

Modern Regulatory Agencies – Professional and Judicial Objectivity or Increased Complexity in Decision-Making?

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Preface

This paper is part of the research project «Regulation, Control and Auditing, funded by the Norwegian Research Council. An earlier version of the paper was presented at the 22nd EGOS Colloquium in Bergen «The Organizing Society» – Sub-theme 26 «Public Sector Agencies – The Problem of Coping with Autonomy, Steering and Regulation», July 6–8, 2006. We would like to thank the participants in this workshop for valuable comments. We will also thank Beate Erikstad, Jonas Folmo and Synnøve Serigstad who have conducted the cases on the Competition Authority, the Post- and Telecommunication Authority and the homeland security.

Sammendrag

I dette notatet undersøker vi vilkårene for å gjennomføre den nye regulerings- og tilsynspolitikken i Norge. Vi undersøker både prosessen i forbindelse med regjeringens tilsynsmelding og beslutningsprosesser i forbindelse med utvalgte tilsyn. Vi argumenterer for at reguleringsorganene opererer i en kompleks politisk-administrativ kontekst, og at vi må kombinere instrumentelle og institusjonelle perspektiver for å forstå hvordan de fungerer i praksis. En rasjonell-økonomisk tilnærming holdes opp mot en transformativ tilnærming som omfatter organisasjonsstrukturelle elementer, kulturelle komponenter og trekk ved institusjonaliserte omgivelser. Vi beskriver hvordan den nye reguleringspolitikken ble introdusert i Norge og fokuserer på reformer av tilsynsorgan i to sektorer så vel som reguleringspraksis i to tilsynsorgan. Hovedbildet er at det er en løs kopleing mellom det idealet som OECD reguleringsreformer forutsetter og a) den generelle tilsynspolitikken i Norge, b) reorganisering av tilsynsorgan i utvalgte sektorer og c) hvordan reguleringspraksisen utøves i utvalgte tilsyn i konkrete saker.

Summary

In this paper we examine the preconditions for fulfilling the aims of the regulatory reform in the case of Norway by comparing different decision-making processes in regulatory agencies. We cover both the process of regulatory reorganization and decision-making within established regulatory structures. Our theoretical point of departure is that regulatory agencies operate in a complex political-administrative context and that we must combine instrumental and institutional perspectives to understand how they work in practice. We start by contrasting the rational-economic approach with a broad transformative perspective that embraces organizational-structural elements, cultural components and features from the institutional environment. Second, we give a brief outline of the context in which agencies operate and administrative reforms have been implemented in Norway. Third, we describe how a new regulatory reform policy has been introduced in Norway over the last three years. Fourth, we focus on agency reform processes in two policy areas and on regulatory practice in two regulatory agencies as case studies. Fifth, we discuss regulatory reform processes and practice from different theoretical perspectives. Finally, we draw some conclusions and address their implications. The main picture is that there is a loose coupling between the OECD regulatory policy ideal and a) general Norwegian regulatory policy; b) the reorganization of regulatory agencies in specific policy areas; and c) regulatory practice in individual cases.

Introduction

Many countries have followed the lead of the OECD and implemented regulatory reforms that give agencies much more autonomy and formally make the role of regulatory agencies less ambiguous both internally and in relation to other regulatory agencies, public authorities, and the subjects of regulation (OECD 2002a). The justification for such reforms is that the effectiveness and efficiency of regulatory agencies will increase if they operate at arms-length from the political executive and that they will attend more closely to professional norms and values and use unambiguous rules to regulate activities in the public or private sector (OECD 2002b). It is also claimed that the more autonomous model will increase transparency and thus enhance credibility and impartiality and reduce political opportunism. This way of organizing regulatory activities – whereby authority is delegated and professional actors removed from political control so that they implement public goals on behalf of executive leaders in close collaboration with the subjects of regulation – would also seem to have wider political-democratic implications. It is held by some to be a more direct and better regulatory model.

An alternative interpretation of this development, based on a broad transformative approach (Christensen and Lægveid 2001), is that this model, often initiated by political leaders, has weakened the potential for political control and created more complex and conflict-ridden decision-making processes involving a more complex set of actors, problems, and solutions. A more traditional model of central steering assigns primary importance to maintaining a close connection between citizens in their role as voters, elected politicians, and the political executive and places political control above professional autonomy. Advocates of this model believe the political executive should be able both to control the laws/rules and policy framework according to which the regulatory agencies work and to interfere in individual cases where necessary. It should also be in a position to obtain information about regulatory practice and to fulfill the popular mandate assigned to it. By contrast, autonomous models of the OECD type allow regulatory agencies to ignore political signals and to «go native,» developing an excessively close relationship with the subjects of regulation. This potentially leads to inconsistency in regulatory practice. In addition, despite allegedly unambiguous rules and professional values, the large degree of discretion that the new model allows professionals in enacting regulations, suggests that the impartiality held to be the main advantage of this model is not guaranteed. As a result, the new regulatory model may actually produce more conflicts and negotiations than the old one.

We contrast and discuss these different views using as an example the new general regulatory policy in Norway. By comparing different decision-making processes in regulatory agencies, we examine the preconditions for fulfilling the aims of the regulatory reform. We cover both the process of regulatory reorganization and decision-making within established regulatory structures. Our theoretical point of departure is that regulatory agencies operate in a complex political-administrative context and that we must combine instrumental and institutional perspectives to understand how they

work in practice. This will yield a more complex, but probably a more realistic picture than the rational-economic scenario that forms the basis for the official OECD regulatory model.

We start by contrasting the rational-economic approach with a broad transformative perspective that embraces organizational-structural elements, cultural components and features from the institutional environment (Christensen and Lægveid 2001). Second, we give a brief outline of the context in which agencies operate and administrative reforms have been implemented in Norway. Third, we describe how a new regulatory reform policy has been introduced in Norway over the last three years. Fourth, we focus on agency reform processes in two policy areas (internal security and immigration policy) and on regulatory practice in two regulatory agencies (the Competition Authority and the Post and Telecommunications Authority) as case studies. Fifth, we discuss regulatory reform processes and practice from different theoretical perspectives. Finally, we draw some conclusions and address their implications.

Contrasting models of regulatory activities

A point of departure for understanding the new wave of establishing regulatory agencies and giving them more autonomy from the political executive is to focus on the OECD as a producer, certifier, and carrier of new reform ideas, prescriptions, and doctrines (Marcussen 2004, Sahlin-Andersson and Lerdell 1997). In 1995, the OECD launched a regulatory reform program whose main components were the regulation of the market, competition policy, and the establishment of independent regulatory agencies. It assessed regulatory policy in all member countries with the aim of improving the quality of regulation by fostering competition, efficiency and performance. The concept of distributed public governance, produced by the OECD and used by the EU, refers to the emergence of quasi-independent non-majoritarian and non-governmental organizations (Flinders 2004, OECD 2002a). The doctrine is that regulatory agencies are most effective if they are independent from the ministry, operate according to a clear regulatory policy, and are staffed by experts (OECD 1995, 1997, 2002a). In line with this, evidence-based decision-making is to replace the informal, consensus-based approach to regulatory processes that was previously the normal policy style in countries like Norway (OECD 2003).

The basis for this official regulatory model seems primarily to be a version of new institutional economic theories. What we may label a *rational-economic approach* will tend to see external pressure for regulatory reform as functional, arising from a need to increase credibility and reduce political insecurity (Knott and Hammond 2003). In rational-economic terms the development of modern regulatory agencies is seen as an apolitical and pragmatic solution to problems such as lack of capacity and attention, time constraints, and lack of professional knowledge and expertise on the part of the political executive. The increased complexity of public policy is said to have reduced the effectiveness of traditional command-and-control techniques. The argument is that delegating regulatory authority from politicians to experts will reduce decision-making costs and enhance efficiency and quality without having negative effects on other goals

and values (Majone 2001). The delegation argument is an old one in the history of regulatory reforms (Bernstein 1955) and it has a strong apolitical and technocratic flavor. One example is the de-politicization of key regulatory activities such as central banking (Marcussen 2006).

Majone (1999), a leading theorist of this school of thought, sees regulatory activities as a question of political credibility. Based on the idea of the primacy of business and markets over politics, the government delegates regulatory authority to experts and independent agencies at arm's length from the political executive in order to avoid short-term and arbitrary political interference and enhance the fairness and legitimacy of regulatory activities. The argument is that the body to which this authority is delegated should be independent in order to enhance the credibility of policy commitments (Majone 2001). The creation of autonomous agencies is justified by the perceived need to insulate certain activities from political influence. The prescription is that autonomous regulatory agencies can provide greater policy continuity, impartiality, predictability, and consistency than cabinets and ministries because they are not dependent on electoral returns. The delegation of power to an independent agency is seen as a way to restrain central government and to restrict its future freedom of action and also to reduce political uncertainty and opportunism.

The rational-economic approach, with its focus on formal institutional design, has generally become more popular over the past decade (Coen and Thatcher 2005). Politicians seem to have both credibility and political uncertainty in mind when they create regulatory agencies (Giraldi 2004). The official *raison d'être* for autonomous agencies is that structural separation, more managerial autonomy, and managerial accountability for results will improve performance and efficiency. In practice, however, this has not been a general finding. It would be fair to say that the official model is a special case that seems to work pretty well under specific conditions—namely, in situations with low political salience, where results and activities are easy to observe, where the tasks do not involve complex technology, where professionals and experts agree, where the risk is relatively low, where the financial resources involved are fairly modest, and where the policy does not involve redistribution issues (Christensen and Lægheid 2006). When these preconditions are not fulfilled, however (which may be quite often), it tends to run into trouble (Pollitt et al. 2004).

Our alternative transformative approach to regulatory activities combines instrumental and institutional perspectives from organization theories (Christensen and Lægheid 2001). From an *instrumental* or *organizational-structural perspective* control via regulation may be seen as compensation for loss of traditional control by central government, owing to privatization, managerial autonomy, and delegation. It may also be seen as a strategy for politicians to avoid blame by shifting responsibility for policy failure to bureaucrats and experts (Majone 1999, Hood 2002) and attributing it to an instrumental conflict among actors with different interests. Autonomous agencies create a buffer zone that political executives can use to shift blame, whereby politicians tend to delegate responsibility for failures but not for successes, and agencies tend to accept responsibility for successes but not for failures.

According to this perspective, political and administrative leaders are often central actors in the establishment of regulatory agencies, and they give various instrumental

reasons for moving away from an integrated model. As shown, while some of the problems and solutions seem to be defined in real terms, others are more symbolic in character. This perspective also offers potential insights into why the increased horizontal and particularly vertical inter-organizational specialization brought about by the establishment of regulatory agencies often leads to an undermining of political control (Christensen and Lægveid 2004). The instrumental effects of having a disintegrated model instead of an integrated one seem obvious – i.e., there is a considerable difference between having regulatory tasks integrated in a ministry or organized in regulatory agencies, with agencies in general having a lot of autonomy (Egeberg 2003). Both the levers of control and political signals are weakened by establishing regulatory agencies.

As the cultural aspect of *institutionalized organizations* would suggest, what happens in one country is not a blueprint for developments in other countries (Gains 2004). Specific national policies and regulations for managing health, safety and environmental risk continue to diverge (Vogel 2003). Regulatory reforms reinforce distinctive underlying national trajectories and historical legacies, and the functional pressure highlighted by rational theory is mediated and constrained by cultural-contextual factors (Thatcher and Stone Sweet 2002). The rise of regulation and the use of independent agencies is not only a product of neo-liberalism but is also connected to a decline in trust in political institutions (Hood et al. 1999, Jordana and Levi-Faur 2004). The increasing number of autonomous regulatory agencies can be seen as a response to this development.

In line with an *institutional environment perspective*, the spread of the regulatory agency form might be seen as a diffusion process (Giraldi 2003, Jordana and Levi-Faur 2005). The diffusion of the regulatory agency form takes place within sectors, across country borders, and within countries across sectors, whereby the first process seems to be faster than the last. There are endogenous sources of change, group processes, and diffusion of best practices through policy networks, which create «world societies» of common understanding of what are appropriate problems and good solutions (Meier et al. 1997). Thus, the great increase in regulatory agencies may be better explained by a constructivist approach than by a rational one. There seems to be a strong element of symbolic diffusion of autonomous regulatory agencies, accompanied by imitation, preconceived notions, and a search for legitimacy (Giraldi 2003). Generally, there is a growing empirical literature, focusing on diffusion, borrowing, and translation of organizational forms like the regulatory agency, but also on the importance of historical institutionalism, path dependency, and historical inefficiency as well as contextual factors related to tasks and contingencies (Lodge 2001, Jordana and Sancho 2004, Busch 2002).

Summing up, according to the transformative approach, which combines organizational theories, the complexity of the organizational context matters, task-specific factors are important, and much of what happens is the result of a blend of external pressure, path dependency, and choice (Olsen 1992). The diffusion of independent regulatory agencies in Europe seems to be a mixture of top-down factors conditioned by domestic responses to national pressure from international sources such as EU bodies, bottom-up factors linked to credibility and political uncertainty, and

horizontal factors that promote diffusion between countries through mechanisms such as «taken-for-grantedness» and symbolic imitation (Giraldi 2005). Thus, the formal structure should not be viewed in isolation: it is important to look at how tasks are structured and also at the historical-institutional context, and at external networks and influences. There are variations in how the rules for control, instructions, and appeals are formulated for different agencies and in how they are executed (Christensen and Læg Reid 2004). Instead of deriving explanations based on one dominant logic, the challenge is to develop more complex propositions about how regulatory agencies are organized and how they work. It is possible to do this using a transformative approach.

The context of agencies and administrative reforms in Norway

The organizational affiliation of Norwegian agencies and their status and role vis-à-vis the ministries have been important issues for nearly 180 years (Christensen 2003). A major cleavage in Norwegian administrative history has been that between political and administrative leaders (often jurists), who believe in an integrated model furthering political control, and professional groups, who demand professional autonomy through the creation of new agencies. Norway's constitution of 1814 introduced hierarchically organized ministries. By the 1830s, professional groups, such as engineers, doctors, and military leaders, were mounting their first attacks on the dominance of the jurists in the integrated and hierarchical state (Christensen and Roness 1999). Around 1850 they succeeded in pushing through their demands for independent professional bodies outside the ministries and the first agencies were established, primarily in the communications sector. This first wave of agencies was followed by a second one in the 1870s. This established the independent agency type, imitated from Sweden, which has been the dominant one in Norway ever since.

In the mid-1950s the government adopted a new principle for agency structure and increased the number of independent agencies. The background to this was that the ministers needed to delegate some of their functions and tasks in order to gain more capacity for strategic thinking (Grønlie and Nagel 1998), an argument similar to the one used to justify NPM-related reforms 40 years later. The doctrine recommended the same organizational solution that the professional groups had supported since the 1830s. The idea was that more technical issues and routine functions should be moved to the agencies, while policy and planning tasks should stay with the ministries. The new doctrine resulted in the establishment of several new agencies over the next 15 years, but this development slowed down in the 1970s, partly for political reasons (Grønlie 1999).

The dominant agency model in Norway has historically been rather unified, with little horizontal specialization. In most agencies administrative functions, regulatory and control functions, and service-providing functions have been combined and integrated. Traditionally Norway has not had any type of administrative court. Appeals have been directed to the ministry, which can also instruct the agencies. It is a rather new idea that there ought to be different types of agencies, even if some of the agencies have had

extended autonomy for some time, mainly in budgetary and personnel matters but also in some more substantive areas (Lægreid et al. 2003).

Over the past 15 years, partly inspired by NPM, but also as part of Norway's adaptation to the EU and the internal market, a process of structural devolution has been going on in the Norwegian central public administration, and the agency model has become more differentiated (Christensen and Lægreid 2003). Up until the mid-1990s major public sectors like railways, telecommunications, power, postal services, forestry, grain sales, airport administration, road construction, and public broadcasting, were organized as integrated government services, whereby the state simultaneously held the roles of owner, provider, purchaser, regulator, and controller. Since then, the commercial parts of these enterprises have become corporate, while the regulatory parts have been streamlined into separate agencies, creating a much more fragmented and disintegrated model.

In 2001 there were 169 central administrative bodies in Norway. Sixty of these bodies are now typical agencies: 25 are mainly regulatory agencies, while 11 have regulatory functions together with other tasks. Over time an increasing proportion of agencies have been allocated regulation and scrutiny as their primary task in addition to other, secondary tasks (Rubecksen 2004).

Summing up, agencies have been a major organizational form in the Norwegian central government for a long time and have displayed a lot of path-dependency. This situation was the result of a long historical conflict between the political executive and professional groups. Since the mid-1990s NPM has gained a stronger footing in Norway, and reforms have become increasingly comprehensive and radical in recent years (Christensen and Lægreid 2002). Changes in forms of affiliation from integrated ministerial models to single-purpose models, increased agencification, and the establishment of autonomous regulatory bodies have been the result.

The new regulatory reform policy in Norway

In 2003 Norway was assessed by the EU regulatory task force with a view to introducing reforms that would foster competition, innovation, economic growth and important social objectives (OECD 2003). The OECD acknowledged that the Nordic incremental, consensus-oriented model of governance, emphasizing egalitarian values, a high level of mutual trust, solidarity, high standards of social welfare, an active intervening state, broad participation from affected interests, and a large public sector, had been successful. The regulatory agencies in Norway seemed to have developed without experiencing any major crisis; they coped well with technical tasks and had demonstrated good regulatory practice and a capacity for adaptation.

In spite of this success and the fact that Norway still performs very well today, the OECD report suggested that Norway should abandon this governance model and «prepare for the future now». It was more or less taken for granted that the integrated, reactive, ad hoc and piecemeal approach, which balances different values and goals, should be replaced by comprehensive, proactive, and systematic regulatory reforms. Without any profound analysis, it was suggested that the well-functioning Norwegian

model should be replaced by the new OECD orthodoxy. The new recipe was to separate the regulatory role of the state from its roles as owner, policy-maker, and commercial actor, to upgrade competition policy to make it the main goal, to deregulate and liberalize state monopolies, to reduce state ownership, commercialize public services, and improve the performance, efficiency, and effectiveness of public spending. Competitive neutrality was said to be essential, and it was recommended that the commitment to competition should be more wholehearted and that the government should retain less public control in the liberalization process. What was not discussed was that such a change might well be at odds with the Norwegian state's traditional norms and values and cause increased conflicts in society, thus reducing efficiency and effectiveness (Christensen and Læg Reid 2004).

The recommendations were: to separate the regulatory function from the commercial one and to reduce the potential for ministerial intervention by making agencies more autonomous and professional; to replace consensus-based decision-making with evidence-based decision-making; to limit political intervention in specific decisions by establishing expert-based appeal bodies removed from the central political level; and to reduce the opportunities for appealing decisions to the minister and the ministry's scope for instructing the agencies. Further recommendations were to clarify the institutional framework and functional responsibility by formulating clear and unambiguous goals for the independent supervisory agencies; to improve co-ordination among the regulators; and to strengthen the framework for accountability and improve monitoring of agencies' performance.

The drive for regulatory reforms of the OECD type came under the Conservative-Center government of 2001–2005. In 2003 the government put forward a White Paper to parliament (St.meld nr. 17 (2002–2003)) proposing changes in regulatory agencies. The White Paper, which aimed to establish an overarching and comprehensive regulatory policy, was influenced both by the OECD's regulatory program and the European Economic Area Agreement, which gives Norway access to the EU internal market. It thus upgraded competition policy to a main issue in regulatory policy.

The White Paper stated that more use of markets and decentralized models of steering and control should be supplemented with and counterbalanced by stronger regulatory activities on behalf of collective interests. First, the government underlined that regulatory agencies should have unambiguous roles, thus breaking with the Norwegian tradition of integrating different roles and functions. The aim was to create more horizontal specialization in the form of non-overlapping roles, as in the principle of «single-purpose organizations» in New Zealand (Boston et al. 1996). A main objective was to provide more clarity in the horizontal design of regulatory agencies by giving each regulatory agency non-contradictory collective goals, with no two agencies working towards the same goals.

Second, regulatory agencies were to increase their independence from the ministries, political and professional premises were to be more clearly defined, and the way they were to be balanced made more explicit. Political considerations were to be confined primarily to establishing general norms via laws and rules while leaving individual cases to be handled by competent professionals in the regulatory agencies. The regulatory agencies were to be endowed with legitimacy by removing the ambiguity inherent in

mixing political and professional considerations and by making the balance between them more explicit. It was also stressed that the independence of regulatory agencies could be ensured by de-coupling regulatory activities from sectoral considerations and pressure, and by strengthening the professional competence of the regulatory agencies.

The specific proposals based on these goals affected the regulatory agencies in several ways. It was proposed that some new agencies should be established by splitting up or merging existing ones. The government also wanted to limit the opportunities for ministers to instruct the agencies in the handling of individual cases. In addition, changes in this restriction would now require the approval of the cabinet as a whole, rather than of just a single minister, making the threshold for political intervention higher.

Third, it was proposed to change the complaints procedure by establishing independent bodies of appeal. Only in cases indicated by specific important considerations would the cabinet be allowed to overturn a decision of the supervisory agencies, thus ensuring that the independence of the agencies was not undermined. Fourth, it was proposed to move seven regulatory agencies out of Oslo. It was argued that relocation would reduce political control and remove the agencies from the influence of other actors. This proposal was inspired by the capture literature (Majone 1996) – re-location being an attempt to reduce the capture of regulatory agencies by regulated interests as well as by politicians.

What is striking about the proposals and the arguments used to support them was that political steering and democratic control were hardly mentioned, indicating a heavy bias towards the NPM-oriented «supermarket state» rather than the centralized, hierarchical state (Olsen 1988). The need to strengthen the framework for accountability was not addressed either. Establishing independent bodies over which political control would not be particularly strong may well raise legitimacy concerns connected with accountability, but such challenges were not discussed. The impression given is that political control and influence from political executives is inappropriate and should therefore be modified or undermined. Although the report acknowledges that differentiating between political and professional decision-making premises might be difficult, it goes on to address this question *as if* it were easy. The proposal to limit control of agencies by executive politicians is treated as a bureaucratic-judicial issue rather than as a question of political democracy. The new proposed structures are not analyzed in terms of the consequences for political control. Neither is attention paid to the complexity implied by these proposals, such as the increased need for coordination.

Another important feature of the report is its strong emphasis on the need for professional autonomy in regulatory agencies. However, there is little discussion of why this consideration should carry more weight than political-democratic considerations. The experience of other countries, such as the US, which has shown that independent regulatory agencies do not just secure professional autonomy but can also result in capture of a different type as well as the politicization of professions (Mitnick 1980), is barely mentioned in the report.

The White Paper was controversial in its making and there were conflicts between the Ministry of Labour and Government Administration and other ministries and the affected agencies before it was issued. The main focus of the conflict and public debate

was the relocation issue, which diverted attention from the question of political control and agency autonomy. The government report resulted in a tug of war between some major parties in parliament and was eventually modified concerning the question of political control (Hommen 2003). The passage of the proposal through parliament had certain striking features. First, the part of the proposal that had been most controversial during the public debate, namely the relocation of several regulatory agencies, gave rise to little debate or tension. While the minister argued for relocation to reduce the problem of regulatory capture, the parliamentarians regarded it primarily as a regional policy issue.

Second, when the proposal was addressed in the parliament, it was obvious that the Labour Party and the Socialist Left Party had the key (supporting relocation) to the solution of the question of more independent regulatory agencies. The focus now moved from the relocation issue to the independence issue, and confrontation was replaced by bargaining. After some bickering the governmental parties struck a deal with the two opposition parties, modifying their proposal on this point. The part of the proposal stipulating that independent appeal boards should handle complaints or appeals was withdrawn and postponed until the next election period. This was seen as important by opponents of the proposal, since keeping the handling of appeals in the ministries is an important part of political control.

The other part of the deal was more ambiguous. It was decided that the proposal to restrict the power of executive political leaders to instruct the agencies should be handled case by case, not as a general principle. This was nonetheless seen by the minister as a breakthrough for the new principle of reduced ministerial instruction, since he gained support for some specific proposals. The opposition, on the other hand, tried to give the impression that this would lead to very little change in overall political control and was of purely symbolic importance, since ministers seldom use their right to instruct. The agreement states that the minister can intervene in important cases and that he/she can instruct the regulatory agencies to handle specific cases, implying business as usual. For the Labour Party it was important not to reduce the opportunities for political control, while for the minister it was significant that agency independence had been underlined. The compromise was ambiguous and open to both interpretations.

Summing up, the government received support for the relocation of seven agencies, but the price it had to pay was a modification of the autonomy-oriented reform. However, this is not the last word on administrative reform. After the general election in 2005 Norway got a Centre-Left majority government with a more skeptical attitude towards the regulatory policy of the former government. There may well be a replay on the autonomy issue when the government proposes reforms of individual regulatory agencies or when it comes to actual daily practice in these agencies – a subject to which we now turn.

Case-studies of regulatory agencies

It is important to distinguish between general regulatory policy, specific reform processes connected to individual agencies, and how regulatory agencies operate on a

day-to-day basis. Both on the macro level (in the establishment of specific agencies) and on the micro level (their day-to-day practice) there may be loose coupling to general regulatory policy. We will now illustrate variations in the reform process and agency practice by focusing on two cases in each category. We will use these case studies to contrast the two main theoretical approaches, one based on the official model and rational-economic thinking, and the other on a combination of instrumental and institutional perspectives known as the transformative approach.

We will first analyze how prominent the tension between political control and professional autonomy was in the processes leading up to the establishment of new agencies of internal security and a new autonomous structure of the immigration administration. In the next section we look at how regulatory agencies work in practice and to what extent this reflects features of the simplistic official model or of the more complex alternative model.

The establishment and organization of regulatory agencies

The reorganization of internal security¹

Parallel to the formulation of the comprehensive governmental program of regulatory policy, a reorganization of the central apparatus for internal security was taking place. The government launched this process in 1999 by appointing a public commission to assess the vulnerability of Norwegian society. The commission's report was submitted to the Ministry of Justice in 2000 (NOU 2000:24). One of the commission's main proposals was to improve vertical and horizontal co-ordination in the security administration by establishing a new special ministry of internal security. These recommendations were not, however, approved by the government in the White Paper presented to parliament in 2002 (St.meld. nr. 17 (2001–2002)). Somewhat surprisingly, the process resulted in only minor changes in the security administration (Lægneid and Serigstad 2006, Serigstad 2003). An important finding is that this relatively comprehensive reorganization process yielded only minor changes in the status quo, despite the fact that the Vulnerability Commission had recommended radical organizational changes.

Ultimately a hierarchical model of this kind proved to be too radical for the ministries involved, and the government opposed the idea of a special ministry of internal security in favor of an upgrading and strengthening of the agencies in the field, achieved partly through mergers and partly by establishing more semi-autonomous agencies. However, no separate appeal boards or specific limitations on instructions from the ministries were introduced. The case illustrates how difficult it is to move responsibility for an agency from one ministry to another. The Ministry of Justice received approval for its traditional view of how to organize the field, and so did the Ministry of Defense. In contrast to the major dispute that took place over the organizational model, there was overall agreement about what the problems were in the field of internal security. Most of the bodies and actors involved acknowledged the

¹ This section is based on Serigstad (2003) and on Lægneid and Serigstad (2006).

problems of fragmentation, weak co-ordination, and low priority assigned to internal security, but no agreement on a radical organizational solution was possible.

The process revealed a conflict over how to define internal security. Should it be regarded primarily as a defense matter or should be treated as an aspect of civil society and therefore be assigned to the Ministry of Justice? Should it be regarded as just one of many spheres covered by general regulatory policy or rather as a special field with its own particular problems and challenges? Clearly the definition of internal security also had implications for identifying the main problems, finding appropriate solutions, and identifying legitimate actors and participants. Opinion here was divided between institutions rather than cutting across them. Disagreement between the justice and defense sectors over how to define safety, security, and preparation for emergencies, and where to place responsibility for them became most pronounced during the governmental process and in the parliamentary reading. The compromise was to abandon the radical solution of a new ministry and to go some way towards strengthening the coordinating responsibility of the Ministry of Justice by merging two agencies into a new Directorate for Civil Protection and Emergency Planning and by having the National Security Authority report to the Ministry of Justice in civilian cases while continuing to be administrative subordinate to the Ministry of Defense.

An analysis of the process shows the relevance of a broad transformative approach. As the process went on, the rational approach gradually gave way to negotiations, which could be understood from an instrumental perspective. In contrast to what a rational approach might have predicted, the goals became ambiguous and subject to change and there was a loose coupling between the general regulatory program and the specific reorganization process, and between different phases of the process. The solutions offered by different actors and the conflict between different parties can be construed primarily in terms of organizational affiliation and sector interests. Somewhat surprisingly, the increasing pressure from the environment in the post 9/11 period had little effect on the reorganization process.

In addition, local rationality and efforts to defend path-dependent institutional identity and ensure institutional survival as well as cultural collusion between the civilian and military administrations explain important aspects of the reorganization process. One important characteristic of the process was that the defense sector was opposed to co-ordination. While almost everyone agreed that horizontal co-ordination was of utmost importance and that improvements were necessary, none of the actors ultimately wanted to engage in co-ordination. The process can thus be said to be characterized by *negative co-ordination* (Mayntz and Sharpf 1975), where the wish to co-ordinate was greater than the willingness to engage in it.

Summing up, this process is an interesting documentation of the parallel features of robustness and flexibility, which cannot easily be explained in terms of a single factor or as a simple adaptation of the comprehensive regulatory program. Our analysis reveals a process of bureaucratic politics (Allison 1971) but also a strong component of institutional constraints based on path-dependency, institutional identity, and historical inefficiency (Krasner 1988, Selznick 1957). The case illustrates that strong sectoral ministries make it difficult for the cabinet and the Ministry of Government Administration to implement a comprehensive regulatory policy program. There is no

quick and easy adaptation to new regulatory policy signals from the executive, and the process can thus best be understood from a broad transformative perspective – as a blend of actor-specific interests, made relevant in negotiations, institutional identities and traditions, and instrumental choices made by political-administrative leaders.

Reorganizing the central immigration administration²

In 1988 the Norwegian Directorate of Immigration (NDI) was established. Its task was to integrate regulation and integration on the agency level and report to the Ministry of Justice on regulatory issues and to the Ministry of Local Government and Regional Development on integration issues. In 2001 this changed when the field of immigration policy was concentrated at the ministerial level in one ministry – the Ministry of Local Government. The Immigration Appeals Board (IAB) was established as a body with a lot of autonomy, while the NDI gained greater autonomy, potentially undermining the political control of the executive. The immigration administration thus became concentrated in one institution and was defined as belonging in one sector, but the formal levers of political control were weakened.

What characterized the overall decision-making process that culminated in radical changes in the central immigration administration in 2001? The process was primarily driven by a Labour government, which had some problems controlling it, resulting in a postponement of the decision on the IAB. The Conservative Party and the Progress Party (far right) were consistently against such a reorganization, because they opposed an undermining of political control, while the view of the other parties fluctuated. The administrative leadership seemed to support the reorganization and worked together with the political leadership to promote it. This is interesting, given that such a reorganization could potentially weaken its position, but its main concern seemed to be capacity problems.

Throughout the process the focus was on regulation, while integration was regarded as a secondary issue. The main argument for establishing an independent appeals board was overload and capacity problems in the Ministry of Justice, but blame-avoidance was also an issue. The prospect of an increased workload of immigration cases, not to mention the unpredictable nature of these cases, made it attractive to delegate such tasks to a board/agency. Added to this was the political sensitivity of many immigration cases, which represented an unwanted political burden for the political executive. It was also argued that the current administrative trend was to move professional administrations handling individual cases out of the ministries.

Another main argument for establishing the IAB and giving the NDI more independence was that the rule of law, impartiality, fairness and trust would all be enhanced. Many of the main actors assumed that when executive politicians got involved in individual immigration cases, they had a tendency to treat equal cases differently and often in a less restrictive way. So moving the handling of individual cases out to the agencies and preventing executive politicians from interfering was deemed to be better. The combination of independence, professional competence and objective

² This section is based on Christensen and Lægveid (2005) and Christensen, Lægveid and Ramslie (2006).

laws/rules was seen as a safeguard against arbitrary action. The media, interest groups and the professional administration all seemed to lack trust in politicians in this regard. In addition, executive politicians themselves encouraged this development in order to rid themselves of a political burden, while the opposition thought that it might lead to a less restrictive immigration policy.

This process can generally be understood in terms of the official OECD model. All the major rational arguments in the model were taken account of and supported by a majority of the actors. At the same time the bid to «sell» the reform by simply taking for granted that this was the best model clearly had a symbolic flavor. Moreover, there was a conspicuous lack of discussion of the potential effects of undermining political control and breaking with administrative traditions.

The Conservative-Centre minority government that came to power in 2001 was supposed to implement the new structure in the immigration administration. The irony was that the new minister of local government, a politically strong minister, came from the Conservative Party (she later became its leader), one of the two parties most consistently opposed to the new solution in the immigration administration. The Christian Democrats, however, who had played a leading role in the decision-making process, had invested quite a lot of prestige in the new solution as had the PM.

In 2004, the Ministry of Local Government proposed a new structure for the central immigration administration. Its main argument, which concurred with the view taken by the Conservative Party in the 1990s, was that the structure adopted in 2001 implied an undermining of the responsibility of the political leadership. It was therefore deemed necessary to regain political control over the implementation of immigration law in practice. The ministry stressed that the structure, which prevented the political executive from interfering in individual cases, was unique and deviant both in Norway and in a comparative perspective. It also underscored that having such weak levers of control in a politically sensitive policy area was problematic, and that in order to be more proactive it was important to have instruments that could be used more quickly and effectively. At the same time, it recognized that bringing many individual cases back into the ministry would not be in tune with general developments in the civil service, so turning back the clock to before 2001 was out of the question. It was therefore proposed to seek a hybrid solution, something in between the structures of 1988 and 2001.

The ministry proposed, first, that it should give the NDI general instructions concerning interpretation of the immigration law and its powers of discretion, i.e. potentially stronger frame-steering than the 2001 structure. Second, the information flow from the NDI to the ministry was to be closely regulated. The NDI was to be issued with guidelines for deciding what kind of practice and changes it should inform the ministry about. Third, the ministry would decide whether an application approved by the NDI should be handled by a new large board in the IAB, which should also address positive decisions in the NDI. Thus, the arguments concerning political control had changed quite a bit since 2001.

The process leading up to the reorganization of the immigration administration in 2004 was tightly politically controlled by a strong minister. She had majority backing in the Storting and did not pay much heed to criticism from the NDI, the IAB and the relevant societal groups. Thus in these muddy political waters the official OECD model

underwent some modifications, even though its supporters insisted it was the best model. The main reasons for the reorganization were an increase in the pressure exerted by immigration cases, increased politicization and unpredictability in the field and the need for a quicker response, a strong anti-immigration opposition party, several politically sensitive individual cases, where the political leadership had been blamed, even though responsibility had been delegated to the NDI, and last, but not least, an increased need for political control in a minority government situation. The political symbols were this time turned against the OECD regulatory model and it was argued that the new hybrid solution was compatible with administrative traditions.

How regulatory agencies work in practice

We will now look at whether regulation works smoothly in practice, in line with the objectivity, transparency, and efficiency gains assumed by the OECD model, or whether it is actually a more complex and tension-ridden process, as a broad transformative approach would suggest.

The Norwegian Competition Authority³

Following the passing of a new competition law in Norway in 1993, the Norwegian Competition Authority (NCA) was established the following year as the body responsible for enacting and operating competition policy; the Ministry of Government Administration continued to be the central controlling body, handling strategic aspects and complaints. In the latter part of the 1990s the NCA was gradually allocated more tasks, eventually taking charge of competition policy in both the public and the private sector. A crucial question was how the interface between competition regulation policy and more sector-specific economic regulation, pertaining to sectors like postal services and telecommunications, finance, transport, health, and agriculture, should be organized. In 1996, the NCA concluded agreements with two other overlapping regulatory agencies.

In 2001, a professor of economics and member of the Conservative Party was appointed as the new minister. He acted proactively and changed the mandate of a public committee whose task was to discuss and propose a new competition law. He also sought to make the NCA stronger and more independent, to bring all competition policy together in one agency, and to establish an independent appeals body. While he failed to achieve most of these goals he did manage generally to strengthen the position of the NCA through the new competition law (Bertelsen 2006).

We will briefly discuss how the NCA has managed its gradually increasing role, i.e. what features have been characteristic of its regulatory practice? How easy has it been to enact «pure» competition principles? How much has it been affected by the ministry, the subjects of regulation, the media, or other parts of the environment? And how has the negotiation aspect of regulation been conducted? Two cases will be used to address these questions.

³ This section is based on Folmo (2005).

In 2001, the Scandinavian Airlines System (SAS) announced its intention to buy a 70% stake in the other major airline in Norway – Braathens. The NCA immediately became involved because the deal threatened to establish a monopoly – thus violating the principle of competition. Two months later, the NCA indicated that it would probably reject the deal but would look into mileage programs, deals with major customers, and deals with travel agents in order to improve the competitive position of Braathens. It rejected the argument that Braathens was likely to go bankrupt, which had been used as a justification for the deal, and even took the proactive step of searching for other potential buyers for Braathens. However, the situation changed quickly, especially after 9/11, and it proved impossible to find a buyer for Braathens, rendering the company technically bankrupt. All this increased the likelihood of getting political backing for a merger.

Upon assuming office in October 2001 the new minister of government administration immediately instructed the NCA to stop SAS going through with the deal. This move made it formally impossible for him to handle the case and he had to leave it to another minister. A short time later, however, to the surprise of many, the NCA approved the deal and did not touch the mileage program, something that was supported by the minister temporarily handling the case. That was not the end of the story, however. The ministries of finance and government administration pressured the NCA to look at the mileage program again, and the NCA eventually decided that the SAS would have to curtail its domestic mileage program in order to open up this field for new actors. Despite protests by the airlines, the minister supported this decision and in 2002 the Norwegian Air Shuttle was established with the minister's support. What is more, he soon struck a big deal with the new company, guaranteeing it a large volume of governmental travelers, despite having said a short time before that such deals would obstruct competition.

This case demonstrates how difficult it is for the NCA to fulfill its role as a competition authority objectively, since work is complicated by the need to respond to environmental pressure. In this particular case 9/11 completely changed the premises for making a decision, both in terms of external pressure and in terms of the legal framework. Ironically, while the NCA assumed that a rejection of the deal would have very little political support, it was the two ministries involved that actually put pressure on the NCA to pay greater heed to the competition law. The minister also participated in creating new biases in the market, favoring the interests of a new company over those of SAS, despite the fact that the Norwegian government holds a 2/7 share in SAS. As a result the position of SAS in Norway was considerably weakened. Clearly the process did not run smoothly or rationally at all, but was characterized by environmental pressure, anticipated reactions, and negotiations, while the NCA's initial attempt to proceed according to the rules received little support from the political executive.

The next case concerns two of the largest financial institutions in Norway – DnB and Gjensidige Nor. In 2003 they decided to merge, potentially giving them a 60–70% share of the market. The case was handled not only by the NCA and its ministry, but also by the Financial Supervisory Authority of Norway and the Ministry of Finance. In August 2003, the NCA warned the two companies that it might say no to the deal, prompting strong criticism from the media and many politicians, since it was seen as the last chance

to establish a large Norwegian financial company. The merger was then approved by the financial authority and the Norwegian National Bank, both of whom saw few problems with it, and the two merging banks then sought to persuade the NCA to sanction the deal. Eventually, the NCA agreed to the merger, but only if 13 preconditions were fulfilled, including sales of assets and subsidiaries. The minister of government administration, who had actually left office just prior to the decision, voiced his opposition to it, accusing the NCA of failing to play its role as a protector of competition.

As in the first case, the NCA again experienced a lot of pressure from the environment, this time of a more nationalistic or cultural nature, revealing that many political actors were less concerned about competition policy than about creating a major Norwegian financial company. This time, however, the NCA had more control over the negotiation process. Anticipating that the Ministry of Finance would agree to the deal anyhow, the NCA obviously thought it would be wiser to give its conditional approval than to adhere rigidly to the provisions of the law on competition. By imposing certain conditions, it would appear to be upholding the principles of competition to a greater extent than in the first case. Another interesting aspect of the second case is the conflict with the other authorities that viewed the proposed merger more positively, thus making it easier for the Ministry of Finance to agree to the deal, as the NCA had anticipated would happen.

Norwegian Post and Telecommunications Authority⁴

The Norwegian Post and Telecommunications Authority (NPTA) was established in 1987 as a result of the liberalization of the telecommunications sector. Its rationale was a perceived need to divide the regulatory and service-providing roles – which was very much in accordance with the later OECD model. The role of NPTA, which is primarily financed by government-imposed dues and fees, was to take responsibility for the regulatory, control, and scrutiny functions in the telecommunications and postal sectors. It was organized as a body subordinate to the Ministry of Transport and Communications but with some degree of independence: the power to take decisions on individual cases was delegated to the NPTA, and a clause in the law on telecommunications restricted the ministry's power to issue instructions to the agency. The agency gradually developed a skeptical attitude towards Telenor, the former public telecommunications monopoly, which was turned into a state-owned company and then partially privatized in 2001. The reason for this was that Telenor was seen as the main roadblock to increased and free competition in the telecommunications sector, and hence as undermining the interests of consumers.

The background to the Teletopia case was that several small firms had for a long time been trying, largely unsuccessfully, to sell services by connecting to the Telenor network. In 2001, NPTA decided that Telenor should give Teletopia, a small private firm, access to its cell-phone network for providing SMS messages. Telenor appealed to the ministry to reverse the decision but it was upheld. The issue was now to decide on

⁴ This section is based on Erikstad (2005)

the conditions of access. As Telenor and Teletopia were unable to reach agreement the NPTA acted as a mediator. After a lot of argument between the two parties, the NPTA ruled on the case in early 2003, deciding which price model should be used and stipulating that Telenor should not be compensated over and above the actual access costs. An exact access price to be paid by Teletopia to Telenor per SMS message was set, albeit one much lower than Telenor had demanded.

Telenor criticized the NPTA's decision, on the grounds of wrong assessment of the cost question. It lodged a formal and comprehensive appeal with the Council for Telecommunications Administration. The council upheld the decision, but Telenor also appealed to the ministry, a legitimate move in cases concerning wider principles. The ministry eventually ruled that another pricing model, closer to what Telenor wanted, should be used. The NPTA was very critical of this decision.

An analysis of the case shows that a rational economic approach has less to offer than a broad transformative approach. One may take as a point of departure the complexity of both the political-administrative apparatus and the handling of the case. Even though the NPTA obviously has features that coincide with the OECD model, it works differently in practice. There are many reasons for this. To start with, the NPTA is an example of a cross-sectoral regulatory agency. It is thus a hybrid organization, a feature that may complicate the handling of certain cases. Second, the telecommunications sector is said to combine deregulation and re-regulation – the latter implying the existence of clear laws and rules for handling cases. In reality, however, the Teletopia case shows that the system is open to interpretation, particularly in complicated cases. Hence both the NPTA and the ministry engaged in negotiations. Third, path-dependency clearly has a major role to play in cases like this, since the monopoly actor (in this case Telenor) had invested a lot of resources in its network and services and had the advantage of having strong political connections. The NPTA, on the other hand, was interested in defending the newer anti-monopoly and competition path. The earlier stated principle of cost-oriented prices that constrained the handling of the case was also the product of path-dependency. Fourth, environmental pressure was strong, both from the institutional environment, constituted mainly by the media, and from the technical environment, involving many new actors in telecommunications; moreover, the EU influences both the institutional and technical environments.

Contrary to the belief that the new regulatory regime is a clear-cut and objective system, the essence of the Teletopia case reveals an ambiguous system of negotiation and a struggle to balance control and autonomy. While the leadership of the NPTA took a rather skeptical attitude towards Telenor and strove to set a much lower access price than Telenor wanted, the experts in the agency exercised a modifying influence, showing that price models could be varied and disputed. These negotiations were then extended to the handling of the case in the appeals council, which sided with the NPTA. Not surprisingly, the final decision in the ministry fell in favor of Telenor, something that can be explained in terms of path-dependency, traditional political support for Telenor and worries that new actors would become free-riders on major investments made by traditionally strong public actors in the past, thus discouraging further major investment by the latter. All these factors modified the judicial and economic arguments and the exercising of discretion lower down the system, mainly in the NPTA.

Discussion

A main observation from these cases is that one cannot easily infer from regulatory programs and formal structure to practice. There is rather loose coupling between comprehensive policy programs and specific reorganizations in certain policy areas, and agency status in itself is a highly uncertain predictor of steering relationships (Pollitt 2003). The legal status and formal powers of the regulatory agencies represent broad categories that allow for huge variations in practice. Contrary to the OECD's assumption, actual regulatory practice does not always concur with regulatory orthodoxy.

The first two cases show that it is difficult to implement the new regulatory policy through inter-agency cooperation and mergers, and also that important actors are skeptical that changing the structure according to the new general regulatory policy will really result in smarter regulatory practice. In the homeland security case one reason for this was that organizing this field according to the new logic would have modified the agencies' ability to attend to different aspects of internal security. Path-dependency obstruction of reorganizations is also an issue. In the immigration case there is an unstable balance between political control and agency autonomy, and it is difficult to find a sustainable organizational form. While negotiations took place and major political actors controlled parts of the reorganization process, opinions about organizational instruments or forms changed. This illustrates one of Gulick's (1937) main points that organizing public organizations according to certain principles of specialization and coordination may solve some problems, but it may also create some new ones. The formal organizational structure is important for understanding variety in decision-making behavior, but no one specific design can guarantee smart practice (Hammond, Jen and Maeda 2003, Hammond 2004). In practice it is difficult to live up to the organizational model espoused by the new regulatory policy.

The two latter cases on practice illustrate the problems of matching administrative practice with the new regulatory orthodoxy. These cases concern more the vertical dimension of regulatory policy. The cases dealt with by the competition authority illustrate the complicated interaction between political signals and professional decision-making in the competition agency. In some cases political and managerial executives in an agency can form a powerful alliance; in other cases there might be a complex interplay between environmental pressure, professional attitudes, and political considerations. The system of regulation in the post and telecommunications sector in Norway now corresponds closely with the official, ideal model of the OECD. The case shows how the different actors have furthered their own roles and interests according to this model, but it is not a model that automatically results in objective and smart practice. When different actors disagree because they play different roles, conceptually driven cooperation is difficult to achieve, and the ministry has the task of balancing the different definitions and interpretations. The result in a political-administrative context is a compromise that is the smartest one possible under the circumstances.

Historically, Norway has had a rather unified and integrated central state system, with relatively strong political control of agencies by the cabinet and the ministries (Christensen 2003). Nevertheless, this system has been flexible enough to accommodate

a variety of considerations. In practice the system has been very robust, since the agency model represents a broad organizational form that allows a wide variety of actions. Using as a basis our broad institutional perspective, it is possible to show how the system has combined hierarchical control by politicians, the influence and partial autonomy of professional groups, a stable environment, a cultural consensus, and the peaceful coexistence of many actors, creating an atmosphere of mutual trust.

When NPM arrived in Norway in the 1980s, the main strategy was to adapt it to the historical path Norway had followed, i.e. to engage in a policy of pragmatic change whereby some elements from NPM—usually the least radical ones—were introduced (Christensen and Lægreid 1998). However, this strategy came under pressure in the 1990s, resulting in more autonomy for the agencies. The reasons for this development may be understood in terms of the main elements in the broad transformative perspective. First, neo-liberal entrepreneurs became more important in the reform process, partly because the electoral wind was blowing more towards the right, but also because the Labour Party had shifted to the right on these questions. Second, the historical-cultural path was gradually being modified, partly as a result of external pressure for reform, but mainly because internal actors, both political and administrative, had adopted a more sympathetic attitude towards NPM. Third, the notion that major elements from the disintegrated state model were appropriate increasingly became the received wisdom. The paradox is that this happened without Norway having any urgent need to reform, but it also explains why the old model was not abandoned but rather combined with NPM in various ways, without actually bringing about any fundamental transformation of the system.

The effects of this first wave of NPM-related reforms seem to be rather evident. One main finding from a study of political and administrative elites in Norway is that the increase in autonomy for agencies has limited cabinet members' leeway for political discretion and control (Christensen and Lægreid 2002). The vertical specialization of agencies and companies has increased the power of administrative leaders in the ministries and agencies at the expense of the ministers. In contrast to what is sought by public choice reforms, this amounts to reduced control for the ministers and may increase the political risks that politicians have to take (c.f. Gregory 2003). The situation is still in a state of flux, however, and should not be seen as a one-way development. The telecommunication case and the competition case illustrate the complexity of the relationship between political executives and agency executives. In specific cases the political leadership is still able to interfere and to reassert control, as case studies of hospital reforms and immigration policy illustrate (Christensen and Lægreid 2005, Lægreid, Opedal and Stigen 2005). Generally in Norway the constraints on the option of withdrawing delegation to autonomous agencies have not been so strong as to represent a serious democratic problem (Hylland 2001).

The process of horizontal specialization, based on practice in the Anglo-American countries in general and the EU in particular, started rather later in Norway, in the mid-1990s, and has entailed separating out regulatory tasks and assigning them to specific agencies. However, this policy has yet to be fully implemented and may well run into problems, as illustrated by the case of internal security. It does, however, signal the adoption of another element in the general trend towards the disintegrated state.

Our broad transformative approach can be used to identify certain typical features of this reform process. First, it shows a political leadership eager to introduce more structural devolution. The arguments supporting this policy attend very little to the challenges of political control posed by a new system of this type and tend instead to see it mainly in terms of efficiency and technical aspects of administration. Thus, this policy in practice results in compromises concerning the autonomy of regulatory agencies and the organization of the appeals process, although it does move the regulatory agencies in the direction of more independence. The reform process is also generally characterized by rather inconsistent and ambiguous organizational thinking concerning the implications of autonomy and the way regulatory functions should be organized.

Second, there is evidence of a changing culture concerning regulatory agencies. The executives of these agencies now tend to view the reforms more positively, as do administrative leaders in the ministries, making them easier to implement. Nevertheless, some political executives and parties in parliament remain skeptical, especially when recurring political crises, like the immigration case, show a need for more control (Christensen and Læg Reid 2002).

Third, external international pressure for reforms in Norway has grown over the last few years, as the notion that NPM-related reforms are appropriate and good becomes more widely accepted. Nevertheless, more criticism is now being voiced nationally than before, while international trends are starting to point in rather different directions, feeding this resistance.

The four cases selected show that the regulatory policy field is politically very controversial and complex. Individual cases of reorganization or regulation cannot be viewed in isolation simply as examples of the technicalities of implementation but need to be treated as political cases, involving political steering and negotiations, external pressure, and historical-institutional constraints. The cases reveal that in practice it is hard to implement the new regulatory policy program and simultaneously live up to the official formal governance model of frame-steering and performance-management (Pollitt 2004). Neither does the practitioner's model fit in very well with how the government's comprehensive regulatory reform program is being implemented in specific policy areas. Rather than assuming that political executives can freely select desirable reform measures, one needs to take into consideration historical-institutional constraints and external pressure. And the objectivity of professional-judicial processes and considerations is often disputed and negotiable. The cases we described above illustrate that we have to go beyond the legal status and formal powers of the government and the agencies to understand how political control works in practice (Pollitt 2003). Smart regulatory practice is more diverse and context-dependent than the official model implies.

This paper has focused on the mismatch between the doctrine of autonomous regulatory agencies and how regulatory agencies have been reorganized in specific policy areas and how they work in practice. The de facto control and autonomy relationship varies between agencies and within the same agency over time. The reform process has been dominated by the criteria used to determine how agencies are supposed to behave, according to an idealized model, rather than by empirical documentation of how they actually work in practice (Pollitt 2003). Furthermore, the dominant model is a

complicated mixture of the New Public Management ideal of performance management, frame-steering and agency autonomy on the one hand, and demands for democratic governance based on democratic transparency, accountability, control, and responsiveness on the other. We are facing simultaneous pressure to adapt to new forms of regulation and control and to guarantee the robustness of sustained democratic governance. These complex and sometimes conflicting demands place a heavy burden on both agency management and on political governance. Formal regulatory agency status seems to be a broad category allowing a variety of actual behavior. Thus, we must go beyond formal legal models of agency status and examine «living» institutions.

An examination of the formulation of regulatory policy, the implementation of the policy program and how relations between ministries and agencies work in practice reveals a complex interaction between external pressure from dominant international agency doctrines, the domestic administrative and institutional context, and political choices made by government executives and political leaders (Christensen and Læg Reid 2001). To understand both policy development and practice in the field of regulatory agencies we have to go beyond one-factor explanations and look at transformation and translation processes (Czarniawska and Sevón 1996). The trade-off between autonomy and control will thus be influenced by the motivation of central actors to interfere. But the equation can also be affected by the distribution of professional expertise. If the ministry lacks the knowledge or capacity to assess what is going on in the agencies, it will also experience problems in exercising political control. This is especially likely to be the case with agencies handling complicated technical matters involving advanced science and technology.

Conclusion

In this paper we have focused on the balance between political control and regulatory agency autonomy in the central governmental apparatus in Norway. It has been shown how the introduction of a new regulatory policy has produced instability in the relationship rather than the enhanced stability promised by the reform entrepreneurs. Regulatory reform started late in Norway, so the focus of our analysis has been on processes that have taken place in the last few years, both concerning organizational thinking advanced by the political leadership and the compromises reached in parliament with its opponents. The result has been increased autonomy for the regulatory agencies and a more specific allocation of tasks, but not as much as intended. We then discussed how the general regulatory reform has been adapted to the reorganization of regulatory agencies in specific policy areas and to the way regulatory agencies operate in practice. The main picture is that there is a loose coupling between the OECD regulatory policy ideal and a) general Norwegian regulatory policy; b) the reorganization of regulatory agencies in specific policy areas; and c) regulatory practice in individual cases.

In a period when the doctrine of agencification, structural devolution, and antonomization has been strong, there is considerable institutional confusion about what tasks, objectives, and responsibility the autonomous agencies should have (Olsen 1998).

Democratic control seems to have been weakened by this new autonomy, even if it is not absolute, but it is unclear what kinds of interests and considerations are replacing traditional political signals and discretion or how the trade-off between political control and agency autonomy will unfold over time.

In recent years the importance of the historical-institutional context has been rediscovered (Olsen 2004). The need for in-depth understanding of the special situations of individual countries is now being underlined to a greater extent (World Bank 2000). Priorities have shifted from a drive to create agencies and autonomous bodies to a striving to achieve good governance generally. More specifically, attempts are being made to find the right balance between accountability and autonomy by focusing on weak co-ordination devices, lack of governing capacity and weak accountability mechanisms (OECD 2002b). One main lesson is that context matters. The effects of structural arrangements, culture, and the present parliamentary situation are dependent on the character of the policy issue on the agenda and the tasks that different agencies handle. The policy salience or sensitivity, often highlighted in political crises, seems to be an especially challenging factor in the balance between political control and autonomy. Strong sectoral ministries and weak superior ministerial coordinating power make it difficult to pursue a streamlined regulatory policy across policy areas and agencies.

The data presented reveal that in practice it may become difficult to live up to the official formal regulatory model of frame-steering and professional autonomy. Our conclusion is that stability in the trade-off between autonomy and control is an elusive goal. Achieving a balance between the two has been a recurring problem in Norwegian administrative history (Grønlie 2001) and it is an open question whether more professional independence for experts in autonomous agencies will prevail, or whether there will be a counter-wave of re-politicization. The issue cannot be resolved once and for all. Instead, one has to learn to live with partly conflicting values. How this situation is handled is determined to a great extent by the domestic political-administrative culture and structural features as well as by the external influence of the dominant international administrative doctrine.

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