

# Regulatory Reforms and Agencification

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# Preface

This paper is written as part of the project «Regulation, Control and Auditing», funded by the Norwegian Research Council. A first version of the paper was presented at the international workshop on «Autonomization of the state: From integrated administrative model to single purpose organization» at Stanford University April 1–2 2005, and co-sponsored by the Scandinavian Consortium for Organizational Research (SCANCOR) and the Research Committee on the Structure and Organization of Government (SOG) in the International Political Science Association. A revised version was presented at the third ECPR Conference in Budapest 8–10 September 2005, the section on «Regulation in the Ages of Governance». We wish to thank the participants at these workshops and Nils Brunsson, Anne Lise Fimreite, Jan Froestad, David Levi-Faur, Michael Moran and Paul G. Roness for valuable comments.

# Abstract

Over the last two decades the classical model of hierarchical and integrated government has been gradually replaced by a more horizontally structured and fragmented arrangement. A central aspect of this development in many countries has been a change in how regulatory activities are organized. Regulation based on central command and control from the top has been weakened in favor of more regulation by autonomous regulatory agencies. We discuss this development first by looking at concepts like the Regulatory State, regulation and agency, thereby drawing together the different strands of literature about regulation and agencies. Second, we describe the development and effects of the new regulatory model and review a number of empirical studies of reform processes and effects. Finally, we discuss how some of the main empirical features may be interpreted using various theoretical approaches such as the rational-economic, organizational-structural, and institutional perspectives.

# Sammendrag

I løpet av de siste 20 år har den tradisjonelle hierarkiske og integrerte statlige styringsmodellen gradvis blitt erstattet av en mer horisontalt strukturert og fragmentert modell. Et sentralt aspekt ved denne utviklingen i mange land har vært en endring i organiseringen av regulerende aktiviteter. Regulering basert på kommando og kontroll fra sentralt hold har blitt svekket til fordel fra regulering gjennom autonome tilsynsorganer. Et formål med dette notatet er å gi en oversikt over den internasjonale litteraturen på feltet ved å bringe sammen litteraturen om regulering og reguleringsreformer på den ene siden og litteraturen om sentrale statlige «agencies» på den andre siden. Vi diskuterer denne utviklingen ved først å diskutere sentrale begreper som regulering, den regulerende stat, og sentrale semi-autonome myndigheter. Deretter beskriver vi utviklingen og effektene av den nye reguleringsmodellen og omtaler en rekke empiriske studier av reformprosesser og effekter i ulike land og sektorer. Endelig diskuteres hvordan en del av de viktigste empiriske trekkene kan fortolkes ved hjelp av ulike teoretiske tilnærminger slik som økonomisk-rasjonelle, organisasjons-strukturelle og institusjonelle perspektiver. Notatet avsluttes med noen forslag til videre forskning på dette feltet.



# Introduction

Over the last 20 years the classical hierarchical model of regulation by command and control from the top has been supplemented by greater delegation of this function to autonomous agencies. The new international regulatory orthodoxy, enhanced by the emergence of a universal reform model, holds that the creation of autonomous agencies will improve regulatory performance and efficiency without having negative side-effects on other values such as political control and democracy (Pollitt et al. 2004, Self 2000). We argue that this is a hypothesis and not an evidence-based fact and therefore needs to be examined through empirical studies. The causes and effects of this development in regulatory policy are still unclear.

There is an increasing literature on central agencies as well as on regulation and regulatory reforms. Until now, however, the research on central agencies has been characterized by weak theoretical development, an absence of comparable data, little comparative analysis, and few empirical studies (Bouckaert and Peters 2004, Pollitt et al. 2004). While there has recently been some improvement in the quality of this research, there is still much ground to cover. The literature on regulation is generally more advanced, but there has been little attempt to link the literature on regulation and regulatory reforms and that on autonomous central agencies. In this paper we will try to bring these two fields together by reviewing some of the main contributions in each of them. We will describe how regulatory and agency reforms are implemented in practice, and discuss some of their effects and implications based on different theoretical approaches.

We will focus on the organizational side of regulatory change and more specifically on the establishment of autonomous regulatory agencies and their relationship with superior ministries, and political executives. The use of central agencies within the regulatory state represents only one instrument of regulatory policy. In practice regulatory policy is implemented using a mixture of different types of state regulations such as independent agencies, self-regulation, and command-and-control regulation (Ayres and Braithwaite 1992, Hutter 2001). However, we will focus mainly on the development of the agency model as an intermediate form between the integrated hierarchical model and the more fragmented network model (Lægreid and Serigstad 2004), leaving aside the broader field of norms, control mechanisms, controllers, and subjects of control. Labeled by some as the post-regulatory state (Scott 2004), this includes phenomena such as self-regulation, soft regulation of the open-method type, framework regulation, responsive regulation, governance, regulatory regimes, regulatory capitalism, and networks between public and private organizations (Scott 2003, 2004, Knill and Lenschow 2004, Levi-Faur 2005).

We will first discuss central concepts such as the Regulatory State, regulation and agency. Second, we will describe and discuss the emergence of the Regulatory State and the agency form. Fourth, we will address some lessons and implications. Finally, we will discuss how different theoretical approaches such as rational, organizational-structural, and institutional perspectives can be used to interpret the processes and effects.

## Some Main Concepts: The Regulatory State, Regulation and Agency

The view is widespread that we live in the era of the Regulatory State (Majone 1994, 1997, Loughlin and Scott 1997, MacGowan and Wallace 1996, Moran 2002, Lodge 2001). The traditional sovereign state model with its command-and-control policy style, public ownership and nationalization, was appealing because it aimed to reconcile a variety of partly conflicting goals in a multifunctional state. In contrast, the goals of the Regulatory State are much narrower, namely to improve the efficiency of the economy, promote competition, and protect consumers and citizens. Other traditionally important considerations, such as democratic aspects, political control, peoples' rights, the participation of affected interest groups, etc., are de-emphasized.

The Regulatory State tends to favor regulation over other means of policy-making. It is more a rule-making state than a taxing and spending state. Market regulation is more important than the redistribution of income and macro-economic stabilization (Majone 1997), the application of regulation is more formal, and privatization is a central feature (Levi-Faur and Gilad 2004). It involves a shift from direct to indirect government, and important policy-making powers are delegated to independent technocratic bodies with considerable political leeway, supposed to make objective decisions mainly based on professional competence. The state is kept at arm's length from direct participation in the economy but has a well-developed regulatory role (MacGowan and Wallace 1996). In contrast to the traditional welfare-state model, which integrates regulatory, operating, and policy-making functions, the regulatory state separates regulatory activities from operational ones, purchasers from providers, and the policy-making role from the operational role. Greater emphasis is placed on single-purpose and non-overlapping organizations and monitoring by autonomous agencies (Boston et al. 1996). The regulatory state is, however, not a consistent concept. Such terms as «American Regulatory State,» a «European Regulatory State,» and a «British Regulatory State» (Moran 2002) all mean slightly different things.

Regulation is also an ambiguous concept that can be used in both a broad and a narrow sense. We can distinguish between two different meanings of the term (Baldwin, Scott and Hood 1998, Jordana and Levi-Faur 2004). First, in the narrowest sense regulation means formulating authoritative sets of rules and setting up autonomous public agencies or other mechanisms for monitoring, scrutinizing, and promoting compliance with these rules. According to Selznick (1985) regulation is sustained and focused control by a public agency over activities that are valued by a community. The establishment of autonomous regulatory agencies brought about by the regulatory reform movement is connected to this narrow meaning of regulation. Public sector regulations imply that one agency seeks to shape the behavior of other organizations, that there is an arms-length relationship between the overseeing agency and the target organization and that the overseer has some formal authority or mandate for its oversight (Hood and Scott 2000). Second, regulation can be defined more broadly as all types of state intervention in the economy or the private sphere designed to steer them

and to realize public goals. This goes beyond rule-making to include areas like taxation, subsidies, and public ownership. In this sense regulation is an all-inclusive concept of governance.

In this paper we are concerned primarily with the first, narrower definition of regulation – i.e., regulation as a) goal formulation, rule-making, and standard setting; b) monitoring, information-gathering, scrutiny, inspection, audit, and evaluation; and c) enforcement, behavior-modification, and the application of rewards and sanctions (Hood, Rothstein and Baldwin 2001). These functions may be carried out by a single central public organization or else delegated separately to specialized agencies. Thus, the regulatory function may potentially involve a complex combination of vertical and horizontal inter-organizational specialization of the central administrative apparatus (Christensen and Lægheid 2001).

Regulation is normally considered to be regulation *by* the state which is in focus in this paper, but there is also a growing focus on private regulation of the public sector from *outside* (Scott 2002) and self-regulation *inside* government (Hood et al. 1999, James 2000, Power 1997). One specific feature of regulation is that it is mainly an external form of control of formal organizations. The increase in formal autonomous organizations in the market, the civil society, and the public sector is said to have reduced the use and efficiency of traditional, informal, hands-on internal managerial and political forms of steering and produced a greater need for more formal and objective external control (Brunsson and Sahlin-Andersson 2000). Privatization, liberalization, and deregulation have produced a larger number of autonomous formal organizations and this in turn increases the need for regulation and regulatory agencies. Regulation was originally directed towards formal organizations competing on the private market, but it continued to follow the market model when it was applied to civil society and the public sector. Our argument is that agencification and regulation go in tandem. Autonomous organizations need regulation, and regulation needs autonomous organizations. Likewise, devolution is coupled to re-regulation, i.e. political executives and ministries both let go and tighten the reins at the same time, something that makes organizational patterns more complex and effects more unpredictable.

The heart of the regulatory state is the organization and regulation of the government apparatus (Moran 2002). Regulation can be carried out through a variety of bodies, such as parliaments, ministries, courts, local authorities, private-sector organizations, and international organizations. In this paper we will focus on central regulatory agencies. Not all agencies are regulatory agencies: some are primarily responsible for managerial tasks, while others provide services or offer policy advice. In fact, mixed or multi-functional roles were for a long time normal for many agencies in many countries (Christensen and Lægheid 2004b).

Agencies have been described variously as non-departmental public bodies, hybrids, quangos, fringe bodies, non-majority institutions, quasi-autonomous public organizations, and distributed public governance (Greve, Flinders and van Thiel 1999, Flinders 2004). What an agency is and what it does vary considerably across national and organizational cultures, legal systems, and political systems (Smullen 2004). In this paper we will mainly use Pollitt and associates' (Pollitt et al. 2004, Pollitt and Talbot 2004) rather narrow definition of an agency as a structurally disaggregated body, formally

separated from the ministry, which carries out public tasks at a national level on a permanent basis, is staffed by public servants, is financed mainly by the state budget, and is subject to public legal procedures. Agencies have some autonomy from their respective ministry in policy decision-making and over personnel, finance, and managerial matters, but they are not totally independent, because political executives normally have ultimate political responsibility for their activities.

In contrast to the former integrated model in which regulation was one of many tasks and a by-product of other relationships, the new regulatory model creates specialized agencies responsible for regulation and inspection. The modern agency model is thus different from the traditional model in that it combines expertise, autonomy, and specialization of tasks in a narrow range of policy issues (Majone 1997). There is separation both between agencies and ministries and between different agencies responsible for different tasks. This creates a lot of organizational complexity, potentially requiring more coordination (Gregory 2003).

Regulatory agencies are a sub-group of central agencies and one of their main tasks is to control the power of the market, ensure fair competition, and protect consumers and citizens by guiding and implementing policy regulation. One of their features is that they often seem to be constitutional hybrids having both statutory power and incorporated status. These bodies carry out regulation using their own delegated regulatory power, resources, and responsibilities. They are neither directly elected by the people, nor directly managed by elected officials (Gilardi 2004, Thatcher and Stone Sweet 2002). Generally, regulatory agencies have more autonomy than agencies with managerial tasks, and are representing some kind of skepticism towards the direct involvement of political executives in regulation.

In some countries, like the USA, all components of regulation, such as standard-setting and rule-making, monitoring, enforcement, and the application of sanctions are delegated to regulatory agencies. The more normal situation, however, is that the different functions are split between different public organizations and different levels (Scott 2004). Goal formulation and rule-making are usually the task of supervisory bodies like ministries or legislative bodies, monitoring is concentrated in the agencies, complaints are handled by independent bodies, and the formal capacity to apply sanctions is reserved for the courts. In practice there is often some overlap in responsibility between agencies and superior organizations and also between agencies, such as when sectoral regulatory bodies clash with broader competition agencies.

Structural changes, leading to the creation of agencies, and regulatory reforms, often go together. But it is also possible to have structural reorganization without changing the regulations and vice versa. Not all central agencies are regulatory agencies and not all regulation is conducted by agencies.

# The Development of Regulatory Reform and the Agency Form

In the late 1980s and 1990s there was a growing critique of state regulation both in the UK and the USA, partly connected to criticism of regulatory agencies (Baldwin 1997), and demands to roll back the regulatory state (Rose-Ackerman 1992). The focus of this criticism, which was accompanied by strong deregulatory rhetoric (Hutter 2001, Majone 1989), was regulatory failure and regulatory crisis (Baldwin, Hood and Scott 1998). Paradoxically, however, during this period more new regulatory authorities were created around the world than ever before, suggesting a loose coupling between the actual or perceived functioning of agencies and the spread of the agency form.

A common misconception is that quasi-autonomous agencies are a recent invention. In fact it would be more accurate to call them a reinvention. In some countries, like Sweden, agencies of this kind can be traced back 300 years, and in Norway they began to emerge from the 1850s onwards (Christensen 2003, Pierre 2004). What regulatory reforms have done is to change the role of traditional inspectorates and agencies (Christensen and Læg Reid 2004b). Agencies are rarely new in any absolute sense but are usually combinations of parts of or entire existing administrative bodies (Læg Reid et al. 2003, Carpenter 2005).

Central agencies are key institutions in most developed countries (OECD 2002a). They are popular organizational forms in contemporary administrative reforms (James 2003, van Thiel 2001, Barbieri 2004) and have expanded in number and importance over the past decades (Flinders 2004). One example is the British Next Steps program, which created more than 140 new semi-autonomous agencies. A study of regulatory agencies in six policy areas in 36 countries reveals that the number of regulatory agencies increased from 28 in 1986 to 164 in 2002 (Levi-Faur and Giald 2004, Jordana and Levi-Faur 2005). Autonomous regulatory agencies have been established in fields as diverse as telecommunications, railways, civil aviation, postal services, market competition, electricity, water, the media, the pharmaceuticals sector, the environment, food safety, data protection, occupational safety, homeland security, insurance, banking, education, and health care. In some countries, like Norway, the number of regulatory agencies has increased relative to other kinds of agencies (Rubecksen 2004). A comparative study of public management reforms reveals that the number of central agencies has grown in 10 of the 12 countries examined in Europe (Pollitt and Bouckaert 2004) while the number of regulatory agencies has also increased in Eastern Europe, East Asia, Latin America, and in developing countries (Jordana and Levi-Faur 2005, Pollitt and Talbot 2004).

Some of these observed increases in regulatory agencies in many countries are probably due to labeling and re-labeling of activities and agencies that have existed for a long time. But there is little doubt that we are facing a 'regulatory explosion' and an epidemic of «agency fever» with quasi-autonomous regulatory agencies becoming accepted as 'best practice' all over the world and a policy fashion of our time (Pollitt et al. 1991, Levi-Faur, Jordana and Gilardi 2005). In contrast to the old integrated model in

which policy-making, regulation, and service-delivery were unified under ministerial control, the new single-purpose-organization model envisages specific organizations for specific tasks and activities. The willingness to delegate authority to non-majoritarian institutions, which fulfill public functions but are not directly accountable to voters or their representatives, seems to be increasing (Majone 1999).

This does not, however, mean that all agencies are the same. A study of regulatory agencies in the telecommunications sector reveals significant differences in institutional design between different countries (Tenbücken and Schneider 2004). In spite of a clear trend towards regulatory policy convergence, national differences persist when it comes to institutional implementation of regulatory reforms. European regulatory pressure matters, but so do national administrative traditions (Bariberi 2004). The spread of the new regulatory paradigm has not led to convergence in the organizational design of regulatory agencies. Tenbücken and Schneider (2004) label this parallel process of stability and change «divergent convergence.»

In the last two decades liberalization has become a dominant political practice. This is especially evident within the area of public utilities, like telecommunications and power (Levi-Faur 2002). The long tradition of public ownership and direct ministerial scrutiny within integrated public organizations has come to an end or at least been pushed back. The new recipe is semi-independent regulatory agencies, which are supposed to have autonomy from both government and ministerial control and be independent from business and stakeholders; ambitions that may be difficult to fulfill.

In the context of privatization and neo-liberalism, the increased focus on regulation represents a paradox (Jordana and Levi-Faur 2004). Even as deregulation becomes a major trend, regulatory agencies with enhanced autonomy have been created in large numbers. Deregulation is often the first step towards re-regulation, but in a new form. Neo-liberalism promotes deregulation at the ideological level, but in practice it is accompanied by more regulation, probably showing a political reluctance to let go of control levers. The number of rules have not decreased but increased in the era of neo-liberalism and there is a trajectory of «freer markets, more rules» (Vogel 1996, Ahrne and Brunsson 2004), reflecting an inconsistency among politicians concerning demanding a reduction of rules and producing new ones at the same time (Aberbach and Rockman 2000). This paradox is a central feature of regulatory reform (Majone 1994).

We also face a shift in the arguments for regulation—away from regulation that legitimizes state monopolies and towards regulation that enhances competition and the free market, thereby changing the content of regulatory policies. Regulation *for* competition has been upgraded to become the main regulatory technique. In addition to this often sector-specific regulation, there is also more general regulation *of* competition achieved by empowering the competition authorities and by introducing enforced self-regulation in various areas. Deregulation and liberalization are followed by more rules and regulation, allowing growth of the regulatory state and public bureaucracies (Vogel 1996). Regulatory reforms and liberalization often imply new forms of regulation rather than deregulation in practice. What is more, there has been an expansion in the scope for regulation from the economic sphere to the welfare state and social sphere. Summing up, in contrast to the deregulatory aspects of New Public Management, which

was supposed to roll back the state and give first priority to market interests, this trend has enhanced the growth of the Regulatory State.

This trend should be qualified, however. Common problems do not necessarily lead to common responses (Hood et al. 2004). In other words, new forms of regulation do not necessarily replace older and more traditional forms. The balance between them change but old regulatory techniques do not disappear. The trend towards a Regulatory State is stronger in some sectors and policy areas, such as utilities, than in others like the welfare sectors, and there are great variations in how agencies operate, depending on what their primary task is (Pollitt et al. 2004). Variation also depends on the degree of regional integration, as exemplified by the European Union, and also on domestic political and administrative processes. How EU regulation is adopted in different countries depends on local political actors and processes (Kallestrup 2004). While European agencies may in general have less autonomy than American agencies and the system of public accountability may be less developed (Majone 1999), there are also big differences between how agencies function in different EU countries (Pollitt et al. 2004). Thus state traditions are important. The regulatory model, with its autonomous agencies, has been a main tool of governance in the USA for a long time (Eisner 1994). Regulatory agencies were created to remove regulation from direct political control and as an alternative to public ownership. Their autonomy, however, left them vulnerable to capture by the interests they were designed to regulate.

The Regulatory State was for a long time an expression of «American exceptionalism.» This is no longer the case. Some scholars have revealed different trajectories in the USA and Europe, especially in the areas of public health, food safety, and environmental regulation. Regulatory issues were formerly more politically salient and civil interests more influential in the USA than in most European countries. In recent years this pattern has been reversed (Vogel 2003). This shift has to do with recent regulatory failures and stronger political support for more comprehensive regulatory standards in Europe as well as the increased regulatory competence of the EU (Wilson 2003, Hellebø 2004). Since the mid-1980s regulatory reforms have become a central feature in the European Union as well as a main issue for the OECD.

In the European context, the UK has also become a strong regulatory state (Moran 2003). While the American Regulatory State was hierarchical, command-like, and concerned with the problem of capture, the British Regulatory State was more trust-based, focusing on self-steering and self-regulation and a cooperative culture (Moran 2002). The British Regulatory State has over the past decade moved towards more formalized, distrust-based auditing techniques and the establishment of many quasi-autonomous Next Steps agencies.

In other countries, like the Scandinavian welfare states, public ownership and nationalization were for a long time more popular policy tools than regulation. There is, however, also a long tradition of strong autonomous agencies being responsible for policy implementation and service delivery. In Sweden one concern is that the capacity of ministries to control and monitor the big and powerful agencies is weak (Molander et al. 2002), even though it can be argued that the cabinet has other, more general means of control that can counteract the formal autonomy of the agencies (Lindbom 1997). In Denmark and Norway the directors of the agencies are political accountable to the

ministries through the principle of ministerial responsibility, but there are regulatory reforms underway which might undermine this accountability, like preventing political executives from interfering in individual cases handled by the agencies or moving appeals or complaints out of the ministries to independent appeal boards (Christensen and Læg Reid 2004b, Greve 2002). In Japan the regulatory system has been dominated by monolithic ministries in close and informal relationships with key businesses (Kagan 2000, Scott 2004). Generally contextual factors such as state traditions, structures and reforms as well as political leadership make a difference (Thatcher 2002b).

Even if the main trend is towards decentralization, delegation, and disintegration, there are also some examples of more centralization and integration in various countries, like the establishment of a Department of Homeland Security in the USA (Kettl 2004) and trends towards strengthening the center can also be observed in New Zealand, Canada, Australia and United Kingdom (Auchoin 2005, Gregory 2005, Halligan 2005, Richards and Smith 2005). Other initiatives, like the Norwegian hospital reform, have tried to combine centralization and decentralization or, like Norwegian immigration policy, have swung back and forth between autonomy and central control (Christensen and Læg Reid 2003).

Summing up these differences, the argument is that the Regulatory State and its distinct structural features are contingent on national settings, state traditions, and administrative cultures (j.f. Christensen and Læg Reid 2001).

## Effects, Implications, and Challenges

When discussing the effects and implications of regulatory reform it is important to look not only at narrowly defined effects like efficiency and economy but also at the broader spectrum of effects, such as changes in accountability, legitimacy, and power relations. We still have a long way to go before we can draw any profound systematic and reliable conclusions about the effects and implications of the agency form and regulatory reforms. Reforms based on universal organizational templates and regulatory models that do not take the national context into account tend to create a need for new reforms rather than producing sustainable improvements (Brunsson and Olsen 1993). The effects of administrative reforms are often promised or assumed but seldom well documented (Christensen and Læg Reid 2001, Bouckaert and Peters 2004), but some relevant and important studies are emerging now.

One comprehensive comparative study of agencies in the fields of prisons, meteorology, forestry, and social security in four EU countries concludes that the variation in agencies and the volatility in agency status and boundaries is such that the official practitioner's ideal model is rare in reality (Pollitt et al. 2004). In addition, there is extensive national path dependency and great variation in activities according to how embedded they are in international networks and markets. Moreover, while performance indicators are widespread they are seldom used to clarify major trade-offs, and full-scale performance management is rare.

One general lesson is that the division of tasks and responsibilities between ministries and agencies is much more complicated in practice than in theory. The

balance between policy areas, between specialized regulatory agencies and general regulators, and between administrative levels is unstable and varies both over time and between normal situations and crises (Christensen and Læg Reid 2004a). The ambiguity of responsibility becomes especially clear when things go wrong (Gregory 1998, Bartle 2005). Formal relationships that were supposed to become clearer in the new model turn out to be complex and disputable, with gray zones of authority.

The balance between control and autonomy varies according to a number of factors, such as how extensive and radical devolution is, the base line, and various polity features, such as whether agencies are in a Westminster system or not. Political-administrative culture and the stage of reform reached must also be taken into consideration (Yesilkagit 2004). Strategic constraints and control can mean different things in different countries, ranging from «hands-off» to relatively more «hands-on» activities by the political leadership. Normally there are overlaps in responsibility and there often exists a «discretion zone» or a «zone of indifference» in which regulatory agencies can operate in the shadow of political executives and make autonomous decisions. If they go beyond that zone, politicians might interfere and strengthen their control, so anticipated reactions also play a role. This means that the relationship between political and administrative executives might be expressed more in terms of ebb and flow than as a linear development towards less political control. That said, one main argument is that structural devolution changes and weakens the instruments of control and increases the distance between the political leadership and subordinate units and lower levels of management (Christensen and Læg Reid 2005). The decision-making premises used by actors in autonomous agencies are less attentive to political signals than in an integrated model (Egeberg 2003).

When regulatory agencies work well, they may enhance credibility and predictability and reduce the need for both political control and for the direct participation and involvement of citizens in the regulatory process. A high level of mutual trust may enhance this as well as a strong common culture (Boin 2001, Kaufman 1960). This is, however, not always the case and some of the main challenges in regulatory reforms are related to problems of implementation, coordination, accountability, de-politicization, legitimacy, and power. In the following, we will briefly address each of these issues.

*Implementation.* It is not clear what the effects of the new regulatory system are in practice and one should be cautious about jumping to conclusions on the basis of formal and legal changes. For one thing, the implementation process may still involve negotiations, flexible cooperation and mutuality and informal control and steering, despite the more formal nature of the new regulatory regime (Hood et al. 1999, Læg Reid, Roness and Rubecksen 2005b). The shortcomings or pathological aspects of regulation, such as «regulatory creep», «agency drift», information asymmetry, and biased bureaucratic behavior are well known (Sustein 1990, Gabrovski 1995, Hood et al. 2004). While the agency concept may occupy a dominant place in the rhetoric of reforms, it may in fact face significant challenges during the implementation process, which might be more incremental than radical, as exemplified by the cases of the USA and Canada (Graham and Roberts 2004). In practice regulatory reforms tend to run into problems of bureaucratic politics and institutional constraints during the implementation process (Læg Reid and Serigstad 2004).

In a study of the UK Next Steps agencies, James (2003) shows that civil servants shape their organizations into forms that yield them benefits and that agencification therefore fails to deliver lasting improvements in public service. The study did not show economic improvements, and efficiency and effectiveness were hampered by a lack of coordination. Moreover, the regulatory reforms used to control agencies at arm's length from the ministries produced performance problems in some agencies. The use of performance targets in large agencies, like the Benefits Agency, had significant shortcomings when it came to broader efficiency and effectiveness issues (James 2000, 2003). When practice is not consistent with the regulatory model, this does not necessarily imply that practice is wrong. Lack of correspondence may just as well be a problem of the model as an implementation problem.

*Coordination.* The fragmentation of public administration by growth, disaggregation, structural devolution, and the establishment of single-purpose organizations might reduce central policy capacity (Christensen and Læg Reid 2005) and increase coordination problems (Flinders 2004, Gregory 2003). The specialization involved in creating single-purpose agencies tends to increase the difficulty of coordination and the capacity problems of political executives, because more issues and policy questions are channeled up to the ministries and the cabinet, instead of being weighed up and decided lower down in the hierarchy. This has been revealed in countries such as New Zealand, the UK, and The Netherlands (Pollitt and Bouckaert 2004). The coordination problem has enhanced the need for «joined-up» government and «whole-of-government» strategies both vertically between ministries and agencies and horizontally between policy areas, especially in countries like the UK and New Zealand, which have been most radical in the NPM movement (Gregory 2003, James 2004, Pollitt 2003a).

*Accountability.* A main concern arising from agencification and regulatory reforms is the problem of accountability (Scott 2000, Flinders 2004): how to make agencies independent and at the same time accountable both upwards to politicians, horizontally to other agencies and downwards to consumers and regulatees. The autonomy of regulatory agencies from government may lead to agency capture, creating a problem of democratic accountability; some scholars talk about an «accountability deficit» (Baldwin, Scott and Hood 1998). Moreover, in many cases the creation of regulatory agencies has not been followed by the establishment of parliamentary scrutiny mechanisms to allow parliament to effectively oversee autonomous agencies (OECD 2002b).

A central accountability issue is how the relationship between government and regulators impinges on ministerial responsibility. It is generally accepted that ministries should be allowed to give some interpretative guidance to the regulators in how to carry out their function; however, this is expected to be general guidance and not directed at specific cases. One problem with such guidance is that it tends to be informal and not given publicly (Graham 1998). Another is that frame-steering often makes political executives feel they are losing control, since specific cases, in which they are not supposed to interfere, can have general implications (Christensen and Læg Reid 2002). Regulation in Europe seems to be characterized by great discretion, weak accountability to parliament, weak judicial review, an absence of procedural safeguards, and insufficient public participation (Majone 1994), but also by variations according to territory, between states and between devolved governing systems.

Nevertheless, weaker upwards accountability to the parliament may be compensated for by stronger downwards accountability to consumers or citizens (Flinders 2004, Verhoest et al. 2005). Agencies are constrained by procedural and substantive rules that guide their discretion, and autonomy from direct political control does not mean immunity from public accountability (Majone 1999). Thus, responsiveness to users and clients might become a substitute for accountability in the control of autonomous central agencies (Bouckaert and Peters 2004). Accountability and transparency are not only about input and ministerial responsibility but should be seen in a wider context, which includes consumer sovereignty and the empowerment of citizens (Lodge 2004).

*Legitimacy.* The emerging Regulatory State has been accused of lacking legitimacy and criticized for undermining political accountability, individual participation, and universal services (Lodge 2001). Indeed, weaker vertical accountability may produce a larger legitimacy gap. One prediction is that the Regulatory State, with autonomous agencies as its main organizational form, will represent a less positive state, encourage the hollowing out of the state (Weller et al. 1997), and weaken social goals. Others tend to view the emergence of a Regulatory State more benevolently as an open-ended project (Ayres and Braithwaite 1992, Jordana and Levi-Faur 2004). While the Regulatory State continues to steer, it leaves the rowing – i.e., such things as service-provision – to civil society or the market (Braithwaite 2000). The accountability challenge appears less threatening if one takes consumer sovereignty approach, which underlines the importance of individual choice. In addition, it may be argued that the delegation of regulation to non-elected decision-makers may prevent short-term political interference and produce more credible decisions (Majone 1999, Lodge 2001). To balance ‘input legitimacy’ focusing on fast, reliable technical information and ‘output legitimacy’ involving representative consultation with different stakeholders is however difficult for the regulatory agencies (Cohen 2005).

The traditional standard of legitimacy within representative democracies is government by majority rule. In the Regulatory State this standard of legitimacy is supplemented by expertise and by a «Madisonian» model, which aims to share, disperse, delegate, and limit power by placing public authority in the hands of officials who have no direct or only weak accountability to either political majorities or minorities (Majone 1997). A main challenge is how agency autonomy and democratic accountability can be made into complementary and mutually reinforcing rather than competing values.

*De-politicization.* Behind the idea of establishing autonomous agencies lies the assumption that it is possible to separate politics from administration and to insulate certain decisions from political considerations. In practice this is difficult. It is necessary to distinguish between the *de jure* formal level of autonomy and *de facto* autonomy, which may vary according to contextual circumstances, such as political salience (Pollitt et al. 2004), but also according to administrative culture, reputation, networks, and entrepreneurship (Carpenter 2001). Depending on what their issues and tasks are, agencies may enjoy more or less autonomy than is formally delegated to them. Thus, real agency autonomy might not correspond with formal agency autonomy (Yseilkagit 2004). Politicians might use informal channels to influence the decision-making of agencies and thus undermining their formal autonomy, and there might also be situations of regulatory capture, in which those subject to regulation constrain the

autonomy of the agencies (Thatcher 2002a). Regulatory reforms and the creation of semi-autonomous agencies meant to weaken the role of political leaders may under specific conditions result in greater politicization (Peters and Pierre 2004). Politicians may interfere in if there is a power struggle between political executives and parliament, or if the media define an issue as a crisis (Christensen and Lægreid 2004b). The problem of bureaucratic drift might occur, meaning that the agency succeeds in bringing about an outcome different to that preferred by the government or the parliament (Majone 2001, Epstein and O'Halloran 1999).

Although agencies may enjoy a high level of formal autonomy, under specific conditions politicians may attempt to curtail this autonomy. In addition, the general public, lobby groups, and media and interest organizations might also bring issues that are supposed to be apolitical onto the political agenda. Thus the process of agencification might be more a question of arena-shifting than de-politicization (Flinders 2004, Flinders and Buller 2005). Rather than fading away politics reemerges in other arenas.

*Power.* Regulatory policy and the creation of autonomous agencies is not only a question of political and administrative efficiency but also of the redistribution of power within the polity. This development tends to strengthen administrative and technocratic bodies, public commercial units, experts, professionals, and bureaucrats and to weaken elected representative bodies and political executives. Some observers talk about the 'regulocrats' as a new group of highly influential bureaucrats in the regulatory agencies enjoying a wide institutional autonomy (Levi-Faur, Jordana and Gilardi 2005). One observation is that power relations seem to be changing faster than accountability relations (Christensen and Lægreid 2003) The political leadership often finds itself in situations where it has responsibility without the corresponding power and control (Brunsson 1989), and seems to have trouble getting relevant information about the activities of subordinate organizational units and levels. Conversely, many of the autonomous agencies may gain more power without necessarily becoming more accountable.

The regulatory policy that creates new autonomous agencies and empowers existing ones should not be regarded as an administrative technicality, but rather as a political reform involving a realignment of power relations (Flinders 2004). Regulation might also be seen as an attempt to compensate for the loss of control by central government brought about by structural devolution, privatization, and managerial autonomy. The price autonomous bodies have to pay for increased flexibility and discretion is a stronger regime of oversight, regulation, and performance assessment.

Summing up, the issues raised by the Regulatory State are strongly interrelated and present some difficult challenges. One way to proceed is to try to gain a better understanding of the similarities and differences between regulatory agencies and other agencies, as well as of the roles of regulatory agencies in relation to other regulatory bodies.

## Discussion and Theoretical Interpretation

The rise of the Regulatory State is taking place in a variety of contexts and for a variety of reasons (Jordana and Levi-Faur 2004). Three of the most prominent external forces driving the spread of the regulatory state are the neo-liberal New Public Management (NPM) movement, the EU, which has been strengthened as a regulatory entity, and the OECD as a promoter of regulatory reform.

First, the rise of regulation as a mode of policy making is an off-shoot of the NPM reform trajectory and its focus on privatization, especially in the area of public utilities, and its emphasis on disaggregation and structural devolution within the public sector aimed at putting more distance between public agencies and politicians (Christensen and Lægreid 2004a). Since privatization is normally followed by new kinds of regulation to control the market and enhance competition (Levi-Faur 2005), the agencification of regulatory tasks is one of the key elements of NPM. Regulatory competence is delegated to agencies with weaker democratic accountability that are more insulated from political influence (Gilardi 2002). The best examples of this development are New Zealand's creation of single-purpose organizations and the UK's Next Steps program. However, many other countries have also launched autonomous regulatory agencies inspired by the NPM movement (Pollitt and Bouckaert 2004). The reform path adopted by New Zealand from 1984 onwards, which actually went against the cultural traditions of the country, was prompted by both an economic crisis and a new political and economic ideology (Aberbach and Christensen 2001).

A second important factor for understanding the rise of the Regulatory State in Europe is greater European integration and the emergence of the EU as a regulatory body focusing on competition and the development of a free internal market (Majone 1994, 1999, Laffan 2001). Inspired by the American model, the European Regulatory State has both an ideological and instrumental background and culturally represents a new direction for many European countries. Regulation is the most important type of policy-making in the EU and in the last decade the EU itself has been the subject of a variety of regulatory reforms affecting both its own regulatory regime and the member states (Armstrong 2000). Quite a few independent regulatory agencies have been established (Dehousse 1997, Flinders 2004). One difference between regulatory bodies at the national and the European level is that the latter also focus on regulation of the regulators (MacGowan and Wallace 1996, Zeiner 2003). The creation of the single European market required the liberalization of the utilities sectors, the abolition of national monopolies, and the establishment of independent regulatory agencies in the member states to promote competition. The EU as a new actor in regulation has affected the European regulatory style and brought it closer to that of the USA. This being said, there are also significant variation in regulatory adjustment both across policy areas and between countries (Knill and Lehmkuhl 2002, Lægreid, Steinthorsson and Thorhallsson 2005, Ugland and Veggeland 2005).

A third central actor in the emergence of the Regulatory State is the OECD as a producer, certifier, and carrier of new reform ideas, prescriptions, and doctrines (Marcussen 2002, Sahlin-Andersson and Lerdell 1997). In 1995, the OECD launched a regulatory reform program in which the regulation of the market, competition policy, and the establishment of independent regulatory agencies were main components. It has assessed regulatory policy in all member countries with the aim of improving regulatory quality by fostering competition, efficiency, and performance. The concept of distributed public governance, produced by the OECD and used by the EU, refers to the emergence of quasi-independent non-majoritarian and non-governmental organizations (Flinders 2004, OECD 2002a). The doctrine is that regulatory agencies are most effective if they are independent from the ministry, operate according to a clear regulatory policy, and are staffed by experts (OECD 1995, 1997, 2002b). Thus, the so-called evidence-based decision-making is to replace the informal, consensus-based approach to regulatory processes that was previously the normal policy style in countries like the Scandinavian (OECD 2003).

Other international organizations important in the field of regulatory policy are the WTO (Veggeland 2004) and the World Bank, which have encouraged the creation of autonomous regulatory authorities and claim that formal oversight agencies are one of the critical success factors for civil service reforms (World Bank 1997, 1999).

One can, however, question the reliability of the new regulatory orthodoxy coming from international organizations, using Norway as an example (Christensen and Lægred 2004b, Olsen 2004). The OECD acknowledged that the Nordic incremental, consensus-oriented model of governance, emphasizing egalitarian values, a high level of mutual trust, solidarity, high standards of social welfare, an active intervening state, broad participation from affected interests, and a large public sector, had been successful and observed that regulatory agencies in Norway had emerged without experiencing any major crisis, had coped well with technical tasks, and demonstrated good regulatory practice and a capacity for adaptation.

In spite of this positive assessment and the fact that Norway still performs very well today, the OECD suggested that Norway should abandon this governance model and «prepare for the future now» (OECD 2003) on the grounds that problems not present today would crop up in the future. It was more or less taken for granted, without any deeper analysis, that the existing, well-performing model should be replaced by the new one. What was not discussed was that such a change might well be at odds with traditional state norms and values and cause social conflict, thus reducing efficiency and effectiveness. The OECD's attitude indicates that ideology and symbolism take precedence over the actual functioning of the traditional regulatory model (Olsen 2004). Thus we face a paradox: While evidence-based policy is a core element of the new OECD regulatory policy, the model itself seems not to be founded on evidence-based facts. The OECD's arguments imply that reforms should be introduced in any governmental body, regardless of whether it functions well or not. The logic is that the existing model might potentially produce negative consequences in the future. But so might the new regulatory model.

A *rational-economic approach* on the rise of the Regulatory State will tend to see these external pressures as functional, arising out of a need to increase credibility and reduce

political uncertainty. This approach is normative in the sense that it focus on agencies that ought to be designed in order to secure a degree of economic efficiency. According to public interest theory, a main reason for economic regulation is to correct market failures that prevent markets from operating in the public interest, such as externalities, market power, natural monopoly, and information problems (Breyer 1982, Noll 1989, Ogus 1994). Another reason is the protection of rights, often labeled social regulation, and pertains to such things as equity questions, the correction of past or possible future discrimination, and the protection of public interests in fields like health, safety, and the environment (MacGowan and Wallace 1996). A main concept in this perspective is that of common interests. Hence, regulatory rules are supposed to enhance justice and fairness (Baldwin and Cave 1999).

In addition, regulation through independent agencies is perceived as the result of politicians' attempts to enhance the credibility of regulatory policy and reduce political uncertainty (Gilardi 2004). This entails policy-makers signaling their credible commitment to the announced policy and avoiding inconsistent preferences over time (Kydlund and Prescott 1977). Regulatory rules are formulated for the common good and regulatory reforms are brought about by central political executives acting on behalf of the general public with the aim of improving effectiveness, economy, and efficiency. Regulatory agencies are seen as a favorable organizational form because agencies can be insulated from immediate and partisan political pressures. The official model or the practitioner's model of agencies is close to this kind of thinking (Pollitt et al. 2004). Disaggregating agencies from the ministries, giving them more autonomy and more responsibility for regulatory tasks, and holding them accountable for their performance is expected to improve efficiency and thus produce better regulation. The assumption is that the agency model has been chosen because it is the most efficient organizational form.

Economic analysis focusing on self-interests and regulatory capture has played a key role in the development of regulatory policy (Ogus 2004). Economic theories of business regulations identify various forms of regulatory failure, often based on a rational choice approach (James 2000). This economic theory of regulation combines economic analysis with analysis of political behavior (Peltzman 1998), and it asserts that special interests and interest groups will try to pursue their own goals and influence the outcome of regulatory processes. A main focus is on power relations and self-interested economic and political competition for scarce resources. In one scenario, regulators might go 'native' and be captured by the interests they were designed to regulate, leading regulated organizations to lobby for regulation from which they will benefit (Stigler 1971).

Another scenario addresses what is sometimes called a bureau-shaping perspective (Dunleavy 1985), whereby in a regulatory state an increase in regulation might be explained in terms of the benefits bureaucrats expect to derive from devising new regulations (Majone 1994). One outcome might be that autonomous regulatory agencies begin to set their own standards rather than those formulated by the legislature and the political executive (Pollitt and Bouckaert 2004). Thus the bureau-shaping model seems to have stronger explanatory power than the public interest model (James 2003). Third, a lack of cooperation between regulators and regulated organizations and the high

transaction costs ensuing from different institutional arrangements might make regulation too costly (Scholz 1991). This might in turn produce «agency drift» with high costs for monitoring, the application of sanctions, and enforcement (Lodge 2001). According to this way of thinking, regulatory rules are the result of a political contest between the different interests represented by politicians, agencies, and market actors. Its adherents are rather skeptical about the benefits to be derived from regulatory reforms and the establishment of autonomous agencies.

In rational-economic terms the rise of the regulatory state can be seen as an apolitical pragmatic solution to problems such as lack of attention, time constraints, and lack of professional knowledge and expertise among political executives. Increased complexity of public policy reduces the effectiveness of the traditional command-and-control techniques. The argument is that delegating regulatory authority from politicians to experts will reduce decision-making costs and enhance efficiency and quality without having negative effects on other goals and values (Majone 2001). The delegation argument is an old one in the history of regulatory reforms (Bernstein 1955). There is a strong flavor of apolitical, de-political or technocratic attitudes behind these ideas. One example is the de-politicization of key regulatory activities such as central banking (Marcussen 2005).

Using the economic variant of the rational approach the creation of regulatory agencies can also be seen as a question of political credibility (Majone 1999). Based on the idea of the primacy of business and markets over politics, the government delegates regulatory authority to experts and independent agencies at arm's length from political executives to arbitrarily avoid short-term political interference and enhance the fairness and legitimacy of regulatory activities. The argument is that the body to which this authority is delegated should be independent in order to enhance the credibility of policy commitments (Majone 2001). The creation of autonomous agencies is justified by the perceived need to insulate certain activities from political influence. The prescription is that autonomous regulatory agencies can provide greater policy continuity, predictability, and consistency than cabinets and ministries because they are not dependent on electoral returns. The delegation of power to an independent agency is a way for central government to restrain themselves and to restrict their future freedom of action and also to reduce political uncertainty and opportunism.

Another overlapping variant of the rational-economic perspective is the principal-agent model, which has been a dominant approach to the study of politicians' delegation of power to non-majoritarian agencies (Cohen and Thatcher 2005). Principal-agent theory has especially focused on formal institutional design of delegation and when and why political executives create agencies and transfer formal power to them. Agencies are supposed to deal with information asymmetries, handling blame and increasing creditability and efficiency. Principal-agency approaches also deals with the autonomy of agencies from political leaders. Agencies can act in contrast to the preferences of their political bosses («agency losses») by following their own preferences («shrinking») or because the agency has incentives to behave contrary to the wishes of the political agencies («slippage») (Thatcher 2005).

Rational-economic approaches has generally increased their popularity over the past decade, but has been concentrated on formal institutional design. There seems,

however, to be some indication that politicians have both credibility and political uncertainty in mind when they create regulatory agencies (Gilardi 2004). One study of agencies in The Netherlands shows, however, that the rational actor model has weak explanatory power (van Thiel 2001). There are also claims that the theory of bureaucratic capture has a weak empirical foundation (Frederickson and Smith 2003, Wood and Waterman 1994).

It would be fair to say that the official model of agencies has had problems of fulfilling its promises. It is a special case that seems to work pretty well under specific conditions – namely, in situations with low political salience, where results and activities are easy to observe, when the tasks do not involve complex technology, when professionals and experts agree, when the risk is relatively low, when the financial resources involved are fairly modest, and when the policy does not involve redistribution issues. When these preconditions are not fulfilled, however, it tends to run into trouble (Pollitt 2003b). Other important factors are the degree of competition and the extent to which international markets, rules, and regulations are involved. The lesson is that context matters. Also the rational-instrumental approach is better to analyze the formal delegation than to analyze the actual practice and effects of non-majoritarian agencies (Cohen and Thatcher 2005). In practice political executives often do not use their formal control over regulatory agencies, and agencies tend to develop close relationships, networks and mutual dependencies with each others and with regulatees (Cohen and Thachter 2005, Thachter 2005).

Thus rational approach needs to be confronted by and supplemented with other theories that are more concerned with how to act in an uncertain, ambiguous, conflict-ridden, and unstable world and that also pay more attention to the role of political and administrative executive leaders and the structural context in which they operate.

A second way to understand the development towards the regulatory state is to see it from an *organizational-structural* approach in which the concept of bounded rationality is a main feature (March and Simon 1958, Simon 1957). It presupposes that decision-makers have limited time and attention. They face problems of capacity, understanding, and authority and therefore have to be selective in the decision-making premises they adopt and in how they distribute their attention. The formal organizational structure represents one important selection mechanism which includes some actors, problems, and solutions in public sector decision-making processes while others will be ignored or excluded (March and Olsen 1976). Gulick (1937) has stated some basic principles of public organizations that are relevant for our general understanding of the working of regulatory bodies. He argues that there is a rather close connection between stated public goals, the organizational structure chosen, and policy content, underlining that the way formal authority is distributed among hierarchical levels is important. In regulatory reform involving autonomous agencies this distribution is biased away from the top leaders. The formal levers of steering are weakened, the distance between levels increases, and political signals are generally weaker in independent bodies (Egeberg 2003). Gulick may also provide insight into the horizontal specialization characteristic of regulatory reform through his four principles of specialization (Hammond 1990). The new regulatory model is mainly built on the process principle of specialization, de-emphasizing specialization based on general purpose, clientele, or geography.

According to an organizational-structural approach, central actors in the field of regulatory policy act on behalf of formal public organizations. Their attitudes and actions and thus the content of the regulatory policy they formulate are formed by the organization they belong to and the organizational setting in which they operate. An organizational approach presumes that one has to study how the public sector is organized to understand the development of regulatory policy and its effects. It makes a difference whether the central governmental apparatus is an integrated system under ministerial responsibility or a more fragmented system of semi-autonomous organizations (Christensen and Læg Reid 2001); whether it is a parliamentary system or a checks-and-balances system; whether it is specialized according to function or according to geography; whether the state is a unitary or a federal one; whether private sector interests are integrated into regulatory decision-making processes or excluded; whether agencies have tight networks with multinational organizations or not; and whether specialization is more horizontal or more vertical.

This way of thinking looks for structural features that will explain the variation in regulatory reforms and agency behavior and seeks to identify factors to explain the creation, maintenance, and performance of agencies (Pollitt et al. 2004). Formal structure makes a difference, but it is not the only factor that can explain variation. It is not enough to focus on the narrow internal governmental organizational structure alone, for the nature of tasks as well as external organizational connections and constraints also play an important role. Public sector organizations are political-administrative actors embedded in a dynamic network of other public agencies, political executives, and private sector organizations (Christensen and Læg Reid 2003, Pollitt and Bouckaert 2004).

From an organizational-structural perspective control via regulation may be seen as compensation for loss of traditional control by central government, owing to privatization, managerial autonomy, and delegation. It may also be seen as a blame-avoidance strategy for politicians by shifting responsibility for policy failure to bureaucrats and experts (Majone 1999, Hood 2002), and indicate an instrumental conflict among actors with different interests. The autonomous agencies create a buffer zone that political executives can use to shift blame, whereby the politicians tend to delegate responsibility for failure but not for successes, and the agencies tend to accept responsibility for successes but not for failures.

This perspective can also provide insights into regulatory reform and agencification and their effects. Political and administrative leaders are often central actors in the establishment of regulatory agencies, and they give various instrumental reasons for moving away from an integrated model. As shown, while some of the problems and solutions seem to be defined in real terms, others are more symbolic in character. This perspective offers insights into why the increased horizontal and particularly vertical inter-organizational specialization brought about by the establishment of regulatory agencies often leads to an undermining of political control (Christensen and Læg Reid 2004b). The instrumental effects of having a disintegrated model instead of an integrated one seem obvious, i.e., it is a considerable difference between having regulatory tasks integrated in a ministry or organized in regulatory agencies, and agencies have general great autonomy (Egeberg 2003, Læg Reid, Roness and Rubecksen 2005a).

A main lesson from this approach is that formal organizational structures are important in shaping organizational regulatory behavior and changing regulatory processes. At the same time, there is leeway within formal structures for some variation and for other behavioral logic to play an important role. Political and administrative leaders are important in shaping regulatory structures. They do not, however, only act on the basis of their hierarchical position but are also constrained by cultural traditions and environmental factors, elements we now turn to.

The *institutional perspective* represents a third approach to understand the development towards a regulatory state. It challenges the hegemony of the rational reform and agency model (Brunsson and Olsen 1993) and it rejects the functional view of agencies underlying the rational approach. It is also skeptical about the explanatory relevance of the organizational-structural perspective (Selznick 1957). Ideas and culture are central features and can be located within organizations and administrative systems or in the environment. An institutional approach implies that regulation and changes in regulation are products of cultural traditions and path dependency, but also of symbols, organizational rituals, cultural constructions, taken-for-grantedness, interpretation, and rhetoric. (Hood et al. 1999).

One variant of an institutional approach focuses on informal norms and values *within* agencies and political-administrative systems (Selznick 1957). Hence, institutional autonomy, organizational culture, and internal dynamics are important. Historical traditions and path dependency constrain what is appropriate and possible to transfer to agency status and to how agencies operate. The reform road chosen reflects the main features of national institutional processes, where institutional «roots» determine the path or «route» followed in a gradual adaptation to internal and external pressure (Krasner 1988, Pierson 2004). Change is characterized by historical inefficiency, incrementalism, and ‘revolution in slow motion.’ What happens in one country is not a blueprint for developments in other countries (Gains 2004, Prince 2000). Specific national policies and regulations for managing health, safety, and environmental risk continue to diverge (Vogel 2003). Regulatory reforms reinforce distinctive underlying national trajectories and historical legacies, and functional pressure highlighted by rational theory is mediated and constrained by cultural-contextual factors (Thatcher and Stone Sweet 2002). Countries such as Sweden, Denmark and the Netherlands have undergone quite dramatic changes in their regulatory administration over the past decades, but these changes have occurred within distinct institutional paths or trajectories that dates back to a long national administrative and constitutional history (Christensen and Ysilkagit 2005).

In some countries an administrative culture with well developed informal contacts and networks between ministries and agencies might undermine their autonomy and create stronger integration between ministry and agency than the formal model would lead one to expect, thus demonstrating the dynamic between structural and cultural factors (Christensen and Røvik 1999). One such example is Sweden, a country with a long tradition of independent agencies (Jacobsson 1984, Pierre 2004). This theory will predict diversity more than homogeneity in regulatory forms and agencies across countries, state traditions, and administrative cultures. It will also predict robustness, reluctance and path dependencies when it comes to implementing new regulatory

reforms, which seems to be the case in Norway (Lægreid, Roness and Rubecksen 2005b).

As the cultural ideas of institutionalized organizations would suggest, the rise of regulation and the use of independent agencies is not only a product of neo-liberalism but is also connected to a decline in trust in political institutions (Hood et al. 1999, Jordana and Levi-Faur 2004). The audit explosion, the general rise of regulation inside government, the development of performance-management systems, and the increasing number of autonomous regulatory agencies, not only in economic areas but also in core sectors of the welfare state like education, health care, safety and environmental issues, and consumer protection, can be seen as a response to this. The informal trust-based system founded on tacit agreements and peer control has been supplemented by more formal and distrust-based arrangements and command-and-control type regulation (Moran 2003).

Another more social constructivist variant of this institutional approach focuses on *external* norms and different ways of constructing and interpreting regulatory reality (Morgan and Engwall 1999). Regulatory rules depend on the situation, the context, and the environment in which they are formulated. The general argument is that normative structures lead to symbolic diffusion and borrowing of the autonomous regulatory agency form. Governments act interdependently and look to other governments for inspiration. A regulatory agency can be created to enhance the legitimacy of a decision to privatize, by distracting attention from more substantive concerns (Meyer and Rowan 1977).

Institutional isomorphism can occur through coercive pressure – pressure from superior public organizations – normative pressure from professional networks, or mimetic pressure, whereby consulting firms and intergovernmental organizations offer organizational solutions that are said to decrease insecurity (DiMaggio and Powell 1983). Autonomous regulatory agencies emerge because it is taken for granted that they are the most appropriate organizational form. The agency form is established simply because it has become the norm in our time. Thus, this organizational form spreads irrespective of its problem-solving capability. There is a tendency to follow fads, fashions, and dominant ideas, so that copying and diffusion are main mechanisms (Levi-Faur 2002) and institutional isomorphism can explain the development of the agency model in countries as the Netherlands (van Thiel 2001). Increased liberalization is perceived as inevitable – the deterministic TINA principle (There Is No Alternative) – and the choice for political leaders becomes more about when and under what conditions they should liberalize rather than whether they should do so at all. In addition, organizational forms tend to spread from country to country. Independent regulatory agencies have become institutionalized as part of the script about how the regulation of liberalized markets should be organized, as in the field of energy (Johansen et al. 2004). The regulatory agency has become a generally accepted recipe for organizing regulatory bodies in a rational and efficient manner.

One way of seeing the rise of the Regulatory State and the spread of the agency form is as a diffusion process in which national governments respond to external symbolic pressure from the institutional environment, leading them to take for granted that regulatory agencies are an appropriate manner of organizing regulation (Sahlin-

Andersson 2001, Gilardi 2003, Jordana and Levi-Faur 2005). There is a diffusion of the regulatory agency form within sectors, across country borders, and within countries across sectors, whereby the first process seems to be faster than the last. There are endogenous sources of change, group processes and diffusion of best practices through policy networks, which create «world societies» of common understanding of what are appropriate problems and good solutions (Meyer et al. 1997). Thus, the great increase in regulatory agencies can be better explained by a constructivist approach than by a rational one. There seems to be strong element of symbolic diffusion of autonomous regulatory agencies, accompanied by imitation, preconceived notions, and a search for legitimacy (Gilardi 2003). That said, there are also elements of functional adaptation, implying that the need to improve credibility and decrease political uncertainty enhances the establishment of autonomous regulatory agencies.

Generally, there is a growing empirical literature, focusing on diffusion, borrowing, and translation of organizational forms like the agency, but also on the importance of historical institutionalism, path dependency, and historical inefficiency as well as contextual factors related to tasks and contingencies. A comparative study of Britain, Germany, Ireland, and Sweden reveals a general shift towards the Regulatory State, but at the same time it is difficult to discern a convergence towards a single and identical regulatory approach in the different countries (Lodge 2001). A similar conclusion comes from a study of the UK, France, Spain, and Germany, which shows that different domestic institutional constellations, such as the degree of fragmentation, hierarchy, and policy overlap, tend to create their own logic and dynamic in the process of regulatory reform (Jordana and Sancho 2004). Domestic institutions and traditions represent «filters» producing different outcomes in different countries, as illustrated by Busch (2002) with respect to the regulation of the banking sector. Thus, there is limited evidence of the emergence of *one* regulatory state.

This way of thinking can explain why the agency form is so popular and has spread so fast and so far. Nevertheless, there is said to be a loose coupling between talk, decisions, and actions in organizations and regulatory reforms (Brunsson 1989), meaning that this theory predicts a lot of superficial similarity in regulatory form without being very specific about what actually directs regulatory activities that are decoupled from the ideal type.

A variant of this approach is the literature on translation, which argues that regulation is reshaped even as it spreads. It asserts that regulation is translated, edited, and modified locally and it takes issue with the idea of regulatory homogenization offered by the isomorphism approach. What are spread are not practice but standardized models and presentation of practice (Czarniawska and Sevón 1996, Sahlin-Andersson 1996, Sahlin-Andersson and Engwall 2002, Røvik 2002, Smullen 2004). The translation theory will predict a lot of diversity within a general trend towards agencification and a regulatory state.

We argue that single-perspective studies have limitations and we therefore try to take a broader, more mixed approach that combines different perspectives. The complexity of the organizational context matters, task-specific factors are important, and much of what happens is the result of a blend of external pressure, path dependency, and choice (Olsen 1992). The diffusion of independent regulatory agencies in Europe seems to be a

mixture of top-down factor by domestic responses to national pressure from international sources such as EU bodies, bottom-up factors linked to credibility and political uncertainty and horizontal factors between counties through mechanisms such as taken-for-grantedness and symbolic imitation (Gilardi 2005). The agency form is a broad category that embraces quite a variety of ways of operating and of relationships with an agency's parent ministry or other actors. The importance of the basic organizational structural form of the regulatory agency must be supplemented by other characteristics, such as the primary tasks enacted, political-administrative traditions, and culture, as well as external pressure, both economic and ideological (Lægreid, Roness and Rubecksen 2005a, 2005b). Such features constrain the scope for managerial strategies as well as political choice and design by executive political leaders (Christensen and Lægreid 2001, Pollitt et al. 2004). The logic of appropriateness and inefficient historical development must be taken into account and mixed with the logic of consequence (March and Olsen 1989, 1998).

A main observation is that one cannot easily infer from regulatory programs and formal agency structure to practice, meaning that although some main effects are apparent, there is a lot of variation (Pollitt 2003b). The legal status and formal powers of the agencies represent broad categories that allow for differences in practice. There are variations in how the rules for control, instructions, and appeals are formulated for different agencies and how they are executed (Christensen and Lægreid 2004b). Instead of deriving explanations based on one dominant logic, the challenge is to develop more complex propositions about how regulatory agencies are organized, how they work, and how they are transformed.

## Conclusion

This review has shown that the development of the new regulatory agency model is much driven by international diffusion and isomorphism, with anti-political and symbolic overtones. When agencies are diffused rather than established for functional reasons, there is no reason to expect them to perform better or to represent rational adaptation. Under such conditions agency design might serve as regulatory 'implants' or 'regulatory triggers' that will enhance divergence rather than convergence. Although it is possible to speak of a particular family of organizational forms, the model varies considerably both between countries and within the same country. This diversity is also affected by economic factors, the instrumental power relations surrounding political and administrative actors, and the national cultural context. Another main lesson from this review is that there is no best way to manage and control an agency and no one-factor explanations. In other words, there is no single best theory which can explain regulatory activity and agency behavior in all situations, everywhere, and at any time (Pollitt 2004).

Regulation has a Janus face. On the one hand, democratic control has been challenged by the enhanced agency autonomy. On the other hand more formality and the drive explicitly to measure are driven by pressure for more open and transparent control. It is still unclear what kinds of interests and considerations are replacing

traditional political signals and discretion and how the trade-off between political control and agency autonomy will unfold over time.

It is an open question whether more professional independence for experts in autonomous regulatory agencies will prevail or whether there will be a counter-wave of re-politicization. In recent years there has been a rediscovery of the historical-institutional context (Olsen 2004). The need for a more profound understanding of the special situations of individual countries is now being underlined to a greater extent (World Bank 2000). Priorities have shifted from a drive to create autonomous agencies to a striving to find a better balance between accountability and autonomy. This involves focusing on weak co-ordination devices, lack of governing capacity, and weak accountability mechanisms (OECD 2002a).

Based on the discussion in this paper, three suggestions for further research on regulatory reform and autonomous agencies are formulated. The first is to investigate the role of representative political bodies and political executives in the new Regulatory State. The changing relationship between politicians and bureaucrats and ways of balancing agency autonomy with political control are research issues that deserve greater attention (Christensen and Læg Reid 2004b, Peters and Pierre 2001). In prescribing both enhanced autonomy and deregulation, and more control and re-regulation, regulatory reform perpetuates an enduring tension in the history of regulatory governance. The balance between autonomy and control is difficult to find and hard to maintain, and a main challenge is to clarify under what conditions the equilibrium tends to tip one way or the other.

The second question, connected to the first, is how to regulate the regulators (Læg Reid, Roness and Rubecksen 2005b). Research on regulatory agencies to date has concentrated on regulatory and organizational efficiency and has not paid much attention to the issues of accountability and democratic oversight (Shapiro 1997, Flinders 2004, Majone 2001, 2002, Thatcher 2002a). Moving regulatory decision-making to autonomous agencies is not only about non-political technical and technocratic efficiency, but also involves sensitive political trade-offs and value-based choices involving such things as economic efficiency, safety, and security; social and environmental objectives like equity, fairness, and sustainability; political control and professional autonomy; and short-term competition and long-term investment in the infrastructure (Lodge 2004). Such trade-offs are often unstable and ambiguous and have clear political components that cannot easily be resolved using purely technical criteria (Jordana and Sanco 2004). It is necessary to bring politics back into our understanding of the logic of regulatory reforms and agencification (Jacob 2004), for these are not only about economic transaction costs, cost efficiency, and managerial rationality, but also about political transaction costs, political accountability, and political rationality (Ter Bogt 2003). Some of the rational-economic theories behind the new regulatory model seem to stem from ambiguous organizational thinking and also de-emphasize some of the potential tensions likely to arise between the different considerations (Boston et al. 1996).

Our third suggestion is to go beyond the rather state-centric approach to regulation research and to examine the issues from a transnational and multi-level perspective. The increasing importance of international organizations, non-governmental organizations

and supranational organizations and bodies like the WTO and the EU challenges the concept of the Regulatory State by blurring the boundaries of competence and adding new dimensions to regulatory policy. Regulation nowadays includes not only regulation by the state or within domestic government but also regulation by organizations outside the state. National administrations are highly integrated into the European regulatory system when it comes to rule making, implementation and enforcement (Læg Reid, Steinthorsson and Thorhallsson 2005). The increased autonomization and Europeanization of the regulatory agencies and the parallel development of autonomous regulatory agencies in the EU and in the member states might create a direct link between regulatory agencies at different levels, thus bypassing the domestic ministerial structure. It might enhance multiple identities and make the agencies double-hatted by enforcing EU laws in direct interaction with the European commission at the same time as they perform traditional regulatory tasks for domestic governments (Egeberg 2004, 2005). Thus the new regulatory competition policy that promise decentralization might result in increased centralized power of the European Commission by developing professional networks and legal epistemic communities (Wilks 2005).

One could also go beyond the transnational and multi-level perspective and open up for a more pluralistic governance approach in which the state is both a provider and an object for regulation, and including new forms of regulation such as enforced self-regulation responsive regulation, soft regulation, transnational governance, and a new global order of regulatory capitalism (Ayres and Braithwaite 1992, Scott 2004, Mörth 2004, Levi-Faur 2005, Djelic and Sahlin-Andersson 2005, Braithwaite 2006). Such an approach would see the state and government agencies as one among many regulatory bodies and would include multiple actors such as non state actors and private regulation of public sector (Johnston and Searing 2003, Mattli and Büthe 2005). Regulatory capitalism implies increased privatization and delegation, development of new technologies and arrangements of regulation and empowerment of experts. This development in which regulation seems to be on the increase but not necessarily directly by the state, makes the challenges of implementation, accountability, legitimacy, depoliticization, and power even more difficult to handle.

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