the decision to liberalize trade, to privatize and to enter into IMF agreements. Yet, none of the mechanisms of convergence explains why governments granted independence to central banks.

11. The Diffusion of Professional Expertise: The European Professional Federations in the Regulatory State

Julia Evett

The chapter considers aspects of the construction of a common European regulatory regime for professional occupations and links this with amore general discussion about the rise of the regulatory state in Europe and the diffusion of professional expertise. The work of the European Professional Federations is examined using data from a research project in the Centre for Professions and Professional Work at the School of Sociology and Social Policy in the University of Nottingham. The processes of diffusion are well-demonstrated in the work and responsibilities of the European Professional Federations. The paper will argue, however, that in the diffusion of regulatory reforms in respect of professional expertise the occupational control of the work needs to constitute an important part of the analysis.

12: Regulation through Independent Agencies in Western Europe: Theoretical Perspectives

Fabrizio Gilardi

Independent regulatory agencies (IRAs) have flourished throughout Europe. Governments seem more and more willing to delegate several, if not all, of their regulatory competencies to specialized institutions that, unlike ordinary bureaucracy, they cannot directly control. The creation of such agencies can be observed in all West European countries and in a wide range of sectors, such as utilities, financial services, food safety, consumer protection, and general competition. Thus, the empirical relevance of this recent form of institutional change can hardly be overstated. Yet scholars have just begun to investigate the origins of independent regulators systematically. Despite some valuable recent work, the origins, nature and consequences of delegation to IRAs still remain unclear.

The goal of the paper is to investigate this question from a theoretical perspective, with a particular focus on the origins of IRAs. Why do governments delegate to agencies they can only partially control? I argue that the most promising avenue for research is the new institutionalism in its three forms.

Rational choice institutionalism has a long tradition in the US, where, in its principal-agent and transaction costs variants, it has been extensively used to analyze delegation to the executive and to bureaucracy. This constitutes an excellent starting point for the study of delegation to IRAs, but more for the question it raises than for the answers it offers. In effect, in the case of delegation to IRAs, what can be observed is that principals make agents purposely independent rather than, as predicted by principal-agent theory, designing as accurate control mechanisms as possible. This means that some powerful incentives must be present that lead governments to engage to this extreme form of delegation. Rational choice institutionalism identifies two such incentives. The first is the need to make credible commitments, and the second is the wish to mitigate the effects of the uncertainty of political property rights. In many regulatory settings, credible commitment capacity is a very valuable asset, as it is the only means for governments to achieve their goals. Delegation to IRAs is a way for governments to remove their future freedom of action, and thus to improve the credibility of their commitments. On the other hand, the problem of political uncertainty refers to the fact that elected politicians, in reason of the democratic process, are not able to exercise power forever. This suggests that politicians should be expected to find a method to make their policy choices last well beyond the moment, which can be postponed but not avoided, when they will lose their political property rights over a given policy area. This means that current politicians may wish to bind future politicians. Again, delegation to IRAs is a possible solution.

Historical and sociological institutionalism share many similarities, but I think it is useful to give them a separate treatment. Beginning with historical institutionalism, the main argument is that "functional pressures" such as those highlighted by rational choice institutionalism are strongly mediated by national institutions, and in particular by state traditions and structures. For example, Britain has a long tradition of regulation through commissions, whereas France has been much more suspicious of independent agencies, which has been seen as threatening the unity of the state. In the end, the argument refers

to path dependency. Change is possible only within a given path. Thus, national and sectoral paths are likely to have an impact on the design of IRAs.

Sociological institutionalism, on the other hand, strongly emphasizes institutional isomorphism. Social processes legitimate certain types of institutional choices over others. In this perspective, then, the creation of IRAs is explained by the fact that governments seek legitimacy for their regulatory policies, which can be achieved by using socially valued institutional models such as IRAs. The three forms of institutional isomorphism, namely coercive, mimetic and normative, are thus likely to be at the origin of the diffusion of IRAs across Europe.

The paper discusses and develops these three theoretical perspectives. An assessment of their relative merits is impossible without systematic empirical testing, which is beyond the scope of the present study. Rather, the last part of the paper is devoted to the discussion of the observable implications of the three theories, as well as of the available empirical evidence. The concluding section summarizes the main arguments and sketches a research agenda on IRAs in Western Europe.

13: The Political Fragmentation of Regulatory Regimes: Is there an overlapping positive effect?

Jacint Jordana and David Sancho

The paper addresses the costs and benefits of the fragmentation of decision-making when an independent regulatory agency is introduced into the system of policy making and policy implementation in federal and unitary states. Frequently, agencies carry on the implementation of policy instruments, but policy definition and policy surveillance usually still remain in hands of parliaments and ministerial organizations, which could be very active guiding the policy. As a consequence, some policy overlapping could appear. Focusing the institutional design, it can be argued that there exists a problem of agency delegation and a possible government commitment failure when some policy overlapping exists. Nevertheless, we want to consider in this paper a complementary approach to these problems, having in mind the typical difficulties that independent agencies often confront (capture, control, etc.), but also their benefits, derived from the fine-tuning nature of most regulatory instruments.

We indicate that when fragmentation is high, probably policy overlapping can produce a negative effect, but when it remains low, overlapping could help to improve the public interest. The reason lies behind the very nature of regulatory policy: its implementation has to be flexible enough to stimulate private sector agents, but distant enough to impose a general will. When fragmentation is high, overlapping tends to produce policy paralysis, impeding the pursuing of general will (it is frequently the case of the United States divided government model). However, these problems tend to be reduced when fragmentation is lower (i.e., Westminster government models). Overlapping could favor consensus formation among public officials, introducing broader political objectives on agency focus, and more technical information on ministerial bodies. It is clear, however, that a correct balance of power among the players involved is a basic key for the success of the game. In the cases in which government can always

impose its decisions, overruling agency positions, no credible debate for consensus formation is possible.

14: Accountability and Transparency in Regulation: critiques, doctrines and instruments

Martin Lodge

Regulation is widely seen to suffer from problems of accountability, usually associated with the allocation of authority, and transparency, usually concerned with the procedures of decision-making. The 'traditional' legal literature highlights political-constitutional concerns, while 'transaction cost' accounts point to the importance of 'slack' for 'other-regarding' actions, while a 'traditional public service'-oriented literature suggests changes to public service accountability and ethos due to the perceived marketisation via regulatory reform. This paper seeks to advance beyond the traditional concerns by highlighting the doctrinal basis of the different criticisms and accounts of regulation.

The argument is advanced in three steps. First, the paper points to the varieties of accountability and transparency accounts in the literature by placing these accounts in distinct administrative doctrines. Second, the paper advances a 'transparency toolbox' to distinguish between various 'value-free' instruments through which regulation can be made accountable and transparent. These instruments are then linked to the contrasting administrative doctrines of fiduciary trusteeship and consumer sovereignty to highlight the variety of potential instruments through which accountability and transparency may be incorporated into regulation. The third part of the paper discusses the factors which impact on the selection of instruments, drawing both on analytical concerns (based on the transaction cost literature) and on empirical evidence, both from the developed and developing world.

15: *Herding towards Regulatory Reforms: The Politics of Emulation and the Diffusion of Regulatory Reforms*

David Levi-Faur

Three major types of political theories deal with the diffusion of regulatory reforms: top-down, bottom-up and horizontal. Top-down explanations examine the process of diffusion against extra-national mechanism of change – such as the effect of international institutions and the pressures of economic and technological changes. Bottom-up explanations include all the theories that confine themselves to the national level of analysis and explain the diffusion of regulatory reforms or their lack of in terms of the national balance of power among competing political interests embedded in specific national characteristics. Finally, horizontal explanations emphasize the existence of distinct communities of knowledge and political actions where the distribution of power and influence is coming from the relevant reference group rather than from above or below. This paper offers a contribution to the growing literature on the role of 'horizontal factors' in the diffusion of regulatory reforms. The major argument that it advances is that policy emulation in conjunction with policy learning were critical factors in the

diffusion of the reforms. While the argument is not new, the theory that is advance and the empirical tests that it provides are not common in this strand of the profession's literature. The theoretical framework rests on (a) herd models that deals with micro-level analysis of the incentives for herding; (b) Granovetter's threshold model of captures the number or proportion of others that must make a decision before a given actor does so, and (c), diffusion models that were developed mostly by sociologists to capture macro-aspects of the spread of new technologies, information, drugs, fashions and the like. The model applies to any country that proceeded towards regulatory reforms after taking cues from all or some of the earliest cases of reforms. The predications of the model are examined against comprehensive set of the data on the diffusion of regulatory reforms in the telecoms and electricity industries in over than one hundred countries.

16: Regulatory Styles: The Diffusion of Adversarial Legalism?

Daniel Kelemen

A rich literature on comparative regulatory policy shows that states differ not only in terms of the substance of their regulations, but also in their regulatory styles. States have relied on different policy instruments and, in a broader sense, on different regulatory styles in pursuing their policy objectives. In recent years, there has been considerable interest among scholars and policy makers in examining the impact of globalization on national regulations. While many scholars have examined how globalization processes are influencing national regulatory standards, little attention has been paid to how globalization may be influencing regulatory styles. However, for participants in regulatory processes (i.e. regulated firms, public interest groups, citizens), changes in regulatory style may often prove just as important as changes in the substance of particular regulations. This chapter examines whether advanced industrialized democracies are experiencing a convergence in their regulatory styles and, if so, why this is occurring.

I argue that a considerable degree of convergence is occurring, but not in the direction that many policy analysts have suggested. There has been much discussion in policy-making and academic circles on both sides of the Atlantic concerning the need to adopt more flexible approaches to regulation, relying on tools such as framework laws, voluntary agreements and various forms of self-regulation. However, the impact of such approaches has been overshadowed by the less discussed but more pervasive spread of transparent, legalistic and adversarial approaches to regulation across a number of policy areas. I argue that the spread of this regulatory style has been caused by a combination of international and domestic factors. In a number of countries across a number of policy areas, increasing economic liberalisation has combined with domestic political fragmentation to undermine informal, opaque approaches to regulation and to create pressure for more legalistic, transparent approaches. The new approaches establish more transparent procedures and create more rights for participants in regulatory processes, but at the same time they encourage more adversarial, litigious interactions between regulators and regulated. Thus, the spread of adversarial, litigious approaches to

regulation is emerging as an unintended, and often unwanted, by-product of economic liberalisation and calls for greater transparency and accountability.

17: Divergence or Convergence? State Regulation of the Banking Sector in Western Europe and the United States

Andreas Busch

The simultaneous processes of globalisation and European integration have rekindled the interest in the role of the nation state. But this debate is an ongoing one, as participants cannot agree whether this will result in the „erosion“, „decline“ or even „the end“ of the nation state, or, quite to the contrary, in its „revival“ because of „new tasks“ for it, exposing ideas about the „powerless state“ as a „myth“. One reason for this stark disagreement, the paper argues, is that theoretical considerations offer two different perspectives and dynamics for an interpretation of that process, and consequently expect different outcomes: one sees an overwhelming pressure for policies to converge (and hence reduce the role of the individual nation state), the other expects exactly the opposite, namely a continuing or even mounting divergence of policies (and thus a continuing or enhanced role for the individual state). The paper spells out these different positions in greater detail and then goes on to argue that only empirical evidence can resolve the debate. The empirical part of the paper draws on four detailed case studies which have followed the course of banking regulation in the US, the UK, Germany and Switzerland. Their main result is that both initial positions have to be modified, and that domestic institutions function as strong „filters“ for globalisation, producing quite different policy dynamics and outcomes in the four countries.

18. Moving away from the "race-to-the bottom" and "regulatory competition" theories: A proposed model of "regulatory co-opetition"

Geraldin Damien and Joe McCharey

Regulatory reformers in the United States call for decentralization in the name of 'federalism'. In Europe, similar claims are often made under the banner of 'subsidiarity'. One of the underlying theoretical premises of these two movements is the suggestion that 'regulatory competition' among jurisdictions will generate pressures for improved efficiency in the regulatory realm. Critics have suggested that rather than welfare-enhancing competitive pressures, divergent regulatory standards may instead trigger a welfare-reducing 'race toward the bottom'.

In this chapter, We argue that both race-toward-the-bottom and regulatory competition theories are overstated from a descriptive point of view and unsatisfactory from a normative perspective. Regulatory theory must reflect the diversity and complexity of the world. Optimal governance thus requires a flexible mix of competition and cooperation between government actors as well as between governmental and non-governmental actors, along both horizontal and vertical dimensions. This enriched model of 'regulatory

co-opetition' recognizes that sometimes regulatory competition will prove to be advantageous but in other cases some form of collaboration will produce superior results.

19. Regulatory Diffusion in the European Multi-Level System: A Research Agenda

Andrea Lenschow and Christoph Knill

In this paper we will reflect on two dimensions central to a project on regulatory reforms: changes in the nature of the regulatory “state” and on the impact of these structural changes on the process of the diffusion of regulatory reforms. With respect to the nature of the regulatory “state” we will focus on the evolution of the multi-level governance system in Europe. In the European Union we have witnessed not only the shift of regulatory activities to a new institutional centre (cf. Majone), but with this shift also the evolution of new regulatory patterns (styles, instruments, etc.). Building on a characterization of this process and the nature of the European regulatory state, we will think in the second part of the paper about the processes of regulatory diffusion in this multi-level system. Rather than attempting to provide empirical answers to questions like “what is diffusing?”, “what are the mechanisms responsible for diffusion?” and “what are the consequences of diffusion for legitimate governance?”, we will explore various theoretical approaches – ranging from rational choice to institutional and cognitive theories – and their “take” on these questions. Hence, we will build a research agenda to guide future empirical research in this area, which is only beginning to be explored.

21: De-regulation and the Complex Interfaces Between Multiple Regulatory Arenas Atle Midttun

De-regulation or transferal of governance from public service companies with monopoly to competitively exposed companies operating within a regulated market re-arranges the institutional allocation of societal and commercial concerns. By institutionalizing a clearer division of roles between a social welfare oriented regulator and business oriented firms exposed to competition, the proponents of de-regulation argue that they can achieve both better governance and better efficiency. The implicit assumption behind this expectation is generally that a sectoral public service regime may be substituted by one regulatory regime where regulators have sufficient knowledge to specify efficient rules and workable procedures.

Particularly in complex infrastructure industries such as telecommunication, electricity and gas, these assumptions are highly debatable. In such sectors we shall argue that the reality is more typically described as unleashing complex regulatory processes in a series of interrelated regulatory fields. This typically includes grid access regulation, competition regulation, regulation of licensing arrangements, land use regulation and innovation regulation. Taken together, the joint effects of these interrelated regulatory fields may prove less clear cut both in terms of predictability, compatibility and clear cut

division between commercial and societal interests than the de-regulation rhetoric would like to have us believe.

Taking de-regulation of electricity, gas and possibly telecom as examples, the chapter explores the regulatory interfaces in complex regulatory fields and discusses problems of policy co-ordination and policy integration under de-regulated regimes. A special focus is given to the interaction between arenas and the regulatory dilemmas that arise between them.

III-II Scientific Content/ Description of the Two edited Volumes [Products of the workshops]

The Politics of Regulation: Examining Regulatory Institutions and Instruments in the Governance Age, Jacint Jordana and David Levi-Faur [Expected publication July 2003, Project supported by European Science Foundation]. Contract signed with Edward Elgar and the CRC Series on Regulation, the University of Manchester.

Description of the First Book:

The publication of James Q. Wilson's edited collection "*The Politics of Regulation*" in 1980 was a major breakthrough in the study of regulation. The book is one of the most oft-cited publications in the field and its concluding chapter is "a must-read" for every student of the subject to this day - almost a quarter of century after its inception. Yet, much has changed in the governance of the capitalist economy since the appearance of the volume. Moreover, many developments are visible in the academic study of regulation, configuring an important interdisciplinary area of study in the social sciences. Indeed, it is hardly possible to exaggerate the extent of change *in the way and extent to which governance through regulation is exercised* and *in the way the concept of regulation is perceived and employed* in the analysis of political and policy processes.

Traditional regulation debates draw exclusively on the American experience, more specifically, on the administrative agencies that stood in the center of the US's regulatory processes. Yet, during the last two decades, major arenas of regulatory policies have emerged across the world, covering many sectors, countries and regions. Reforms have been spread to Europe and the developing world. These were of course sponsored by a wide variety of international organisations sharing responsibilities with the nation-states over the regulation of major aspects of the economic process. We therefore need to examine the original 'American-centered' concepts and theories of regulation and revise or refine them against the backdrop of the extensive and intensive experience of the last two decades.

Moreover, the ascendance of the neo-liberal doctrine in the 1980s and its advocacy of deregulation of market and society left its impression on the agenda of most, if not all countries. Whilst the extent of the success of the ‘deregulatory’ component in the neo-liberal *ascendance* is still rather obscure, there are sufficient indications for significant changes in the governance of capitalism. Thus, the papers in this volume should deal not merely with the new stage of development and expansion of regulatory processes worldwide but also with the role of regulation in a new historical stage of capitalism. **Finally**, we wish to present distinct cross-national and cross-sectoral comparative approaches and emphasise the role of institutions, policy networks and epistemic communities in shaping the politics of regulation – aspects that were hardly dealt with by Wilson.

The changes that occurred – not to mention general progress made in the study of regulation - call for a re-evaluation of the theory of regulation and its legitimate scope of application. Yet, our intellectual exercise follows the basic assertion of Wilson (1980) and Lowi (1964, 1984), that regulation is a distinct field of study carrying typical problems and processes deviating from other modes of intervention, most notably distribution and re-distribution. Hence the title of the book: *The Politics of Regulation*, and hence the claim for a distinct place for regulation research *within* the general field of politics.

In summary, we identify five main aspects of change in the way regulation is employed and exercised nowadays. These are the central topics in the politics of regulation discussed in the contributors’ papers and will serve us as guidelines in the volume we intend to publish:

First, changes affected in regulatory practices in the context of transformation of politics from ‘the art of governing’ to ‘the art of governance’. ‘Governance’ has become a standard way of characterising the new role of government in a world of increasing interdependencies and interlocks across countries and territorial levels, through public and private spheres. Thus, regulation often occurs in complex multi-level political fields, where some actors can play simultaneously at several levels and new institutions are (built) established to deal with the new setting. These transformations challenge our perception of regulation as a new mode of governance.

Second, political processes have increasingly been leading to the expansion of regulatory modes of governance into more spheres of life and into more political arenas. Two issues are especially important here: First, the advance of regulation in the context of privatisation and the development of pro-active policies facilitating economic competition. Second, the spread of regulatory knowledge and institutions from economic to social spheres (that is, the transfer of knowledge from the field of economic regulation to the field of social regulation).

Third, the politics and theory of regulation experience specific problems of political and economic institutions. These problems might be different than those characterising the United States. Thus, we raise the question, to what extent are the issues and theories

discussed by American theorists of regulation are central to the current debate on regulation.

Fourth, the impact of institutions, policy networks and epistemic communities on the politics of regulation at the national and sector levels could be very significant. The theory of regulation might be advanced best by cross-regional, cross-national and cross-sectoral comparative analysis.

Fifth, new ideas on the ways that regulatory instruments can be used to enhance the efficiency and efficacy of governance. The growing arsenal of regulatory instruments and the debate on the suitability and effectiveness of these instruments open a new area of research for students of the policy and administrative processes.

Description of the Second Book

The Internationalization of Regulatory Reforms: The Promises of Learning and the Realities of Emulation, David Levi-Faur, Jacint Jordana and David Vogel [Expected conclusion August 2003].

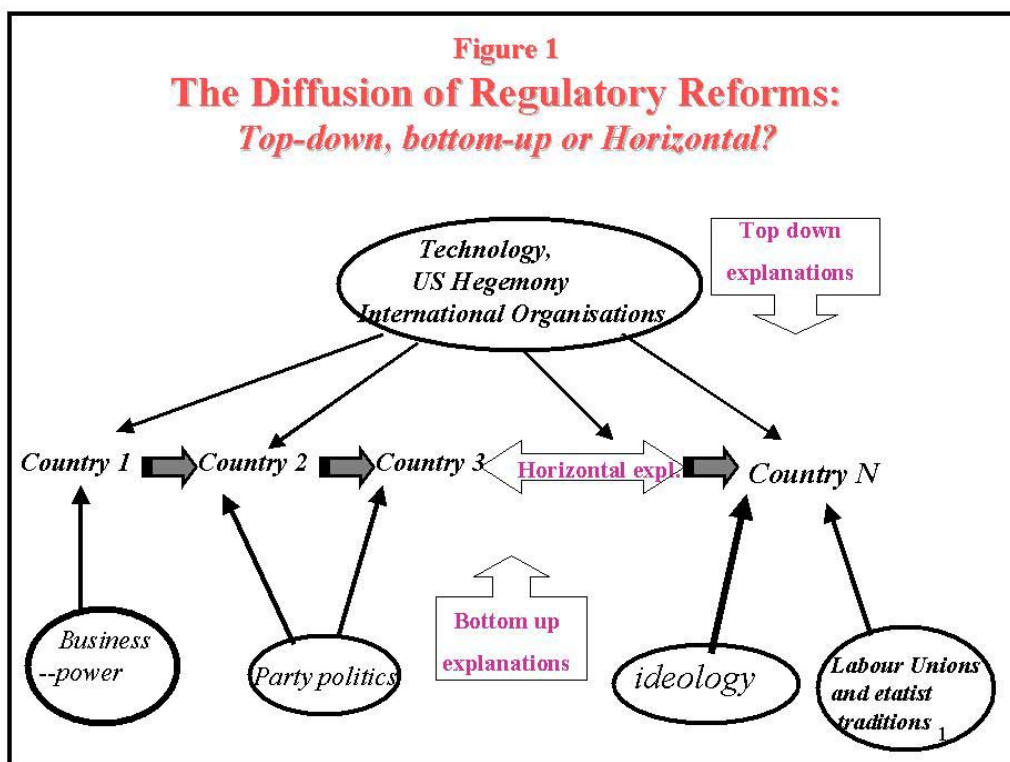
The diffusion of regulatory doctrines and practices from Europe and the United States to other parts of the world is an outstanding manifestation of the change in the governance of capitalism. The spread of regulatory reforms has resulted – at the level of the nation state - in the emergence and consolidation of the “Regulatory State” as a new mode of governance. There is ample evidence for this change. New regulatory institutions are increasingly embedded in the crowded and complex administrative structures that serve to govern the modern capitalist nation-states for the last century. The “Developmental State” that promotes industrial policy by means of subsidies and investments, and the “Welfare State” that focuses on re-distribution, persist as very important modes of governance, yet, change advances amidst continuity. While there are significant variations in the extent that regulation is employed and in the extent that regulatory regimes are consolidated (across regions, countries, sectors and issue-domains), the overall trend of the diffusion of regulatory modes of governance and the subsequent rise of the ‘regulatory state’ is hard to avoid. This volume aims to explore the motivations, manifestations and implications for the diffusion of the regulatory reforms and the advance of regulation as a dominant mode of capitalist governance.

This volume asserts that the rise of the regulatory state and the diffusion of regulatory reforms should be studied also as a global phenomenon and not merely as regional and national phenomenon (e.g., the European regulatory state, the British regulatory state). The explosive growth in the number of independent regulatory authorities - in developing and developed economies, democracies and autocracies, in telecoms as well as in food safety, indicates that the spread of reforms be promoted to a higher level of analysis and on more generalized terms. In doing so the book raises two major questions and discuss each of them through a distinct and unique prism. **First**, what are the political forces responsible for the rapid advance of regulatory reforms across the world? And **Second**, to what extent does the diffusion of these reforms reflect qualitative change in the governance of capitalist economies?

In dealing with the first question we rest our analysis on the distinction between three major explanatory strategies - “top-down”, “bottom-up”, and “diffusion” (see figure 1). Top-down explanations discuss the advance of regulatory reforms as a response of national policy makers to exogenous (and often common) pressures from various international sources on national policy communities. Bottom-up explanations examine the advance of reforms as an outcome of domestic balance of power and specific national style.

The third explanatory strategy treats the spread of reforms as a “contagious process” of diffusion across interdependent group of multi-level actors. Internationalisation is

produced and conditioned by formal and informal networks of actors who closely monitor the behaviour of each other. These actors are part of ‘world societies’ of epistemic communities. The causal relations in these diffusion processes are therefore ‘horizontal’, as the action of other members of the group is the driving force propelling the adoption of regulatory reforms across the world. To an important extent this approach suggests that policy makers are drawing their incentives from their fellow policy makers in varied domains of action. These suggestions do not negate the assertion that the domestic setting (bottom-up considerations) and the effects of international organisations (top-down considerations) are important. It does however indicate that the study of the mechanism of diffusion is imperative and without it our understanding of systemic change is deficient.



The second question that we raise in this volume is to what extent does the diffusion of regulatory reforms reflect qualitative change in the governance of the capitalist economies?. We distinguish here between two major answers. For some the major mechanism of diffusion is that of policy learning (fuelled by regulatory competition, regulatory co-opetition and regulatory cooperation) as a major mechanism of survival in an increasingly economically interdependent world. For others the major mechanism is policy emulation that is driven mainly by political considerations in a world, which is increasingly politically interdependent. No doubt each of these explanations captures some truth and suggests that the distinction between emulation and learning will facilitate comprehension of the subtle and refines aspects of the diffusion process – most

importantly the **depth of change** and the **seriousness of commitment** of the policy makers. While emulation involves superficial imitating action, learning involves a redefinition of one's interests on the basis of newly-acquired knowledge. In reality, it is difficult to envision a situation where only one mechanism – be it learning or emulation - produces such large-scale effects. Instead, we may wish to explore the combination of emulation and learning processes as shaping the process of diffusion.

These two central questions will be explored in this volume, by scholars adept in various research traditions tuned to a variety of regions and sectors. However, they all are expected to contribute to our understanding of the spread of regulatory reforms as a process of diffusion, (mainly by contrasting and combining diffusion-centred explanations with the traditional top-down and bottom-up explanations). Equally they are well placed to contribute to our understanding of the role of policy learning and policy emulation in the political process.

Empirically and methodologically, this volume will be heterogeneous. It will include small-N case-oriented analysis as well as large-N variable-oriented analysis. In order to understand the internationalisation of the reforms it will apply both macro- and meso-level theories as well as micro-level/rational choice perspectives. The empirical analysis will focus on the European arena as a natural arena for comparative analysis but will also bear on Latin America, Asia, Africa and North America. We hope our joint efforts will produce the first volume on the internationalisation of regulatory reforms to be approached mainly from the perspective of political science.

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