Political responsiveness and credibility in regulatory administration

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FRONTIERS OF REGULATION: ASSESSING SCHOLARLY DEBATES AND POLICY CHALLENGES

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Abstract

Regulatory administration in Denmark, the Netherlands, and Sweden has gone through frequent and dramatic changes since 1950. Reforms are neither restricted to economic regulation nor to the post-1980-reform period. The changes facilitate political control through either the parliamentary chain of delegation or collegiate boards, often with strong corporatist traits. However, change does not follow a universal pattern. Rather they build on organisational forms that are embedded in national administrative traditions. The analysis questions the validity of functionalist theories of regulatory reform while arguing for the empirical validity of the politics of structural choice theory. In parliamentary systems of the European type policy makers prefer organisational designs that maximise flexibility to delegation to independent regulators, but consistently within the confines of national administrative tradition.

No government can work without extensive delegation of authority to the administration. However, such delegation raises two serious problems to be solved. One is to which extent politicians can rely on civil servants to which they delegate discretionary authority. The other is whether the citizens and business can trust their cases are handled in a consistent, fair and impartial way. This excludes both political discrimination between different groups of clients and political meddling of policy implementation when political contingencies induce politicians to act opportunistically. This double concern makes the issue of political control of the bureaucracy and the credibility of official policy key issues in the political design of administrative arrangements. Their mutual linkage also implies that policy makers should not be expected to take these design decisions lightly. To maximize the political responsiveness of bureaucracy politicians may have a strong preference for solutions that integrate the administration in the executive hierarchy. But to demonstrate the credible commitment of their present policies to their constituency they may feel an equally strong incentive to create administrative organisations beyond their day-to-day and case-to-case intervention.

For two reasons these issues are particularly pressing within regulatory policy and administration. First, in democratic systems the rule of law presumes that administrative intervention in private affairs is based on the application of formal legislation and backed up by independent courts. However, this legislation is not able to specify in detail the administrative actions to be taken to implement policy. This is partly due to the political transaction costs involved in legislative decision-making, partly to uncertainty as to the precise nature of future problems (Horn, 1995; McCubbins, Noll, and Weingast, 1987). The implication is that much legislation is quite vague in its policy-prescriptions. Second, government regulation represents the strongest form of state intervention. Business and citizens alike are placed in a situation where the legality of their decisions depends on the letter of the law and its application by public authorities. For economic entrepreneurs what is at issue is the certainty with which they can make long term investments if they do not know which rules will apply, and how the authorities will enforce them (Levy and Spiller, 1996). Citizens face similar problems in their dealings with e.g. building, immigration or police authorities. For them a civilized life depends on their ability to predict how the authorities will deal with their applications for permits and with the enforcement of the prohibitions inscribed in law. Within both groups this may create a concern for the credibility of the government's commitment to the policy prescribed by legislation and the precedence laid down by administrative

practice. This problem has since Max Weber belonged to the core of administrative theory (Weber 1921/1980: 552)

An important insight from the literature is that as policy-makers can not cope with these issues in the drafting of legislation they have to rely on organisational instruments. Still, the organisational design strategy does not provide a straightforward solution to their problems. This is the case because the delegation of discretionary authority to the bureaucracy raises the question how politicians can make sure that administrative decisions mirror their preferences; one solution to this problem is the integration of administrative authorities into a hierarchy where the political executive keeps the last word. But such hierarchical integration may give cause to anxiety among business and citizens fearing for the government's commitment to present policy. An alternative design therefore may be to delegate authority to bodies that enjoy some bureaucratic autonomy. We define it as the formal exemption of an agency head of full political supervision by a departmental minister (Christensen 2001). A considerable literature has demonstrated that delegation to more or less autonomous authorities is quite widespread. There are even observations that the creation of independent regulatory bodies has been a common feature in regulatory reform in many countries over the past 20 years, and further that this solution has spread between countries. It is moreover a global phenomenon that is not limited to the advanced capitalist economies (Gilardi, 2002; Levi-Faur, 2005; Jordana and Levi-Faur, 2005). If this holds true it is an indication that national administrative tradition which in parliamentary systems stress ministers' status as political executives has given way to an international and modernising trend (van Thiel 2005). According to its recommendations the political executive should stay at arm's length of the implementation of economic regulation. In this paper we argue that things are more complex. With no easy solutions to the design problem policy makers in government and parliament have to balance their concern for responsiveness and control against demonstrating their commitment to a generally phrased policy through the delegation of administrative authority to a body beyond their hierarchical control.

In this research we present an empirical analysis of how policy makers balance these contrasting concerns. It presents results from a long term comparative analysis of the organizational design solutions in three European countries, Denmark, the Netherlands, and Sweden. These countries have similar systems of parliamentary government, and they all have a tradition for close coordination between the government, parties in parliament and organized interests. The implication is that policy-makers make regulatory policy and choose the design for its administrative implementation under similar institutional and political circumstances. Moreover, the

latter have been basically stable over time. But in one potentially important respect the three countries diverge from each other. The reason is that their basic administrative structures rest on very different historical-institutional foundations. This analytic design therefore allows us to answer three questions:

1. How do policy-makers in parliamentary democracies of the continental European type balance the concern for control and responsiveness against the quest for credible commitment in the design of regulatory administration?
2. When making their design decisions have policy makers then given in to a general trend in tune with modern regulatory reform or are their design decisions still formed by the repertoire of solutions that form part of the national administrative tradition?
3. Is the quest for credible commitment through the establishment of independent regulators particularly strong for economic and business regulation or does the institutional solutions favoured by policy makers similar for different types of regulation?

The following three sections present the theoretical background to the study and the propositions governing the analysis. The theoretical discussion is related first to the problem of structural choice in parliamentary democracy, second to the issue of regulatory reform and administration, and third the impact of administrative tradition on organisational choice. This is followed by a presentation of the data and the precise design of the study. The empirical analysis finally is organised around the three questions set out above. It involves two steps. First the organisation of regulatory administration in 2000 is analysed. Second, changes in regulatory administration from 1950 to 2000 are analysed.

Structural choice in parliamentary democracy

Delegation research has shed considerable light on the importance of formal organization and procedures to policy makers. In a situation where they can not specify in legislative detail their preferred policies, policy makers have to rely on organisational and procedural prescriptions in order to minimize the agency problem that they face. This moves structural choice into centre stage of political decision making. When making these decisions policy makers are expected to create organizations and to set up procedures that maximize their own long term political power while guarding their preferred policies against being overturned by a new majority. The participants in this political contest over the future influence on policies already enacted are members of the

executive, political parties and their members of parliament as well as interest group representatives (Moe, 1990 and 2005; Lewis 2003).

Most of the research on delegation and structural choice has concentrated on its implications within the American checks-and-balances system. It has been shown how Congress and interest groups have a preference for ex ante-procedures to constrain the power of the President and his bureaucracy (McCubbins, Noll and Weingast, 1987). It has also been shown how the severity of the constraints varies with the intensity of conflict between the executive and the legislative (Epstein and O'Halloran 1999; Huber and Shipan, 2002). However, this applies to the American checks-and-balances system where the relationship between executive and legislative institutions is governed by very complex procedures, and where, in addition, party bonds are weak. Even if the basic problems of structural choice are the same, little is known of how policy makers handle this problem in parliamentary systems (Moe and Caldwell 1994).

A basic trait of parliamentary democracy is the relative simplicity of institutional relations. This goes both for relations between parliament and government and for relations between government and administration. First, the government is "accountable to any majority of the members of parliament and can be voted out of office by the latter" (Strøm 2000: 265). Second, the government and its individual ministers form a political executive which is in command of a hierarchically organized and professionally staffed administration. In ideal terms this creates an unbroken chain of delegation which in Kåre Strøm's words is governed by the singularity principle with non-competing agents for each principal and a single principal for each agent (Strøm 2000: 269-270).

The purest form of parliamentary democracy is found in Westminster-systems where one party on the basis of its majority in parliament forms the government. Under these conditions many of the problems discussed in the delegation literature based on research within the American checks-and-balances system seem less relevant. A shift of majority will immediately allow the ensuing government to change policy, including the reorganization of the administration according to its own policy program. The kind of organization and procedural safeguards so important in American legislation lose their political relevance under these conditions (Moe and Caldwell 1994; Müller 2000). However, Westminster systems are not the typical form of parliamentary democracy. In most of Western Europe parliamentary democracy takes the form of either coalition or minority rule, in some cases even a combination of the two. Under these circumstances administrative arrangements

specified in formal legislation may have an importance similar to American practice (Cf. e.g. Epstein and O'Halloran 1999: 242-244; Huber and Shipan 2000).

There is a severe limit to this interpretation as it overlooks two other traits that are linked to parliamentary government of the minority and coalition type (Müller 2000). First and most importantly policy makers lose the very flexibility that is built into the chain of delegation. This clearly applies to the cabinet and its ministers who are no longer able to intervene into cases where situational contingencies might induce them to make an exception to established practice. The same considerations appeal to political parties in parliament. With an unbroken chain of delegation they have the option of both putting pressure on the political executive to adapt policy implementation to political circumstances and of holding the minister in charge responsible for decisions made by him or her and even to decisions made within the departmental hierarchy. Second, public policy in systems based on minority and coalition policy may tend to be consensual (Bovens, 't Hart & Peters 2001. The implication is that the risk of abrupt and radical changes in policy because of shift in government is low. Therefore, political parties and interest groups have little incentive to give up the flexibility built into an unbroken chain of delegation. Rather, in parliamentary democracies with minority and/or coalition governments bureaucratic autonomy is low as the government and its individual ministers are placed as political executives in a hierarchically organised regulatory administration. By implication they have full supervisory authority over the civil service (hypothesis 1a).

Regulatory reform and delegation to independent regulators

Since the 1980'es regulatory reform has been placed high at the policy agenda in the industrialised world. The general idea has been to improve and expand the operation of the market through regulatory reform. With its emphasis on the market focus has moved to economic and business regulation. Neither social (e.g. environmental regulation, workers health and safety, consumer protection) nor legal regulation of citizens' individual rights and obligations as in traffic laws, protection of property rights, immigration law as well as in administrative and legal procedures regulating individual rights vis-à-vis the state have got similar attention.

In this perspective regulatory reform rests on a double rationale. The first is that market competition is an important driver for economic growth, but also that competition depends on appropriate government regulation. However, the effectiveness of regulation is at risk because politicians may be sensitive to pressure from regulated business seeking protection against market

forces; it is also that politicians may be oversensitive to voters' concerns, thus intervening into the market even if market forces can be relied upon to solve the problems in due course. The second part of the rationale is that the prime strategy for improving the effectiveness of regulation is the design of regulatory administration that protects regulation against political interventions. The solution is delegation of regulatory authority to independent regulators that operate on the combined basis of formal law and professional discretion. This is particularly important where former monopolies providing public utility services are removed from government control and transferred to the market. So, the former monopolists (often state owned enterprises) may be politically well connected to make it difficult or less attractive for new entrants to make investments into these newly opened markets for e.g. energy, railway transportation, telecommunication or waste disposal.

This functionalist (and normative) reasoning is strongly represented by among others the OECD and EU's internal market to some extent is an expression of this thinking (OECD 1997 and 2006; Majone 2000).[1] The same applies to economic analysis (Levy and Spiller 1996) and to political analysis relying on transaction cost theory (Horn 1995; Pollack 2003). The common point is that delegation to independent regulators creates a credible commitment as policy makers renounce the right to interfere in administrative implementation. This line of reasoning clearly finds support in empirical research that has shown how delegation to non-majoritarian institutions is a prominent feature of modern regulatory policy and administration (Gilardi 2002; 2005; Thatcher and Stone Sweet 2002). Other research within the same framework has shown how the idea of independent regulators has spread between countries. The clout of the rationale for setting up independent regulators is the rise of a new form of regulatory capitalism which is seen as the precondition for the successful privatisation and liberalisation of public service utilities.

There are two limits to these claims. The first is theoretical. The implication of the functionalist argument is that policy makers should have waived their right to intervene in situations which they can not foresee precisely. They have tied their own hands in order to demonstrate their credible commitment to a certain policy that they deem socially efficient in a long term perspective. If this argument holds it is quite difficult to see why it should only apply to the past twenty years' of regulatory reform. It should also hold for the past. Finally, the argument is in conflict with broadly accepted assumptions as to the motivation of politicians. Also, these analyses run the risk of

[1] OECD has conducted a series of critical reviews of regulatory policy and administration in many member countries. These reports both identify problems and presents solutions to them. Such reports have been published for Denmark and the Netherlands, but not Sweden (OECD 1999 and 2000).

observational equivalence. From the fact that independent regulators are established they infer that politicians must have been credibility seeking. However, the same observation could be explained by structural choice perspective as well, which assumes forward looking policy-seeking politicians. The other source of doubt is methodological. The empirical evidence cited to support the claim of a near universal wave of regulatory reform that relies on delegation to independent regulators and agencies is mainly cross sectional. There are few - and nearly no thorough - analyses which are based on long term historical data on the organisation of regulatory administration.

Both the theoretical and the methodological criticism call for further empirical analysis. One goal for this analysis is to establish whether there has been a change in regulatory strategy. Its implication is that during the 1980'es and 1990'es there has been set up independent regulatory authorities that remove regulatory administration from the executive hierarchy. Thus the structure of regulatory administration in 2000 should be very different from the structure for example 50 years earlier.

Whether it is so is an empirical issue. But the functionalist argument for the change raises some doubt. This is particularly the case if the design of administrative structure is seen as a structural choice where the involved actors, parties and interest groups, strive to place administrative authority within an institutional framework that 1) protect their own long term concerns and 2) preserve their access to intervention in situations that at the moment of enactment are highly uncertain. One option is to keep the administration under political control within the executive hierarchy; another option is to delegate in order to demonstrate a credible commitment. According to this view the demand for credible commitment comes from interests affected by governmental regulation. They may prefer a professional and independent regulator, but they might alternatively have a strong preference for institutional solutions that rest on the delegation to bodies in which they are represented. Truly, such bodies will be removed from the executive hierarchy, but contrary to the independent regulators of functionalist theory they remain strongly integrated into the political system.

In order to shed light on these contentions a critical analysis presumes the application of a concept of delegation that captures the full range of institutional variation when it comes to removing regulatory administration from the executive hierarchy. Consequently, a competing hypothesis (1b) building on structural choice theory (like hypothesis 1a) would propose that credibility and delegation is an issue in the dealings between on the one hand government and parliament, on the other hand affected interests. Deviations from the executive hierarchy should

therefore be expected to involve delegation to bodies institutionalising the representation of organised interests. According to this theory they are the actors striving for assurance as to the credibility of enacted policy.

Structural choice theory is also sceptical to the claim that the reform wave should be particularly strong for economic regulation. For both social and general legal regulation affected groups might share the same interest as economic actors in the creation of regulatory structures that give them influence on policy implementation. Also a functionalist line of reasoning might lead to creation of independent regulatory authorities because what is at stake is a similar kind of long term concerns as in economic regulation. In the case of social regulation for example it might be the concern for long term environmental sustainability and in the case of general legal regulation for example the protection of minorities against politically motivated infringements on individual rights in situations where a political majority give in to populist pressures.

The regulatory reform literature leads to two hypotheses. According to one hypothesis (2a) regulatory reform since the 1980'es has increasingly been based on delegation to independent regulators. This sets it out as different from the organisation of regulatory administration that was dominant during the preceding period. According to the other hypothesis (3a) this phenomenon is limited to economic regulation and thus does not apply to social and general legal regulation. However, these hypotheses are challenged by the theory on structural choice in government and more generally delegation. Although this literature acknowledges the political relevance of credible commitment in regulatory policy and administration, it does not expect change to be the result of a sudden drive of reform. Neither does it see any reason why such reform should be reserved to economic regulation. This leads to one competing hypothesis (2b) according to which there is no breach in the post-1980 period as compared to earlier and a supplementary hypothesis (3b) that does not expect any difference between the organisation of regulatory administration for economic as compared to social and general legal regulation. If delegation to independent regulators takes place structural choice theory rather expects independent regulators to be given a structure that institutionalises the representation of organised interests within the field (hypothesis 1b)

Bounded rationality and path dependency in regulatory reform

The above discussion presumes policy makers who are free to design the administrative organisation most appropriate to solve a given task. It is either a question of balancing interests and influence against each other or of designing an organisation that meets the functional needs of the

task in question. But policy makers do not make these decisions in a historical void. This is neither the case when they want to reform and adapt existing regulatory policy, nor when they set up an administration to implement entirely new policies.

There are two important reasons for why it is so. The first follows from the literature on historical institutionalism and path dependency. One finding in this literature is that there are strong vested interests in prolonging existing policy and also in upholding existing administrative arrangements. Change creates uncertainty for both management and staff and interest organisations risk to see their relative position weakened (Christensen 1997). These vested interests even increase in political weight over time. There is, as it has been expressed, an increasing return to continuing along the trodden path (Pierson 2004).

The second reason is that policy makers not only are confronted with considerable political uncertainty as to what the future might have in store for them. This very much is the starting point for structural choice theory. It is also that the institutional and organisational models that they might consider as solutions to these problems are ambiguous. Because of their bounded rationality they do not know how a particular administrative set up will work and what is more they have no way of getting information providing them with precise guidance in this matter (Zahariadis 2003). However, they can reduce part of their ambiguity by applying institutional and organisational models that are historically tested in their national systems (van Thiel 2005). This is an option that they will rely on both if they decide to amend existing regulation and if they decide to enter into entirely new fields of regulation as e.g. the regulation of the new markets for public service utilities. Accordingly hypothesis 4 is that when comparing the pattern of regulatory reform of several countries the preferred pattern of reform is expected to be based on organisational models that are compatible with national administrative tradition.

Empirical analysis and data

Our analysis covers the development of regulatory administration in three European countries from 1950 to 2000. Denmark, the Netherlands and Sweden share important institutional and political traits to make a critical analysis of their experience interesting. They are all parliamentary democracies with governments that during most of the period have been either coalitions, minority governments or a combination of both. The implication is weak executive dominance and the development of certain checks and balances in the interaction between parliament and government (Siaroff 2003: 455-460). In addition, the countries have all developed strong corporatist practices.

They have throughout the period been characterised by a comparatively high involvement of especially labour market organisations in economic policy making (Siaroff 1999). This basic similarity of their political systems simplifies the analysis considerably as there is no need to include these institutional and political variables in the analysis. They are treated as constants.[2] However, the combination of parliamentary dominance, the existence of some checks and balances and the high degree of integration of organised interests in economic policy making make them ideal candidates for a critical analysis.

Their different administrative traditions have similar simplifying consequences for the empirical analysis. Denmark and the Netherlands have administrative systems that historically emphasise the role of the political executive as head of a hierarchically integrated administration that is accountability to parliament on any matter (for Denmark, see Christensen 2004; for the Netherlands, see Andeweg and Irwin 2002: 148-153; van der Meer 2004). Swedish democracy rests on very different principles. They are inscribed into the constitution and originate from a historical compromise made in the early 19th century. Political conflict between the lower and the higher nobility led to a constitutional provision according to which members of the government can not issue orders to the bureaucracy. It is only the government that at a collective basis can issue such orders, and the general presumption is that the government relies on general letters of regulation when it comes to directing the operation of central government agencies (Premfors et al. 2003 60-62 and 83-89). This was fundamentally a constitutional solution to the kind of a credible commitment problem facing hitherto dominant political actors unable to win the trust of others (North and Weingast 1989). The 1974 constitution still rests on these dualist principles. The implication is that Sweden has a central administration where the constitution separates the authority of the government and its departments from the authority of central agencies. The former are responsible for policy planning and political advice while the latter are responsible for policy implementation and administration. With the dualist principle rooted in the constitution it is difficult to imagine a stronger and more credible commitment to the delegation of administrative authority to independent regulators. This makes Sweden an ideal critical case to any empirical analysis of the organisation of regulatory administration and the impact of regulatory reform. If the reasoning on government and political party preferences in parliamentary democracies holds true, we expect policy makers to develop structural solutions that modify the dualist principle. To the

[2] In an analysis of the creation of new agencies in the three countries we have shown that these variables do not account for the decision to set up new agencies (Yesilkagit and Christensen 2006).

contrary if the functionalist reasoning underpinning the regulatory reform theory holds true we should expect the dualism to be upheld and even strengthened over time as this normative theory is strongly compatible the Swedish constitutional tradition.

The research on regulatory reform and the use of independent regulators have mainly concentrated on delegation of administrative authority to agencies, i.e. to central administrative units placed outside ministerial departments. This is clearly at the core of the analytic problem. However, an exclusive focus on regulatory agencies overlooks the institutional diversity that characterise real world administrative organisation. This also applies to Denmark, the Netherlands, and Sweden. Like Sweden both Denmark and the Netherlands know the agency institution; in Denmark they have the form of “direktorater” and “styrelser”, in the Netherlands of “agentschappen”, and in Sweden of “centrala ämbetsverk”. But this is not a full picture. In all three countries there is a myriad of collegiate bodies to which administrative power has been delegated. Moreover this is particularly important in regulatory administration. They have names as “råd” and “nævn (Danish) or “nämnder” and “styrelser” (Swedish) or “zelfstandige bestuursorganen” (ZBO) (Dutch).

To this comes that central government agencies do not have a uniform organisation. The relationship to their mother departments varies, and it is even possible that they have boards of directors. Finally the composition of such boards of directors diverges as do the composition of the independent regulatory boards mentioned above. At the extreme it is possible that administrative authority has been delegated to interest organisations or a self-regulating body.

Policy makers have to choose within this assortment of organisational models. Structural choice theory expects parliamentary actors to prefer solutions that rest on integration into the executive hierarchy. This gives them a maximum of flexibility and situational adaptability while keeping the chain of accountability fully intact. The main reservation of the hypothesis is that interest organisations may have a preference for non-majoritarian solutions that represent a credible commitment towards them.

The data on which the analysis is based reflect the complex character of the variable of bureaucratic autonomy. It is defined as the formal exemption of an agency head from full political supervision by a departmental minister and it increases if an alternative or a competing level of political supervision is inserted between the departmental minister and the agency.

Data on the formal organisation of regulatory administration have been collected with ten year intervals for 1950-2000-period. The units have been identified through the official government handbooks for each of the three countries. Additional information has been retrieved from formal legislation and from central government archives. All central level authorities are included in the analysis if 1) they are ministerial departments, 2) set up by law, or 3) permanent, i.e. appearing in the official handbooks at two consecutive points of observation or more.

Political integration and bureaucratic autonomy in regulatory administration

The basic question is how policy makers balance the concern for political control and accountability against the rival concern for the credibility of regulatory administration. According to both politics of structural choice theory and to functionalist theory these are matters of organisational and institutional design. Structural choice theory expects policy makers to design organisations that are integrated in the political system. Which form of organisation will be chosen depends on the distribution of power. In a parliamentary democracy both government and parliament may have a preference for organisational solutions that fit into the executive hierarchy. This integration ensures a maximum of flexibility and adaptability in future and uncertain situations. This allows the government to intervene in response to political contingencies and parliament to hold the government and its departmental ministers politically accountable for administration within their portfolio. To the contrary functionalist theory claims that such integration will weaken the credibility of the political commitment to implement regulatory policy in a consistent and fair way, even in future situations where political contingencies might induce them to deviate from declared policy. This makes it claim that policy makers not only should but in modern regulatory policy also delegates authority to independent regulators. These regulators are not only freed from hierarchical supervision through the ministerial hierarchy; they are also placed at arm's length from affected interests thus reducing the risk of regulatory capture.

Table1 outlines the basic structure of regulatory administration in Denmark, the Netherlands, and Sweden. It reveals a mixture of fundamental similarities and differences between the three countries. First, all countries have a central administration that differentiates between ministerial departments and agencies; for Denmark and the Netherlands neither principles nor practice exclude ministers and their departments to decide individual cases. So, even if Denmark has a long tradition for delegation to agencies, ministerial departments have and in particularly have had a portfolio of tasks which implied that individual cases also were decided here (Christensen, 1997). Similarly Dutch departmental ministries are organised around two or more directorates general, each with its

own specialised portfolio that integrate policy work and political advice with administrative responsibilities; in this context an illustrative example is the competition authority, NMa, that is set up as a directorate general in the Ministry of Economic Affairs (Wise, 1998). Ministerial departments have such differentiated tasks because decision making authority is placed here in the first instance, because the case is brought to the department or the minister by a client or because the department or minister decides to intervene into a procedure at a lower level in the executive hierarchy. Exclusion of ministerial and departmental engagement in administrative decision making presumes an explicit legislative clause to this purpose.

The dualist principle of Swedish administration makes it very different. The authority to handle individual cases is an agency responsibility and following the constitution ministers and ministerial departments do not hold the authority to decide individual cases. The same goes for the cabinet, although it can issue general instructions to agencies. Following Swedish constitutional tradition it can also handle complaints over decisions made by the agencies. In Swedish administrative thinking administrative case work is seen as an instance of rule application analogous to judicial decision making (Larsson 2002; Premfors et al 2003: 68-72).

Table 1. Organisation type and hierarchical integration within regulatory administration 2000. .

Organization types (absolute numbers)	Denmark	The Netherlands	Sweden
Agencies	41	132	64
Boards	234	67	83
Total	290	223	156
Agency head reports to (percentages)			
Departmental minister	93	20	0
Decision making board	7	80	77
Independent agency	0	0	23[1]
N= 100 %	40	126	64

Sources: Denmark: Hof- og Statskalenderen; The Netherlands: Staatskalender; Sweden: Sveriges Statskalender.
[1] Agencies neither departmental ministers nor to a board or board of directors are coded here.

The second fundamental trait is that all three countries to a large extent involve collegiate boards in the handling of regulatory tasks. Numerically such boards dominate Danish regulatory administration and have considerable weight in both the Netherlands and Sweden. But board status varies. They may have a strictly consultative status, but frequently decision making authority has been delegated to them. They may have narrow and specialised duties as in Denmark and to some extent in the Netherlands, covering a well-defined part of departmental or agency business. They may also as is the case in the Netherlands and Sweden be a kind of board of directors to which agency heads report; this is extremely rare in Denmark[3]. This results in a striking difference. Danish agencies are with very few exceptions fully integrated in the ministerial hierarchy while some 80 per cent of Dutch and Swedish agency heads reports to a board or board of directors.

A preliminary observation is that Danish regulatory agencies are fully integrated into the executive hierarchy and the parliamentary chain of delegation. This is not the case for Dutch and in particular Swedish agencies, but the extensive use of collegiate boards with decision making powers by any of the three countries implies that the independence of regulatory administration of regulatory administration depend on internal board organisation and composition. Table 2 shows to which extent non-majoritarian authorities were responsible for regulatory administration, and how these authorities were organised.

The most striking observation is that in 2000 only Sweden has the kind of independent and professional agencies that maximizes credible commitment. Similar agencies are unknown in Denmark and the Netherlands. Yet, it is important that the majority of Swedish agencies report to a board of directors (a “styrelse”), which is also the case for most Dutch agencies. Danish regulatory administration also heavily relies on non-majoritarian institutions, but they are specialised boards normally responsible for only a sub-field within an agency or departmental portfolio. It is therefore possible that independence from both ministerial supervision and affected interests is assured through the composition of boards.

Again practice differs considerably between the three countries with Denmark being the deviant case. Here only 22 per cent of the boards lack representatives for neither interest groups nor the political parties. To the contrary, this is to a considerable extent the case in both the Netherlands (46

[3] In 2000 only Domstolsstyrelsen (the agency responsible for the administration of the judicial system) reports to a board of directors.

% of the boards) and Sweden (33 %).[4] However, both Denmark and Sweden bolsters the independence of boards through the extensive representation of members of the judiciary. So, judges are represented at 40 % the Danish boards, often as chairs, and on 36 % of Swedish boards.

Table 2. Non-majoritarian regulator organisation 2000.

Regulator organisation	Denmark	The Netherlands	Sweden
Agency outside departmental hierarchy, not reporting to board (percentages)	0 (40)	0 (126)	23 (64)[1]
Percentage of decision making boards[2] with representation of			
- organised interests	78	4	37
- parliamentary appointees	4	0	50
- members of the judiciary	40	5	37
- neither organised interests or parliamentary appointees	22	46	33
No. of decision making boards = 100 %	129	103	96

Sources: Se Table 1.
[1] Agencies not reporting to a board or board of directors are coded here, even if they are formally reporting to the government, rather than individual ministers responsible for the policy portfolio.
[2] The figure includes decision making boards that are served by either a ministerial department or an agency as well as boards of directors to which agency heads report.

Does this guarantee the independence of the board? This is hardly the case as the same boards have a heavy representation of interest group representatives (78 % for Denmark) and parliamentary appointees (50 % for Sweden). Under these circumstances the role of judges is rather that of a neutral chair that can act as a trusted mediator between possibly conflicting interests. In addition their presence in the Danish case marks that many Danish boards handle complaints, e.g. over decisions made in either an agency or a ministerial department, eventually even by the minister. In this way they have tasks that are equivalent to those of administrative courts in other countries. They are in other words representative of the pragmatism that marks Danish public administration. Few regulatory contentions are seen as purely legal, but rather as cases with legal and political dimensions. They are solved through negotiation and intermediation by a board that combine legal expertise, interest representation and the integrity that a judicial career endows on the chair.[5] Dutch

[4] Especially for Sweden the coding was on this point made difficult because the official listing of board members often contained little information about their professional status and background. Coding therefore often had to rely on inferences from members' titles.
[5] Members of the Supreme Court are especially popular as board chairs (Department of Justice, 2006).

administration is characterised by the same pragmatic approach, and as in Denmark the absence of administrative courts is as striking as the use of agency boards of directors and collegiate boards as a frequently preferred forum for intermediation in regulatory affairs (Andeweg and Irwin 2003: 153-160).

The formal structure of regulatory administration in Denmark, the Netherlands, and Sweden varies to a considerable extent. Only Sweden has an agency structure that comes close to the ideal type independent regulator prescribed and expected by functionalist theory. Still, even in Sweden the ideal type is hardly a proper description of the formal structure. The reason is that most Swedish agencies have boards of directors, and that parliamentary appointees are represented on many of these boards. For Denmark and the Netherlands the main structure is different, but especially in the Netherlands both the board of directors to which agency heads typically report and the boards (ZBOs) were in 2000 remarkably free of parliamentary appointees and formal representation of interest organisations was weak. In the Danish case the strength of the ministerial hierarchy and the parliamentary chain of delegation are as conspicuous as is the role of collegiate boards with strong corporatist traits. Independence in the sense discussed in functionalist theory is not linked to the extensive use of regulatory agencies, but rather to the presence of judges on a large part of the regulatory boards. These conclusions do not exclude validity of functionalist theory stressing the importance of credible commitment to policy makers. Yet, it strongly indicates that the design of regulatory institutions also meet other, principally political criteria that according to the circumstances give priority to either a hierarchical solution or to solution that allow interests and political parties to be engaged in regulatory administration.

Institutional change in regulatory administration 1950-2000

The claim of the functionalist theory of regulatory reform is that a key element in recent reforms is delegation to independent regulators. These independent regulators are authorities that do not report to ministers and the government. This is why they are aptly called non-majoritarian. However, their independence is not only a matter of not being integrated in the parliamentary chain of delegation. It is also a matter of being withdrawn from the political process in general. Therefore, independent regulators are presumed kept at arm's length of the political executive as well as parliament, parties and interest groups. There is no precise date for the start of this period of reform, but it the general presumption is that this has been a gradual process starting in the late 1970'es and accelerating up through the 1990'es. Table 3 accepts this by using the basic traits of regulatory authority organisation in 1950 as the reference point. It also shows the figures for 1980 where

following hypothesis 2a change was about starting and 2000 where the claim is that large scale has been accomplished.

Table 3. Change in non-majoritarian regulator organisation 1950-2000.

Country - Year	Percentage of agency heads reporting to board/board of directors[1]	Percentage of boards/boards of directors with members representing				N = 100 %
		Interest groups	Parliament/political parties	Judiciary	Neither interest groups nor parliament/parties	
			Denmark			
1950	6 (48)	64	15	39	15	69
1980	7 (58)	75	8	43	22	99
2000	7 (41)	78	4	40	22	129
			The Netherlands			
1950	37 (82)	52	0	18	49	68
1980	59 (106)	71	0	9	30	99
2000	77 (131)	54	0	5	46	103
			Sweden			
1950	46 (37)	23	1	26	75	69
1980	83 (48)	47	35	26	40	129
2000	77 (49)	37	50	37	33	96

Sources: See table 1.
[1] Total N in parentheses

During this 50 years' period there has been considerable change in all three countries. This is especially the case in the Netherlands and Sweden. But change is not limited to the 1980-2000-period. It is a general phenomenon for the post-war period. Two criteria indicate whether change and reform has led to more independence for regulatory administrators, namely 1) whether the agency reports to a decision making board (of directors), and 2) whether this board is free of representatives for interest groups as well as parliamentary and partly political appointees. It is seen that on both criteria Denmark has not reformed in the direction that is both expected and recommended by the theory. The ministerial hierarchy is firmly in place throughout the period, and the main modification being the increasingly strong representation of interest groups on regulatory boards. Then and now members of the judiciary fulfil a role as members, in most cases chairs of these boards, but party political representation through parliamentary appointees has been reduced

and was in 2000 nearly brought to an end. The role of judges has been remarkably stable during the entire period.

The Netherlands and Sweden represent more complex developments. In the Dutch case agencies and boards (ZBOs) play an increasingly important role as judged by their numbers. In addition boards and boards of directors without interest group or party political representation are as important in 2000 as they were in 1950. But they were relatively unimportant in 1980. For Sweden the development is equally complex, although different. Boards and board led agencies came to play a very strong role during the 1950-1980 period, but have since then seen their role somewhat reduced. Similarly the relatively few boards that existed in 1950 were virtually free of both interest group and party political representation, but this has changed dramatically since then. In 1980 it was the case for 40 % of the boards and in 2000 for just a third of them. Thus, change and reform is not a recent phenomenon, exclusively connected with a wave of pro-market reform; it has taken place throughout the entire period and is probably related to specific factors, rather than a general rationale or wave of reforms. It is also clear that the dramatic changes have in no way been linear.

In both countries the role given to interest group and party political representatives are particularly illuminating. Even though interest representation has always been at a lower level than in Denmark it markedly increased from 1950 to 1980, but has since decreased equally dramatically. In both countries this is a development that followed a very critical debate on the politically strong part organised interests played in Dutch and Swedish politics and administration (Larsson 2002; van Oosteroom 2002). Such a debate has hardly taken place in Denmark (Christiansen and Nørgaard 2003). But the implication in the two countries is not parallel. Party political representation on regulatory boards (of directors) was and is unknown in the Netherlands. This was historically also the case in Sweden, but political parties have got strong representation since. In 1980 they were present at a third of the boards and in 2000 on half of them. As to judges they play a minor and decreasing role in Dutch regulatory administration, but a moderate and over time increasingly important role in Sweden.

The first conclusion therefore is that none of the national systems of regulatory administration has been static. However, change has neither followed the direction expected by functionalist theory nor has it been uniform between the countries. Yet, the implication is not that concern for independence and representation has been unimportant to policy makers deciding the right organisation of regulatory administration. This has especially been an issue with regard to formal interest group

representation on regulatory boards and boards of directors at the agency level; again national experience varies as Denmark has been practically immune to this debate. Equally apparent it is that in the Swedish dualist tradition with independent agencies political parties have come to play an important role in as far as they appoint members to an increasing share of agency boards. Thus the very country with a strong and constitutionally defined non-majoritarian tradition has changed its basic institutional structure so that regulatory administration has been connected to the parliamentary chain of delegation. However, this has not happened through a strengthening of the executive hierarchy.

The second and related hypothesis derived from functionalist theory is that regulatory reform involving the creation of independent regulatory authorities has been particularly important for economic regulation. So, even if at the aggregate level there is only little support for functionalist theory it is possible that a control for regulatory function will lend support for the theory. The analysis follows in two steps. Table 4 shows deviations from the ministerial hierarchy while table 5 shows the change in regulatory board organisation, be it for agency board of directors or for regulatory boards. Either table controls for regulatory function, i.e. economic regulation compared to social and general legal regulation. Again the tables show changes from 1950 to 1980 and from 1980 to 2000, thus making it possible to see whether the development after 1980 follow the predictions of the theory and also whether they are particular in direction and scope when compared to the first decades after the 2nd world war.

Table 4. Change in agency status 1950-2000.

Percentage of agencies reporting to board within regulatory functions	1950	1980	2000
	Denmark		
Economic	9	12	11
Social	0	0	0
General legal	0	0	10
	The Netherlands		
Economic	48	81	91
Social	11	15	72
General legal	0	0	56
	Sweden		
Economic	55	85	86
Social	40	91	73
General legal	20	70	64

Sources: Se Table 1.

Table 4 generally supports the claim that there is a difference between regulatory functions. This comes clearly out in the Netherlands and Sweden where it has always been an important trait to let authorities responsible for economic regulation report to boards and boards of directors. Over time this type of organisation has even gained importance. This form of organisation is less popular for the other regulatory functions, but over time similar board structures have been introduced for social and for general legal regulation. Denmark is deviant with its reliance on the ministerial hierarchy and with its clear hierarchical structure for both social and general legal regulation. Except for the creation of an independent agency with its own boards of directors responsible for the management of the judiciary nothing has happened since the world war in this respect.

Table 5 gives further support to the claim that regulatory function is important for the political choice of organisation. Still, the differences found are not those predicted by functionalist theory. Rather it is seen that in any of the three countries general legal regulation is set apart with board structures that strengthen the political independence of the boards responsible for regulatory decisions. First it happens much more frequently that neither representatives for interest groups nor for political parties are members of the boards. Second in all three countries judges play a role in regulatory administration that for Denmark and Sweden is stronger than in economic and social regulation; to some extent this also applies for the Netherlands where the judiciary generally has been little involved in regulatory administration. This first observation has particular validity for 1950. For the second observation is that over time the organisation has approached each other for all three regulatory functions in both Denmark and Sweden, while in the Netherlands social and general legal regulation upholds an administrative organisation setting it apart from economic regulation. In Dutch economic regulation interest groups turn out to play a very important role throughout the period, demonstrating the importance of the strong corporatist traditions of the country (OECD 1999; Wise 1998).

Table 5. Change in board structure for regulatory functions 1950-2000

Regulatory function	1950				1980				2000			
	Percentage of boards/boards of directors with members representing											
	Interest groups	Parliament/ political parties	Judiciary	Neither interest groups nor parliament/parties	Interest groups	Parliament/ political parties	Judiciary	Neither interest groups nor parliament/parties	Interest groups	Parliament/ political parties	Judiciary	Neither interest groups nor parliament/parties
						Denmark						
Economic	76	14	22	20	86	7	22	13	83	3	15	15
Social	79	14	26	17	82	5	25	14	87	5	27	11
General legal	29	0	59	71	48	7	52	48	60	6	49	40
						The Netherlands						
Economic	62	4	11	39	74	0	3	26	70	0	1	30
Social	38	0	3	63	46	0	4	54	30	0	2	70
General legal	31	0	41	69	43	0	32	57	26	0	33	74
						Sweden						
Economic	22	3	18	75	38	39	15	40	41	37	29	35
Social	30	0	10	70	66	25	25	30	43	45	20	33
General legal	17	0	50	83	41	45	41	45	28	41	44	44

Sources: Se Table 1.

The main conclusion is that the control for regulatory function reveals that policy makers in choosing how to organise regulatory administration demonstrate a concern for institutional autonomy. But this concern falls out differently for economic and general legal regulation. Economic regulation is accepted as an area where interest groups are relevant and politically legitimate co-decision makers while the boards involved in the implementation of general legal regulation have been kept free of both interest group and party politics. However, over time the three functional areas increasingly approach each other when it comes to their administrative organisation. Finally changes, even quite dramatic changes, have taken place in any of the countries, but they have not been restricted to the post-1980 period often depicted as an epoch of radical reform with a highly profiled and near exclusive focus on pro-market reforms.

National tradition and institutional precedence

Within the general trends laid out above it is clear that there is considerable variation between the three countries. There is in addition considerable institutional and organisation change over the period, but no clear common trend. Table 5, for example, revealed that the administration of general legal regulation in any of the countries bore the marks of tradition for independence that has persisted over time, even if it is to some extent weakened as also policy within this field has been politicised. In Denmark and Sweden this set it out against the preferred organisation for economic and social regulation whereas in the Netherlands the organisation for general legal and social regulation follow a similar path that is different from that of economic regulation.

This differential pattern points in two directions. The first is that in each of the countries modern regulatory administration rests on a fundamental pre-conception of the proper organisational solution. In Sweden this pre-conception has even been inscribed into the constitution and has survived later constitutional revisions, including the 1974-reform. In Denmark and the Netherlands administrative matters are little formalised as both the government and the civil service operate within a highly pragmatic framework. Still, there exists also in these countries a distinct national model that has served and serves as the nodal point in any discussion of the right way to organise central government, including regulatory administration. What is more throughout the period the discourse has kept focus on the same basic themes and solutions. Examples are for the Netherlands the 1997-report from the Cohen-Working Group and for Denmark the 2006 Ministry of Finance report on the organisation of central administration.[6]

[6] On the Cohen-report, see Wise 1998; on Denmark, see Ministry of Finance 2006.

The second observation is that the existence of three distinct national models in no way reduces the design decision to the installation of a universal organisational appliance. It remains a matter of political choice as there is ambiguity as to the operation of the model in a particular context and as the precise implementation of the model raise concerns as to the ensuing distribution of power and its consequences for the future implementation of regulatory policy. Under these conditions policy makers have a strong incentive to opt for a model that is tried out in prior national practice as well as legitimate, but also to see to that it is properly adapted to the specific situation. Table 6 specifies the basic traits of the national administrative paradigms as well as the novel features that during the period have been added to them.

Table 6. Principal elements in national administrative tradition

	Denmark	The Netherlands	Sweden
Core tradition	Ministerial supremacy within parliamentary chain of delegation	Ministerial supremacy within parliamentary chain of delegation	Dualist administration inscribed in the constitution combined with parliamentary democracy
Complementary feature	Regulatory boards with strong corporatist representation in economic regulation	Agencies and boards with strong corporatist representation in economic regulation and pillarisation of civil society	Historical integration of organised interests in boards
Application in regulatory change and reform	Expansion of complementary feature to cover social and general legal regulation	Expansion of complementary feature to cover social and general legal regulation, but differentiation between economic from social and general legal regulation	Expansion of the use of agency boards of directors with extensive parliamentary representation and parallel reduction of corporatist representation
Introduction of innovative elements	None	None	Gradual, but limited politicisation of executive appointments

The core traditions present Sweden as radically different. Its dualist system of central administration makes it different from not only Denmark and the Netherlands, but also other parliamentary democracies. However, all three countries have complementary features in their basic administrative systems. The implication is a strong tradition for integrating organised interests in

not only policy making, but also in regulatory administration. In doing so each of the countries has developed its own specific forms that have been upheld over time. In Denmark they take the form of specialised regulatory boards, while in the Netherlands and Sweden the preferred form is representation on the boards of directors to which agency heads report. In Sweden the installation of agency boards provide political guidance and accountability to a central organisation that is set apart from the parliamentary chain of delegation. Over time this has been developed as party political representatives have gradually replaced interest group representatives on the boards. In the Netherlands it is a complementary forum of leadership, guidance and control. However, it is only for the ZBO's (boards) that this modifies ministerial accountability within the parliamentary chain of delegation.

The coexistence of a distinct core tradition and complementary reliance on corporatist representation has in the three countries created a sufficiently flexible framework that allows for considerable change and even reform. This can be enacted without breaking with the components that have been the historical components of regulatory administration. So, while the administration of economic regulation has been relatively stable over time, the administration of social and general legal administration has been developed by implementing features already known in the particular systems. The fact that change and reform within these areas, in particular in Denmark and Sweden, has moved in different directions clearly indicate that reference to established organisational practice is non-deterministic and open to influence from principled debates as well as political bargaining between parties and organised interests. With the combined strength and latitude of national administrative traditions change and reform with minimal organisational and institutional innovation is the general pattern.

Sweden is partly an exception from this pattern. Both Denmark and the Netherlands have with remarkable consequentiality stuck to the principles and practice of a merit-based and professional civil service (Christensen 2004; van der Meer 2004). This is also in accordance with the principles of delegation and accountability that constitute the defining characteristics of parliamentary government (Müller 2000). But these principles do not apply to Sweden because of the pre-parliamentary dualist system of central government. Therefore both the formal capacity for political guidance and executive control and the provisions for parliamentary accountability are weakened. The gradual, although limited politicisation of Swedish central government is interesting in this perspective. So, over time appointments to leading positions in the ministerial departments have followed party political lines and undersecretaries are in recent decades without exception political

appointees (Pierre 2004). Similarly the directors general at the agency level have increasingly been recruited among people with a party political background. In 1950 and 1960 13%, respectively 9 % had a background as ministers, undersecretaries or MPs. In 1970 their share was 19 %, and in 1990 and 2000 it has further increased to over 20 %. This development has to be seen in connection with the increasingly strong presence of parliamentary and party political representation on agency boards.[7]

The regulatory reform literature focuses on the administration of economic regulation and it is particularly pre-occupied with reforms that expose former government and monopoly providers of public utility services to competition. Often the road to this goal goes through a full or partial privatisation and reregulation. This has also happened to utility services in Denmark, the Netherlands and Sweden. Telecommunications, energy, railway transportation, and postal services have all been transferred from a regulatory regime combining monopoly with government control to a regulatory regime combining competition with government regulation. As the governments to a varying extent in the three countries, like in other countries, still plays a more or less important role as service provider in these sectors, and as there is a theoretical and normative concern for former monopolists exploiting their connections to their former government owners, the idea that regulators should be independent has been voiced with strength with regard to these services.

The minimum demand, incorporated in much EU-regulation, is that the role of operator-owner and the role of regulator should be separated. As EU-legislation is vague and lacks precision regulator organisation within the utility services is an extremely strong test case for the rival hypotheses of functionalist vs. politics of structural choice theory. The simple question is first to which extent utility regulators are removed from the ministerial hierarchy, and if so whether the collegiate boards responsible for regulation are free of interest group and party political representatives. The second question is how structural choice within this new field of regulation relates to the national administrative traditions described above. Table 7 gives information in both regards. As specialised utility administration was very rare in 1950 the table only gives figures for 1980 and 2000. As claimed by functionalist theory this is also within this later period reform was launched and to a considerable extent implemented.

[7] The figures are collected for this research, cf. sources to table 1. The partial politicisation of appointments is subject to regular scrutiny by the Swedish Parliament's constitutional committee, cf. http://riksdagen.se . See also Larsson 2002.

Table 7. Non-majoritarian organisation of economic and utility regulation

	1980		2000	
Percentages with total N in parentheses	Economic regulation[1]	Utility regulation	Economic regulation	Utility regulation
		Denmark		
Agency head reporting to board	14 (29)	0 (4)	13 (15)	0 (3)
Neither interest nor parliamentary representation on regulatory board	14 (80)	0 (7)	12 (109)	80 (5)
		The Netherlands		
Agency head reporting to board	82 (58)	0 (1)	87 (71)	100 (1)
Neither interest nor parliamentary representation on regulatory board	24 (89)	100 (3)	29 (75)	50 (2)
		Sweden		
Agency head reporting to board	88 (21)	67 (3)	86 (22)	100 (4)
Neither interest nor parliamentary representation on regulatory board	41 (64)	40 (6)	38 (37)	27 (11)

Sources: See table 1.
[1] Excluding utility regulation

The data give partial support for the functionalist hypothesis in several ways. First, the liberalisation of public service utilities has been accompanied by administrative reform where specialised authorities have been set up to monitor the new markets. Second, there is also in the structural choices a rather clear concern for the independence of these new bodies. Moreover, this concern is stronger for the utility regulators than for other economic regulators. So, both in Denmark that in other fields gives little priority to regulator independence the new or reorganised boards responsible for utility regulation are all free of interest and political representatives. A similar emphasis on independence is seen in the Dutch preference for the combination of board led agency with interest and party free representation.

It is equally conspicuous that the structural choices within this new field of regulation in all countries can be described within the dimensions used in this analysis. What is more, the solutions

opted for by Swedish policy makers demonstrate that they may well have opened for market competition, but they hold operators on these newly created markets under political observation through the presence of parliamentary and political representatives on the boards. Their representation is stronger for utility regulators than for other economic regulators. Similarly, in their structural choices Danish policy makers have been faithful to their historically strong preference for specialised regulatory boards.

Politics and principles in regulatory administration

The comparison of long-term changes in regulatory administration in three European parliamentary democracies confronted a set of competing hypotheses derived from on the one hand politics of structural choice theory and on the other hand functionalist theory of regulatory reform. The former sees administrative design decisions as primarily a matter of allocation of power while the latter sees it as an important factor for economic welfare and growth. Where structural choice theory makes no claims as to dramatic and universal waves of reform, functionalist theory argues that a dramatic change in regulatory policy and administration has been enacted since about 1980 governments initiated a series of quite radical pro-market reforms. This by the way sets economic reform out against both social and general legal regulation.

This study gives considerable support to structural choice theory, but it also concludes that the organisational strategies followed may vary between as well as within national systems of regulatory administration. Evidence for this is the delicate balance between an administration embedded in the parliamentary chain of delegation and a system of corporatist authorities organised as either regulatory boards or boards of directors to which agency heads report. Regulatory agencies and boards of this type may be seen as policy makers demonstrating a credible commitment to regulated subjects, in particular business interests. But it is a far cry from the independent regulatory agency that is at the core of functionalist theory, be it as a prescription for good regulation or as a factual claim as to the direction of recent reforms. Only Sweden knows an agency institution that meets the demands of functionalist theory. Interestingly, this institution dates back to a constitutional reform in 1809, and it principles are untouched by the latest revision of the constitution in 1974.

Neither Swedish ministers nor the government are entitled to interfere in the administration at agency level. They can not give orders to agency officials; equally, they can not demand a case to be moved to the departmental level to be decided by the minister or even the cabinet. Their

instrument is general instructions, presumably in the form of an annual letter of regulation (regleringsbrevet). From a parliamentary perspective the implication logically is that neither the ministers nor the government can be hold accountable for specific agency decisions. With this constitutionally regulated organisation of central government Sweden has inherited from pre-parliamentary times an administrative systems meeting the most modern standards for regulatory administration in a market economy.

In spite of the remarkable persistence of the Swedish dualist system policy makers seem strongly aware of the control and accountability as well as the distribution of power aspect of administrative design decisions. In the present context we shall draw attention to three important indications of this. First, there has for years been a debate where a vocal point of view has been that executive and administrative dualism had paved the way for a powerful and unresponsive administration. Therefore a thorough reform should improve the capacity for ministerial leadership by integrating the central administration in a parliamentary chain of delegation modelled after the Danish and the Norwegian system[8] This debate is constantly nourished through reports that neither the government nor ministers and their departments have sufficient organisational authority to guide and control agency activities.[9] Second, there are empirical studies demonstrating a flexible and pragmatic interaction departmental and agency officials allowing for consultation on both policy and the handling of administrative casework. This research also has shown how the relative strength between departments and agencies varies from portfolio to portfolio and over time (Jacobsson 1984; Lindbom 1997).

Third, and most importantly in the present context our analysis demonstrates that Swedish policy makers with considerable consistency have taken steps that partly compensates for the lack of political controllability and accountability that is built into the dualist system. This is primarily done through the increasingly strong representation of parliamentary and party political appointees on agency boards, but also through an increasing, although limited use of political appointments to the important offices as agency director generals. These institutional adaptations of the dualist model both gives support to the politics of structural choice theory and to our argument of the preference for the flexible forms of control and accountability inherent in parliamentary democracy.

[8] See Molander, Nilsson and Schick 2002; cf. also Ekonomikommissionen 1993: 154-166 that also discussed the issue. But the commission, dominated by prominent Swedish economists, ended up concluding in favour of the dualist tradition.

[9] See e.g. a report from the Swedish national auditors on government control of the national agency for environmental protection, Riksrevisionen 2006.

The contrasting perspectives between structural choice and functionalist theory in many ways appear as a competition between a realist, even cynical view of the relationship between politics and administration and a principled, general interest and welfare-oriented view of the same relationship. There may be some truth to this, but our comparative study also has shown that structural debate and even choice is to some extent the result of principled discourse. So, there are areas where regulatory administration is at least partly insulated from party and interest group politics and from ministerial meddling in handling of individual cases. But contrary to the predictions of functionalist theory this does not mark out economic regulation, and moreover there are no signs of things moving in that direction. The exception is that the new authorities responsible for utility regulation in all three countries have been given a formal status that removes them from both the ministerial hierarchy and from the traditional corporatist board structure. Similarly, and potentially more important we have also found that the administration of general legal regulation has traditionally been entrusted to authorities enjoying this form of autonomy and independence. Here it is not economic interests, but rather the protection of individual rights and freedom that are at risk, and any of the three countries have maintained principles that contribute to and even safeguard the credibility of its regulatory administration. Another important instance of principled change is the targeted reduction of the role of interest organisations that has been seen in both the Netherlands and Sweden since the 1980'es.

One set of hypotheses focused not only on the direction of change and reform, but also on its timing. Particularly, we were interested in seeing whether the pro-market reforms launched since 1980 have set their mark on the organisation in the three countries. By including the whole post-war period in the analysis we find strong evidence for change and reform. However, reform activity is not restricted to a particular period and it is not so that regulatory administration has gone through more far-reaching changes in the past two decades. Rather we conclude that the regulatory administration is remarkably adaptable and prone to changes. These changes are not linear in that they point in a particular direction, neither cross-nationally nor nationally. They are definitely framed by national administrative tradition and institutional precedence that constrain and inform structural choice without bereaving it of flexibility.

Conclusions

This comparison has shed light on the relative merits of two lines of theory. Generally it has given support to structural choice theory and demonstrated the institutional strength of the parliamentary chain of delegation. In our interpretation this strength follows from its flexible traits

allowing for executive control, parliamentary accountability and the possibility of responding to situational contingencies in regulatory administration. This is a conclusion much in line with other recent research that has shown how national authorities within the specialised of utility regulation, non-regarding the precise national organisation, are quite open for and responsive to political intervention (Böllhoff 2006 and generally Coen and Héritier 2006). Deviations from the ministerial hierarchy are frequent, and surely involve considerations about credible commitment. But generally this commitment is achieved through the involvement of affected interests into regulatory administration. This feature is particularly strong for economic regulation.

There are two limitations to our research. They both call for further research. One is the limit to three countries that are very similar in institutional and political terms. The other is that our study has been limited to the formal structure of regulatory administration. Still, it is our contention that we have made a strong case for a strict political science perspective founded in the politics of structural choice and further for basing claims on the scope and impact of administrative reform on long term historical data.

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