

Institutional Setting and the Quality of Regulatory Policy: Evidence from the Telecommunications and Banking sectors in Chile and Peru

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Abstract. The paper aims to contribute to the debate about the relationship between institutional design and the success of the regulatory policy. We develop a research design to evaluate the performance of the new institutional settings created by the market-oriented regulatory reforms undertaken by Latin American countries in recent decades. More concretely, the paper focuses on whether the institutional reforms, mainly specified in the creation of Independent Regulatory Agencies, have been as successful as expected in terms of the quality of policy in the regulated sectors. Our approach proceeds from a description of the regulatory policy outcomes (based on interviews with actors in regulatory agencies and regulated companies) as the dependent variable. In addition, the independent variable will be configured as the institutional setting of the regulated sectors, both as a managerial structure with different settings and as a part of a policy network.

By studying regulatory reforms in this way we hope to contribute to the academic debate about the policy outcomes of a specific regulatory structure. Following the policy network approach, we will enhance our knowledge of the environment in which the policies are embedded and the different actors involved in the policy. We test our research design empirically by carrying out an in-depth analysis of the institutional designs of Independent Regulatory Agencies in banking and telecommunications in Chile and Peru.

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1. Regulatory capitalism: origins and mechanisms of diffusion¹

One important referent in current ideological debates on economics and political science has been neo-liberalism. According to this doctrine, capitalism is in the phase of globalization, which is promoted on the basis of deregulation and privatization, which means reducing the role of the state in favour of the market. However, empirical evidence reveals that, although it is true that a new mode of capitalism is gaining in importance in the international economy, it rests on different foundations from those claimed by some scholars.

Some studies, such as that carried out Osborne & Gaebler (1992), show that since 1980 states have been more concerned with driving—that is to say, leading, thinking, steering—than with rowing. In other words, this change can be explained as a shift from the traditional functions of levying taxes and providing services to new modes of governance, whereby the state retains the responsibility for steering, while business increasingly takes over the functions of service provision and technological innovation.

The expansion of this regulatory capitalism raises four important issues, as pointed out by Jordana and Levi-Faur (2004). First, the institutional advance of regulation in the context of privatization and the neo-liberal hegemony presents a paradox, since neo-liberalism and privatization was supposed to lead to deregulation and a freer market. Second, the development of proactive policies for the promotion of economic competition (regulation-for-competition) represents a departure from the past. In fact, the new regulatory authorities that are now established worldwide are committed to the active promotion of competition, using modern regulatory techniques. Third, the incremental transfer of regulatory knowledge and institutions from economic to social spheres shows that regulatory institutions have some clear advantages over government ministers. Fourth, the political forces that sustain, promote, and diffuse the regulatory reforms are still unclear.

Once the characteristics that differentiate the new regulatory capitalism from other forms of governance have been described, it is important to point out what has

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facilitated this political economy transformation. According to Levi-Faur (2005), four processes of change in world capitalism have fostered regulatory capitalism:

1. *A new division of labour between state and society and in particular between state and business.* This new division of labour goes hand by hand with the restructuring of the state (through delegation and the creation of regulatory agencies) and the restructuring of business through the creation of internal controls and mechanisms of self-regulation in the shadow of the state.
2. *An increase in the delegation of functions in the political realm to experts.* This process is justified by the need for a high degree of expertise in the regulated sector and by the need to gain credibility in the eyes of foreign investors (Majone, 1999).
3. *International networks of experts reinforce the growing influence exerted by experts.* Knowledge and information about regulation have generated important transnational epistemic communities composed of individuals with common interests and institutionalized mechanisms of communication.
4. *Proliferation of new technologies and instruments of regulation in both public and private spheres.*

So, what is important to stress is that the most important characteristic of this new regulatory capitalism is the impressive change in the balance of forces between states and society. If we analyse this balance from the perspective of the history of capitalism, we find two main discontinuities in that history marking out three phases.

The first phase, known as *laissez-faire capitalism*, comprises the period from the early nineteenth century until the 1930s. This period was characterized by an absolute dominance of business over the two major functions of governance: steering (leading, thinking, directing, guiding) and rowing (enterprise, service provision). With the crisis of the interwar period, capitalism entered its second phase, namely, *welfare capitalism*. In this epoch the process of democratic enfranchisement led to the growth and expansion of the role of the state, which in many spheres took over both steering and rowing functions.

Lastly, around 1980, a movement started to balance the forces: business gained importance in economic production and the state strengthened its functions in direction and supervision. This movement, known as *regulatory capitalism*, is characterized by

privatization and the creation of Independent Regulatory Agencies. Levi-Faur (2005) shows that the wave of privatizations, one of the main transformations promoted by neo-liberal reformers, has been accompanied by a significant increase on regulation.

Consequently, this new phase of capitalism has not been characterized by deregulation, as neo-liberal doctrine has presumed. To the contrary, as Vogel (1996) states, the bulk of the reforms were focused mainly on liberalization and re-regulation, depending on the country. Thus, according to Vogel, it should be acknowledged that domestic institutions matter in shaping the new wave of regulatory capitalism. National differences in the implementation of regulatory capitalism have generated different outcomes reflecting domestic institutions, which define actors' preferences and, as a result, the manner in which a country regulates its economy (Weiss, 1999).

In this paper, we want to test this hypothesis, taking as a case study similar countries that have faced regulation of the same sectors but adopted different approaches. We develop an analytical and comparative study of these new public institutions (the Independent Regulatory Agencies), with their own systems of public functions and human resources management. The increasing use of regulatory mechanisms in many fields of public policy, fruit of the recent big wave of privatization, has sharpened this issue as a central subject for the political process. The maintenance of the state capacities and the possibilities of economic and social development in the region are related to the efficiency of the new institutional regulatory organizations.

The paper seeks to analyse the political and institutional design of the new independent or semi-independent institutions developed in Chile and Peru to regulate the telecommunication and banking sectors. The regulatory authority model features strongly in the administrative reforms implemented during the 1990s in Latin America, in developing a new model denominated in the literature as the "regulatory state". The results will consist in a general interpretation of the performance of these new institutional designs and the problems they have encountered. We want to study their policy impact in the selected sectoral policies and, also, on their impact in the consolidation of the government structures.

2. Institutional and managerial design as regulatory quality

Following the research carried out by Oszlack (2001) and Spink (1997), three phases in the modernization of public administrations in Latin America can be

distinguished. The first, which covers the modernization initiatives from the beginning of the 20th Century to the 1980s, sought to reinforce the public apparatus by enhancing public interventionism. The second phase started in the 1980s and is known as “first generation reforms” (Bresser-Pereira, 2001). These reforms were focused in introducing the “New Public Management” reforms carried out in the United Kingdom and the United States. In Latin America, the World Bank was indeed heavily committed to reforms of this kind since the Baker Plan (1985) defined them as a precondition for the solution of the debt crisis (Bresser-Pereira, 2001). The last phase, which started in the 1990s, is known as the “second generation reforms”, characterized by state downsizing and other public sector reforms.

So we will use these reforms in public management as our independent variables, and measure their performance in improving public policy in the sectors analysed. To do this, we have chosen to use two models of social sciences analysis, which we consider delimit precisely the institutional structure of regulation in a given sector. First, the studies of executive agencies have thrown up multiple instruments and concepts with which to approach those public organizations, the most common managerial formula of the regulatory authorities. Second, the policy network approach allows us to understand the relationships that those authorities have established with other actors involved in regulation and service delivery.

2.1. Executive agencies: the institutional model of the new regulatory agencies

As mentioned above, one of the most prominent institutional characteristics of the regulatory capitalism is the establishment of regulatory authorities. These entities have adopted the principal-agent managerial and institutional model. Furthermore they have been designed with some degree of autonomy, in order to increase their credibility with the economic sectors, both domestic and international (Majone, 1999). The executive agencies have been defended as structurally separate bodies that develop national public tasks with civil servants. Also, they are financed mainly from the public budget and are dependent on legal procedures. The agencies maintain a certain level of autonomy vis-à-vis regarding their ministries in their decision-making, as well as in questions related to human resources and management. Yet they are not totally independent because responsibility for their activities falls to democratically elected politicians (Pollitt et al., 2004).

Concerning the theory of the public management, the organizing typology is found within the category known as Alternative Service Delivery (ASD). These institutional forms —alternatives to the traditional model, structured in ministries and supported by a hierarchical logic— are characterized by sharing functions of government within individuals, community groups, and other governmental institutions (Ford & Zussman, 1997). According to a World Bank classification, among the main typologies of ASD are the executive agencies, partnerships, and private enterprises. Regarding the remaining organizing formulae included under ASD, the executive agencies signify the creation of an arm's length organization with an important structural, legal, and financial limitation, comparing with partnerships or private enterprises (Gains 2003). Furthermore, they maintain a greater hierarchical intensity with respect to the public administration.

As said above, one of the characteristics of the executive agencies with respect to traditional mechanisms of organization of public administration is the human resources management model. Agencies organize and negotiate with their personnel with great autonomy and can choose from among an extensive spectrum of possibilities. Those options comprise choosing labour legislation from the private sector or opting for a public model, or even configuring their own civil service model.

The analysis of the institutional agreements for the control of the public bureaucracies has been developed from studies of delegation. Of these new approaches, we are especially interested in the concept of regulatory discretion (Epstein & O'Halloran, 1999; Huber & Shipan, 2002) to measure the capacity of the governments to intervene in the human resource policies of its different institutions. This concept permits us to understand to what extent legislation guarantees to government and its ministries sufficient authority over decisions related to human resources.

2.2 Factors determining the behaviour of regulatory agencies

The regulatory agencies constitute a distinct subgroup of executive agency. Their mission is confined to managing the frameworks of economic and social agents, employing rules and norms linked to controls, sanctions and incentives rather than being in charge of distributional elements, which are more oriented to assigning resources appropriate to determined merits, needs or conditions (Majone, 1997). Other authors maintain that regulatory agencies perform actions related to the defence of competition or consumer and citizen protection by means of steering and implementing regulatory

politics (Christensen & Laegreid, 2005). When regulatory agencies work well they reinforce their credibility and predictability, reducing the necessity for control and direct citizen participation and involvement (Christensen & Laegreid, 2005). Some authors identify elements that can help these organizations to function well. These elements are mutual confidence as well as a strong and shared culture among the actors in the regulated sector (Boin, 2001; Kaufman, 1960). Thus, such studies allude to concepts like confidence in and legitimacy of the institution, which are the core elements for the success of the institutionalization process (Boin, 2003).

The confidence generated by an institution can be observed from two dimensions of managerial action (Braithwaite, 1998): (a) as a procedure (I trust an organization that acts in a consistent, predictable, and prudent) and, (b) a more substantive dimension (I trust an organization that does things in the correct way). Institutional legitimacy constitutes something deeper and without doubt is seen to be influenced by the confidence that generates an institution (Boin, 2003). The concept of legitimacy alludes to the perception or conviction that not only the acts of the organization but the organization itself are desirable or appropriate within a system of norms, values, beliefs and definitions (Suchman, 1995). Boin (2003) suggests an example that illustrates the relation between the two concepts: compromising news for a given local police force can cause a decrease in our level of confidence in the police. But this lower confidence does not mean that we doubt that the local police should exist.

As well as factors that favour the good performance of an institution, we can find elements that can constitute undesirable threats to the activity of regulatory institutions. Christensen and Laegreid (2005) point out a number of threats to regulatory reforms that are related mainly to problems of implementation, coordination, accountability, and the depoliticization of power.

Implementation: problems in implementation arise mainly when there is a lack of coherence between the practices of the regulatory authority and the institutional model proposed. This lack of congruence can be caused by the bureaucracy or by institutional limitations during the process of implementation (Laegreid & Serigstad, 2004).

Coordination: one of the consequences of the processes of agencification is the downsizing of the central executive structures. The proliferation of agencies with specific purposes dissipates the competences that traditionally resided in the ministries, with a consequent increase in problems of coordination (Flinders, 2004; Gregory, 2003).

The detection of this problem has prompted strategies of “governmental aggregation”, both at the vertical level between ministries and agencies, and at the horizontal level among policy sectors.

Responsibility: this problem faces the contradiction between the principle of the independence of the agency vis-à-vis its principal, with the principle of responsibility to politicians, and also to the public sector generally and to consumers and regulated actors. This contradiction determines the extent to which the relation between government and regulators affects ministerial responsibility. In this sense, it is accepted that the ministries should be able to give some general guidelines to the regulatory authorities on how to carry out their functions (Christensen & Laegreid, 2005). The problems of these guidelines are that they used to be informal and unpublished (Graham, 1998).

Democratic legitimacy: the model of regulatory agencies is based on the creation of organizations that implement regulation with the resources, responsibilities and regulatory powers delegated to them. The government of these organizations is neither elected by the citizens nor managed by elected representatives (Gilardi, 2004; Thatcher and Stone Sweet, 2002). Against this, it is argued that the delegation of power to actors that have not been elected prevents political interference and enhances the credibility of decisions (Majone, 1999; Lodge 2001).

Depolitization: the agency model arose from the principle of autonomy between the political and administrative arenas. This formal principle of autonomy is threatened on two fronts: (a) politicians can use informal channels to influence agencies’ decision-making; and (b) regulated actors can constrain the autonomy of the agencies. This phenomenon is known as regulatory capture (Thatcher, 2002).

Power: the development of regulatory policies can be seen also as a new redistribution of power among traditional actors. This approach proclaims the emergence of a new sector of bureaucrats with a marked technical-professional profile that enjoys extensive institutional autonomy and exercises significant influence on the policy outputs.

This review of the regulatory risks in the activities of regulatory agencies greatly helps us in constructing our research design, since it indicates aspects that can be important for the quality of regulation. This section has dealt with the elements mainly of the principal-agent problem: autonomy, legal framework, depolitization, and coordination. But, as already noted, the structure and interaction between the regulatory

agency and other actors in regulatory policy constitutes another element of our explanatory variable.

2.3. The policy network approach

The policy network approach arises from the redefinition of the existing relationships between lobbies and the state, shaping an intermediate model between conceptions based in hierarchy and ideas inspired by the market structure in public administration. From this approach, political decisions are conceived as emerging from a network of private and public actors. This network operates in a vast diversity of fields, both sectoral and multisectoral, and at every level, whether regional, national or international. Nonetheless, this approach has no precise conception of how such interactions come about. To the contrary, it presents a flexible and adaptable scheme for different contexts. It is hypothesized that relationships based on information and resources interchange among actors embedded in the net can assume a variety of formulae. Therefore, they have to be determined empirically from analysis focused on a concrete reality. This flexibility in the composition and structure of the net is specified in its transformations throughout the development of its different public policy phases. So, in every phase of the same public policy, the types of actors involved, their structure, their interchanges and the allocation of power within the network can be modified and changed (Subirats, 1992).

The policy network approach presupposes acknowledgment of the idea that the public administration is no longer the main actor in a hierarchical process of policy-making. However, the administration retains a strategic role in the whole process. The interdependence is viewed as a set of public and private agents that have important effects on the internal dynamics of the organization and on the mechanisms of its behaviour. This perspective is opposed to the public-policy process analysis based on the description of formal administrative structures, where the state is the actor at the top of the hierarchical arrangement its scope embraces all areas of intervention. The policy network approach acknowledges the outstanding reality of every different field, as well as the multiple modes of organization and operation that can take shape in the policy-making process.

In this sense, the policy network approach has an interesting potential to describe the public and private actors involved in the public policy process for identifying both its relative positions and the model of the relationships it has developed (Thatcher,

1998; Jordana & Sancho, 2004). To identify the characteristics of policy networks, Jordana (1995) has suggested the dimensions and basic variables that should be borne in mind. These are:

A. The *number of actors* involved in the network. This dimension is materialized in terms of network density, since important differences exist depending on the grades of density of the network. On the one hand, very dense networks usually exist in politics where benefits are concentrated and costs dispersed, which promotes the mobilization of a great number of agents. On the other hand, less dense networks usually emerge in politics with concentrated costs and benefits, restricting the number of agents involved.

B. The *kind of actors* involved in the network. Networks exclusively consisting of public agents can be distinguished from others made up of social actors, lobbies or political parties. The network' actors typology can vary according to the field of reference.

C. The *field of reference*. Although different points of view exist, policy networks as an analytical tool for the study of policy are usually associated with the "micro" and "meso" levels, not with the "macro" level. In any case, the network level of generality can be distinguished at different levels:

1. *Policy arena*, corresponding to large sectoral fields such as industry or public health.

2. *Policy sector*, corresponding to more delimited fields, such as the chemical industry or hospitals.

3. *Policy sub-sector*, corresponding to specific sub-sectors such as pharmaceutical production within the chemical industry.

4. *Themes of policy*, referring to concrete questions and problems such as pharmaceutical prices or market deregulation in the automobile industry.

D. The basic *functions* and network institutionalization, referring to the effective role played by the network in relation to public policy. The idea is to analyse network functionality according to elements such as different actors' capacity to influence outcomes or the predominance of one of them. Thus, the level of network institutionalization can vary according to the formality or informality of its recognition by public agents, to its permanency and stability, and to its effective role played in relation to the elaboration of public policy in its field of reference.

E. The *structure of and stability* in the relations among the actors in the network. The kind of relations that have place in the network (whether conflicting or cooperative) determines the way of working, depending on the relative positions of every actor and the tradition or the cultural context within which they work. Here is also included the analysis of the actors' permanence in the network, since it is assumed that the actors negotiate their inclusion in it with the aim of improving their position and their influence over the decisions related to public policy.

F. The *degree of institutionalization of rules*. This dimension is focused on the mechanisms that explain the relations generated in the network, from the more formalized to the less formalized routines. These rules or routines contribute to defining the specific tools of management and direction that later will be applied to public policies produced in the network's field of reference.

G. *Power distribution and strategies* of the actors in the network. In this category is included the inequalities among the actors in the network in respect of their control capacities in the policy making process derived from the resources available to every actor. 'Resources' are here understood broadly, to include economic resources and symbolic resources derived from the monopoly of certain information. Nevertheless, even when accessibility to resources has an important influence on the share of power that a given actor enjoys in the network, the strategies that they develop can modify the final result. That is because actors have different abilities to mobilize their resources and, consequently, to change their initial positions in the interaction processes generated in the network.

3. Quality implementation in telecoms and banking sector in Chile and Peru

To what extent have the new telecoms and banking regulatory regimes, in both Chile and Peru, produced an improvement in service delivery? To answer this question, in this section we will, first, briefly describe the forces that drove the process of liberalization in the two countries. Secondly, on the basis of data obtained from several interviews with different actors who play diverse roles in the regulatory process (ranging from government to regulatory bodies and regulated entities), we will answer the questions posed above to measure the improvements in regulatory quality on the basis of the institutional and managerial changes.

3.1 Telecoms liberalization in Chile and Peru

In the last two decades, all Latin American countries have privatized their state-owned enterprises (SOE) in the telecommunication sector. Relative to other regions in the world, privatization of telecommunication in Latin America has been especially intense. Indeed, at the end of 1990s, two-thirds of the countries in the region had partially or wholly privatized their telecommunications companies, while in other regions with similar economic standards the proportion was around one-third.

The major factors that fostered the turnover of the SOEs in basic telephony to private hands are fivefold (Rozas, 2005): (i) the inefficient state monopolies in basic telephony; (ii) the distortion of prices of basic telephony; (iii) the investment deficits and capitalization problems of SOEs involved in telecoms; (iv) the fiscal deficits of central governments; and (v) the end of the consensus about the role of the state in telecommunications.

Generally speaking, the methods whereby the different Latin America governments privatize fixed telephony were reasonably similar. The common denominator was the sale of an important part of the state-owned incumbent to a foreign investor or to a consortium of national and international firms headed by an international telephony operator (Rozas, 2005). The aim of this kind of privatization was to gain access to the new generation of information and communications technologies, as well as to use the significant fiscal proceeds of privatization to reduce both the fiscal deficits and balance of payments deficits.

The **Chilean** story with regulatory regimes and ownership patterns in telecommunications has produced three radically different results (Galal, 1996). In the first period, between 1930 and 1970, firms were privately owned and regulated but the sector grew only modestly after the agreed investment obligations were fulfilled. In the 1970s the government took over ownership of the two firms providing local and long-distance services and worked them as regulated monopolies. In the final period, since 1982, Chile deregulated some segments of the sector, improved the regulation of others, and gave back the firms to private ownership.

In 1982 Chile was the first country in Latin America to introduce liberalization into its entire telecommunication sector, with a low level of governmental control. However, this model did not last very long, since in 1987 the law was amended, establishing a process of price setting. The Subsecretary of Telecommunications

(Subtel), the regulatory body, started the price setting, which one year later resulted in the first regulatory tariffs on telecommunications.

Although since 1982 the Chilean Company of Telephones (CTC) and the Telecommunications National Enterprise (Entel), the two main operators of telecommunications, have had the capacity to put up prices without restraint, they informally agreed prices with the Ministry of Finance (Guasch & Spiller, 1999). Moreover, even though the 1987 reforms had an important impact on the investments of CTC and Entel, they did not have an appreciable effect on the companies' behavior. Indeed, the earnings of both companies -- particularly for Entel -- rose considerably after the 1982 reform.

Once the different laws have been approved, the main characteristics of the regulatory framework in Chile are the following (Guasch & Spiller, 1999: 126): (i) prices are set independently of current costs and are related instead to the costs of a putatively "efficient" firm; (ii) prices adjust automatically during the year, with major revisions every five years; (iii) no company has an exclusive license; and (iv) the arbitration procedure is well specified. Because the regulatory system is supposed to compensate an efficient firm for its cost of capital, this system can be called benchmark regulation.

At the beginning of 1990s, telecommunications development in **Peru** has been portrayed by the reform of its judicial framework and by the privatization of its two major SOEs. Afterwards, these two SOEs were merged into one company, known as *Telefónica del Perú* (TP). The concession contract assured to TP of a five-year period of monopoly in fixed telephony, long-distance, and international services. The idea was that, once that period had expired, a free market in telecommunications would operate.

On the other hand, the firm undertook a spread of net coverage and rebalanced its tariffs, eliminating cross-subsidies and reflecting marginal costs (Otero, 2001). Consequently, privatization required a new institutional and legal framework, which triggered the creation of a regulatory body. This agency was the Telecommunications Private Investment Supervising Organization (OSIPTEL), created in 1991 with the aim of regulating and supervising the development of the telecommunications market. The second half of the decade was characterized by (i) a significant increase in access and quality of services delivered; (ii) a rebalance in tariffs to reduce the gap between tariffs and costs; and (iii) liberalization and a free market in the telecommunication sector.

As some scholars point out (Melo, 2002) three or four years after the privatization process all of these aims were fulfilled, except for the first. Indeed, in the privatization scheme the TP monopoly was supposed to be temporary. Actually, this period of exclusivity was justified, on the one hand, to give enough time for rebalancing tariffs, as well as for the improvement of TP management in order to achieve its revalorization; and on the other hand, to make for doing business more attractive and, consequently, to obtain more proceeds from selling the company.

3.2. Banking liberalization in Chile and Peru

The financial liberalization that took place in the 1980s and 1990s in most Latin American countries is basic to understanding the current banking regulation in the region. The sector underwent an in-depth transformation that was not always accompanied by a strengthening in the supervision sector. That meant a dangerous fragility, evident from the fact that most of the economies in the region suffered an external shock. In the second half of the 1990s the banking sector evolved into a stronger system, based on an efficient balance between market incentives and an effective supervisory and regulatory framework.

After those important transformations, the financial sector in Latin America is characterized by the following trends (Stallings & Studart, 2003): (a) it is bank-based; (b) there has been an important increase in the sector, in terms of size and depth; (c) the existing banks have been allowed to engage in new activities, such as securities trades or insurance; (d) foreign institutions have become increasingly significant actors in the financial sector; (e) there has been a decrease in the number of banks as a result of mergers and acquisitions, including privatisations; (f) there has been some diversification with respect to the development of capital markets; and (g) larger institutions, a greater mix of activities, and a bigger foreign presence can all complicate the tasks of regulators and supervisors.

The financial reforms differ among countries in the region according to the model developed. In fact, some countries carried out legal reforms in depth, such as Bolivia, **Chile**, Ecuador, El Salvador, Honduras Mexico, Panama, Paraguay, **Peru**, and Venezuela. Other countries opted for partial reforms that, however, have entailed important changes, as Colombia and Costa Rica. Finally, Argentina, Guatemala, and Uruguay have just changed some specific aspects of the legislation.

With regard to the regulatory agencies, it should be noted that two different tendencies existed in Latin America countries. On the one hand, some countries built up regulatory agencies exclusively for banking systems. That way was chosen by **Chile**, with the Superintendence of Banks and Financial Institutions (SBIF). On the other hand, some countries adopted regulatory agencies that joined (a) financial with monetary regulation (Argentina, Mexico, and Cuba) or (b) banking regulation with other financial institutions, as insurance, securities, and so on. **Peru** is in the latter group, since it combined in the same regulatory body banking, insurance and pensions (the Superintendence of Banks, Insurance and Pension Found Administrations– SBS).

Banking legislation in Chile was modified in the 1980s when some deficiencies in supervision led to the 1982 crisis. These reforms allowed the banks to engage in new activities. In 1989 a second modification was implemented, leading to reform of the conditions and terms of the debts that the principal banks maintained with the Central Bank. Finally, in 1997, a broad reform introduced full liberalization and internationalization of banks, reinforcing the supervisory mechanisms.

In general terms, **Chile** has implemented adequate legislation to reinforce regulation and supervision of the banking system. Actually, this legislation was one of the main factors that limited the impact of the Tequila crisis in the country. Having survived this crisis with few problems, the Chilean banking system could flourish jointly with the productive sector in the second half of the 1990 in the virtuous circle that characterizes the relationship between financial and productive development (Stalling & Studart, 2003).

In **Peru**, as part of a reform process in the financial sector, in 1991 a new Bank Law was promulgated to improve some aspects related to the competence and strength of, and confidence in, the financial system, as well as to promote saving and the diversification and growth of financial services. In the institutional realm, the SBS faced an important redefinition process that embraced (a) a reduction of human resources and the hiring of new qualified workers, (b) an increase of training, and (c) an improvement in computer systems and supervision.

In 1996, as an SBS initiative, the financial reform continued. The main aim was to strengthen the financial system and banking supervision, while incorporating the 1998 and 1991 guideline from the Basel Committee on Banking Supervision. Such recommendations included the regulation of debt risk administration, as well as items related to market risks.

3.2. Institutional and managerial design

As noted above, we have focused on four regulatory authorities, based on telecommunication and banking regulation in Chile and Peru. These agencies are the Telecommunications Private Investment Supervising Organism (OSIPTEL) and the Superintendence of Banks, Insurance and Pension Fund Administrations (SBS), in Peru, and the Subsecretary of Telecommunications (Subtel) and the Superintendence of Banks and Financial Institution, in Chile. Table 1 gives a brief description of the functional dependence in the four agencies. It is important to point out some remarkable differences. On the one hand, institutional missions in the telecoms market are oriented to regulation and supervision/control. In the Peruvian case some references to private investment promotion are included. On the other hand, in banking markets the objectives are more focused on supervision/control and promoting the reliability and good management of financial institutions.

Second, it should be stressed that three of the four studied regulatory authorities (SBS, OSIPTEL, and SBIF) are institutional models of agency, whereas Subtel is a regulatory authority embedded in a hierarchical-functional structure inside the Ministry of Transport and Communications. Despite this institutional difference, the behaviour of Subtel is considered that of a technical regulator, having overcome political conflicts satisfactorily. Indeed, in some aspects where an opportunistic political intervention could be expected (especially in tariffs regulation), the technocrats exercise a decisive influence, even not having binding opinions (Melo, 2002). Also, the publication of information and the high degree of vast transparency in the processes reduce the risk of opportunistic behaviour. In general, the fusion of political and regulatory authority assures unity of the criteria as between policy and regulation, although the risk of opportunistic behaviour or regulatory capture is always present.

Table 1. Analysed regulatory institutions: missions and organic dependency

	Peru		Chile	
	SBS	OSIPTEL	SBIF	Subtel
Mission	Control of banks, insurance and pension entities as well as other entities that receive public deposits	To set tariffs of telecoms public services and to establish the rules for a proper application; promote private investment; and to monitor the fulfilment of the obligations and agreements undertaken by the telecoms providers	Preventive supervision, and management and solvency evaluation of financial institutions	To regulate, to promote and to control technically the telecoms, as well as to manage the radioelectric frequencies spectrum; county's representation in telecoms affairs; and concessions, establishment premises and network operations study
Dependence	Functional, economic and administrative autonomy with own legal personality in public law	Public entity with technical, economic, financial, functional and administrative autonomy, depending on the Cabinet Meeting Presidency	Public institutions related to the executive branch through the Ministry of Economy and Finance	Organic and functional dependency on the Ministry of Transport and Communications

After the institutional description, we shall focus on the managerial design and innovations introduced. These characteristics permit us to distinguish the regulatory institutions as organizations with different arrangements and specific organizational cultures that help us to explain the quality of the implementation of policy delivery. To this end, according to actors interviewed, information and communications technologies and human resources departments are the most important in supporting managerial innovations. In the ICT case, they are perceived as a great opportunity to overcome the bureaucratic model, to improve service delivery and to achieve more transparent management, as well to improve the citizens' perception of regulatory agencies.

Organizational charts

With reference to the organization charts, one of the main characteristics is the simplicity of its structures, illustrated by horizontal directive positions in direct contact with professionals and technicians. Furthermore, it is important to note the few positions at the intermediate level, something very unusual in bureaucratic administrations. In fact, public administrations have many such staff positions with little relevance as well as personal advisors at the directive level.

Another important characteristic is the low degree of relevance of the common services or techno-structure (general departments of human resources, finances, services...). In general it can be noted that the organizational charts in the regulatory

agencies give more weight to the technical areas, which in some cases assume as their own functions this kind of common services (as for example the human resources policy in OSIPTEL and SBS in Peru). In this sense, a perception can be extracted from the interviews of a certain contempt for internal managements activities of an organizational character. The important counterpoint to this situation we found in Subtel, where the techno-structure plays an important role, with two divisions at the second level (Strategic Planning and Administration and Finances).

Outsourcing

All of the institutions analysed opt to outsource important support activities, such as studies and research, both in the regulated sector and in organization management (human resources, ICT management, managerial design, and so on). With respect to the main activities (supervision and regulation), certain institutions admit outsourcing at specific times moments, as when there is a lot of work, and in very specific areas. As examples, the SBIF outsources some inspection activities or OSIPTEL outsources the major part of regulatory policies management, as well as the supervision of the rural market. Also, in the SBS case, on certain occasions external auditing services have been hired to support supervision.

Nevertheless, the most important services habitually contracted are referred to as common services, such as security or cleaning services. Yet basically experts are hired for these areas in which the agency does not have qualified personnel. This characteristic does not occur in Subtel, which insists that outsourcing affects only research activities and information gathering, never regulation activities. So, it is observed that the Subsecretary displays a more classical organizational management style, based on national public administration patterns.

Pattern of human resources management

The four institutions coincide in the pattern of human resources management. They all have a different pattern from the civil service model in national public administration. This differentiation is achieved by the different civil service recruitment, selection and maintenance undertaken by their human resources. In some cases, these patterns have explicit references to other agencies' patterns. In fact, the OSIPTEL human resources model has been inspired by the National Institute for the Defence of Competition and by the Protection of Intellectual Property (INDECOPI). What is

important to stress is that no agency has drawn inspiration from the national bureaucratic administration. To the contrary, their references are other agencies, whether national or international.

Human resources recruitment

The diverse ways of human resources recruitment in the agency studied are focused on meritocracy, seeking suitability and professional specialization in access to qualified jobs. The examples of recruitment systems are very illustrative:

- The SBS carries out annually a recruitment process that includes a formative period. The Superintendence through the better universities in the country (one public and three private) recruits around the 25 and 30 better curricula of the new graduate students. This selection is the group that takes the extension course on banking regulation, based on a continuous evaluation methodology. At the end of the course, the two or three best students are selected. The rest generally are hired by the bank sector, improving specific formation. This recruitment system has been inspired by the one developed by the Central Reserve Bank of Peru, with more than 30 years of functioning.
- OSIPTEL has a recruitment model based on the Extension Course and at the same time fills vacancies through public auctions. To select applicants an *ad hoc* commission is formed and two sectoral managers are in charge of undertaking interviews and evaluating the selection exams.
- Subtel has no guidelines to recruit personnel but instead have three entry-ways. The two first directive levels are appointed politically and the person in the post also discretionally designs their technicians. From the third level to below on the chart, two recruitment processes are alternated. The first one is based on written and objective tests. The other is referred to bidding processes to hire experts (above all in the ICT field).
- The SBIF has a structured system of recruitment based on objective and testable examinations.

There is a clear tendency to recruit very young professionals who recently have obtained the bachelor's degree in economics, law or technical grades. This strategy reflects the desire to reinforce the cultural change and the distinct corporate culture. In that sense, the main actors in the agencies explicitly treat the academic and professional origin of the personnel as a source of distinction in managerial culture. The high degree

of specialization required in regulation, supervision and control tasks has driven this change in the search for specialization and excellence.

Mechanisms of human resources stability

Compared with the national public administration, the institutions analysed here show a high level of stability in their human resources. This stability derives from two main causes. The first is fruit of the human resources policies that try to reduce the classical problem of Latin American administration: political clientelism or other mechanisms not based on objective criteria. Second, there are no systematic changes of personnel to regulated enterprises or to professional positions at the same level. The only exception to this rule is in OSIPTEL, which in recent years has faced a significant loss of staff to the regulated sector. It is said that this phenomenon is due to uncompetitive salaries.

With respect to salaries, apart from OSIPTEL, the general trend is that salaries in the regulatory agencies are equivalent to those in the private sector. Compared with the rest of the public administration, salaries show significant differences between countries. Effectively, whereas the Chilean agencies (Subtel and SBIF) maintain the same salaries as the rest of the public administration, the Peruvian ones (OSIPTEL and SBS) have a policy of making salaries more generous than in the rest of the national administration.

So, it should be pointed out that the regulatory agencies maintain sufficient ingredients for the human resources stability. These are supported by higher salaries, but also by status and other symbolic and cultural elements. The better perception of overcoming clientelism or corruption gives to the agencies a better social position than the national public administration, and are perceived by citizens as more professional and prepared bodies.

3.3. The agencies relations in the network

In this section we describe what kinds of relation have built up the analysed agencies in the policy network where they are embedded. To do so, we separate the main actors in the regulation process to obtain a better understanding of every relation that the agency have with the diverse actors that compose the network. We will observe not only the sort of relation that agencies have but also how tough and structured is it.

The legislative branch

The relation developed with the legislative branch is based on highly defined and structured standards. As a general trend, the holder of the higher position in the regulatory agencies has to go annually or biannually to the legislative body to account in the name of the agency. These meetings usually are carried out in a good environment and seek to reinforce the coordination and information between the principal and the agent.

Therefore, these relations are absolutely institutionalized. Some agencies, such as the Unity of Communications and Institutional Marketing in SBS, have included a specific department to drive these relations with the Congress. In these departments not only the regular accounts but also some information requests from diverse parliamentary commissions are managed. In the Subtel example, since it is a subdivision of the Ministry, the relation with Congress is structured by legislative and control processes. That means that the Ministry executes directly the information exchange, accounts, and so on.

OSIPTEL is the exception to the rule, since Congress control is quite aggressive against some agency activities, such as tariff increases and the dominant position of Telefonica in the telecoms market. The relations are quite strained and difficult. Actually, three parliamentarians who are specialists in telecoms seek to have the tariffs decreased and constantly disagree with OSIPTEL. Basically, these problems are derived from a technocratic and political logic.

The judicial branch

The relations maintained by agencies with the judicial body are not as structured as those maintained with the legislative body. The agencies are constantly required to go to court to resolve lawsuits with regulated entities. These sorts of proceedings are common in the sectors analysed here, but are more intense in telecoms than in the banking sector. The lawsuits mainly stem from problems with the regulated enterprises that consider a regulatory activity or decision to be unfair. In other cases, the regulatory bodies are denounced for not assuring enough market freedom.

In banking regulation, agencies (specially SBS) play a detectable role in teaching judges, who have insufficient technical knowledge to decide about a specific theme related to the banking sector. In that sense, the courts request technical reports and descriptions of the regulated sector from the regulatory bodies. Sometimes, these

requests are so frequent that agencies develop specific departments to manage this information. The SBS, for instance, made up the Department for Judicial Advocacy in that sense. These relationships seem not to occur in the telecoms sector and the relations that have emerged are based on disputes with the regulated enterprises.

The executive branch

As a general rule it is recognised that the conflicts in the relations between the regulatory agency and its principal depend on the level of model consolidation as well as the level of definition and acceptance of the spaces and competences in the behaviour of the regulator and principal. Perhaps the clearest example of this situation is the significant tension maintained between OSIPTEL and its principal, the Ministry of Communications and Transports, described above.

In all the cases studies, except Subtel, we found well-designed institutions, with their functions and competencies well protected, even at a constitutional level. Therefore, the role of principal is clearly residual and the relations are not so controversial. In the Subtel case, since it does not have formal autonomy, its relation with the Ministry is based on a hierarchical logic.

In the relations with the executive branch it is interesting to analyse also the relations that the agencies have with the called transversal ministries or other regulatory agencies, that is, those ministries that according to their intervention in the general framework of the public administrations can make use of their influence in the internal management of the regulators. These relations, according to the four cases considered, are based on information interchange and, in some cases, on the development of joint projects or other activities. Even when these kinds of relations are the most common that an agency has, in our sample we observed that there is always a specific institution, which maintain the narrowest relation with the agency. This institution is not the principal, even having a similar level of relationship. For example, we have found that Subtel has a strong relationship with the Ministry of Finance or SBIF with the Bank of Chile. Furthermore, it should be stressed that the four regulatory agencies have intense relations with the agencies in charge of promoting free markets and competition.

Finally, it may be noted that in Peru there is a monthly meeting among the directors of all the country's regulatory agencies. These monthly meetings are well institutionalized and are used to conference proceedings, to hiring common experts, and

so on. All kinds of experiences are exchanged in order to build up a body of mutual knowledge about national regulation.

Other actors in the policy network

Other important actors with special relevance in the policy network are the regulated enterprises. With them, the regulatory agencies usually have had strained but cordial relations. The problems derive from the autonomy of the agencies. The regulated entities consider the agencies as highly dependent on their principal and, consequently, are too much guided by them. Furthermore, the regulated sector complains that they are not consulted as much as they would desire, and they should participate most actively in regulatory policy-making, since they are the most affected by it.

This opinion is against the ideas manifested by agencies, which believe that they must retain independence in the decision-making process before the lobby from the regulated actors. They defend the current system of concrete advice. The main idea is to ask the regulated sector in a normal and fluent manner, but keeping a distance and autonomy from them. As occurred with other actors, in the banking sector relations with the regulated sector are better than in the telecoms sector. However, as pointed out by some actors, the relations with that sector depend on the directors' sensitiveness. Thus, these relations are not as structured and solid as those maintained with the executive or legislative branch. In that case, relations are more fickle and more changeable, depending on the political mood and on the affinity among managers.

The last relations that we describe in these lines are those that agencies maintain with users' organizations and with international associations of regulators. The relations with the former are very slight, just based on sending information or some meetings with customers' organizations. These are not structured relations but, rather, are very diffuse relations, and if they exist they depend on the strength of the customers' organizations. With regard to the international associations, it can be said that all the agencies belong to one in order to seek common strategies for regulation their sector and improve organizational design and internal management. The international forums are very useful for the agencies to improve regulation, learning from different perspectives, pitfalls and successes. These meetings take place in a defined and structured scenario. Especially important is the role played by the Basel Committee, a forum for regular cooperation on banking supervisory matters. It has allowed the establishment of a general and international criteria for banking regulation.

4. Some tentative conclusions

This study has aimed to improve our understanding of the relationship between the new institutional designs and the quality of regulatory policies. We have seen how regulatory authorities have been able to avoid the problems of the traditional public bureaucracies, implementing new methods in policy-making and delivery. Indeed, in the four agencies that we have studied we have detected that the human resource recruitment, management and stability are managed more professionally and with more regard for excellence than in the usual Latin American bureaucracies. Moreover, the institutional design has broken the traditional complex structure with a simpler and more flexible organizational chart. In this new type of organization the common services usually are outsourced in order to reduce costs and improve the quality of service provision.

On the issue of how the agencies are embedded in the policy network, we can state that the agencies have strong and structured relations with their principal, accounting to them periodically. As described, agencies also have important relations, whether tense or cordial, with other actors set in the network. But what is important to note is that regulatory institutions play the hegemonic role in the network, even when much of the decision-making power is shared among the actors. In this manner, even when power is diffused in the network, the responsibility is not, because every decision has a visible accountability. The roles are well defined, and every actor knows its role and the roles of the rest of actors in the network.

The four cases analysed here demonstrate that, even when the development of independent regulatory agencies seems to be important for improving sectoral policy provision and public administration, an adequate institutional and organizational environment can also contribute to good regulation. Indeed, Subtel constitutes a good exception to the rule, as it is considered a good regulatory body even without being independent. So a proper institutional environment (including stable political institutions and an independent judiciary) can increase the capacity of government to establish a credible regulatory system and to reinforce it, as well as considerable private sector investment. That was what happened with Subtel in Chile (Galal, 1996). Nonetheless, that is beyond the scope of this paper, although it would be interesting to test in future research.

References

- Boin, R. (2001) *Crafting Public Institutions: Leadership in Two Prison Systems*. Boulder: Lynne Rienner Publishers.
- Boin, R. (2003) “The Emergence of Public Institutions: Toward a Dynamic Theory of Institutional Birth and Development”. Paper presented at ECPR Conference, Edinburgh, 29th March – 2nd April.
- Braithwaite, V. (1998), “Communal and Exchange Trust Norms: Their Value Base and Relevance to Institutional Trust”. In Braithwaite, V. and M. Levi (Eds.) *Trust in Governance*. New York: Russel Sage Foundation, pp. 46-74.
- Bresser-Pereira, L. (2001) “New Public Management Reform: Now in the Latin American Agenda, and yet...” *International Journal of Political Studies*, 3 (1): 117-140.
- Christensen, T. and P. Laegreid (2005) *Regulatory Reforms and Agencification*. Working Paper No. 6/2005, Stein Rokkan Centre for Social Studies.
- Epstein, D. and S. O’Halloran (1999) *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. Cambridge: Cambridge University Press.
- Flinders, M. (2004) “Distributed Public Governance in Britain”. *Public Administration*, 82 (4): 883–909.
- Ford, R. and D. Zussman (1997) *Alternative Service Delivery: Sharing Governance in Canada*. Toronto: KPMG Centre for Government and the Institute of Public Administration of Canada.
- Gains, F. (2003) “Executive Agencies in Government: The Impact of Bureaucratic Networks on Policy outcomes”. *Journal of Public Policy*, 23 (1): 55-79.
- Galal, A. (1996) “Chile: Regulatory Specificity, Credibility of Commitment, and Distributional Demands”. In B. Levy & P. Spiller (Eds.), *Regulations, Institutions, and Commitments*. Cambridge: Cambridge University Press.
- Gilardi, F. (2004) “Institutional Change in Regulatory Policies: Regulation Through Independent Agencies and the Three New Institutionalisms”. In J. Jordana and D. Levi-Faur (Eds): *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Cheltenham: Edward Elgar.
- Graham, C. (1998) “Is There a Crisis in Regulatory Accountability?” In R. Baldwin, C. Scott and C. Hood (Eds): *A Reader on Regulation*. Oxford: Oxford University Press.

- Gregory, R. (2003) "All the King's Horses and All the King's Men: Putting New Zealand's Public Sector Back Together Again", *International Public Management Review*, 4 (2): 41–58.
- Guasch, J. L and P. Spiller (1999) *Managing the Regulatory Process: Design, Concepts, Issues, and the Latin America and Caribbean Story*. Washington: The World Bank.
- Huber, J. and C. Shipan (2002) *Deliberate Discretion: Institutional Foundations of Bureaucratic Autonomy in Modern Democracies*. Cambridge: Cambridge University Press.
- Jordana, J. (1995) "El análisis de los policy networks: ¿Una nueva perspectiva sobre la relación entre políticas públicas y Estado? *Gestión y Análisis de Políticas Públicas*, (3): 77-93.
- Jordana, J. and D. Levi-Faur (2004) "The Politics of Regulation in the Age of Governance". In J. Jordana & D. Levi-Faur (eds.) *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Cheltenham: Edward Elgar.
- Jordana, J. and D. Sancho (2004) "Regulatory Designs, Institutional Constellations and the Study of the Regulatory State". In J. Jordana & D. Levi-Faur (eds.) *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Cheltenham: Edward Elgar.
- Kaufman, H. (1960) *The Forest Ranger: A Study in Administrative Behavior*. Washington: Resources for the Future.
- Lægreid, P. and S. Serigstad (2004) *Organizing for Homeland Security: The Case of Norway*. Working Paper No. 12/2004, Stein Rokkan Centre for Social Studies..
- Levi-Faur, D. (2005) "The Global Diffusion of Regulatory Capitalism". *Annals of the American Academy of Political and Social Science*, 598: 12-32.
- Lodge, M. (2001) *From Varieties of the Welfare State to Convergence of the Regulatory State? The 'Europeanization' of Regulatory Transparency*. Queen's Papers on Europeanization No. 10/2001, Queen's University of Belfast.
- Majone, G. (1997) "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance". *Journal of Public Policy*, 17 (2): 139-167.
- Majone, G. (1999) "The Regulatory State and its Legitimacy Problems". *West European Politics*, 22 (1): 1-24.

- Melo, J. R. (2002) *Reformas y políticas sectoriales en la industria de telecomunicaciones en Chile y Perú*. Economic Commission for Latin America and the Caribbean Document – Public Management Series, No. 23.
- Otero, C. (2001) *Perú: gestión del Estado en el período 1990-2000*. Economic Commission for Latin America and the Caribbean Document – Public Management Series, No. 14.
- Osborne, D. and T. Gaebler (1992) *Reinventing Government*. Reading, MA: Addison-Wesley.
- Oszlack, O. (2001) El servicio civil en América Latina y el Caribe: Situación y retos de futuro. Paper presented at *VI International Congress of CLAD on State and Public Administration Reform*, Buenos Aires (Argentina), 5th-9th November.
- Pollit, C., C. Talbot and J. Caulfield (2004) *Agencies. How Governments Do Things Through Semi-Autonomous Organizations*. London: Palgrave Macmillan.
- Rozas, P. (2005) *Privatización, reestructuración industrial y prácticas regulatorias en el sector de las telecomunicaciones*. Economic Commission for Latin America and the Caribbean Document – Natural Resources and Infrastructure Series, No. 93.
- Spink, P. (1997) Technical Possibilities and Political Imperatives in 70 Years of Administrative Reform. Paper presented at meeting of the Latin American Studies Association, Mexico, April.
- Stallings, B. and R. Studart (2003). *Financial Regulation and Supervision in Emerging Markets: The Experience of Latin America since the Tequila Crisis*. Economic Commission for Latin America and the Caribbean Document – Reports and Special Studies Series, No. 8.
- Subirats, J. (1992) *Análisis de políticas públicas y eficacia de la administración*. Madrid: Ministerio de Administraciones Públicas.
- Suchman, M. (1995) “Managing Legitimacy: Strategic and Institutional Approaches”. *Academy of Management Review*, 20 (3): 571-610.
- Thatcher, M. (1998) “The Development of Policy Network Analyses: From Modest Origins to Overarching Frameworks”. *Journal of Theoretical Politics* 10 (4): 389-416.
- Thatcher, M. (2002) “Regulation after Delegation: Independent Regulatory Agencies in Europe”. *Journal of European Public Policy*, 9 (6): 954–959.
- Thatcher, M. and A. Stone Sweet (2002) “Theory and Practice of Delegation to Non-Majoritarian Institutions”. *West European Politics*, 25 (1): 1–22.

Vogel, S. (1996) *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. Ithaca: Cornell University Press.

Weiss, L (1999) "Globalization and National Governance: Antinomy or Interdependence?" *Review of International Studies*, 25 (5): 59-88.