

The Global Diffusion of Regulatory Capitalism

By
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This article analyzes the rise and diffusion of the new order of regulatory capitalism. It offers an analytical and historical analysis of relations between capitalism and regulation and suggests that change in the governance of capitalist economy is best captured by reference to (1) a new division of labor between state and society (e.g., privatization), (2) an increase in delegation, (3) proliferation of new technologies of regulation, (4) formalization of interinstitutional and intrainstitutional arrangements of regulation, and (5) growth in the influence of experts in general, and of international networks of experts in particular. Regulation, though not necessarily directly by the state, seems to be on the increase despite efforts to redraw the boundaries between state and society.

Keywords: regulatory capitalism; regulatory state; contagious diffusion; regulatory explosion

Ours is an era of change, and indeed change is prevalent everywhere, from Latin America to eastern Europe, from southern Europe to northern Europe and from Africa to Asia.¹ Such change is commonly captured in the notions of privatization and deregulation and understood as the outcome of the rise of neoliberalism and the sweeping forces of economic globalization.² Yet it has significant regulatory components that go largely unnoticed and that are incompatible with either neoliberalism or economic globalization.

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This volume highlights the globalization of regulation and the regulatory components that are transforming the neoliberal agenda of deregulation and privatization in unexpected ways. Governance through regulation (that is, via rule making and rule enforcement) is at the same time both constraining and encouraging the spread of neoliberal reforms. Regulatory expansion has acquired a life and dynamics of its own. Regulatory solutions that were shaped in North America and Europe are increasingly internationalized and projected globally. Deregulation proved to be a limited element of the reforms in governance and, where it occurred, it was followed either immediately or somewhat later with new regulations. These regulations are shaping a new global order that reflects the set of problems and solutions that were socially and politically constructed in some dominant countries and regions. While the ideals of democratic participation and discursive democracy have gained some prominence in recent decades, the reality is that many supposedly sovereign polities are increasingly rule takers rather than rule makers (Braithwaite and Drahos 2000, 3-4). We could now be experiencing a transformation from representative democracy to indirect representative democracy. Democratic governance is no longer about the delegation of authority to elected representative but a form of second-level indirect representative democracy—citizens elect representatives who control and supervise “experts” who formulate and administer policies in an autonomous fashion from their regulatory bastions (van Waarden 2003).

Bits and pieces of this new order have been expressed and explored through the notions of the rise of the regulatory state (Majone 1997), the postregulatory state (Scott 2004), the “deregulation revolution that wasn’t” (Vogel 1996), the legalization of international relations (Goldstein et al. 2001), adversarial legalism (Kagan 2001; Keleman 2004), regulation inside government (Hood et al. 1999), the “audit society” (Power 1999), the regulatory society (Braithwaite 2003), the growth of internal control systems in corporations (Parker 2002), and the proliferation of instruments of smart regulation (Gunningham and Grabosky 1998). Each of these notions captures some important aspects of the new order, but they are not usually explored as the interrelated elements of regulatory capitalism. There may well be some advantages in exploring these elements of the new order in an interrelated way. Thus, it is argued that a new division of labor between state and society (e.g., privatization) is accompanied by an increase in delegation, proliferation of new technologies of regulation, formalization of interinstitutional and intrainstitutional relations, and the proliferation of mechanisms of self-regulation in the shadow of the state. Regulation, though not necessarily in the old-fashioned mode of command and control³ and not directly exercised by the state, seems to be the wave of the future, and the current wave of regulatory reforms constitutes a new chapter in the history of regulation.

Much debate has taken place over the causes and impact of neoliberalism, but few doubt that neoliberalism has become an important part of our world (Campbell and Pedersen 2001, 1; Crouch and Streeck 1997; Hirst and Thompson 1996; Kitschelt et al. 1999). Yet a revisionist literature on the impact of neoliberal reforms is increasingly challenging the notion of neoliberal change and the consolidation of

a neoliberal hegemonic order. Thus, Frank Castles's (2004) work on welfare state expenditure seems to provide conclusive evidence that welfare state expenditure across the rich countries did not decline. Linda Weiss's critique of the *Myth of the Powerless State* (1998) and her emphasis on the persistence of neomercantilist strategies in foreign economic relations seem now not to attract dissent but to reflect the consensus. Swank and Steinmo (2002) found "remarkable stability in the levels and distribution of tax burdens" across the fourteen developed economies and that statutory cuts in tax rates were not associated with reductions in effective average tax burdens. A recent review of the globalization literature across the social sciences concluded that "the most persuasive empirical work to date indicates that globalization per se neither undermines the nation-state nor erodes the viability of the welfare state" (Guillén 2001, 254). While neoliberalism may well be the dominant discourse, it is not the only discourse available. This volume suggests that the discourse of regulatory reform and "good governance" both complements the neoliberal reforms and poses a challenge to some of its simplistic assumptions about the nature of the relations between politics and the economy in general and the state and the market in particular (cf. Campbell and Pedersen 2001, 3). Consequently, it adds another dimension to this revisionist view of the effects of neoliberalism and the rise of a new global order. While at the ideological level neoliberalism promotes deregulation, at the practical level it promotes, or at least is accompanied by, regulation. The results are often contradictory and unintended, and the new global order may well be most aptly characterized as "regulatory capitalism."

The new regulatory order is social, political, and economic. State, markets, and society are not distinct entities. Indeed, regulatory capitalism rests on an understanding of the relations between state and market along a condominium (Underhill 2003).⁴ The state is embedded in the economic and social order; any change in the state is expected to be reflected in the economy and the society, and vice versa. That much is reflected through the various dimensions of regulation. Thus, efficient markets do not exist outside the state and the society in which they operate, and efficient markets may require not only strong regulatory frameworks but also efficient ones (Polanyi 1944; Underhill 2003). Elsewhere I have argued that regulation-*for*-competition may be a necessary condition for competition both in network industries and well beyond them (Levi-Faur 1998). Efficiency is often achieved through smart regulations that are a sine qua non for the efficient function of markets. At the same time, the legitimacy of capitalism rests on the ability of government to mitigate negative externalities through "social regulation" (or the regulation of risk). Regulation is both a constitutive element of capitalism (as the framework that enables markets) and the tool that moderates and socializes it (the regulation of risk). From this point of view, the history of economic development is the history of regulation.

This leads directly to a discussion of regulatory capitalism in historical perspective.

1. The Origins of Regulatory Capitalism

Capitalism is understood here as an order of economic accumulation that achieved its maturity sometime in the nineteenth century. Maturity implies some coherence between the social and political on one hand and the economic on the other. This maturity was served mainly by the British hegemony in the nineteenth century, by the social and economic implications of the Industrial Revolution, and by the global echoes of the French Revolution. At the price of some simplification, it is possible to identify three distinct capitalist orders, each characterized by a different division of labor between state and society. These three distinct orders are presented in Table 1 on the basis of a distinction between two major functions of governance: *steering* (leading, thinking, directing, guiding) and *rowing* (enterprise, service provision; Osborne and Gaebler 1992). While in the nineteenth century steering and rowing were both dominated by business, the crisis of the inter-war period and the process of democratic enfranchisement led to the growth and expansion of the roles of the state, which in many spheres took over both functions. The new order of regulatory capitalism represents a new division of labor between state and society and in particular between state and business. For some it represents a “return to the past,” that is, nineteenth-century laissez-faire capitalism. In the present interpretation, it is a distinctive order that critically differs from laissez-faire capitalism. In regulatory capitalism, the state retains responsibility for steering, while business increasingly takes over the functions of service provision and technological innovation. This new division of labor goes hand in hand with the restructuring of the state (through delegation and the creation of regulatory agencies) and the restructuring of business (and other societal organizations) through the creation of internal controls and mechanisms of self-regulation in the shadow of the state (Ayres and Braithwaite 1992, 15).

This scheme of change, like all schemes, may benefit from some qualifications and reservations. To begin with, regulatory capitalism has not abolished earlier state structures and competing modes of governance. Change is embodied not as much in the demise of welfare capitalism as in its augmentation by new techniques of political, social, and economic control. Redistribution seems to have peaked, but it has not been rolled back (Castles 2004). Moreover, new regulatory institutions, technologies, and practices are increasingly embedded in the crowded and complex administrative structures of modern capitalist nation-states. The diversity of regulatory capitalism augments the diversity of earlier state structures. Second, this scheme does not clearly explicate the rise of international regimes as one of the defining characteristics of regulatory capitalism. The global level is simply not there and so neither is a qualified shift from the national to the international. International competition, coordination, and cooperation between the regulatory systems of the United States and Europe are important in shaping the global arena as well as domestic regulatory regimes (Kahler 1995; Bach and Newman 2004). The United States and Europe certainly use regulation as a form of power to advance

TABLE 1
 THE TRANSFORMATION OF GOVERNANCE AND THE
 NATURE OF REGULATORY CAPITALISM

	Laissez-Faire Capitalism (1800s-1930s)	Welfare Capitalism (1940s-1970s)	Regulatory Capitalism (1980s-)
Steering	Business	State	State
Rowing	Business	State	Business

NOTE: This table is based on Braithwaite (2000). It was first explicated in a somewhat different format by Jordana and Levi-Faur (2004).

the interests of their own constituencies in the global arena (Halabi 2004; Jessop 2002; Cerny 2001; Drahos 2003). At another level, the international order is one in which transnational networks of technocrats and professions have more influence than ever before (Haas 1992; Domínguez 1997; Dezalay and Garth 2002; Slaughter 2004).

Third, this scheme does not reflect historical, cross-national, and cross-sectoral diversity. Historical diversity is reflected in the fact that certain countries, most notably the United States, made regulation a major element of their governance systems much earlier than the 1970s. In fact, both McLean (2004) and Moran (2003, 41-42) identified a Victorian regulatory state. The U.S. system of governance since the end of the nineteenth century and most visibly and widely during the New Deal is often labeled “regulatory capitalism” (Yergin and Stanislaw 2002, 28-48). Sectoral diversity is reflected in the widespread variations in the use of regulation (and regulatory agencies) across different sectors. Governance through autonomous regulatory agencies was evident in many countries’ financial sectors early in the twentieth century (Jordana and Levi-Faur forthcoming). Yet even nowadays, the extent, form, and scope of governance through regulation vary widely from one sector to another. The current rise of regulatory capitalism is actually about the spread of certain techniques of control more from one sector to another than from one state to another (Jordana and Levi-Faur 2005 [this volume]). National diversity is reflected in the various degrees of diffusion of regulatory innovations and practices. In short, if this schematic picture of the changes within capitalism is to be useful, one should keep one’s mind open to historical, sectoral, and national diversities.

2. Regulation beyond Privatization

For some, the expansion of regulation in both scope and depth is a marginal aspect of the new capitalist order. Such a view is traditionally associated with prevailing Marxist and neoliberal approaches that downgrade the role of institutions in general and the state in particular (see Skocpol [1985] for a review and an alterna-

tive). In some guises, these approaches converge nowadays in the argument that globalization emasculates the autonomy of the state (e.g., Strange 1996). Yet even within Marxism and liberalism, there are important deviations from the standard view. Neo-Marxist interpretations, such as those of the French school of regulation (Boyer 1990; Poulantzas 1969; and Jessop 2002), suggest taking the state seriously. One of the most important developments in the discipline of economics is the rise of neoinstitutional economics and with it the rediscovery of institutions as an important aspect of the functions of markets (North 1990; Levy and Spiller 1996; Williamson 2000). The notion of regulatory capitalism sits quite comfortably with these revisionists' views of the market and the relations between state and economy. Yet at a deeper level, it is grounded in a research tradition that emphasizes the importance of the state and from time to time has to bring to it back in (Skocpol 1985; Weiss 1998). The notion of regulation and governance through rule making and rule enforcement is essential if one is to bring the state back in once more in the era of globalization.

[T]he new global order may well be most aptly characterized as “regulatory capitalism.”

Nowadays, the discourse of globalization, especially economic globalization, suggests the demise of the state and therefore often undermines the importance of regulations as mechanisms of governance (although private nonstate regulations are increasing, no one suggests that they are even potentially equivalent to state regulation).⁵ Many of the assertions of the globalization discourse, especially in its cruder forms, are based on the notion of globalization as a primarily economic process. Yet globalization is also a social, cultural, and political process. It promotes not only firms but also tourism, not only integration of markets but also ideas about the appropriateness and desirability of markets. Yet even if one subscribes to a predominately economic view of globalization, it is possible to “emancipate” regulation from the globalization of firms and markets. Indeed, this is what Braithwaite and Drahos (2000) did when they distinguished between the globalization of firms, the globalization of markets, and the globalization of regulation. Sometimes these processes are advanced together, but at other times it is possible to observe the globalization of regulation without a corresponding globalization of firms and markets (Levi-Faur 2004). This relative independence of the globalization of regulation, which to some extent is manifested in the legalization of international relations, suggests some independence of regulation from the economic order in general and from economic processes and organizations in particular.

FIGURE 1
THE DIFFUSION OF PRIVATIZATION AND REGULATORY AUTHORITY
AROUND THE WORLD: TELECOMMUNICATIONS

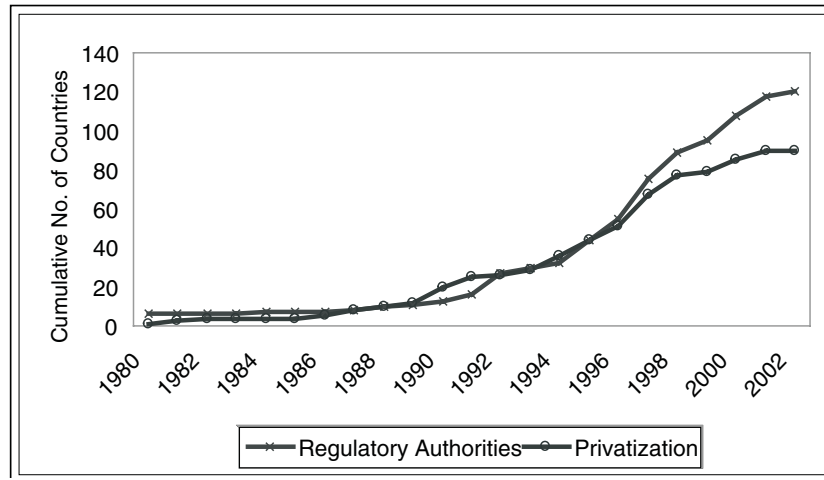
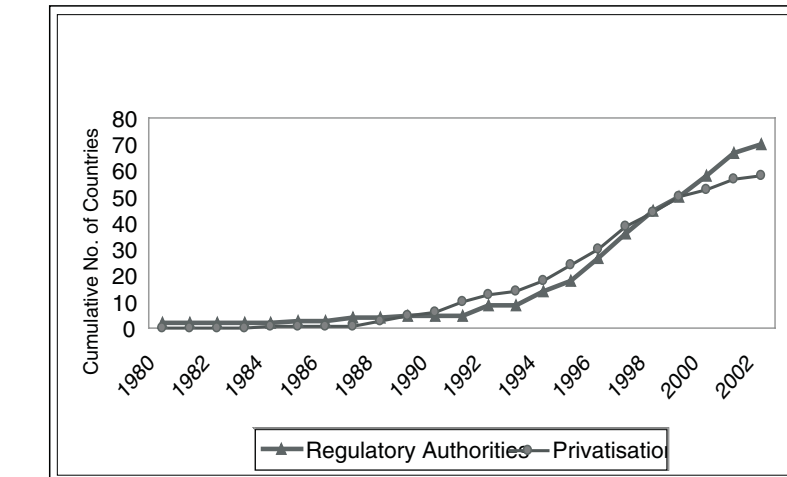


FIGURE 2
THE DIFFUSION OF PRIVATIZATION AND REGULATORY AUTHORITY
AROUND THE WORLD: ELECTRICITY



Political, economic, and social perspectives that marginalize the role of regulation and emphasize the primacy of economic processes are therefore part of a long tradition and a wider debate in the social science. This is an important issue that is

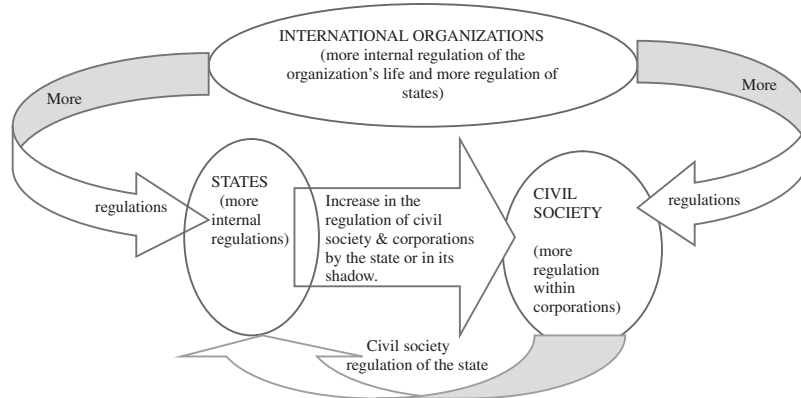
essential to the progress of social science, and it cannot be resolved here. Instead, this article sheds light on some of the most important aspects of the regulatory components of “regulatory capitalism.” I start with Figures 1 and 2, which portray the close relations between the decision to privatize and the decision to create regulatory agencies in two sectors: telecoms and electricity. The graphs are based on a data set of 171 countries and document the timing of privatization and of the creation of regulatory authorities.⁶ The close proximity of the two lines reflects the intimate relations between one of the major features of the neoliberal agenda—privatization—and the rise of regulatory institutions. Yet it would be misleading to conclude that this close association suggests that regulation is just the flip side of neoliberalism. What is interesting to note about the two graphs is that, if for a while privatization was more popular than the creation of regulatory agencies, since the 1990s, the opposite seems to be the case. The rationale for the creation of regulatory agencies seems to be stronger than the rationale for privatization. This suggestion is even more strongly supported when one examines the broad issues and sectors that are now being subject to some kind of regulatory agency or commission. Social regulatory agencies and commissions—outside the context of privatization—in areas such as the environment, human rights, food safety, pharmaceutical products, and privacy are increasingly diffused across the world (Gilardi, Jordana, and Levi-Faur forthcoming).

While neoliberalism gave strong impetus to regulatory reform, including the creation of new instruments of regulation and the establishment of new regulatory authorities, this should not be considered as a mere balancing act to the rise of neoliberalism. Regulation is a necessary condition for the functioning of the market, not only a compromise between economic imperatives and political and social values. While most of the regulatory agencies that were established are committed to the promotion of competition, the degree to which this competition is enhanced by regulation is giving these policies a neomercantilist (e.g., strategic trade, promotion of intellectual property rights) rather than a liberal character (Levi-Faur 1998). Moreover, regulation is helping to legitimize markets and facilitate transactions by enhancing trust. One way to understand the relations between trust and regulatory capitalism is to suggest that “we audit, and we regulate, when we cease to trust” (Moran 2000, 10). Another way is to focus on the changing patterns of trust allocation by the public rather than the alleged decline of trust (O’Neill 2002, 9-10) and therefore to emphasize the transfer of trust from elected politicians to regulators. Yet whatever the pattern of causality is, the interaction between trust and regulation implies that regulation is more than the flip side of capitalism.

3. Interrelated Components of a New Order

One important assertion beyond the notion of regulatory capitalism is that the various elements of the new order are in themselves highly related. Figure 3 portrays the various facets of regulatory capitalism in the widest possible manner. More regulation is observed not only in the context of the traditional relations

FIGURE 3
REGULATORY GROWTH AND REGULATORY CAPITALISM



NOTE: Regulation within corporations represents a wider process of regulatory growth. The notions of regulatory society, audit society, and risk society reflect the social dimensions of regulatory capitalism.

between governments and business but also within the state, within corporations, and in social (not only economic) arenas. The scope of growth in these various arenas is still to be documented, and thus Figure 3 should be considered as a heuristic for analysis or a set of hypotheses about the changing relations between economic, society and politics in late-modern societies.

But let me rest my case with some of the insights that might lend initial support for the hypotheses. The seminal study by Hood and his colleagues (1999) of regulatory oversight inside the British government found an explosive growth in the investment in oversight. In an era when governments aspired to be leaner and meaner in the name of efficiency, regulators within government—and thus outside the traditional arena of government-business relations—doubled their budget. From the 1980s the British government substantially reduced the number of its direct employees, with more than one in four civil servants disappearing from the payroll between 1976 and 1996. Yet total staffing in public sector regulatory bodies went dramatically in the other direction, with an estimated growth of 90 percent between 1976 and 1995 (pp. 29-31). It might well be that this growth reflects their role as the chosen instrument for making the rest of the public service leaner and meaner. Indeed, if the patterns of regulatory growth and civil service downsizing had continued at the 1975 to 1995 rate indefinitely, Hood et al. (p. 42) estimated that late in the present decade the civil service would have had more than two regulators for every “doer” and more than ten regulatory organizations for every major government department.⁷

Michael Power (1999) characterized social development as the rise of “the audit society” (and thus indirectly as the rise of the regulatory society). During the late 1980s and early 1990s, Power observed, the practice and terminology of auditing began to be used in Britain with growing frequency and in a wide variety of contexts. Financial auditing, the traditional regulation of private companies’ accounting by external financial auditors, came to acquire new forms and vigor. Among the emerging new forms of auditing were forensic audit, data audit, intellectual property audit, medical audit, teaching audit, and technology audit. Auditing won a degree of stability and legitimacy that institutionalized it as a major tool of governance well beyond the control of business: “increasing numbers of individuals and organizations found themselves subject to a new or more intensive accounting and audit requirement . . . and a formalized and detailed checking up on what they do’ (p. 4). The augmentation of auditing practices creates the “audit society,” “a collection of systematic tendencies and dramatizes the extreme case of checking gone wild, of ritualized practices of verification whose technical efficacy is less significant than their role in the production of organizational legitimacy’ (p. 14). Regulatory growth, Power suggested, is not only an answer to the problem of political control over the economy but represents at the deeper social level the demands for legitimacy and trust and the difficulties involved in accepting and dealing with risks. The demand for and the supply of regulation shape the way we act; and while Power was skeptical about the ability of regulation in general and auditing in particular to meet the expectations that it creates, one can take his analysis as one more indication of the growth of regulation outside the relatively narrow scope of neoliberalism (see note to Figure 3).

Another indication of the new order of regulatory capitalism is the proliferation of regulatory instruments to ensure corporate social responsibility. In the past two decades, we have also seen an exponential increase of tools for integrating social justice and environmental protection issues into the governance structure of corporations. These tools include “environmental management systems, corporate reporting systems, codes of conduct, third-party certification systems and ethical investment” (Courville 2004, 210). Big corporations are just as subject to “red tape” and excessive internal regulation as they are to external regulation. Domestic and self-regulation, whether to enhance social responsibility or to meet the demands of lawyers and insurers, are exploding, and the demands on corporations seem only to increase the sphere of internal regulation (Braithwaite 2003; Parker 2002). The issue now is not whether corporate social responsibility is effective (or, in more general terms, to what extent regulation achieves its purpose) but the fact that regulation and the formalization of internal structures of governance are increasing.

Regulatory capitalism is a technological as much as a political order.⁸ It is technological in the sense that it is shaped not only by the debate about more or less government but also by the quest for better instruments of regulation.⁹ “Smart regulation,” as Gunningham and Grabosky (1998) called it, is defined by the use of a mixture of regulatory instruments, by the mobilization of new regulatory actors and third parties, and by harnessing the enlightened self-interest of individuals and

corporations. One of the most interesting indications of the rise of the regulatory capitalism is, therefore, the rise of new instruments of regulation: from eco-labeling and league tables to auctioning and from “gatekeepers” and “awards” to RPI minus X.¹⁰ Some of these instruments such as price control (even in its RPI minus X form) are compulsory while others, such as eco-labeling, are voluntary. Some are promoted and enforced by nongovernmental international organizations; others are enforced by governments and intergovernmental organizations. In all these forms, they are important indications of the new order. The new instruments are highly sophisticated, but are also vulnerable to misuse. The auctioning of the frequencies for Third Generation Mobile Technology has resulted in huge incomes for some European governments but may also result in a delay in the introduction of the technology. More important, it represents a new form of taxation on the telecoms industry and, according to some interpretations, led to the crisis in the telecoms industry and consequently also to the world economic recession of 2000 to 2003. There are plenty of examples of sophisticated regulatory instruments that have been used inappropriately. Knowledge-embedded instruments are one of the defining characteristics of the new order of regulatory capitalism and a reason for moderate optimism about their ability to provide more efficient and participatory forms of governance. Efficiency and participation may or may not lead to widespread distribution of the efficiency gains. Regulatory capitalism may or may not take a more social orientation. Yet it is clear that it does not necessarily exclude the possibility of a progressive distribution of resources by means of regulatory instruments when the political agenda will be more inclined to be open to the weakest members of the society.

All in all, the increasing scope and depth of regulation suggest that it is a phenomenon to be reckoned with. The notion of regulatory capitalism that rests on a new division of labor between state and society, on the proliferation of new regulatory agencies, on new technologies and instruments of regulation, and on the legalization of human interactions seems to open an agenda which may well become a major area of social, economic, and political research.

4. Diffusion: Beyond Structural Explanations

Individual and collective action is conventionally interpreted as a response for external “structural forces.” This volume, by contrast, emphasizes the interdependencies and contagious aspects of the change. Max Weber’s example of human reaction to rain that distinguishes between social action and mere structural action is instructive for the current purposes. Some people may open their umbrellas because it is raining; some may open theirs partly or mainly because others are doing so. The former react to structural conditions (rain); the latter react to some mechanisms that might be best defined by the notion of “contagious diffusion” (following what others do). These mechanisms are hard to specify as they usually operate at the actor level and in the context of group processes, while the present observations usually involve *ex post* analysis and are often at the macro level. Yet

contagious diffusion can be distinguished empirically from mere structural processes of change by looking at the extent to which the adoption of the practice by one actor increases the probability of its adoption by another (cf. Strang 1991). What this definition does not capture, however, is the social aspects of diffusion: something that is best done by Rogers (1995, 5), who defined diffusion as “the process by which an innovation is communicated through certain channels over time among members of a social system.” To bring these aspects out, it might be useful to define diffusion as the process by which the adoption of innovation by member(s) of a social system is communicated through certain channels and over time and triggers mechanisms that increase the probability of its adoption by other members who have not yet adopted it. What is readily observed as an outcome of both structural and diffusion processes of change is “clustered behavior” (to use Elkins and Simmons’s 2005 [this volume] distinction) or convergence. In other words, what may on the surface look like a diffusion process (a forest of umbrellas in rainy day) is not necessarily driven by mechanisms of diffusion.¹¹

It is thus hardly surprising that when the domestic order in Europe and the North is changing, this order [regulatory capitalism] is also exported elsewhere.

But why a diffusion perspective at all? Not too long ago, social scientists were busy explaining stability and exploring the political, social, and economic factors that made the postwar order seemingly permanent. Since the 1980s, the focus has changed radically, and change, transformation, and convergence dominate the research agenda. As might be expected, the new agenda has revived old debates and opened new ones, including on the power of the state, the source of change, and its implications. In this debate, the sources of change are captured in various guises, from Europeanization and regionalization via technological innovations (information economy) to ideational change (neoliberalism) and, of course, globalization. Implicit in the analysis of both sides in the debate is the assumption of the existence (or absence) of certain “structural” forces that change the ways politics, societies, and economies are governed. Although the two sides respond differently to such change, they both tend to perceive the forces of change as “global,” “common,” and external to the politics, societies, and economies under consideration. These “structural” views may capture some of the dynamics of change, but they certainly do not capture the suggestion that change is socially and politically *con-*

structured and that it is internal to the web of actors who are involved in the process whereby it acquires meaning and is interpreted and projected. Moreover, with the growth and expansion of communication and transport technologies, we can expect interdependencies to be even more important forces of change. Diffusion is expected to be more and more important as global networks became more and more dense and wide in scope.

Closely related to the diffusion perspective is the “policy transfer” approach to change. Policy transfer is “the process by which knowledge about how policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting” (Dolowitz and Marsh 2000, 5). This approach is closely connected to the notions of lesson drawing (Rose 1991) and policy learning (Sabatier and Jenkins-Smith 1988). The framework of analysis of this literature is best captured by Dolowitz and Marsh’s model (2000, 8-9) and its six questions: Why do actors engage in policy transfer? Who are the key actors? What is transferred? From where are lesson drawn? What are the different degrees of transfer? What restricts or facilitates the policy transfer process and how is the process of policy transfer related to policy “success” or policy “failure”? The policy transfer approach attests to the growing recognition across the social sciences of the importance of diffusion processes and should be considered an important example of this growing literature on diffusion.

A diffusion perspective on global regulatory explosion suggests that the regulatory order that was shaped in some leading countries and sectors is then diffused to the rest of the world. Highly developed capitalist economies are experiencing structural problems in some sectors that then shape not only their internal order but also the way they see the rest of the world. Their own particularistic order is then “exported” or “projected” globally as a “universal rationality” (Meyer and Rowan 1977; Meyer et al. 1997). This should not be too surprising. The nation-state itself was formed in the center as a specific order of governance that reflected the balance of power in certain European countries. It was only then exported—through a combination of colonialism and utopian liberal internationalism—to the rest of the world. It is thus hardly surprising that when the domestic order in Europe and the North is changing, this order is also exported elsewhere. These observations are all mediated by the peculiar prisms of experts and actors of knowledge. It is our observations of one another, rather than the mere actions of others, that often make our actions interdependent. This “social” interdependency of choice implies that the probability of action by one actor is positively or negatively connected to the observed actions of others. When the decisions are positively interdependent, we may experience a successive process of adoption over time along an S-shaped curve. Thus, adoption of new practices, institutions, and instruments starts with an initially slow adoption (of behavior, policy, views, institution, technology, or instruments), then a successive and rapid adoption up to a certain point in time when the number of adopters per unit of time rapidly declines and adoption among the rest of the potential group becomes a rare event (Rogers 1995,

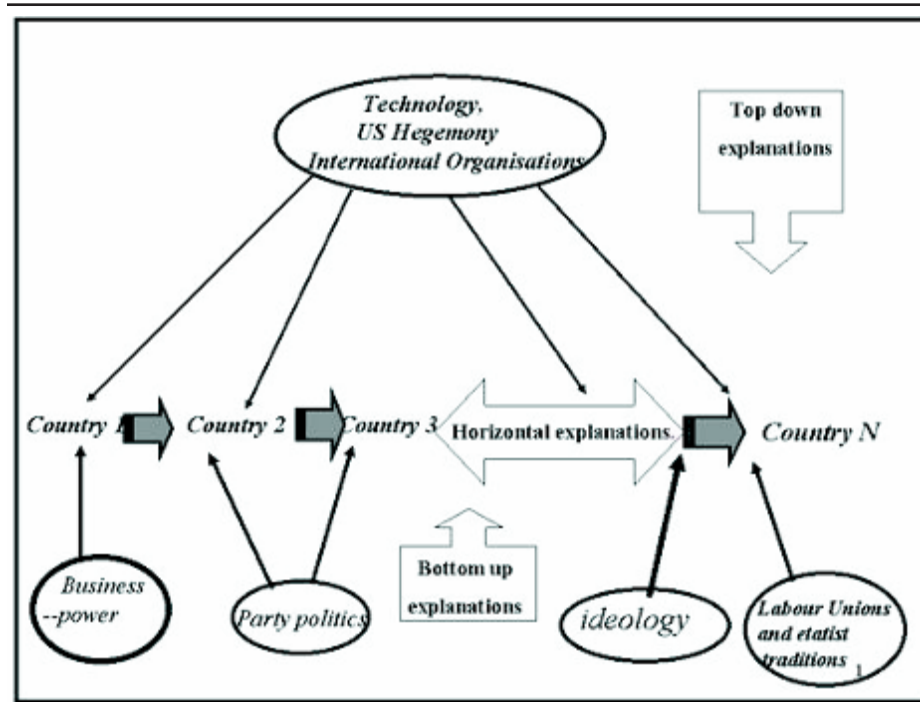
257-61). Interdependency among actors requires us to revise our understanding of causality in the process of change. So much was powerfully suggested in the context of the study of global business regulation:

More of the variance in culture and institutional structure is explained by patterns of modeling [i.e., diffusion, DLF] than by configurations of actor interests and their relative power. The clash of interests is not only quantitatively less important as an explanation, it is causally secondary: the interests of the actors are constituted in response to received models; they do not pre-exist. . . . Hence, in Australia we have laws criminalizing rape not because of any titanic struggle between a women's movement (or some other actor) which demanded rape laws and others who resisted them; rather, we acquired them without debate from British criminal law. Having occurred, it is now nearly impossible for any actors with any amount of political power to argue for a way of dealing with rape that disposes of the criminal-law model in favour of a radically different strategy. (Braithwaite and Drahos 2000, 581-82)

To make sense of the diffusion perspective in the context of global change, it may be useful to distinguish “horizontal” from “top-down” and “bottom-up” approaches (see Figure 4) to change. Top-down explanations discuss the advance of regulatory reforms as a response of national policy makers to exogenous (and often common) pressures from various international sources on national policy communities. This is a standard approach that is likely to be adopted by scholars of international relations, who would consequently identify “systemic changes” or “systemic powers” behind the rise of regulatory capitalism. One such example traces the change in the world economy and the new wave of democratization to “technologies of freedom” (Pool 1983). In a closely related version, change is alleged to reflect the transition from Fordist to post-Fordist manufacturing, the rise of the knowledge economy, and the integration of the world economy. In yet another version, it is international institutions, acting at least partially as agents of the United States, that are the sources of this change. Their financial power and the terms of conditionality that they enforce, as well as their monopoly on advice to governments, serve to explain systemic change in general and the rise of regulatory capitalism in particular.

Bottom-up explanations examine the advance or stagnation of reforms as the outcome of domestic balances of power and specific national styles. These approaches to change look at domestic (or national) trajectories of industrialization and state building (Thelen and Steinmo 1992), electoral competition (Frye and Mansfield 2004), the balance of power between business and labor (Murillo 2001), distributional coalitions (Schamis 1999), politicians' political survival (Geddes 1994; Way 2005 [this volume]), and leadership (Wallis 1999). If the top-down explanations are the fiefdom of international relations scholars, bottom-up ones are popular among area specialists and comparativists. To be sure, there is a tradition that is trying to bring the bottom-up and the top-down traditions together (Rosenau 1969; Gourevitch 1996; Putnam 1988), but this tradition, with some notable exceptions (Way 2005), does not include the “missing component” of “horizontal” patterns of change.

FIGURE 4
THE DIFFUSION OF REGULATORY REFORMS:
TOP-DOWN, BOTTOM-UP, OR HORIZONTAL?



The horizontal approach to change treats the decision to adopt regulatory reform as an “interdependent” decision that is taken within a group of actors who closely observe each other. The observation of regulatory reform in one sector increases the probability of regulatory reforms being adopted in other sectors in the same country and in the same sector in another country (Jordana and Levi-Faur 2005). This interpretation of change is grounded in the assumption that human action is social. The self-evaluation of one’s identity, interest, and action is not an isolated process. It is against the observations of others that one’s own identity and interests are formed and actions are taken. At the same time, it is suggested that social cohesion is not only a function of one’s national identity but is increasingly reflected in one’s profession, hobbies, and lifestyle. It is quite common for a policy maker who is an expert on telecoms to know more about telecoms developments in other countries than about developments in electricity in his or her own country. Actors are linked by information, competition, and cooperation and are tied together in formal and informal networks of information, enforcement, and harmonization (Slaughter 2004). These networks increasingly specialize around issues and sectors and develop their own discourse and hierarchies (Stone 2004). Together they create “world societies” of common understanding of the nature of

the problems, challenges, and solutions that they face (Meyer et al. 1997; Haas 1992). Their mutual interdependency in decision making suggests that policy makers are subject to incentives from their fellow policy makers in varied domains of action. Consequently, the study of horizontal mechanisms and channels of diffusion is imperative, and without it any understanding of systemic change is deficient. This is not to deny that the domestic setting (bottom-up considerations) and the effects of international organizations (top-down considerations) are important. Indeed, one of the most important challenges facing the horizontal approach is to interpret top-down and bottom-up institutions and actors in horizontal manner. Thus, the International Monetary Fund might be perceived as a node of a network rather than a command and control institution. Accordingly, ministries of finance will be examined as part of a network that expands both internationally (interacting with ministers of finance in other countries) and domestically (being part of national networks of actors).

5. Conclusions

The order of regulatory capitalism that is portrayed here varies in three major respects from the conventional wisdom. First, regulatory capitalism conveys a conception of change that is more specific than notions such as the “new world order,” the “retreat of the state,” or the rise of a neoliberal hegemonic order. Second, it examines changes as a diffusion process. Finally, it diverges in its approach to power and distributional issues from both the advocates of freer markets and their opponents. Let me summarize each of these issues in turn.

The new order of regulatory capitalism, which has been in the making since the 1980s, differs qualitatively from older forms of capitalist governance in its reliance on rules and rule enforcement. It is characterized by (1) a new division of labor between state and society (for example, privatization), (2) an increase in delegation (remaking the boundaries between the experts and the politicians), (3) proliferation of new technologies of regulation, (4) formalization of interinstitutional and intrainstitutional relations and the proliferation of mechanisms of self-regulation in the shadow of the state, and (5) the growth in the influence of experts in general and of international networks of experts in particular. It is suggested that this notion of a new order of regulatory capitalism goes beyond privatization and includes an increase in delegation to autonomous agencies, formalization of relationships, proliferation of new technologies of regulation in both public and private spheres, and the creation of new layers of both national and international regulation. In other words, a regulatory revolution is gathering pace despite the hegemony of neoliberal ideology. It is also suggested that it might be useful to understand these changes in an interrelated way (readers are invited to revisit Figure 3). More regulation of business by the state is related to more regulation within the state and within corporations as well as to the increase in regulation in the international arena.

At the same time, it is suggested that the new order is diffused rather than reproduced independently as a discrete event in each country and sector. Diffusion is a reflection of an increasingly interdependent world. Beyond economic interdependencies, there is a growth of “horizontal” channels of diffusion and an increase in the export and import of institutions and knowledge. This is expressed in diffusion from the center (or the North) to the periphery (or the South) and from some, hegemonic, sectors (finance, telecoms) to others (pensions, food safety). A diffusion perspective allows one to endogenize change, to see it in a social and network context, and, most important, to look at the role of “knowledge actors” in its diffusion (see the Conclusion by Levi-Faur and Jordana 2005 [this volume]). Finally, to suggest that states are restructuring and that the demand for and supply of regulation are on the increase is to suggest that power is entrenched nowadays in rules and consequently that the monopoly on rule making and rule enforcement is the major source of power. This view diverges from the materialist conceptions of power held by both neoliberals and neo-Marxists, and it also implies that regulatory capitalism is much more open to collective action than is usually portrayed by both advocates and opponents of freer markets. While the regulatory instruments and institutions that were developed in the past two decades certainly marginalized the domestic and global poor, the growing reliance on regulation as a mode of governance reopens the field for a more balanced approach to the distribution of power and resources. This is indeed the great challenge of regulatory capitalism.

Notes

1. In the study of change, most attention is devoted to privatization. Yet from a theoretical point of view, privatization is not necessarily the most interesting aspect of change. Other aspects of what I describe as the “regulatory revolution” may well be more important.

2. Neoliberalism is defined for my purposes as a transnational political-economic movement that appears as a reaction to the social-democratic hegemony of the postwar period and that advocates freer markets and less government. The criterion of its success is therefore the separation of markets from politics.

3. Command and control regulation is conventionally understood as the “old” way and as “the staple diet of many politicians. . . . It refers to the prospective nature of the regulation (the command) supported by the imposition of some negative sanction (the control)” (Gunningham and Grabosky 1998, 4).

4. Following Polanyi (1944), the condominium model suggests that “states and markets are part of the same integrated ensemble of governance. . . . The regulatory and policy-making institutions of the state are one element of the market, one set of institutions, through which the overall process of governance operates” (Underhill 2003, 765). Political economy often leaves “society” out of the analysis. For some theoretical foundations for a state-market-society model, see Migdal’s (2001) “state in society” approach.

5. Even the globalization literature seems to shift away from, or at least refine, the consensus on the demise of the nation-state (Guillén 2001, 254).

6. A privatization event is documented when some shares, however few, in the incumbent public operator(s) are transferred to private ownership. Often, the process of selling all the shares lasted many years. In these cases of multistep privatization, the earliest year of privatization is documented in Figures 1 and 2. For regulatory authorities, the years refer to the start of operation, not to the date of legislation. Because the sources of the data vary (see below), the countries that are covered do not necessarily overlap. Data were collected by the author. Beware: some overdetermination of the diffusion process in the figures is due to the col-

lapse of the Soviet Union, which increased the likely number of candidates for privatization in the 1990s when compared with the 1980s.

7. Some of the analysis in this section rests on Levi-Faur and Gilad (2004).

8. It would be a mistake to examine the notion of regulatory capitalism only from the point of view of more or less regulation or even of the “right” or balanced mixture of public control and individual freedom. Regulatory capitalism is driven and shaped to a large extent by the technologies or instruments of regulation.

9. This seems to have inspired the British Labour government of Tony Blair to change the name of the Deregulation Unit set up by the Conservatives to the Better Regulation Unit.

10. RPI minus X is a method of price regulation whereby tariffs of monopolies are regulated according to the Retail Price Index (RPI) minus some measure of efficiency (X). It was first applied to British Telecoms in 1984 and then extended to other British utilities as they were privatized. It is now widely used across different sectors and countries (Baldwin and Cave 1999, 226-38). This instrument is the brainchild of Professor Stephen Littlechild. See the twentieth anniversary collection of the Littlechild Report (Bartle 2003).

11. Diffusion studies are often inspired by models of technological innovation (Bass 1969; Baptista 1999) as well as by a long sociological tradition (Ryan and Gross 1943; Coleman, Katz, and Menzel 1957). More recent breakthroughs are associated with the introduction of aspects of threshold behavior (Granovetter 1978), event history methodologies (Berry and Berry 1999; Box-Steffensmeier and Jones 1997), and diffusion in social networks (Burt 1987; Marsden and Friedkin 1993; Macy 1991).

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