

***Regulatory Revolution by Surprise:
On the Citadels of Regulatory Capitalism and the Rise of Regulocracy***

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Abstract

The era of privatization is also the era of regulation – a paradoxical assertion since privatization and the family of policies that were associated with it were supposed to lead to deregulation and freer markets. Yet, national and sectoral variations aside, the general trend is towards ‘regulatory explosion’. A quarter of century after the launch of the Thatcher and Reagan revolutions, we conclude that the new economic order involves all but *deregulation* and indeed may be best described as “regulatory capitalism”. We maintain that the evidence of a regulatory explosion requires us to abandon the zero-sum assumptions that characterize much of the literature on regulatory institutions and strategies in favor of a positive-sum paradigm. We demonstrate the compatibility between agencies at the national level and more elaborate and institutionalized regulatory structures at the regional and global levels, and between the proliferation of voluntary and private instruments of regulation and the growth of public and coercive instruments. The empirical analysis is grounded in a step-wise research design that starts with a study of the diffusion of *autonomous regulatory institutions* as the citadels of the new global regulatory order in 36 countries in Europe and Latin America and 7 economic and social sectors. We continue with a comparative study of the global and regional governance structures of the telecoms and food sectors. Observations on the patterns of change are then analyzed from a diffusion perspective which emphasizes the importance of regulatory competition on the one hand and of transnational networks of experts on the other.

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For some observers, ours is an era of *deregulation*, *neoliberalism* and privatization (Kalyvas, 1994; Fourcade-Gourinchas and Babb, 2002). For others it is an era of regulation and even of 'regulatory capitalism' (Levi-Faur and Jordana, 2005; Braithwaite, 2005). Some argue that the capitalist state is downloading and uploading its regulatory functions (Majone, 1997a; Jayasuriya, 2001), while others proclaim the rise of a regulatory state at the national level (Eberlein and Grande, 2005; Christensen and Læg Reid, 2005; Moran, 2003). For some the future belongs to the post-regulatory state (Scott, 2004) and to nodal forms of governance (Shearing and Wood, 2003); for others the critical nodes of the new order are still occupied by the regulatory institutions of the nation state (Evans, 1995; Weiss, 1998). This paper clarifies some of the issues at the center of the discussion through a study of the diffusion of *autonomous regulatory institutions* as the citadels of the new global regulatory order. Surveying 36 countries in Europe and Latin America and 7 economic and social sectors, we were able to document the establishment of 174 agencies in the period up to 2002. Most of these agencies (107) were established in the 1990s. The autonomous regulatory agency, an administrative innovation which for almost a century was largely confined to one country (the US) and to one sector (central banking), has become the new convention about the proper way to govern the capitalist economy and society. A major feature of the new agencies is the autonomy of their staff from direct ministerial controls, resulting in the creation of a new type of state official, the *regulocrat*.¹ The agencies are important nodes in elaborated and multilevel networks of experts. These nodes and networks supply the backbone of the new global order of regulatory capitalism.

We raise two major questions concerning the widespread diffusion of these regulatory agencies. First, how can we best account for the forces and actors that are responsible to the cross-sectoral and cross-national spread of the agencies? Second, what does the spread of these agencies tell us about the dynamics of global governance? Our answers are grounded in the observation that the era of privatization is also the era of regulation, a paradoxical assertion since privatization and the family of policies associated with it were supposed to lead to deregulation and freer markets. Yet with the advance of privatization it became clear that freer markets often imply more rules (Vogel, 1996) and that, national and sectoral variations aside, the general trend is towards a regulatory explosion. A quarter of century

after the launch of the Thatcher and Reagan revolutions, we conclude that the new economic order involves all but *deregulation*. Moreover, we go beyond the assertion that much of what is being describe is *deregulation* is in essence *reregulation* (Majone, 1990, Shearing, 1993, Vogel 1996). The advance in scope, arenas, instruments and depth of regulation is far beyond what was expected from a mere *reregulation*. The word 'reregulation' no longer captures the essence of the change, which may best be described as the rise of a new global order of 'regulatory capitalism' (Levi-Faur, 2005a; Braithwaite, 2005). More regulatory institutions, regulatory networks and regulatory instruments are visible at the global, regional, national and domestic levels, and have mounting effects on the relations between state and social organization and on the growth of self-regulatory systems within states (Hood et al., 1999) and within social organizations (Power, 1997). All this paradoxically places regulation at the center of the new global order.

The evidence of a regulatory explosion requires us to abandon the zero-sum assumptions that characterize much of the literature on regulatory institutions and strategies. Unlike other scholars, we do *not* suggest that regulatory functions are migrating upwards or downwards (Jayasuriya, 2001); nor do we argue that they are being allocated increasingly to non-governmental organizations (Grabosky, 1995; Scott, 2004). Instead, we point to two dimensions of the new regulatory order. First, we demonstrate the compatibility between agencies at the national level and the more elaborate and institutionalized regulatory structures at the regional and global levels. If these observations are valid, then more regulation upward to the global and regional arenas will be accompanied by more regulation at the lower end, that is, at the national and sectoral levels. Second, we demonstrate the compatibility between the proliferation of voluntary and private instruments of regulation and the growth of public and coercive instruments. Again, if these observations are valid, then more voluntary and private instruments of regulation will grow together with more coercive and public instruments. Consequently, we need to abandon the zero-sum assumptions that govern our understanding of regulatory politics and policy in favor of a positive-sum paradigm.

On top of the paradox of regulation amid liberalization, we deal with a Sherlock Holmes-type mystery. While the making of American regulatory capitalism involved a visible and intense political struggle across most the twentieth century, the emergence of the current global regulatory order is much less politicized and contentious, and is proceeding much

faster. While the political history of the United States gave birth to impressive grass-roots political moments such as the Garner, the Progressive and the Consumer movements (Cushman, 1941; Bernstein, 1955; Wilson, 1980; Vogel, 1989; Eisner, 2000), the actors and the political and social factors that have constituted the emergent global order of regulatory capitalism are mysterious. Similarly, while it is possible to identify the “prophets of regulation”, namely, Adams, Brandies and Landis (McCraw, 1984), who shaped the regulatory institutions and strategies of American regulatory capitalism, the current prophets are yet to be identified. The recent diffusion of regulatory agencies was *not* the result of a conflict between progressives and conservatives, it was *not* consolidated as a programmatic plan in party manifestos around the world, and it was *not* brought to electorates for discussion and reflection. Hence, this regulatory revolution has been a revolution by surprise. We point to the rise of a new class of transnational knowledge actors – the regulocrats – in order to identify those who are responsible for this change.

A diffusion perspective is applied to explain the process of positive-sum regulatory change (or regulatory explosion). Instead of looking at the process of the establishment of regulatory authorities across countries and sectors as an aggregation of discrete events, we examine cases of the establishment of such authorities as interdependent events. It is from this interdependency that we can obtain a more accurate perspective of the nature of the reforms and the meaning of the new order. In line with recent work, we argue that interdependencies among policy choices are the defining characteristic of diffusion processes (Levi-Faur, 2002; Simmons and Elkins, 2004; Meseguer, 2005; Gilardi, 2005). We thus define diffusion as a process whereby the adoption of an institution, technology or behavior in one political arena (e.g., country or sector) increases the probability of the adoption of a similar institution, technology or behavior in another arena. This suggestion redefines the ‘delegation game’ between principals and agents as it requires principals to monitor the behavior of other principals before deciding on the preferred course of action (cf. Thatcher and Stone Sweet, 2002; McNamara, 2002). The center of gravity in the “delegation game” becomes the relations between principals rather than between principals and agents (Bikhchandani, Hirshleifer and Welch, 1992; Levi-Faur, 2002). Three broad theories of diffusion – regulatory competition, regionalization and transnational advocacy networks of professionals – are then examined in an effort to make sense of the rapid process of change. Each of these three broad theories is formulated in an open-ended manner so as to allow us to examine the regulatory outcomes from both public and private-interest perspectives.

Our arguments are grounded in a stepwise comparative research design (Levi-Faur, 2005b). We first present the widest and most comprehensive data-set on the mushrooming, since the mid-1980s, of new regulatory institutions across Europe and Latin America. While in 1983 only 34 regulatory agencies existed in the 36 countries and 7 sectors we studied (fewer than one agency per country on average), their number increased fivefold to reach a total of 174 in 2002 (almost 5 agencies per country on average for the 7 sectors studied). We then proceed to assess the importance of these agencies in a wider context of change in the governance of these sectors. We focus on global and regional developments in the governance of telecoms and food sectors, two of the seven sectors we study in the first part. This allows us to place our observations in a broader theoretical and empirical context, and to gradually build our argument in a case-oriented manner, striving to maximize validity through a most-different research design (Przeworski and Teune, 1970).

To compare the governance structures of the telecoms and food sectors (and economic and social regulations generally)² is to compare regulatory strategies that deal with distinctly different issues, with different social implications and with varied degrees of government investment. Global governance of the telecoms industry focuses mainly on the technical compatibility of networks and equipment, on economic rules for interconnection, and on the degree, scope and form of market openness. Global governance of food safety issues is focused largely on the quality attributes of food and the effects on human health of the production, processing, distribution and consumption of food. The severity of the problems of food safety, even without the recent food scandals, is qualitatively different from that of telecoms. According to the World Health Organization, up to one-third of the population of developed countries are affected by food-borne illness each year. The poor are the most vulnerable and food and waterborne diarrhoeal diseases, for examples, are leading causes of illness in less developed countries, killing an estimated 2.2 million people annually, most of whom are children.³ Global and national attention to food safety issues, however, only partly reflects the seriousness of the problem, and global and regional governance structures in telecoms are more institutionalized than in food. We use the similarities and differences between the development of governance structures in the two sectors in order to generalize our arguments.

Our discussion proceeds as follows. We start with the explanandum and present a comprehensive picture of the diffusion of the reforms using descriptive statistics and comparing patterns of commonalities and variations across Latin America and Europe and across social and economic sectors. The second section contextualizes the evidence of the diffusion of regulatory agencies through a study of regulatory developments in the telecoms and food-safety sectors. The third section of the paper reviews the current literature and suggests a diffusion perspective as an alternative to the explanations propounded there. Each of the next three sections examines the process of regulatory change according to one of three broad theories of regulatory change. We conclude with a summary of the arguments of the paper as they touch on the question of the emerging regulatory order and on the implications of the diffusion perspective for our understanding of regulatory change.

I. Capturing the Explanandum: The Spread of Regulatory Agencies

The institution of autonomous regulatory commissions is often presented as one of the most important characteristics of the American administrative state and as a uniquely American institution (Bernstein, 1955, 296). To a large extent it was, and for many years it was indeed unique. While there were some examples of autonomous regulatory commissions in Britain and Northern Europe already in the mid-19th century (McLean, 2004; Joergen and Yesilkagit, 2005; Christensen and Læg Reid, 2005), they did not develop into a fully-fledged comprehensive system of governance. In the United State, by contrast, the regulatory commission became the hallmark of the administrative state at least up to the Second World War. It was in the United States that these agencies were perfected into a system of governance and it was in the United States that regulation was constructed as a legal, political and administrative tool of governance. What the United States regulated, other countries most often nationalized. Whereas the United States separated the legislative and policymaking process from regulation, most other countries combined them in one hierarchical form of control. Autonomous commissions for the governance of fields as diverse as telecommunications, electricity, water, post, media, pharmaceuticals, environment, food safety, occupational safety, insurance, banking, and securities trading became one more testimony of “American exceptionalism”. The growth of these agencies, first at the state level and then in three waves during most the 20th century, has represented for a long time in the American public imagination a victory of “progressive” forces over the interests of business and the Republican Party that was associated with them. There are good

reasons to support this view; and indeed, the creation of the Interstate Commerce Commission in 1877 marked the first significant attempt by the federal government to regulate the economy since the expiration of the charter of the second Bank of the United States in 1836, as well as being a major landmark in the growth of federal government. But the picture is, of course, more complicated, and there is early awareness in the literature that the independent commissions were often created in response to pressure from business interests (Bernstein, 1955, 21).

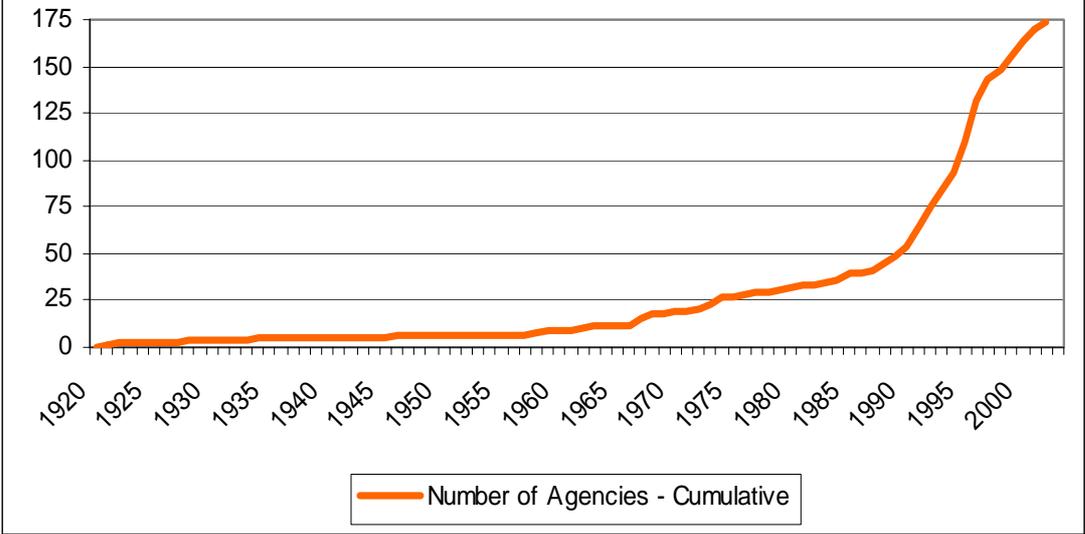
The impact of the independent regulatory commissions started to decline sometime around the Second World War and with the growth of welfare and developmental policies (Bernstein, 1955, 6). Increasingly, key economic controls and resources were transferred to the president or to single-headed agencies responsible to the president rather than to Congress, and Congress did not hesitate to assign regulatory tasks to executive departments. Long before the Chicago School of regulation overstated regulatory capture, sympathetic reviewers of administrative regulation argued that “regulation by commission has not been able to match the ingenuity, imagination, and inventiveness of American business. It has been conventional in method, passive in attitude, and orthodox in the evolution of policy” (Bernstein, 1955, 296). The combination of empathetic criticism and the rise of neoconservatives to power in the United States and of neoliberals in the United Kingdom was supposed to lead to a further decline in the power and central position of the American administrative state. Yet this was hardly the case. Regulatory agencies and regulatory issues came back on to the agenda as the American government embarked on yet another grand effort to redesign capitalist economy and society (Derthick and Quirk, 1985; Horwitz, 1989). Moreover, the regulatory budget’s share of US Federal expenditure continued to grow under President Regan and his successors (Dudley and Warren, 2005). For proponents of deregulation, this was a somewhat disappointing result. What was heartening, however, was that no new regulatory agency was established.⁴ The neoconservative agenda in the United States stopped the mushrooming of new regulatory agencies. But things developed differently in other countries, where autonomous agencies appeared everywhere, like mushrooms after rain.

The empirical basis for our observations is expressed in a database that includes information on the creation of regulatory institutions in 36 countries across 7 economic and social

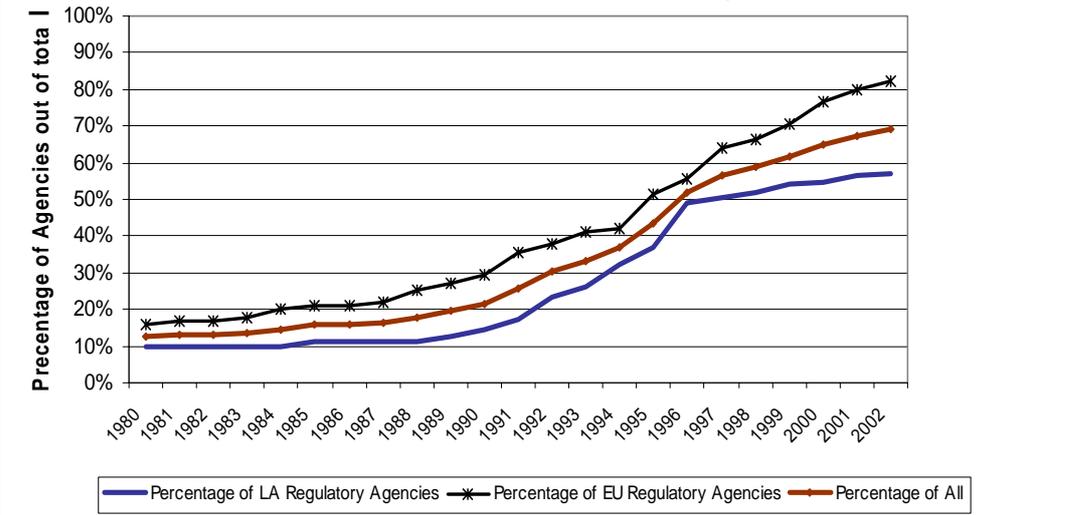
sectors.⁵ We cover four economic sectors (telecoms, electricity, competition and securities and exchange) and three social sectors (food-safety, pharmaceutical and environment). What we have identified, counted and classified are administrative agencies that have been separated from ministries. The agencies' degrees of separation vary widely across sectors and countries, but their status as distinct entities and the use of regulation in their mission statements serve as criteria for inclusion in our database. Looking at both social and economic sectors provides a more general view of the relations between regulation and privatization and allows us to test the three theories of regulatory diffusion across a broad set of changes. For the same reason we also focus on Europe and Latin America, two large regions that were engaged during the 1990s in a frantic process of regulatory reform. We cover developments in 19 Latin American countries and 17 European countries (EU 15 before the latest enlargement plus Norway and Switzerland).

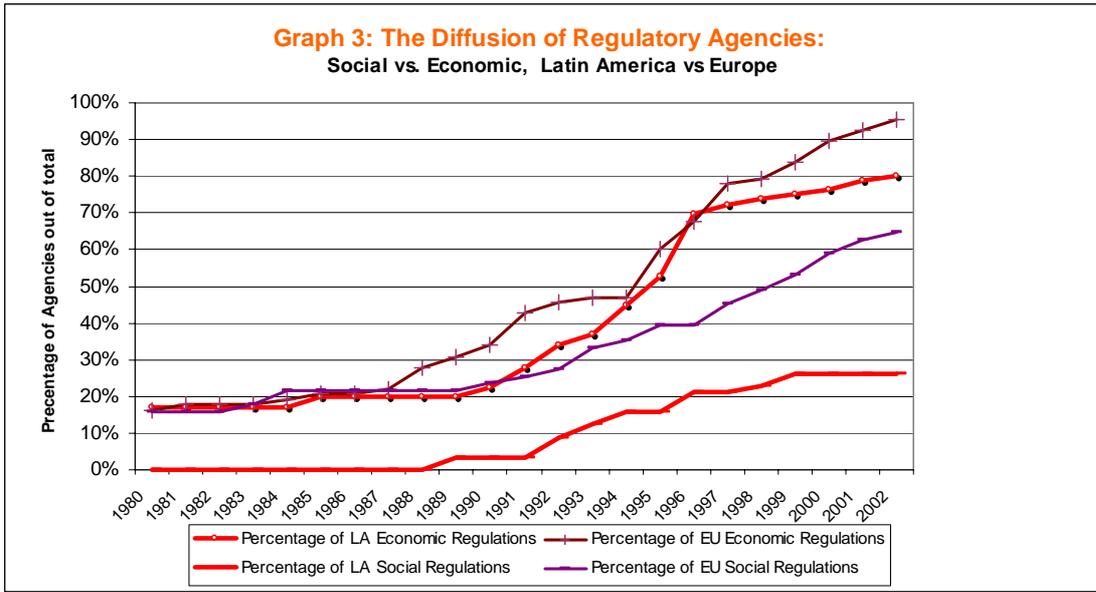
Graph 1 presents the growth of regulatory institutions across our dataset since the 1920. It suggests immediately that, while not new, the phenomenon of "agencification" of regulatory agencies is gaining momentum in the 1970s and booming in the 1990s. Graph 2 presents the growth of regulatory agencies since 1980s according to region. As can be seen, most of the new agencies (98 in total) are found in Europe, where the penetration rate is 82% compared with 57% for Latin America and of 69% for the data-set as a whole. Patterns of growth are similar between the regions but Europe seems to move forward much faster. Graph 3 adds information as it presents the growth of regulatory agencies across Europe and Latin America in the social and economic areas. Two points should be noted. First, the tendency to establish regulatory agencies is stronger in economic sectors than in social sectors. The 174 agencies identified in 2002 include 35 in telecommunications, 34 in securities and exchange, 32 in electricity and 25 in competition. The rest, with a significantly lower penetration rate, are in social regulation, including 18 in pharmaceutical, 16 in environmental and 14 in food safety. Second, most of the variation between the rates of penetration of regulatory agencies in Europe and Latin America seems to be due to a significantly lower rate for regulatory agencies in Latin America in the social sectors (26%, compared with 64% in Europe). Regulatory agencies are indeed more popular in Europe than in Latin America also in the economic arenas (with a penetration rate of 98% in Europe compared with 80% in Latin America), but this difference is much smaller and is mainly due to the weaker tendency to establish regulatory authorities in the area of competition in Latin America than in Europe (there is almost parity in the two utilities sectors and finance).

**Graph 1: The Diffusion of Regulatory Agencies
(7sectors; 36 countries)**



**Graph 2: The Diffusion of Regulatory Agencies:
The General Trend and Latin America vs Europe**





	Similarities across social and economic regulation	Variations across social and economic regulation
Similarities across Europe and Latin America	<p>I Observation: new regulatory agencies are established across both areas and across both regions (i.e., they spread in all cases).</p>	<p>II Observation: the spread of economic regulatory agencies is faster than that of social regulation.</p>
Variations across Europe and Latin America	<p>III Observation: The spread of both social and economic regulatory agencies is greater in Europe than in Latin America across all spheres of regulation (largely due to competition agencies).</p>	<p>IV Observation: While there are variations between the spread of economic regulation agencies and that of social agencies in both regions, the gaps are larger in Latin America.</p>

Table 1: The Spread of Regulatory Agencies in Europe and Latin America: variations and similarities across regions and spheres of regulation

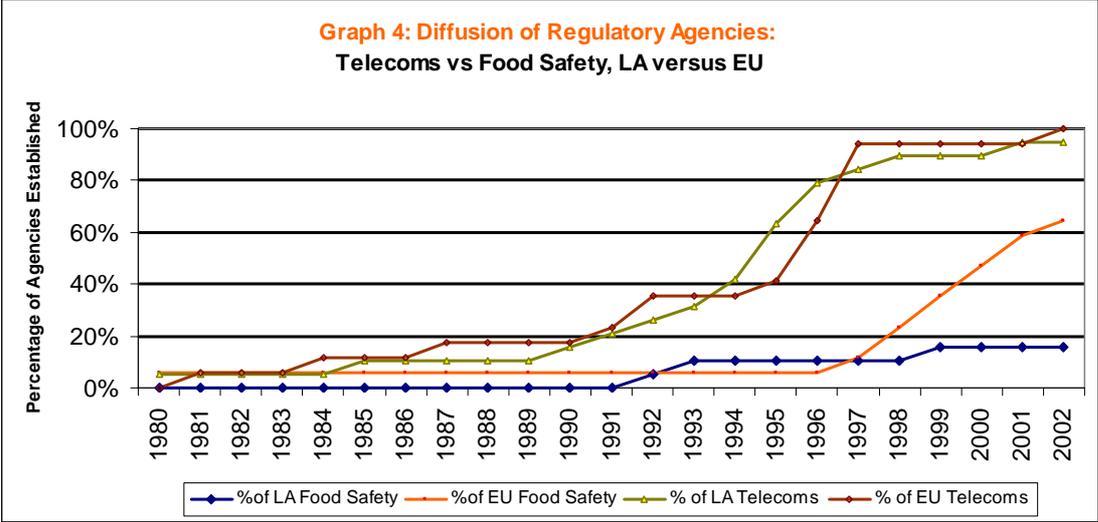
In an effort to capture comprehensively the similarities and variations table 1 presents four different aspects of the process of change, comparing social and economic regulation in the two regions. First, our data unambiguously show a clear tendency to create more regulatory agencies across both regions and both spheres of regulation (cell I). Second and at the same

time, the diffusion of this institutional innovation is stronger in the field of economic regulation than social regulation (cell II). Most countries have established autonomous authorities in economic regulatory domains such as utilities, whereas autonomous regulators are less common in social regulatory domains such as food safety and pharmaceuticals. Third, the spread of regulatory agencies in Europe is greater than in Latin America (cell III). This is true for both economic and social regulations. As mentioned above, in economic regulation the variations are mainly due to the gap in the number of competition agencies, and the gap is narrower in economic than in social regulations. Finally, while there are variations between the spread of economic regulation agencies and that of social regulation agencies in both regions, the gaps are larger in Latin America (Cell IV). These variations in the spread of the regulatory agencies are useful sources of evidence about the actors and factors that made these widespread changes possible. But, before we deal with these issues, it might be useful to examine the phenomena in a more detailed way. We therefore focus on regulatory developments in two of the seven sectors studies.

II. The Explanandum in Context: Comparative Study of the Telecoms and Food Sectors

The general pattern of commonalities and variations that is evident from the aggregate data is also evident from a more detailed study of regulatory agencies in the telecoms and food sectors. Graph 4 presents the pattern of diffusion in these two sectors in Europe and Latin America. It reveals the close resemblance of the diffusion of regulatory authorities in telecoms and, since 1997, the divergence of the diffusion of regulatory authorities in food safety. Let us first examine more closely the telecoms sector. The data here reveal that 35 out of the 36 countries established regulatory authorities to govern the sector (the exception is Cuba). The first country to establish a telecommunications regulatory authority was Costa Rica, in 1963; the second one was Portugal, in 1981 (the two countries extended the autonomy of their agencies, in 1993 and 1989 respectively). The turning point in the diffusion of the regulatory agencies was, however, the establishment of Oftel in 1984 by the British government in conjunction with the privatization of British Telecoms. In that decade two more countries established regulatory authorities (Chile in 1985 and Finland in 1987). Most of the countries (77%), however, established regulatory authorities in the 1990s, including five in 1995, seven in 1996 and six in 1997. In food safety only 14 countries have established regulatory authorities. The first move was in Sweden, in 1972. Two decades later, Argentina and Columbia established food-safety regulatory authorities, in 1992 and

1993 respectively. Nothing, however, seemed to change until Denmark decided to establish a regulatory authority in 1997, followed by Brazil, France and Ireland in 1998, and Greece and the United Kingdom in 1999. Five additional European countries have established regulatory agencies since 2000: Belgium and Portugal in 2000, Finland and Spain in 2001 and Germany in 2002.



These agencies were not created in a vacuum. On the contrary, they emerged at the same time as important regional and global governance regimes were upgraded. Before we start trying to explain the widespread growth of regulatory agencies, we need to understand the extent to which they are central components of the current global order. A useful way to do so is to compare governance regimes at the global level, shed light on the dynamics of change in the last decade, examine developments at the regional level (especially in Europe), so as to explore the effects of the new global trade regime on the governance of these two sectors and to assess the extent to which private and voluntary forms of regulation replace public and coercive forms of regulation.

We start with global governance structures in telecoms. These are not only significantly older but also more institutionalized and dense than in food safety. An international telegraph convention (replacing bilateral and regional agreements) was signed in Paris by 20 European states in 1865, 21 years after Samuel Morse ushered in the telecoms age by sending the first public message over a telegraph line between Washington and Baltimore. The convention gave birth to the International Telegraph Union and to what might be best called the “old

telecoms regime". After 1932 the central institution of the regime was the International Telecommunication Union (ITU), formed out of a merger of the older International Telegraphs Union and the signatories of the International Radio Telegraph Convention of 1906 (Jacobson, 1973). The ITU is one of the oldest international organizations operating today and, with 189 members, an annual budget of hundreds of millions of dollars, and about 800 employees, it is one of the world's most institutionalized international organizations. The major institutions in the food sector are two UN organizations, the Food and Agriculture Organization (est. 1945) and the World Health Organization (est. 1948). Food-safety issues are not a priority area with these organizations, and their tasks in food safety are carried out by a standardization body called the Codex Alimentarius Commission, which was established in 1962 (Millstone and van Zwanenberg, 2002). CODEX, set up almost a century after the establishment of the ITU, is a small, subsidiary and dependent organization. It is especially small and dependent when compared with the ITU. Its budget and agenda are dependent on the two parent organizations, the FAO and the WHO. Its annual budget of about US\$7 million is about 5% of the budget of the ITU.⁶ For years it was one of the least-known international organizations, and its impact has been growing only since the mid-1990s, notably in relation to developments in the international trade regime (Post, 2005). The tight controls on CODEX exercised by a joint sponsorship of the FAO and the WHO reflect also a widespread practice across the world in which food-safety issues are divided between ministries of health and agriculture. To some extent this issue echoes our study of autonomous food safety agencies at the national level. A recent evaluation report on the performance of CODEX by the FAO and the WHO recommended an increase in both the autonomy and the budget of CODEX.⁷ This recommendation probably reflects a paradigm shift that transforms food-safety from an agricultural or commercial domain into a consumer protection domain and leads in consequence to the creation of separate and autonomous agencies for food-safety. It is notable that this process is culminating in, rather than originating from, global institutions.

The weaker global governance structures of food-safety issues when compared with those of telecoms reflect weaker forms of national government controls of the food industry. Food safety regulations in Europe were often the responsibility of guilds and local authorities. State regulation of food safety issues blossomed surprisingly late (Braithwaite and Drahos, 2000, 399). Food-safety issues were entrusted to agriculture administration (and therefore producer interests). The focus of regulation was on issues of adulteration rather than

attempts to promote best practice in processing and marketing food. Thus, in the United Kingdom a select parliamentary commission was set up to consider the problem of adulterated food, which led to the passing of the Adulteration of Food and Drink Act of 1860, which prohibited mixing injurious ingredients with food. The acts that followed in 1928 and 1938 extended the prohibitions so as to include minimum compositional standards in essential food. A notable event in the history of food safety regulation is the obligation, since 1939, to report cases of food poisoning in the UK (Hardy, 1999). In continental Europe leadership in food-standard setting was in the hands of the Austro-Hungarian policymakers, who initiated in 1891 the *Codex Alimentarius Austriacus* to regulate food trade in the empire. The Austrian code is considered as one of the strictest; it had an informal status until it was incorporated into Austrian law in 1975. An important turning point in France was the establishment of the *Société Scientifique d'Hygiène Alimentaire* in 1904 and the passage of the 1905 Food Adulteration Act (Zylberman, 2004, 1). Denmark made meat inspection mandatory only in 1903–6, after an MP's family was infected with trichinae. Development was not always linear. Germany repealed the stricter regulations drawn up by Prussia in 1900, and veterinarians had come to doubt the cost-effectiveness of inspections based on microscopes (Ibid, p.9). Modern systems of food regulation originated in the United States in the late 19th century in the United States when state and local governments began to enact food regulation. In 1879 the first general food-safety law was introduced in Congress but failed to pass. Repeated attempts over the next 25 years eventually succeeded in the form of the Pure Food and Drug Act of 1906 (Law, 2003; Scheuplein, 1999). As in Europe, the law emphasized adulteration and the obligation to inform the consumer, but it also upgraded the administrative capacities and status of the Bureau of Chemistry in the Department of Agriculture, creating the predecessor of the current regulatory agency, the Food and Drug Administration, which for a long period was the only autonomous food-safety regulatory agency in the world.

While governments were only gradually and hesitatingly moving into the domain of food safety, they adopted a much more proactive approach in telecoms. Most European countries nationalized their telegraph industries and, later, their telephone industries. Germany nationalized telephony in 1878, followed by France (1889), Switzerland (1880), Austria (1895), Belgium (1896) and Britain (1911). State ownership of the telecoms industry was, with few exceptions, the rule worldwide (Levi-Faur, 2003). The rise of neoliberalism in the late 1970s had a major impact on telecoms but hardly any on food-safety. The divestiture of AT&T in

1984 pushed the old monopolistic (yet private-ownership) domestic regime in the US into a state of flux, and the implication of those changes were gradually felt across the world. A similar development in Britain led to the privatization of the old colonial telecoms provider, Cable and Wireless, in 1981 and to the partial privatization of British Telecoms and the establishment of an autonomous regulator in 1984. The British move seems to prove the feasibility of competition for Europeans and countries well beyond Europe that were tuned to British developments. The incentives for regulatory emulation were created as soon as it became evident that competition was possible and would bring significant benefits for consumers in terms of both the cost and the quality of service. Other governments increasingly followed the American path and the British example, and acted to privatize telecoms operators and to regulate monopoly power using sector-specific agencies. Privatization and the establishment of regulatory authorities were therefore highly correlated events. Yet regulatory agencies proved to be even more popular than privatization. Throughout the world, only 90 countries privatized some of their telecoms operators but 120 countries established regulatory agencies (Levi-Faur, 2002).

This radical regime change in telecoms was not matched in food safety. While the US Federal Drug and Food Administration faced strong criticism (especially on drug issues), changes at the domestic level were hardly radical. Certain controversies on risk assessment that affected food additives were resolved in the 1970s and 1980s in the courts, but changes in the food-safety regime were hardly felt. More changes were evident in the United Kingdom, especially after the 1980s. Yet these changes were basically the results of the failure of the domestic food-regime rather than of neoliberal or even European challenges. In October 1984 a lengthy series of food safety scares and crises started in the UK with food additives, to be rapidly followed by, for example, botulism, pesticides, veterinary medicines, salmonella, BSE and GM foods. The responses, although for a long period slow and hesitant, were in the direction of stricter and more extensive regulation (Millstone and van Zwanenberg, 2002).

At the regional level, it is possible to observe in Europe a general tendency towards the strengthening of telecoms and food-safety regulation. The role of the European Commission and EU-level players was growing almost constantly during the 1980s and the 1990s in the field of telecoms. The publication of *Action Lines* (1983) served as the basis for the Community's earlier telecoms plan (Schneider et al., 1994). In 1986 a new directorate for telecoms was established in the European Commission, indicating the growing ambitions of

the Commission in this sector.⁸ A Green Paper on the liberalization of telecommunications equipment and services in 1987 presented new ambitions. New directives followed after 1988, and the adoption in 1990 of the Open Network Provision (ONP) was a very important initiative to harmonize access conditions for telecommunications networks and services for all member states. Except for basic telephone services, which remained under monopolies, value-added markets began to be opened under these directives. Intense conflicts between the European Commission and some member states occurred after 1988 over their respective responsibilities. However, in 1991 the European Court of Justice confirmed the Commission's powers on this issue. Yet within those period key member states such as Germany and France began to endorse telecoms liberalization. Intense debates on the nature of the EU regime continued during the 1990s, and four more Green Papers were published between 1990 and 1996, focusing on different aspects of the reregulation of the telecoms systems (Natalicchi, 2001). In June 1993 the Commission proposed the liberalization of all voice telephony services (local, domestic and international) and, after two meetings of the Telecommunications Council, in June 1993 the member states agreed to open voice telephony, the major segment of the market, to competition as of 1 January 1998 for all EU countries (but with moratoria for specific countries).⁹ These moves led to the creation of a regulatory regime at the EU level that committed members states to open competition in the provision of telecoms services. However, several attempts to set up an autonomous European agency at the center of this regime failed.

While issues of telecoms liberalization appeared on the agenda of the EU in full force in the 1980s, food-safety issues became high politics in Europe only in the mid-1990s. While the food sector is an area where EC regulation dates back to the earliest days of the Community, and EC provisions relating to foodstuffs are collected in a volume which by the mid-1990s had already run to more than 700 pages (Majone, 2000, 281), the effects of EU legislation on the member-states regimes were minimal. The saliency of food-safety issues on the EU agenda increased in the wake of the BSE crises and the international trade negotiations in the context of the General Agreement on Trade in Services (GATS). In the late 1990s food safety responsibilities were moved away from DGIII (Industry, internal market) to the directorate-general for health and consumer protection, known now as DG-SANCO (Millstone and van Zwanenberg, 2002, 595). Towards the end of the 1990s the commission suggested the creation of a European Food Agency with the support of the food industry (Majone, 2000, 282). A White Paper on food safety from 2000 endorsed the idea and proposed an integrated

statutory framework covering the entire food chain “from the farm to the fork” (Millstone and van Zwanenberg, 2002, 603-4). Yet the institutional regime proposed limited the scope of the authority of the proposed agency mainly to issues of risk assessment. A General Food Law from January 2002 (EC NO 178/2002) gave force to the White Paper’s recommendation, and a European Food Safety Authority started to operate in 2002. The general tendency of EU food regulation is towards a stronger and more restrictive regime in food safety. While commentators tends often to emphasize the weakness of EU regulatory structures in food safety (Kraphol, 2004; Millstone and van Zwanenberg, 2002), EU food safety regulation are stronger today than in the past. Bernauer and Caduff go even farther to suggest that “[t]his governance system bears the risk of a race to the top in EU food safety standards without significant positive effects on consumer trust” (Bernauer and Caduff, 2004, 5).

Only a very limited parallel growth and expansion of regional regulatory structures is evident in Latin America. The signing of the Mercosur agreement in 1985 between Argentina and Brazil and its inclusion of Paraguay and Uruguay in 1991 did not result in institutional expansion on the European scale. Regionalism, however, is stronger in telecoms than in food-safety issues. There are frequent Latin American telecoms conferences, and a network of government regulators (Regulatel) is active in the dissemination of information and training. While this form of cooperation is still embryonic, it represents more intensive activity than in food-safety, where regionalism is hard to identify. This is not to say, of course, that food-safety issues are not increasingly on the agenda of policymakers in Latin America or that there is no progress in the quality and scope of regulatory controls. A study of food safety in Brazil found that, while there have been improvements in Brazil’s food safety regime, priority is given to quality assurance for export markets over such assurance for domestic consumers (Salay and Caswell, 1998).

Stricter regional controls on telecoms and food-safety issues are accompanied by a growth in both the scope and the intensity of global regimes in the context of trade issues and the growing role and interest of the European Commission in “regulatory export”. The reputational benefits that telecoms liberalization brought on the EU project allowed also a shift in the international regime for telecoms as the outcome of a joint transatlantic project. Telecoms issues were defined no longer as issues of international interconnections of independent national systems but as issues of equal market access. Accordingly, the institutional center of the global regime moved from the ITU, which privileged the old

national telecoms operators, to the institutions of the international trade regime. Telecoms was redefined as “service industry” and thus fell under GATS from 1994 and led also to the establishment of the World Trade Organization (WTO). The critical issue of network liberalization was delegated to a special voluntary forum of the Negotiating Group on Basic Telecommunications (NGBT) that first met in 1994 and concluded an accord on telecoms in February 1997.

Similar developments are evident in food-safety domains. The signing of the 1994 GATT (now WTO) agreement on Sanitary and Phytosanitary Standards creates some principles for an international regime for food-safety issues (Hooker, 1999). The agreement seeks to minimize trade conflict by providing some principles for food standard-setting. It specifies that countries may set their own risk standards, but that these must be science-based, transparent, and applied equally to domestic and imported products (Unneevher and Jensen, 1999). The agreement provides new mechanisms for dispute resolution by developing scientific consensus regarding sanitary standards. A key element in setting standards is carrying out a risk assessment of the hazard. “Only then can a country defend that a particular sanitary standard is science based and actually reduces risk” (Unneevher and Jensen, 1999). The new WTO agreement and the dispute mechanism that it involves did not replace the old institutions of food safety regulation but amalgamated and incorporated them. For example, the Codex Alimentarius was recognized as the mechanism for developing scientific consensus around food-safety standards.

To what extent is there a shift towards more private and voluntary instruments of regulation? Surely, new state-level agencies cannot be the hallmark of a new regulatory order if there is a shift towards more private and voluntary instruments of regulation. Let us evaluate developments on the basis of the main innovative instruments of regulation in telecoms – the RPI minus X mechanism – as well as the notion of “asymmetric regulation”. RPI (retail price index) minus X is a formula for regulating of costs that ‘formalizes’ the criteria for the update of tariffs. The RPI represents the basis for calculations of a fair price, while X reflects the regulator’s demands for efficiency. The new formula is the brainchild of Stephen Littlechild, who effectively designed the regulatory regime that was constructed following the privatization of British Telecoms in 1984.¹⁰ The regulatory instrument dealt quite successfully with monopolists incentives to inflate their costs under regimes of price-regulation (Averch and Johnson, 1962) and was diffused swiftly across the world. This new

regulatory instrument represents an innovation in states' instruments of command and control regulation rather than the expected shifting of the balance of control towards private regulation.

The same is true for a more conceptual innovation in the field of telecoms and regulation more generally. The notion of "asymmetric regulation", which reflects the ambition to create a level playing field for different economic players, is all but étatist. In contrast to the principle of a single law applying equally to all, asymmetric regulation sets different procedures and standards for different business actors. In order to curtail and control the dominant firm's market share, telecoms regulators in Europe and the United States imposed various sets of requirements, obligations and rules of behavior on dominant operators. Asymmetric regulation is usually justified where economic power is not equally distributed. Network interconnection is one critical such area. Because dominant operators derive much of their power from their ability to transfer calls between large numbers of subscribers, any new entrant to the market will be in an underprivileged position. Because of the heavy investment required to achieve broad user coverage, the most practical arrangement for promoting competition is to allow new and small competitors to connect their lines to the dominant TO network. In theory, such interconnection arrangements can be left to market negotiations between the parties; in practice, dominant operators do not have incentives to offer competitors a fair, cost-oriented, and technically feasible connection to their own networks. The global telecoms regime therefore obliges state telecoms officials to regulate for open access.

The scope for self-regulation by corporations and industry-sponsored private regulation at the national and regional levels in food safety is wide. Information asymmetries are not absolute and are not equal across all types of food, and thus allow the development of self-regulatory controls as well as third-party certifications. At the same time investment in branding is very high and therefore sensitive to negative public response. One can therefore expect the growth of private regulation as sellers, distributors and marketing chains have incentives to invest in safety and quality assurances. This is all the more true in view of the concentration of the food industry and of the ability and tendency of the marketing chains to demand higher food safety standards from producers. Yet, while there is indeed growth in private systems of food-safety assurance, they often find themselves depending on mandatory rules and regulation. The current "regulatory mix" includes private and

voluntary instruments on the one hand and public and coercive instruments on the other. One of the most notable of food-safety instruments, the Hazard Analysis Critical Control Point (HACCP), was diffused initially as a private instrument of regulation to a mandatory standard. HACCP focuses on verifiable control of the process of food production (aimed at establishing good production, sanitation, and manufacturing practices that produce safe food, through identification of points in the production processes that are most critical to monitor and control). HACCP was incorporated into public legislation and increasingly is accompanied by some performances standards. Thus, Codex Alimentarius adopted guidelines for HACCP in 1993. An EU directive from 1993 (effective in December 1995) made it a mandatory instrument of regulation. From 1994 it was mandated gradually in different industries in the US. HACCP is now in use in most developed countries, and is increasingly practised in less developed countries that export food products into industrialized markets (Unnevehr and Jensen, 1999). While economic evaluation is increasingly accepted as good practice in the development of food safety regulation, it is evident that many, and maybe even the majority of, existing public interventions still go beyond the economic and the scientific in making their case for regulatory controls (Henson and Caswell, 1999, 593). The relevance of our observation on the growth of state level administrative agencies is therefore confirmed by the evidence of the limits of private and voluntary forms of regulation in these two sectors.

III. Theories of Regulation for the Age of Regulatory Explosion

Two broad perspectives dominate the literature on the creation of autonomous regulatory agencies. The public interest perspective suggests that these agencies reflect the growing social and economic demands for expertise and for stable, fair and effective governance (Baldwin and Cave, 1999, 19-21; Mitnick, 1980). Accordingly it is suggested that risk assessment, problem definition, fact-finding and professional management by experts are necessary in the face of market and social failures in an increasingly complex environment. The more complex the environment is, the greater is the need for a professional and scientific approach to problem-solving. This is an old theme in the literature: "In general, the commission form has been championed by those who believe that administrative regulation requires a high degree of expertness, a mastery of technical details, and continuity and stability of policy" (Bernstein, 1955, p. 4). These requirements can allegedly be met by a

board of commissioners functioning in a neutral environment, free from partisan and political considerations. Actors that promote autonomous regulatory institutions are expected to do so in the public interest, and regulators are largely expected to act in the public interest. A second strand of the public interest literature suggests that stable regulatory regimes are often achieved by a credible commitment by politicians to a long-term policy commitment that aims to elicit maximum trust from the public in general and from economic constituencies such as investors in particular. To the extent that public and investor trust is an important quality of democratic governance systems, theories of credible commitment via institutional design should be considered as a version of the public interest theory of regulation.

The second broad perspective of regulation is often labeled the “private interest” theory of regulation (Baldwin and Cave, 1999, 21-25; Mitnick, 1980, xx-xx). It includes three distinct but complementary strands. The first strand is most often known as the “regulatory capture” theory of regulation. The most forceful and oft-cited, though not necessarily the most original, expression of this approach was George Stigler’s maxim “regulation is acquired by the industry and is designed and operated primarily for its benefit” (Stigler, 1971, 3). A more theoretically thick elaboration of this view is offered by Lowi’s *The End of Liberalism* [1969] and Olson’s *Logic of Collective Action* [1965]. Both demonstrated the stronger incentives and capacities of narrow interests (e.g., producers) to organize than those of more general interests (e.g., consumers), and the vulnerability of government to penetration by narrow interests. A second strand of the private interest theory of regulation is the theory of bureaucratic entrepreneurialism. Here, regulatory developments are initiated and promoted by public servants who thereby enhance their power and authority. These bureaucrats are treated like any other agents that preach public welfare, but are essentially power-seekers. A third strand of the private interest perspective on regulation emphasizes institutional and political conflicts within government as a mechanism explaining the emergence of autonomous regulatory institutions. Thus, scholars of American institutional design suggest that Congress tends to regard the autonomous agency as a “bulwark against excessive centralization of power in the executive branch” (Bernstein, 1955, 4). An inherent tendency of democratic system to produce party change and therefore political uncertainty may explain actions of delegation. Thus, it was suggested that an incumbent government could be expected to try to prevent future governments from undoing its policies through delegation to an independent agency (Moe, 1990; 1995), which may make it more difficult for successive

governments to change current policy choices as expressed in the current institutional design.

Public and private-interest theories tell us different stories about the origins and the outcomes of regulation. These conflicting views offer a theoretical framework that is both challenging and politically relevant (Ogus, 2004, 42). We therefore do not recommend giving it up. Nonetheless, three major challenges, evident from our findings, call for a rethinking and reformulation of these two perspectives. First, we suggest that sector-, country- and region-specific explanations cannot deal with the general trend of regulatory explosion that is evident in the growth of these regulatory agencies across regions, countries and sectors. Second, we need to identify the actors that are responsible for the widespread change across the sectors, countries and regions that we study. As mentioned in the introduction, while the proponents of American regulatory capitalism in the form of the Garner, Progressive and consumer movement are readily identified, the actors responsible for the sweeping restructuring of the state are harder to identify. If “regulation is acquired by the industry and is designed and operated primarily for its benefit”, as suggested by private interest theories of regulation (Stigler, 1971, 3), why was there a strong deregulation movement in the 1970s? If business interests were in control of regulatory developments, who challenged them (Baldwin and Cave, 1999, 23-4)? Finally, private- and public-interest theories of regulation should be reformulated so as to explain the regulatory explosion that we identified at the global, regional and national levels.

We take some steps to deal with these challenges. As suggested above, we elaborate three broad theories of regulatory change that rest on the claim that regulatory change is interdependent, that is, change in one jurisdiction increases the likelihood of change in another. The first of these theories focuses on the dynamics of regulatory competition between jurisdictions (e.g., countries) and their effects on the stringency of regulation. In its original formulation the theory of regulatory competition between loosely connected jurisdictions will lead to economic efficient results (Tiebout, 1956; Geradin and McCahery, 2004). Here we employ a version where the competition is not only for economic benefits but also for public and electoral support. We also suggest that the equilibrium of regulatory competition does not necessarily reflect an efficient regulatory equilibrium. The second theory focus on regional integration processes and suggests that regulatory agencies and regulation in general are part of a new political, social and economic order that is

characterized by integration processes (Majone, 1994; 1997a). Positive integration will create regulatory structures at the EU level that prioritizes democratic performances, while negative integration prioritizes economic imperatives (Sharpf, 1996). Finally, the third theory highlights the role of policy learning and 'knowledge' actors in the diffusion of policy reforms. It suggests that the major agents of reforms are professionals who both enjoy the authority of expertise and are members of transnational networks and communities. The regulatory agencies serve as an institutional platform for a new type of state official, the regulocrat. The theory is then open to an assessment of the benign and malign effects of the regulocracy. Together these three perspectives supply us with some criteria for assessing the nature and the causes of regulatory change, allowing us to distinguish between race-to-the-top, positive regulatory integration and benign regulocrats on the one hand and race-to-the-bottom, negative regulatory integration and malign regulocrats on the other. It is time to examine the evidences.

IV. Does Regulatory Competition Matter?

The theory of regulatory competition implies that the major force beyond the regulatory reforms and specifically the choice of autonomous regulatory agencies as best practice is the dependency of state officials on capital. The more privatized is the economy, the greater is its dependency on private capital and the greater is the need to create a stable institutional design that is technocratic rather than political in its orientation (Tiebout, 1956; Geradin and McCahery, 2004; Radaelli, 2004). Good institutions, it is argued, are causally linked to better economic performance (North, 1990; Williamson, 2000). The establishment of autonomous regulatory authorities is seen as a signal that political jurisdictions are sending to investors in order to maximize investment. This signal conveys the following message: we are serious about private investment and we assure you that we have a stable institutional design that separates technocratic decision-making from political decision-making and put constraints on the reversal of policies. The delegation of regulatory competencies to an agency that is autonomous from political pressure is a possible solution in that it is meant to increase the credibility of commitment after market decisions have been made (Spiller, 1993; Levy and Spiller, 1994; Majone, 1996; 1997b; 2001). The dynamics of institutional design in the context of regulatory competition is therefore the dynamics of a sequential game between investors who wish to invest at time t , and then, once more or less irreversible investment decisions

have been taken, are under the threat that government will renege on their commitments at time $t + 1$. If investors anticipate this, they may decide not to invest in the first place, so as to escape expropriation. This outcome is suboptimal for both governments and investors.

By way of extending the argument about the effects of growing economic integration and taking into account the fact that globalization is not only about market integration but also about growing political and social contacts across jurisdictions, it is suggested that trustworthy institutional design is the means whereby politicians attract public support, especially in situations of crisis in public trust. With the growth of global constituencies and the creation of a global model of best practice in the form of autonomous regulatory agencies, public officials are increasingly drawn to adopt the same institutional design as their colleagues in other jurisdictions. This theory has an important diffusion element. Credibility games are taking place not only between the governments and their economic and political constituencies but also between different governments, who compete on credibility. As soon as a given government gains credibility through the adoption of a certain institutional design, other governments might want to narrow the credibility gap by adopting the same institutional design.

As mentioned above, the theory of regulatory competition in its original design predicted economically efficient results. The expectation of efficient economic results beyond the model is often doubted (Geradin and McCahery, 2004).¹¹ But we don't have to believe that the institutional design itself is efficient or otherwise; all that matters is the fact that other governments adopted it and that it came to be perceived as a mechanism to enhance credibility. Thus, to explain the rapid diffusion of the institution itself we do not need to consider its role after the decision to invest but just the signal that it conveys to potential investors and the public.¹² That much is often disputed and it might be useful to follow David Vogel's (1995; 1997) assertion that regulatory competition can lead to both socially desired and undesired results. In practice, increasing economic (as well as political and social) integration can lead to a "race to the bottom" (also known as "trading-down" and "Delaware effect") or a "race to the top" (also known as "trading-up" and the "California effect"). Among the factors that may lead to or encourage a "race to the top" one can mention (a) relative low compliance costs; (b) strategic use of regulation as non-tariff barriers; (c) greater opening of the political system to social demands; and (d) common interests between some segments of business and consumers groups. (Vogel, 1997; xxxx, xxxx).

To what extent can the theory of regulatory competition deal adequately with the growth of regulation at the global and regional levels and the patterns of variations and similarities that we found in the diffusion of regulatory agencies? The simple answer is that it can do so to a great extent, probably because we formulated it in a broad manner, suggesting that competition is a social process and the trophy is not only economic but also political support. What we get in return for this less parsimonious formulation of the theory, however, is cost-effective. First of all, the theory hypothesizes a link between privatization and regulatory reforms. It expects a strong correlation between the privatization of certain sectors and the likelihood of the establishment of regulatory authorities, and this is a pattern that is clearly documented in studies of privatization and establishment of regulatory agencies in telecoms and electricity around the world (Levi-Faur, 2002) and event-history analysis of the diffusion of regulatory agencies in Latin America (Jordana and Levi-Faur, 2005) and in Europe (Gilardi, 2005). Second, the notion of regulatory competition speaks directly to the interdependency of decisions taken in different countries as they compete for capital, either with all other governments or, perhaps especially, with their peers (Elkins and Simmons, 2005). Third, the notion of regulatory competition seems to be compatible with the variations in the diffusion of regulatory institutions across the social and economic arenas. Since regulatory competition is tailored to the context of private investment, we can expect regulatory agencies to appear in economic rather than social domains. Fourth, the dynamics of growth in regulation-*for*-competition in telecoms and strictness in food-safety standards seems to go hand in hand with the expectation of race-to-the-top. It is, in other words, within the expectations of the theory.

The notion of regulatory competition, while elegant and while certainly supplying a convincing explanation of some aspects of the establishment of regulatory agencies, has at least three shortcomings. First, the theory cannot deal with the slower and less autonomous diffusion of regulatory agencies in social arenas. Second, it is not compatible with our expectation of the establishment of regulatory agencies in the two regions when one considers their credibility gap. Since long-term investment in Latin America is riskier than in Europe, one might reasonably expect the signals that Latin American governments convey to be stronger than the European. Yet the propensity of governments in both regions to establish regulatory agencies in economic arenas is very similar. The variations are due mainly to a smaller number of competition agencies. Third, the actors beyond the process of

change are not exposed to scrutiny. All in all, it is possible to suggest that regulatory competition theory does fine when it applies to economic sectors and in the context of privatization but fails to account for patterns of variations in the social sectors, regions and political agency.

V. Does Regionalization (Europeanization) Matter?

A second theory of regulation emphasizes the effects of regionalization in general and of Europeanization in particular. The link between regulation and regional integration was made most explicitly by Giandomenico Majone, who forcefully argued that the EU is a regulatory state. Limited fiscal and human resources constrain the ability of the Commission and its allies, and they therefore find it necessary to rely on regulation as a major tool of governance. Much of the budget is earmarked for specific policy goals (such as subsidies to farmers), and the “Brussels Bureaucracy” is, despite its image, very small compared with national bureaucracies. Under these constraints it made sense to rely on the regulatory dimensions of policymaking. For Majone, causality in the formation of the regulatory state runs from the EU to the member state: “in order to take an active part in the formulation of all these new rules in Brussels, and then to implement them at national level, member states have been forced to develop regulatory capacities on an unprecedented scale” (Majone, 1997, 146). This hierarchical formulation of regulatory developments is accompanied by an expectation that efficiency considerations will eventually force the creation of regulatory institutions at the EU level (Majone, 2002c). Yet the road to a more functional European regulatory polity will not be smooth. Majone’s own account suggests that constitutional constraints (the Meroni Doctrine and Article 7 of the EC Treaty) limit the ability of the EU to create fully independent regulatory institutions at the European level. It is important, however, to note that this situation is portrayed as anachronistic, and Majone predicts that functional pressures will lead to the creation of an elaborate structure of regulatory institutions at the European level in the not very distant future (Majone, 2002c, 303).

A softer and less forceful interpretation of the relations between regionalization and regulatory developments suggests that the EU acts in the sphere of regulation not coercively but as a platform of policy transfer (or diffusion) of regulatory innovations and best practice (Radaelli, 2000). Accordingly, the question would be to what extent the establishment of

regulatory authorities at the national level was the result of process of policy learning within the EU context or, alternatively, the result of mimetic behavior propelled by group pressures. A broader interpretation of the literature on the EU and especially Majone's regulatory state thesis may link regional organization in general to the development of regulatory institutions.

Before examining the evidence against the theory, we could usefully discuss certain aspects of regionalization in Europe and Latin America. First, the integration process is stronger in Europe than in Latin America, in both its political and its economic dimensions. The European Union is at least aiming towards the creation of political structures that are in some respects federalist. Mercosur, the closest equivalent to the EU in Latin America, is much more limited (four members), newer (1991) and focused mostly on trade issues.¹³ The second important aspect of the regional integration process is the economic bias of both organizations. Regional integration in the EU is often directed towards the coordination of production (such as the Coal and Steel Community), industrial policy (large projects such as Airbus) and trade liberalization (the major issue since the 1980s). Social issues are secondary on the agenda of both the European Union (on the European social deficit, see Leibfried and Pierson, 1995) and Mercosur. Finally, it is important to note that regional regulatory powers are mainly entrenched in laws, while administrative powers (and much room of maneuver) are left at the national level. More specifically, the administrative muscles of the European regulatory state – and even more so the Latin American – are at the level of the member states, not the region.

To what extent can regional regulatory developments deal adequately with the growth of regulation and with the patterns of variations and similarities that we found in the diffusion of regulatory agencies across the two regions? We believe that the EU integration process and especially hierarchical models of EU policymaking and politics have very limited explanatory power. First, the dominant decision-making procedures are consensual; and while a country may have to agree to certain policies even under consensual procedures, it is unlikely that many countries would find themselves in this position on any given issue. Second, EU powers do not touch on issues of ownership (thus, public or private ownership is a matter for national discretion). Third, in all the relevant directives that deal with regulatory issues there is no provision that requires member states to establish regulatory authorities. While there is a requirement to separate ownership from regulatory functions in order to

ensure that the regulator treats all market actors fairly, the particular institutional design that is chosen does not necessarily to include delegation, and is essentially a matter of national choice. This notwithstanding, the Commission has closely scrutinized the regulatory structures in place, and has repeatedly stressed that lack of independence is a strong market disincentive. Even though the Commission has been careful to note that the organization of regulatory authority is a matter of national choice, its preference for independent regulatory agencies is quite clear (see, e.g. for telecoms European Commission, 1999: 9-10; 2000: 12-14; 2002: 18). In some cases, like Belgium, the Commission explicitly requested more independence for the regulatory authority (European Commission, 1999: 10; 2000: 12).

The limits of hierarchical models are also evident when the regulatory structures at the EU level are examined. Efforts to create European regulatory agencies either ended with failure (telecoms, see, Levi-Faur, 1999; Michalis, 2003) or were not raised at all (electricity, see Jakobsen, 2004). The only case of a powerful regulatory agency at the European level, though not a marginal exception, is the European Central Bank (Jabko, 2004). In response to the difficulties in establishing influential regulatory agencies at the regional level, the European Commission is promoting networks of national regulators and a coherent European identity in each of these sectors through the exchange of information. A group of European telecommunications regulators was established in Paris in 1997 to cooperate on issues of market liberalization, as well as acting as an advisory body to the European Commission. In electricity the Florence Forum of European regulators was established in 1998, and this network was formalized in 2003.¹⁴ In the regulation of securities and exchange a Federation of European Securities Commissions (FESCO) was set up in 1997 (Muegge, 2004). The common denominator of all these arrangements is their low degree of institutionalization. Developments in social regulation are somewhat more institutionalized, but are still soft in their nature. The European Environmental agency was established in 1990, the European Agency for the Evaluation of Medicinal Products in 1995, and the European Food Safety Agency in 2002. It would be a mistake to examine the work of these agencies through the hierarchical models of domestic politics. These agencies have no compulsory regulatory powers. The function of the Environmental Agency is to provide timely, targeted, relevant and reliable information to policy making agents and the public. The mission of the pharmaceutical agency is to provide high quality evaluation of medicinal products; to advise on research and development programs and to provide useful and clear information to users

and health professionals. Finally, the Food Agency focuses on the provision of “independent scientific advice and clear communication on existing and emerging risks.

At the same time that regulatory agencies at the member state level are growing in scope and resources, the agencies at the EU level (such as they are) work on principles of voluntarism and consensus in implementation and influence through the provision of information and the creation of networks of regulators across the member states (Dehousse, 1997; Kreher, 1997).¹⁵ The importance of these networks stems from the fact that regulators interacting in networks care about their professional reputation and thus attempt to preserve their autonomy (Majone, 2002: 387). In addition, a common professional identity can develop, thus favoring similar changes across countries. Therefore, as coordinators of European networks, European agencies have contributed to the creation of transnational professional and epistemic communities. If we are to explain regulatory changes as the outcome of regionalization, we need to adopt the softer interpretation of its effects. Yet, even if we take that softer approach, regional variations in integration across Latin America and Europe do not explain the similarities in the diffusion of economic regulatory agencies across the two regions. They do somewhat better in regard to the deficit in regulatory agencies in social arenas when compared with economic arenas, since regional integration schemes of the 1980s and 1990s are oriented towards economic issues. If regional integration is a relevant factor in the creation of regulatory agencies, it might well be that the social regulatory deficit at the national level is really a reflection of the same deficit at the regional level. The political ambitions of proponents of federal Europe rest to a large extent on the democratic legitimacy of the European project. Responsiveness to social demands is one tool that may serve to enhance the legitimacy of the European project. Thus, the expansion of EU regulatory powers into social arenas may serve to signal that the European Union is not only the Europe of Business but also “Social Europe” (or “Europe of its Citizens”). The lack of political ambitions of this sort in Latin America makes such considerations redundant and in consequence, so this line of reasoning suggests, there are fewer social regulatory agencies in Latin America. Yet while the “Social Europe” agenda may in the future bring important changes, probably in the direction of more regulation, it does not seem to supply a convincing explanation of the major regulatory developments that have been identified so far.

VI. Do Transnational Networks of Professionals Matter?

Transnational networks of professionals supply a third theory of regulatory change. We find this theory very helpful in understanding the positive-sum growth in regulations in general and regulatory agencies in particular. It is grounded in theories of policy learning and knowledge-based change with reference to world-society literature (Meyer and Rowan, 1977; Meyer et al., 1997) on the one hand and the agency of knowledge actors embedded in transnational networks of professionals on the other (Keck and Sikkink, 1998; Stone, 2003; 2004). It is via this theory that we capture the missing element in the study of change: the agents who make it happen are the heroes and the ones that directly gain from it are 'knowledge agents', actors who claim a legitimate role in the policy process on the basis of their superior 'scientific knowledge'. Indeed, the scale of regulatory change, captured here through the diffusion of new regulatory institutions, is too widespread and too intimately driven by knowledge actors to be explained exclusively by power and institutional configurations.

In formulating this theoretical perspective we draw significantly on the World Society Approach (WSA). First, the WSA suggests that there are startling degrees of global cultural, social and organizational convergence across the world. Second, diffusion of cultural, social and organizational forms of governance from the center to the periphery is increasing. Third, these processes of social, organizational and cultural convergence are driven by "a world society" of international organizations and related transnational networks that share Western liberal norms and preferences. Fourth, in the making of these changes science, the scientific experts and the educational system constitute the central framework, agents and channels of change (Drori et al., 2003). As will soon be clear, this insight, which connects "norm diffusion" to "science and rationalization" is a critical issue in our understanding of the diffusion of regulatory agencies. Fifth, the high level of social, cultural and organizational isomorphism that exists today is far too great to be explicable solely in functionalist terms. Scientific knowledge "constitute[s] the religion of the modern world" (Meyer et al., 1997, 166). Consequently, some of what is usually portrayed as regulatory learning is sometimes mere regulatory emulation.

The emphasis of the WSA on the diffusion of norms may be more strongly entrenched in explicit references to actors of knowledge, namely, transnational networks of professionals

and experts. Thus, our explanation here stand on a second pillar: transnational networks of professionals are the backbones of what might be labeled “Global Civil Society” (Kaldor, 2003). These transnational networks of experts include both “non-state actors” in the global system (Higgott, Underhill and Bieler, 2000) and intergovernmental networks of experts (Slaughter, 2004). Their importance is suggested to be increasing, following growing interaction across borders and the celebrated authority of scientific knowledge. The decline of trust in social institutions may well affect also the sciences; but science seems to be the least affected form of authority. The rise of science and of professionalism is also enhanced by the “end of ideology” as ideologies used to place some important constraints on scientific autonomy. Some of these transnational networks are civil in the sense that their members are autonomous from the state; but others, including – most important for our purpose – networks of regulators, are not (Slaughter, 2004). Regulators are increasingly professionals and this professionalism entails some autonomy. A simple dichotomy between intergovernmentalist and supranationalist networks might be misleading in our case. Networks of regulators are acting under two masters, their epistemic community and the particular sovereign of each of the members. As noted above, participation in networks makes regulators sensitive to their reputation among their peers; in addition, regulatory networks can develop common professional norms, which, as with most other professions, tend to value autonomy. Epistemic authority tends to be transnational, yet political masters are usually national governments and follow a domestic logic of policymaking. Institutional autonomy (following delegation to independent regulatory agencies) makes it easier for the regulators to follow the policy preferences that are driven by their epistemic community and makes it more difficult for politicians to control the regulators. Transnationalization therefore increases the power of some experts and some agents of the state, and decreases the power of others. As noted above, the creation of networks of agencies at the EU level coordinated by European agencies may also contribute to this trend.

We suggest that the authority of science as a force of convergence on “Western rationality”, as suggested by the WSA, the diffusion of new information through transnational networks and the interest of knowledge actors in enhancing their autonomy may add up to a powerful explanation of the co-diffusion of privatization and regulatory agencies and its framing as policy learning. At the center of such an explanation would stand the economics profession and its advocacy of efficient use of resource on the assumption of scarcity; the formation of

core ideas and the recruitment of the high priests of knowledge rest with the universities, especially American ones (Dezalay and Garth, 2002; Bockman and Eyal, 2002; Kogout and Macpherson, 2003). Their advocacy of market-based allocation and of the work of global markets is essential for the advance of privatization policies; their growing recognition of the importance of institutions explains the transformation of independent regulatory agency from a peculiar institution that was confined largely to one sector (finance) and one country (the United States) into a global best practice. The knowledge-oriented nature of these networks creates authority patterns which are celebrated as policy learning. Yet policy learning is not divorced from power, and power comes into play in our account in two forms. First, the institutional platform for the authority of knowledge is guaranteed through the delegation of authority and legal provisions that protect it from some political controls (e.g., ministers and their staff). Second, expertise and knowledge are segmented into various branches of knowledge, and in consequence “professional competition” is one of the characteristics of the new order. In some cases, when market issues prevail, lawyers, engineers and biologists find themselves undervalued when compared with economists.

We find that economists have been much more present in the new regulatory agencies in the utilities (supplanting, to some extent, the traditional role of engineers in these areas), and, more generally, that the new regulators are typically characterized by high-level academic degrees. It is not untypical to find that entry into the higher echelons of the regulatory agency depends on a second or third degree. What economists gained others lost, and the measure of their success is not only their dominance of the economic regulatory agencies but also the failure of natural scientists and engineers to achieve similar autonomy in social arenas. The modest diffusion of the institution of the independent regulatory agency in the social arena is therefore mainly due to the gap in professional prestige and the uneven resources of different experts. Note that this theoretical perspective can also deal with the gaps between Latin America and Europe in the diffusion of social regulatory institutions.

VIII. Conclusions

Early work on regulatory reforms and on the rise of the regulatory state concentrated either on broad structural changes that forced the adaptations of state structures (e.g. Müller and Wright, 1994; Majone, 1997) or, by contrast, on national and sectoral institutions and path dependencies mediating reforms (e.g. Thatcher, 1999; Eberlein, 1999). We advance a research

agenda that examines the diffusion of regulatory agencies as an interdependent event, where a decision to establish an agency in one sector, nation and region increases the likelihood of the adoption of the agency idea in other sectors, nations and regions (Levi-Faur, 2002; Jordana and Levi-Faur, 2005; Gilardi, 2005). Cases of the creation of regulatory agencies – in different sectors, nations and regions – can now be studied in a context that was practically missing. We also downscale the importance of privatization as *the* defining characteristic of the emerging political, economic and social order. Ours is the era of regulation, regulatory explosion and administrative regulatory agencies. While the diffusion of privatization and the diffusion of regulatory agencies are highly correlated, they do not represent the two sides of the same coin but conflicting trends, each with its own dynamic and consequences. The fivefold increase in the number of regulatory agencies, as well as the institutionalization of new layers of regulatory regimes at the global and regional levels, are altogether puzzling. One might have expected a retreat of the state and a relaxation of rules and regulations amid the rise of neoliberalism, the prominence of the American deregulation movement, and the teleology of privatization. The academic debate seems at last to be moving beyond privatization and the principal-agent framework.

We call the new global order “regulatory capitalism” and put forward four observations of its dynamics. First, the sweeping trend towards more economic and social agencies is accompanied, as the study of telecoms and food sectors demonstrated, with a parallel growth in the scope and authority of regulatory institutions at the regional and global levels. The new national telecoms regimes are grounded in an elaborate set of regulations that promise to feed extensive academic, legal and policy discussions in the years to come. Thus, for example, the new Telecom Act in the United States brought the number of pages of primary legislation for telecoms to over 300. The number of pages in the official compendium of FCC decisions and proceedings has nearly tripled since the passage of the new act in 1996. Membership in the Federal Communications Bar Association increased by 73 percent between 1995 and 1998 (Kahn, 2004, 2). Developments in other countries follow the same trajectory of “freer markets, more rules”. The growth of regulation is similarly reflected in food-safety issues: “in both developed and developing countries, food safety assurance systems are generally becoming more stringent, in response to enhanced, both real and perceived, food safety problems. This is occurring through changes in both public and private quality control systems” (Henson and Caswell, 1999, 589). While new food-safety risks are adding to the challenges of established ones, the arguments of “trading down” and

"race-to-the-bottom" do not seem to represent the dynamics of regulatory change. The dynamics is, on the contrary, towards more elaborate structures of governance. This doesn't imply that food is governed rationally, that it receives the attention it deserves, or that the attention that it gets is directed to the issues that represent the greatest risks to human health. New and innovative instruments of telecoms and food-safety regulation are clearly visible, but these instruments do not necessarily compete with each other and certainly do not shift the center of gravity of the regimes towards private and voluntary forms of regulation. We therefore suggest that the global diffusion of state-level regulatory agencies is part of a more general regulatory expansion.

Second, the notable development of more state-level agencies in Europe than in Latin America co-evolves with stronger regional structures of governance in Europe. Indeed, the institutional development of regulatory agencies at the national level in the two sectors studied is more impressive than the institutional development at the EU level. It may well be that the EU will take over and become the major source of regulatory authority in telecoms and food safety, but the trend is not necessarily in this direction. Third, the slower diffusion of autonomous regulatory institutions at the state level in food safety than in telecoms is compatible with slower and less institutionalized regulatory structures at the regional and global levels for food safety than for telecoms. For some reason there is a lesser degree of delegation around food-safety issues than around telecoms issues. We believe that this might be an outcome of the differences in the professional composition and prestige of the networks of regulacrats as between telecoms and food safety, but more research is needed on this issue. Finally, while there are variations between the spread of telecoms agencies and that of food agencies in both regions, the gaps are larger in Latin America. Accordingly, the gaps between regional structures of governance in the two industries are wider in Latin America (where telecoms cooperation is evident but food-safety issues are left almost completely out of the regional scheme). This may suggest less coherent developments in governance in Latin America than in Europe.

All these pieces of evidence suggest a paradigm change in the study of regulation. We call attention to the growth of regulation at all levels of governance, which co-evolve rather than replacing each other. A regulatory positive-sum paradigm for the understanding of the growth of regulation requires us to rethink and to re-evaluate the ways in which we think about cause and effect in the making of the new regulatory order. The hallmark of the new

global order – though not its only characteristic – is the regulatory agency. Regulatory agencies are mushrooming all over the world. Neoconservatives in the United States dismantled a few marginal regulatory agencies and no more. Neoliberal governments in the UK are responsible (even if reluctantly) for the creation of at least a dozen regulatory agencies and, probably by the way of example, for their popularization all over the world. Paradoxically, the idea of regulatory capture that dominates academic discourse did not stop governments and academics from establishing the agencies and legitimizing them as best practice. The regulatory agency became the citadel of new and highly influential actors, best called “the regulocrats”. Unlike their predecessors, the bureaucrats of the developmental and welfare state, the regulocrats enjoy wide institutional autonomy and good job conditions. Much autonomy is derived from their academic credentials. In the higher echelons of the regulocracy it is not rare to find people with Ph.D.’s from abroad, or a university professor at the head of an agency. The scientification of policy and politics (Drori et al, 2003; Marcussen, 2005) is accompanied by growing international contacts, the institutionalization of networks and the creation of epistemic communities of regulocrats around policy problems and sectors. The strength and prestige of these epistemic communities of regulocrats significantly affects the institutional design of the sectoral regime at the state level.

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Notes

¹ The new practice takes the form of a delegation of power from ministers and ministerial departments to arms-length bureaucracies that are staffed and governed by technocrats and professionals. A new layer of public controls, regulatory in its orientation, is increasingly signifying a new approach to policymaking whereby politicians delegate authority to regulators who in turn enjoy considerable autonomy in the formulation and administration of policies.

² Regulation is conventionally termed "economic" when it deals with the price, entry, exit and service of an industry, while it is termed "social" when it concerns non-economic issues, controlling health or hazard risks for individuals (Meier, 1985: 3).

³ WHO Global Strategy for Food Safety (WHO, 2002).

⁴ "In many ways results were very heartening. The size of regulatory establishment was curtailed for several years. The regulatory review process had a substantial impact. The most significant accomplishment was so undramatic that it went unnoticed: during the Reagan presidency no new regulatory agency was established nor was any major regulatory program substantially expanded. It reminds us of the Sherlock Holmes tale where the most significant clue was the fact that the dog did not bark" (Weidenbaum, March 2000).

⁵ Agencies are included in the dataset if they have some degree of structural separation from ministerial hierarchies. The date of establishment is the date of creation of the agency, or of its reform in case autonomy was granted subsequently.

⁶ <http://www.fao.org/docrep/meeting/005/y7871e/y7871e00.htm>, accessed 24 August 2005.

⁷ Food and Agriculture Organization of the United Nations and World Health Organization Report of the Evaluation of the CODEX ALIMENTARIUS and other FAO AND WHO food standards work, 2002.

⁸ DGXIII. In 1999 it became the Information Society Directorate.

⁹ A few years later, in 2003, the European Union updated the regulatory package, including media, data and traditional communications in a single regulatory framework. However, the distribution of responsibilities and the institutional organization of the sector as between member states and European Union institutions did not change.

¹⁰ See Ian Bartle (2003), 'The UK Model of Utility Regulation: A 20th Anniversary Collection to market the "Littlechild Report"' Retrospect and Prospect', CRI Proceedings 31, The University of Bath.

¹¹ It is interesting to note that very little is known about the extent to which the establishment of regulatory agencies actually increases the credibility of regulatory policy.

¹² Thus, we move the discussion from the debate on the effects of regulatory competition (race to the bottom or to the top) to the logic of the choice of instrument (regulatory design).

¹³ Historically, in Latin America economic and political integration initiatives have been quite common since the 19th century, starting during the independence wars, but most failed in their initial stages and none achieved a solid basis. More recently, during the second half of 20th century, many integration initiatives emerged, of very different natures. Many of these initiatives were of a sub-regional nature, such as Mercosur (Argentina, Brazil, Uruguay and Paraguay) or the different attempts to create the Centro-American Union. Others were limited to trade issues, as for example the 1994 NAFTA (a free trade agreement between Mexico, US and Canada) or the FTAA - currently in the final stages of negotiation - that includes almost all North and South American countries. Yet perhaps the more active institutions for integration are in fact the development banks, such as the Inter-American Development Bank, by now creating regional networks and stimulating the diffusion of new governmental technologies. In Latin America, geography did not help integration, but the

orientation to developed countries markets kept internal regional trade and any communications weak until today.

¹⁴ Decision 2003/796/EC of 11 November 2003.

¹⁵ However, the pharmaceutical regulatory agency, probably an exception in the whole social sphere, has *de facto* obtained important regulatory capabilities in some areas (Feick, 2002).