Organizational Variety in Regulatory Governance: An Agenda for Comparative Investigation of the OECD Countries

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1. Introduction

The emergence of regulation as a field of study in the disciplines of economics, political science and law is closely associated with the creation of federal independent regulatory agencies in the United States. Though the first of these, the Interstate Commerce Commission, was established in the 1880s it was the proliferation of such agencies during the period of the New Deal which caught the attention of scholars, and generated such classics as Robert Cushman's *The Independent Regulatory Commissions* (1941) and Marver Bernstein's *Regulating Business by Independent Commission* (1955). The very titles of these books reveal their focus on agencies. While governments in other industrialized countries also sought to exercise some degree of control over key industries, the instruments of choice were more typically the bureaucratic oversight of government departments or ownership through the public corporation form (Friedmann 1954).

Many OECD countries began processes of privatization of public corporations or state owned enterprises (SOEs) in the 1980s. The politics of privatization frequently required the establishment of regulatory agencies to provide reassurance that the public interest would still be served. These reform processes caused European scholars, in the UK and elsewhere, to begin to work with the concept of regulation. This is not to say that regulation in these countries

was new. A clear legacy of the American dominance of the literature is the continuing link between regulation and independent agencies (Majone 1990).

For some public ownership and agency regulation were at opposite ends of a continuum of available instrument choices for control of industry (Trebilcock and Prichard 1983). We should note that some OECD countries proceeded with reforms without establishing new regulatory agencies. The leading case is New Zealand which placed considerable dependence on competition law and the courts in securing the kind of market access which was being sought by regulatory agencies in other countries. New Zealand also deployed a form of 'implicit regulation' through the cajoling and threats to industry players by ministerial government departments. Other OECD countries, notably Japan and South Korea, have not entered a regulatory state phase, but rather continue to place emphasis on the discretionary and informal controls exercised by powerful ministerial government departments, coupled with self-regulation by powerful trade associations (Schaede 2000). In many OECD countries non-state institutions for regulation have considerable importance, including both self-regulatory bodies (for example dealing with advertising content, travel agents, etc) and private governance institutions dealing with standardization both domestically (such as the British Standards Institution (BSI), the Association française de normalisation et de certification (AFNOR) , Deutsches Institut für Normung (DIN)) and at international level (for example the Comité Européen de Normalisation (CEN) and the International Organization for Standards (ISO)).

2. Regulation and Control

In order to think about the organizational forms deployed in regulatory activity it is essential to posit a definition or definitions of regulation. There are many different ways in which the regulation community conceives of their field of study and we have been warned of the risks of 'definitional chaos' (Black 2001: 129). A widely adopted definition refers to 'sustained and focused control exercised by a public

agency over activities that are valued by a community'. That definition can be made more specific by positing that the control should exercised by reference to rules (rather than through expenditure or provision of information) (Ogus 1994). Such a restrictive definition accords with the first OED definition of the verb to regulate: to control, govern, or direct by rule or regulations (Daintith 1997: 3, 8).

For purposes of regulatory policy generally it may be appropriate to draw the definition of regulation more broadly so as to encompass instruments, processes and organizational forms beyond traditional conceptions of 'command and control' (Baldwin, Scott and Hood 1998: 2-3). A 'relatively inclusive' definition, embracing 'state intervention in private spheres of activity to realize public purposes' has tended to find favour among political scientists (Francis 1993: 5). Recent scholarship has additionally brought controls over public sector activities within the regulatory analysis (Hood et al. 1999).

A key form of intervention within the second but out with the first definition is the deployment of public ownership as a mechanism for controlling not only utilities provision, but also other economic activities. There is a large comparative literature both public enterprise traditions (Cassese 1988; Friedmann and J.F.Garner 1970; Hancher 1988)] and on the dynamics of public enterprise organization (Wettenhall and Thynne 2002) and there appears no need to elaborate on that topic in this article. Indeed, processes of privatization in many OECD countries have been partially responsible for greater interest in processes of regulation on the first definition (Feigenbaum, Henig and Hamnett 1999).

A third and wider definition, along the lines of all forms of social control, whether intended or institutionalized or not, might be appropriate to certain forms of sociological inquiry (Black 2001:129-136). Adherents to the 'regulation school' of political economy work with a wider definition along these lines (Boyer 2002). However for the purposes of examining variety in organizational form it appears to me appropriate to limit the investigation to instruments and processes which

seek to achieve control by reference to rules, while extending the analysis to all organizations (not just public agencies) which seek to control in this manner (Daintith 1997: 18-23).

There is a helpful tendency in both the public administration and socio-legal literature to use a cybernetics analysis to distinguish the different components of control systems relevant to regulation (Hood 1984: Dunsire, 1996 #892; Hood, Rothstein and Baldwin 2001; Teubner 1984). Within this analysis a control system has three components: some form of goal, standard or norm; some mechanism for detecting deviation from that norm; some mechanism for realigning the operation of the system with the norm. In classical regulation these functions equate to standard setting or rule making, monitoring and regulatory enforcement.

Early forms of regulatory activity in England consisted of the creation of instrumental norms without much consideration given to mechanisms of monitoring and enforcement. Such norms were generated both by statute (for example the 13th century legislation governing the price and quality of bread) and by the common law judges. By the late 18th century the doctrine of common callings – which required those holding themselves out as offering certain services such common carriers, common innkeepers and common millers – was well established and required providers of key services to offer them at reasonable price and to all without discrimination. Similar principles were developed later to require owners of monopoly infrastructure such as ports to provide access to all who required it (Craig 1991: 145-7). These standards were typically privately monitored and enforced through the courts. Similar stories could be told about regulatory developments in other European states.

Reforms in eighteenth century Prussia saw the creation of an all-purpose enforcement capacity in the hands of the Polizei concerned with such matters as public health and work standards and an organizational form (Raeff 1983). This

organizational form embodied a continental notion of ‘police science’ somewhat broader than that which emerged in England. The nineteenth century revolution in British government bought with it new machinery for monitoring and enforcing standards in respect of such matters as factory safety, public health and prison conditions. (Chadwick 1829) thought in terms of instituting ‘preventive police’ on the continental European model as multi-purpose enforcement authority.

Locating all of the regulatory functions in a single public agency requires some version of a doctrine of regulatory independence. The independence doctrine appears to originate with the British regulatory institutions of the second half of nineteenth century, some of which were constituted as commissions or tribunals and chaired by judges. These commissions operated largely through processes of adjudication and had a form of independence from the executive based on that of a court. The Railways Commission, established under the Regulation of Railways Act 1873 was of particular significance. (Dimock 1933: 71-72) noted that

> [The] historical importance of the commission idea was…very great. The railway board of 1873 was the first semi-administrative tribunal which England had ever established for regulatory purposes. Its creation recognized the necessity of relying on technicians in government …The First tendency to modify “departmentalism” and parliamentary responsibility was set in motion. Independent commissions were not destined to become numerous in Great Britain, but in the United States scores of regulatory tribunals and the famous Interstate Commerce Commission, which was established in 1887, have owed their germ idea to the example afforded by the railway tribunal of 1873’ (footnotes omitted).

During much of the twentieth century British government’s favoured instruments of control were premised either on public ownership of activities or direct and informal oversight by government departments rather than the independent

agency model which had been transplanted and taken up with such enthusiasm in the United States.

Outside the United States it is fairly unusual to find whole regulatory regimes within the ambit of a single agency or department. 'Intra-state diffusion of power' is more commonly the norm (Daintith 1997). Within federal regimes such diffusion is built into a state's constitutional arrangements. Within other systems diffusion is a product of functional differentiation between legislators, executive and judiciary with a tendency of each to jealously guard their territory and apply distinctive rationalities to substantive regulatory domains. Thus it is not unusual to find rule making powers reserved to legislatures and power to apply formal sanctions reserved to courts. In terms of the control function it is therefore helpful to think about regimes and the character of relationships between organizations within this regimes (Eisner 2000; Francis 1993: 43-48). This is particularly true of regimes which are characterized by a split in capacities between different levels of government, whether within federal or proto-federal national jurisdictions or as between national and supranational jurisdictions. A different form of diffusion of power occurs in those domains, such as standard setting, where public and private organizations each play key roles.

3. Classifying Regulatory Organizations

Organizations which make up regulatory regimes may be classified in a number of ways. Six key parameters are ownership, legal form, funding, functions, powers and governance level.

3.1 Ownership

Ownership has commonly been used as a key indicator of the public or private quality of an organization. The whole privatization movement (where privatization connotes the transfer of ownership of assets) is premised on an ownership basis

for distinguishing the public from the private. One reason for adopting such an analytical approach is its simplicity. It creates a binary division which operates irrespective of legal form and all organizations belong in one category or the other save those which are partially owned by the state. Partial state ownership is only likely to occur in practice with operational organizations, such as utility providers which have been partially privatized, and is less likely to be found with regulatory organizations.

But, on closer inspection, ownership, like other indicators, proves to be too simple in itself as a classificatory indicator. It classes as public organizations which happen to be in public ownership but in which there is little 'public interest' in the broad sense, and classes as private organizations which legislature, executive and judiciary, not to mention other stakeholders, might scrutinise quite closely so as to detect deviation from public-regarding norms.

Put another way expectations that organizations will conduct themselves in pursuit of some conception of the public interest are not restricted to those bodies which are publicly owned. Thus we might want to subject the expenditure of public funds granted to private organizations to techniques of public sector audit, as occurs with the European Court of Auditors and some other Supreme Audit Institutions. We might think it appropriate to subject private regulatory organizations to the scrutiny of judicial review of administrative action, either because their powers (for example granted by legislation) or functions (explicitly or implicitly delegated by legislatures) have a public character. We might, for these reasons, think private regulators should, in some circumstances be subject to other disciplines applied to public bodies, such as the application of ethics codes, freedom of information legislation or human rights legislation. We might equally have reasons for exempting some public sector bodies from some of these constraints.

3.2 Legal Form

Classical regulatory agencies are constituted in a variety of ways. In the UK, for example, contemporary agencies have legal forms as diverse as statutory authorities, government departments, non-statutory executive agencies and companies limited by guarantee. Each is usually wholly owned by the state. Government departments are always constituted as public entities, though their legal form varies across jurisdictions. While many countries establish government departments as statutory authorities, the UK uses a mixture of prerogative power, creation of statutory office holders with powers to appoint staff (as opposed to creation of departments) and statutory departments (Daintith and Page 1999: 32-34).

It is not conventional to think of courts and tribunals as regulators (Francis 1993: 22-23). However in New Zealand, where agency models have been largely eschewed, recent policy discussions have directly compared the virtues of regulating access to vertically integrated natural monopolies using the different institutional forms of government departments, specialist agencies and courts – defined within the working paper as the 'gatekeeper' issue (Department of Commerce and Treasury 1995: para 242 and Appendix E).

The approach taken by the New Zealand government has much in common with the strand of new institutional economics thinking which emphasizes the desirability of deploying organizational forms which maximize the credibility of commitment to stable regulatory environments (Levy and Spiller 1996). Thus courts as decision makers are attractive because they are less vulnerable to outside influence than agencies and ministers and their decisions have precedent value, particularly in the higher courts. On the other hand they have limited expertise (though New Zealand is unusual in having the capacity to appoint expert lay people to sit with judges in the lower courts) and are unable to act proactively in resolving problems (Department of Commerce and Treasury 1995: Appendix E, Table 2). In other words their orientation is less instrumental.

This was rather clearly demonstrated in a decision of New Zealand's highest court, the Privy Council sitting in London, which determined that access charging by the dominant incumbent, Telecom New Zealand, so as to recover opportunity costs (i.e. the profit lost through granting access to its infrastructure to other operators) was not inconsistent with the country's competition law principles which prohibit abuse of dominant position (Scott 1998b: 245-246). This decision was made notwithstanding the fact that permitting NZ Telecom to charge on this basis created a serious risk of undermining *de facto* (as opposed to *de jure* liberalization).

3.3 Funding

Many publicly owned regulatory bodies derive some or all of their funding through levying of fees on regulated bodies. Many private regulators similarly derive their operating costs from fee income. Thus standardization bodies commonly derive much of their income from selling the standards which they produce. The funding relationship has caused some to question the independence and capacity for being effective of the regulators. The central question here appears to be whether regulatees or other stakeholders have discretion over whether to fund regulators and in what amounts. Where a levy or licence fee is set by finance departments and moneys allocated through regular authorizations to the agency, as commonly happens in the UK, then the agency appears to be fairly well insulated from any influence which might derive from the fact of industry funding. Conversely where industry actors are centrally involved in funding decisions on self-regulatory bodies, to the extent of determining annual contributions, then the fact of industry funding may also provide considerable leverage over shaping the operation of the regime. With standardization bodies, their partial dependence for income on selling of documents may create some market pressure for these to be usable, well presented, etc. Many standardization bodies, though they are private, also receive grants of public money, making their funding hybrid in character.

3.4 Functions

Many private organizations exercise public regulatory functions. Key examples include standardization bodies, which are typically private companies, but in receipt of some public funding, and self-regulatory bodies established by industry players. Standardization bodies are sometimes described as being self-regulatory in character (Daintith 1997:20). I prefer to think of them as instances of private rather than self-regulatory government. Industry players are likely to participate in both national bodies (such as the German DIN or the French AFNOR) and Supranational bodies as the Comite Europeen de Normalisation (CEN) and the International Organization for Standards (ISO), but the take up of the standards whether on a voluntary or binding basis (for example because domestic legislation requires adherence to a private standard) typically extends well beyond the participating firms.

A leading European example of private self-regulatory bodies exercising public functions is in the advertising sector where there is an *implicit* delegation to bodies. The European Advertising Standards Alliance (EASA) has in its membership 28 self-regulatory organizations (SROs) of which 24 are European and drawn from 22 European countries (http://www.easa-alliance.org/). While EASA is in essence a mutual organization it regulates the SROs for minimum standards in respect of such matters as independence, transparency and effectiveness, generating a considerable degree of convergence between self-regulatory regimes in Europe and extending to its non-European members in Canada, New Zealand and South Africa. (There is a US organization within the EASA membership but it has a much more limited role in respect of entertainment software and is not a general advertising regulator). The state delegation to this form of self-regulatory regime is implicit. In the UK, for example the Advertising Standards Authority derives it powers not from statute but from the contract made between the members.

3.5 Powers and Organizational Form

The United States was the first country to adopt the instruments and institutions of the regulatory state. The European industrialized countries pursued public policy objectives through the instruments and organizational forms of the welfare state – monolithic bureaucracies, wide discretion and public ownership. Excited discussion of the 'rise of the regulatory state in Western Europe' (Majone 1994) exaggerates the extent of convergence between European and US governance models in the 1980s and 1990s. Similarly analysis of convergence on independent agency models in other parts of the world, for example Latin America, - needs to be significantly qualified by reference to such matters as culture and political bias (Murillo 2002)

The UK has arguably gone furthest down the regulatory state route, but has created no organizations with the breadth of rule making and sanctioning power of the US federal commissions. There is some limited movement in the UK towards greater empowerment of agencies in this regard with recent moves to give direct power to apply financial sanctions both to the main competition authority, the Office of Fair Trading (Maher 2000: 557-559), and a newly consolidated Financial Services Authority (Scott and Black 2000:451). The latter agency also has extensive rule making powers. It should be noted, however, that indicators of formal power or regulators do not tell us how such powers are deployed. Empirical investigation reveals a wide range of different 'enforcement styles' (Braithwaite, Walker and Grabosky 1987) such that some formally powerful organizations may have little impact in the domain over which they are regulator while less powerful organizations may be able to eke out limited powers to greater effect (Scott 2001).

In a majority of OECD countries there is a clear disposition towards retaining rule making powers within ministerial government departments and legislatures and power to apply formal sanctions reserved to courts. Accordingly it is often the

case that ministerial departments are the key regulators of particular domains in countries such as France and Japan. Even in the UK, where there has been a proliferation of agencies, ministerial departments, and in particular the Department of Trade and Industry, must nearly always be given prominent mention when detailing the regulatory organizations for regimes both economic and social regulation.

Private self-regulators of the type commonly found in the advertising domain are of particular interest because they frequently exercise the full set of regulatory functions – standard-setting, monitoring and enforcement – without the necessity of involving other organizations. Consequently they might be labeled as 'full regulators' as compared with many public and private regulators who only exercise one or two of the component control functions, being dependent on other organizations in respect of the others.

The more fragmented pattern of self regulation may arise where there is explicit delegation of power to private bodies, as with the statutory regulatory regimes for the legal and medical professions in many common law countries (Francis 1993: 56). Thus private professional bodies exercise public statutory powers, with rules typically set by legislatures.

In summary there at least three main combinations of form and power: Organizations established and given power by statute (which is often regarded as paradigmatic);Organizations established without direct state involvement, through contracts or incorporation, but empowered by state legislative instruments; non-state organizations exercising private regulatory power. Paradoxically the last of these is often the most independent and most powerful because of its capacity to combine each of the three regulatory functions of rule-making, monitoring and enforcement, without the involvement of any other organizations.

3.6 Governance Level

Within federal regimes it is not uncommon to find regulatory powers being exercised at both state and federal level, sometimes in similar domains or with overlap of responsibilities. In Australia responsibility for regulation of consumer markets is shared between state and federal governments, with considerable overlap. Financial services regulation is assigned to the states by the constitution, but the state governments have delegated this power to the Federal legislature and agencies. In the United States there is considerable tension between state and federal jurisdictions over such matters as utilities regulation, a significant factor in slowing down progress towards liberalization in the telecommunications sector. Within the proto-federal arrangements of the European Union the governments of the member states are key actors in the legislative process, through the Council of Ministers, and in most domains are also responsible for implementing EC legislation. Accordingly the European Commission as a regulator has only very limited rule making and enforcement powers, focused on the competition policy domain. In respect of most other matters it enforces indirectly through engagement with the member state governments over the fulfillment of their responsibilities (Hood et al. 1999: Chapter 8).

The bifurcation of responsibilities between different levels of government is said to bring considerable advantage, in that it provides a check on over-zealous regulatory activity and an incentive to innovate with less intrusive regulatory regimes. In the United States a substantial literature has pointed to the virtues of competition between the states over corporations laws as they seek to encourage firms to establish within their territories, bringing many economic advantages. This downward pressure on the regulatory requirements placed on corporations is sometimes referred to as the ‘Delaware effect’, and identified with a ‘race to the bottom’ in regulation (Bratton et al. 1996). It is far from clear that the conditions under which such competition might arise exist generally, and

there are counterintuitive examples which suggest instances of races to the top in certain domains.

In many areas standard setting is increasingly achieved through supranational bodies. Of the governmental supranational standard setters the EU has the most developed institutional structures for legislating. Among the private organizations the International Standards Organization is a key player. More generally recent research on international business regulation points to the centrality of national governments in most of the diverse regimes for setting and monitoring standards internationally (Braithwaite and Drahos 2000), significantly challenging the view that globalized government has caused the breakdown of sovereign state power.

4. Independence and Accountability

The picture of regulatory power being diffused through a wide range of public and private organizations is a long way from traditional models which emphasize the need for a balance between independence and accountability of regulatory agencies. In most OECD countries ministerial departments retain central powers over most regulatory domains and questions of accountability are not special to regulation. Private organizations have long exercised key regulatory powers at local and national level and their significance at supranational level is becoming every more apparent.

4.1 Independence

The doctrine of regulatory independence is well established within the United States (although in practice exhibits considerable variety in its application). Even when applied in its strongest form the plausibility of agency independence has been questioned by some skeptics (Sunstein 1990). Such doubts notwithstanding the doctrine has been adopted more recently in the European

Union and by the WTO (Daintith 1997). Advocates of the more extensive regulatory independence found in some US domains highlight the merits of technocratic regulatory decision making and its relative insulation from political considerations (Majone 1994). Recent analysis within new institutional economics has sought to use the principal-agent framework to highlight the mechanisms be which agencies can be kept in line with legislative objectives whilst exercising sufficient independence to carry out their expert tasks (Horn 1995; Levy and Spiller 1996; Macey 1992).

When interest in the independent agency model was renewed in the UK as part of the policies of privatization and re-regulation in the 1980s the independence granted to the new agencies was of a more limited kind, substantially limited to exercising independent judgment and prioritization of monitoring activities. The model was established by the Fair Trading Act 1973 with the creation of the Office of Fair Trading to monitor competition and consumer markets. So, for example, the Telecommunications Act 1984 retained for ministers most of the rule making powers (exercised through statutory instruments or licence issuance) over the telecommunications sector while the power to apply formal sanctions was substantially reserved to the courts. Where the new agency, the Office of Telecommunications (OFTEL) was empowered to make rules through licence modification the process required either the consent of the licensee or the involvement of another agency, the Competition Commission (formerly the Monopolies and Mergers Commission), in assessing the desirability of the change. Enforcement powers were so tied up with formal requirements to make them difficult to use and in practice they were little used during the agency's first ten years of life. These factors generated a relationship between OFTEL, the Department of Trade and Industry (the relevant ministerial government department) the main firms which is better characterized as interdependent than independent (Hall, Scott and Hood 2000).

Set against the arguments for the independence doctrine are path dependencies which keep European governments from wide delegations of power. These cultural traditions have come under pressure in particular from supranational forces. Moves to create independent agencies at the EU level have, to date, been rather limited, reflecting a tradition which is reluctant to make widespread delegations of power to independent agencies (Keleman 2002; Thatcher 2002) Key EU legislative instruments directed at the liberalization of utilities and telecommunications sectors require member state governments to separate operational and regulatory functions, a norm that has been generally interpreted to require the establishment of agencies with at least some measure of independence from the executive. This has required considerable organizational innovation in countries such as France, Spain and Italy which have traditionally retained regulatory functions within ministerial government departments (Daintith 1997: 27).

Global initiatives, such as those of the WTO on telecommunications liberalization create pressures for other states to adopt similar institutional innovations. Thus far Japan has substantially resisted these moves, whereas the New Zealand government adopted an adjudicatory model under the Telecommunications Act 2001. The Telecommunications Commissioner, to be located within the offices of the Commerce Commission (competition authority), departs considerably from modern independent agency models and harks back to the age of nineteenth century adjudicatory tribunals.

4.2 Accountability

To some extent special considerations of agency accountability may serve to obfuscate the central issues of control and responsibility in respect of regulatory power. The separateness and visibility of regulatory agencies contributes towards greater transparency, while it is common to find significant interdependencies linked to the exercise of some or all of their power.

Accordingly agencies commonly have to account for their actions not only to courts and to ministerial departments, but also to other stakeholders, in a manner which generates at least a functional equivalent to more traditional and formal accountability mechanisms (Scott 2000).

Where, as in many OECD countries, monolithic ministerial departments retain some or all of the key regulatory powers (together with implicit powers to propose regime changes) then we may be more concerned about how accountability for the exercise of those powers is made effective. Even in the United States, the exemplary regulatory state, it has been noted that regulatory responsibilities are often 'located in the same set of institutional structures as other governmental responsibilities such as defense or finance' (Francis 1993: 61). The tendency of regulatory units to be hidden away within departments, linked to the busy agendas of ministers may, paradoxically, serve to make such units *more* rather than *less* independent, at least on issues of low political salience. This is, in part, because the internal units of government departments tend to be less transparent and tend to rely less on statutory authority. Should formal mechanisms of accountability be weak or fail to reach the locus of regulatory decision making within a department, then regulatory decision making may evade accountability structures altogether.

Conversely, in regulatory domains of high political salience such units are likely to less independent, with the risk that functional regulatory mandates are diluted by political considerations. Where independence is of greater importance than expertise or contact with political considerations, then it may be appropriate to assign functions to courts, tribunals or agencies having some features in common with these bodies. Similar concerns arise within the supranational structures of the European Union where there is considerable scope for politically driven decision making in rule making, and to a lesser extent in enforcement of EU rules. It is for this reason that the assignment of formal sanctions is often reserved to courts or tribunals, and that some heads of regulatory bodies,

particularly for regulators of the public sector such as such supreme audit institutions (auditors-general, courts of auditors) and ombudsmen, have tenure arrangements similar to those of judges.

Private regulatory bodies raise issues of independence and accountability for different reasons. Legislative and judicial control may be of more limited application. Indeed the common law courts have struggled to define the circumstances under which private bodies exercising regulatory functions may be subject to judicial review (Black 1996; Scott 1998a). This is all the more worrying for some because many private regulators are 'full regulators' in the sense that they exercise all three of the component control functions. They consequently attract less of the substantive day-to-day accountability which arises from interdependence with other organizations. Consequently the institutional design for such bodies, for example in respect of representation of stakeholders, reporting requirements, and so are of particular significance.

The problems are perhaps more acute in respect of private regulatory organizations which are not constituted as self-regulatory organizations. With standard setting organizations and other commercial organizations which exercise considerable regulatory power such as insurance companies and credit rating agencies the chief mechanisms for holding them in check are the traditional structures of corporate governance the operation of markets for their business and information (Scott 2002). There is little empirical data on how well such checks operate. A central case is provided by the assessment of sovereign debt by credit rating agencies. There is no contract for the generation of the agencies' assessments, but the detailed analyses can be sold to organizations considering making loans to governments and government bodies. Ratings effectively second-guess the decision making of elected politicians on key questions of economic and fiscal policy. There is no question that the agencies exert some form of regulatory power over decision making within finance departments. Such assessments have probed to be problematic not only for

reasons of inaccuracy, but also because of the potential for diverting governments from their mandates in order to retain financial credibility. The agencies exercise almost complete independence and have few responsibilities to formally account for their actions. With international standard-setting bodies there is considerable evidence linkage with public bodies at both national and international level in the way that standards are developed and made binding and enforceable.

5. Conclusions

Organizational variety in regulation is intimately linked to the diffusion of regulatory power within and beyond contemporary OECD states. The extent of the variety to be found depends in part on how widely the definition of regulation is drawn. Even the classic regulatory state, the United States, has greater organizational variety than is widely understood. The picture becomes more complex when we extend our analysis beyond domestic state organizations to include private and supranational bodies. Such analysis raises the question whether the organization category of 'regulation' is useful for organizational analysis when the forms studies are so disparate. Does it make sense to think about the development common administrative doctrines governing such diffuse forms?

The problem is linked to a tendency to wards expansive thinking about regulation in scholarship and policy making which is concerned with questions of effects and effectiveness within regulatory regimes. Arguably these have become the central questions within regulatory debates. The idea of deploying regimes analysis implies a rejection of common organizational models for regulation. The necessity for such a change in approach is accentuated by the prevalence of international organizations in regulatory standard-setting and enforcement. If administrative doctrine is to keep up then it too must attempt to work within a regimes analysis. The questions of what independence and accountability

doctrines would look like within such an approach appear to me to be central to the new regulatory research agenda.

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