

# Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review

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This article reviews the literature that deals with the puzzle of legitimizing regulatory governance, paying special attention to the accountability of independent regulatory agencies. The discussion begins by presenting conventional arguments regarding the democratic deficit of the regulatory state. Then, two alternative sources of legitimacy are presented: the positive evaluation of regulatory performance by citizens (that is, the substantial component of what Majone calls non-majoritarian legitimacy); and the existing approaches to ensuring agency accountability (the procedural component). The last section offers some insights concerning new forms of accountability, namely with reference to the establishment and ongoing consolidation of formal and informal networks of regulators.

*Was alle angeht, können nur alle lösen.<sup>1</sup>*

## Introduction: regulatory governance by independent agencies

Representative democracy has no credible rival today as the accepted political regime in western countries (and beyond). Political theorists and empirical-oriented political scientists are recurrently trying to discover which model of democracy produces better social and economic outcomes, which one is “gentler and kinder” with citizens, and which one most adequately promotes stability and peaceful coexistence among groups given the social, cultural and economic structure of the investigated country. An important aspect of this question to consider is which model of democracy works best in a context where the democratic principle itself is generally taken for granted as the legitimate way to organize the collective decision-making process (Anderson and Guillory 1997; Armingeon 2002; Boix 2003; Epstein and O'Halloran 1996; Hanf and Smootha 1992; Horowitz 1993; Lijphart 2004; Lijphart 1999; Lustick 1979; Norris 2005; O'Flynn 2007; Putnam 1993; Reilly 2002; Rodrik 1997; Salloukh 2006). Democracy, from a normative point of view, is considered more desirable than any alternative (Beetham 1999; Dahl 1989), and core democratic principles seem to diffuse towards a number of formerly authoritarian countries, although partially and quite imperfectly (Almond 2003; Andeweg 2000; Carothers 2002; Dahl 1989; Diamond 1999; Diamond and Plattner 1996; Epstein et al. 2006; Fukuyama 1992; Huntington 1993; McGarry and O'Leary 1993; Welzel and Inglehart 2003).

Yet, at the same time, according to some well-established claims, the very substance of democracy seems to be eroded in a number of crucial ways. First, low participation rates in political consultations are eroding the “Schumpeterian” legitimacy of democratic procedures, such as political elections, voting and

referendums (Luskin and Fishkin 2005; Putnam 1995). Second, the growing cynical attitudes towards politics, linked to the feeling of under or misrepresentation, are challenging the legitimacy of traditional representative institutions, such as governments and parliaments (Barber 2004; Smith and Wales 2000). Third, the apparent declining power and sovereignty of nation-states in favour of less democratic international organisations and transnational corporations risks to hollow out the effectiveness and the scope of domestic policymaking (Dahl 1999; Follesdal and Hix 2006; Moravcsik 2004).

In this article, I point out another emerging phenomenon, which further challenges the foundations of democratic political systems. In several countries we can observe a growing phenomenon of reassignment of political power from democratic institutions (parliaments, governments, administration) to various non-elected bodies, which are not democratically accountable in the traditional sense of being politically responsive to citizens by means of a chain of political delegation (Strom, Bergman and Müller 2003; Vibert 2007). Two broad categories of non-elected bodies can be identified for analytical purposes.<sup>2</sup> On the one hand, there are those non-elected institutions that rely upon a “non-republican” form of representativeness (Manin 1996), which usually claim to represent an actual picture of the society (i.e., “the nation in a room”). Examples are: deliberative opinion polls, citizens' juries, and focus groups (Saward 2000). The establishment of these bodies is strongly advocated by partisans of deliberative democracy (Dryzek 2002; Fishkin and Luskin 2000), with the aim of improving the quality of collective decisions. The standard counterargument is that deliberation – however desirable – is a procedural, complementary characteristic of democracy and does not constitute an actual, singular model of

<sup>2</sup> Students of neo-corporatism may object that peak associations, delegates of industries, and trade unions traditionally involved in tripartite negotiations in corporative arenas are not elected by the people, but are nonetheless strongly legitimized in small consociational European countries. However, one may respond that these delegates are, on the one hand, representatives of social forces, and they are to some extent accountable to their basis. On the other hand, in neo-corporatist arrangements, the state plays at least the role of a player and/or broker, whereas non-elected bodies are constructed as separate entities that should mediate between the political decision-makers and the regulated industries. Finally, neo-corporatist arenas are influencing the decision-making process, but cannot directly exercise public authority.

<sup>1</sup> “What affects everybody can only be solved by everybody”. Dürrenmatt, Friedrich. 1998. “Anhang: 21 Punkte zu den Physikern, Punkt 8.” in *Die Physiker; eine Komödie in zwei Akten*. Zürich: Diogenes-Verlag.

democracy (Bohman 1998; Saward 2000; Saward 2003). Consequently, its presence is neither a sufficient condition for legitimizing a non-elected institution, nor an exclusive feature of unelected bodies. This procedural characteristic is indeed compatible with traditional institutions of representative democracy, such as parliaments, committees and collegial governmental cabinets. In addition, the actual relevance of this kind of institution is still very low, and at the same time the amount of political power reassigned in its favour is negligible, as its function is usually only consultative, and normally focuses on limited, local policy issues.

On the other hand, another category of non-elected bodies exists, which does not rely on any claim of representativeness. These non-elected bodies' legitimization is normally based on a large array of "non-democratic" justifications, but primarily the need for insulation from day-to-day politics and technical expertise (Majone 1996). They are increasingly widespread, much more powerful – this is the crucial point – and more disquieting in some regards than those bodies that make up the former category. For this reason, this paper focuses on the proliferation of the latter type of non-elective and non-representative bodies, which are separated from the politico-administrative state hierarchy, and exert a distinctive form of political power through the application of public authority – that is, regulatory power (Gilardi 2008; Levi-Faur 2005; Thatcher and Stone Sweet 2002). I propose a provisional classification of this kind of non-elected body as follows: supranational bodies, such as EU organs and international organization committees; non-majoritarian national authorities, such as central banks and independent regulatory agencies (hereafter, IRAs); and private governance actors, such as accounting and rating companies and committees for standard-setting that are largely dominated by business actors (Mattli and Büthe 2003). I will limit my conceptual discussion to domestic non-elected bodies (i.e., IRAs) because I consider the question regarding the legitimacy deficit of supranational institutions and private governance nowadays broadly recognized and well assessed both theoretically and empirically (Dahl 1989; Follesdal and Hix 2006; Moravcsik 2004). Conversely, the question regarding the legitimacy of non-elected domestic bodies has received less attention, except perhaps in the quite narrow case of central banks. Therefore, in the rest of this paper I will deal with the case of independent regulatory agencies.

Since the 1980s, a concomitant process of delegation and re-regulation has come forward in Western Countries, stimulated by the earlier American experience, which also spilled over into Latin America and South Asia. The new regulatory order – extensively adopted in almost all possible sectors – has been identified with the concept of the regulatory state (Majone 1994b; Majone 1996), or, more broadly, regulatory capitalism (Levi-Faur 2005; Levi-Faur and Jordana 2005), showing that the style of governance has been revolutionized considerably. Indeed, the post-war settlements of "welfare capitalism" have been severely challenged, but in an unexpected way. While several studies emphasize how the spread of liberalization and privatisation is reducing room for political manoeuvre, and other scholars point out the increase of deregulation, this approach also underlines the expansion and intensification of stricter regulatory arrangements (Christensen and Laegreid 2006; Christensen and Laegreid 2007; Gilardi 2008; Levi-Faur 2005; Vogel 1996). These arrangements' competencies of execution are delegated to authorities that are formally independent from direct political control: IRAs. Examples of these bodies include

competition and antitrust authorities, utility regulatory agencies, financial market supervisors, pharmaceutical regulators, and environmental commissions. There is now cumulative evidence showing that the diffusion of IRAs is due to a mix of factors such as emulation mechanisms among countries, top-down initiatives - above all European Union policies - and pressures for improving credibility of national policies and coping with political uncertainty (Gilardi 2005). They not only possess delegated public authority in order to execute important regulatory functions (Thatcher 2002a; Thatcher 2002b; Thatcher and Stone Sweet 2002), but they also play a central role in policy-making (Maggetti 2007; Maggetti 2009). Accordingly, the crucial question here is about how these relatively new, powerful, important and widely diffused actors are legitimizing, if we conceive legitimacy in the traditional Weberian sense of social acceptance of the existing (regulatory) order.

The structure of the paper is as follows. The discussion begins with the presentation of arguments about the democratic deficit of the regulatory state. The positive evaluation of regulatory performance is presented as the first alternative source of legitimacy. Then, the existing varieties of procedural legitimacy, based on the prospect of ensuring regulatory accountability, are considered. Before concluding, I offer some insights concerning new forms of accountability, namely with reference to the establishment and ongoing consolidation of formal and informal networks of regulators.

## Democratic legitimacy

Democratic systems can be conceptualised as chains of delegation from voters to parliament, to government, to ministers, and eventually to bureaucracy (Strom, Bergman and Müller 2003). Delegation to IRAs constitutes an additional step, which is qualitatively different since IRAs are not directly responsible to either voters or elected officials (Gilardi 2008). As a consequence, with the development of the regulatory state, the significance of political participation appears undermined, producing a "democratic deficit" (Lodge 2004; Majone 2001a; Majone 1999; Scott 2000; Weller, Bakvis and Rhodes 1997). The principles of representative democracy are thus becoming less relevant, in favour of influence connected to specialised expertise (Papadopoulos 2003). In this context, the normative justification for legitimizing regulatory governance by independent agencies is, first and foremost, supposed to derive directly from the (expected) separateness of IRAs from politics and organised interests. This is a crucial point – though somehow implicit – in the theory of delegation to IRAs (Majone 1996; Spence 1997). The argument is the following. Administrative bureaucracies in general and regulatory agencies in particular have been described in the American literature as a "fourth branch of government", which is independent by design (Majone 1993; Meier 1979). In this sense, the independence of IRAs can be considered as justified, as it exemplifies the separation of powers concept, one that has enjoyed a long history since Montesquieu and the French Enlightenment and typifies the modern constitutional state (Manin 1996; Maravall and Przeworski 2003). The separation of powers concept, that is, a system of government with appropriate checks and balances, helps to prevent abuse of power and guarantees rule of law (Persson, Roland and Tabellini 1997). This view is consistent with the Madisonian model of democracy (Hamilton and Madison 1788), prescribing the fragmentation and limitation of political power in order to impede the tyranny of the majority

(Riker 1982). Hence, IRAs can be considered institutions protecting some pre-established “basic principles” from the “populist” component of democracy and from the risk of an arbitrary use of political power by political decision makers.

However, in order to endorse this justification, even before discussing whether independence as prescribed in agencies’ statutes corresponds to effective independence from political decision makers (Maggetti 2007), we shall recognize that delegation to IRAs implies a “net loss” of legitimacy for the political system (Majone 2005). In fact, following Majone, the political “principal” can transfer his powers to the independent delegate, but not his legitimacy; hence IRAs must rely on other external sources of legitimacy. In other words, to compensate this loss, additional legitimization procedures are required, in order to ensure the “social sustainability” of regulatory governance by IRAs (Costanza 1992; Kemp and Rotmans 2005; Knoepfel, Nahrath and Varone 2007). The two conventional options are: on the one hand, the expected high credibility and/or efficiency of IRAs, based on the assumption that they are more proficient in producing qualitatively better policy outputs than democratic institutions; and, on the other, the expected high procedural accountability of IRAs, i.e., the assumption that they operate more lawfully, transparently, openly, and fairly than ordinary bureaucracies can do. Hereafter, I will examine the arguments underlying these options.

### Output-oriented legitimacy

The traditional argument to counteract the democratic deficit claims that a lack of “inputs-oriented legitimacy” (i.e. democratic legitimacy) might be compensated by a positive evaluation of results by citizens (Scharpf 2000). Accordingly, the legitimacy of IRAs could rely on the capacity of producing regulatory outputs (and broader outcomes) considered satisfactory. This is the substantive component of IRAs’ legitimacy (Majone 2001b; Majone 2001c). After all, regulatory agencies are cut off from the chain of democratic delegation precisely for the purpose of obtaining “better” results from regulatory governance. On the one hand, a certain amount of autonomy is supposed to be necessary for credible regulation. Particularly in sensitive, unpredictable, and internationalized economic sectors, such as financial markets (Baker 2005), the expected credibility derived from enhanced time-consistency of regulatory policies is considered such a crucial stake for the functioning of the system that the choice of an independent regulator could be considered desirable (Dixit 1998; Keefer and Stasavage 2003; Shepsle 1991; Barro and Gordon 1983; Kydland and Prescott 1977). On the other hand, specialised agencies are expected to possess expert-based knowledge that politicians and bureaucrats lack, which is considered indispensable to perform some tasks in a complex society, increasing the efficiency of decision making (Majone 2001b; Majone 2001c; Bendor, Glazer and Hammond 2001; Epstein and O’Halloran 1999; Majone 2001c). Nevertheless, two major drawbacks are challenging this (dual) form of legitimacy pertaining to IRAs.

The first scepticism derives from empirical evidence: after 40 years of impact assessment in the United States and the subsequent development of the European regulatory state in existence for more than two decades, there is still no clear-cut evidence concerning the results of regulatory reforms (Christensen and Laegreid 2007; Jacobs 2006; Jacobs 2008;

Radaelli 2004) and regulatory agencies’ performance (Pollitt and Bouckaert 2004; Pollitt et al. 2004; Verhoest 2005; Verhoest et al. 2004). The few studies examining agencies’ performance (Brunsson 2002; Talbot 2004; Verhoest 2005; Yamamoto 2006), while helpful for building detailed country-specific knowledge, have led to mixed and inconclusive results. I can briefly summarize the reasons with three points. *First*, it is difficult to assess the impact of IRAs because their constitutional goals are varied, mixed, broad, unclear or at least blurred, all in all less intelligible than those of central banks, for instance. The literature distinguishes four dimensions of goal ambiguity characterizing all public sector organizations, which can show various levels of intensity: mission comprehension ambiguity, directive goal ambiguity, evaluative goal ambiguity, and priority goal ambiguity (Chun and Rainey 2005). Given that IRAs benefit from structural disaggregation and increased managerial autonomy, they are likely to suffer from the highest levels of goal ambiguity across these dimensions in comparison with ordinary public sector organisations. Additionally, IRAs may be marked by another source of ambiguity, that is, policy discretion, as they can sometimes select the suitable regulatory instruments to reach their pre-established (but generally quite indeterminate) regulatory ends. *Second*, the concept of regulatory quality has to be considered empirically sensitive to the subjective understandings of the different actors involved, such as political decision makers, civil servants, experts, producers, consumers, and citizens (Radaelli and De Francesco 2007). As a consequence, there are unrelenting difficulties in attempting to reach a general agreement on the measurement of regulatory quality. Regulatory policies frequently entail the redistribution of resources, the protection of first-mover positions, the allowance of competitive advantages and the support or discouragement of new entrants in the market (etc.). These regulatory policies are inevitably sustained or contested by different stakeholders with heterogeneous interests, whilst the aggregation of individual interests can hardly be converted into a unique societal notion of “public interest” (Arrow 1970). *Third*, even if one could confidently define the goals and develop the proper indicators for assessing the quality of regulatory policies, it would be arduous to persuasively verify the causal relationship linking the regulatory action of IRAs with the broad outcomes on the whole society. The study of organisational performance (as a dependent variable) suffers from critical problems of attribution and overdetermination, mainly due to disregard of the complex causal structure behind correlational findings and the limits of existing and available data, which are based on retrospective and subjective recalls of informants (March and Sutton 1997). To deal with these overly complex phenomena, some scholars of public management even propose to draw insights from chaos theory and quantum mechanics, such as the famous Heisenberg’s uncertainty principle and Born’s rules of probabilistic interpretation (Overman 1996). More generally, this link constitutes a micro-macro (or “meso-macro”) transition, which represents one of the most intractable problems in social theory and causal analysis due to the very high number of intervening variables and problematic epistemological assumptions of this kind of inference (Berg-Schlosser 2003; Coleman 1990; Kittel 2006; Sawyer 2003). As a matter of fact, the vague notion of “x-efficiency” is occasionally used in order to denote this somewhat undefined type of outcome (Button and Weyman-Jones 1993; Stennek 2000).

The second critique invokes a theoretical problem. Indeed, it is not sure that a deficit of “inputs legitimacy” could be perfectly compensated by a “better” quality of the outcomes, no matter how its measure is conceived. It appears that ex-post legitimacy cannot be conceptually separated from input legitimacy, notably because the positive evaluation of results by political actors depends primarily on the previous agreement about the existence and framing of a specific problem, which is rare in practice, as regulatory policies have often significant redistributive effects (Papadopoulos and Benz 2006). This point is complicated further by the consideration that such a form of legitimization at the very least requires the regulatory game be perceived as neutral. Instead, even theoretical “Pareto-optimal” regulatory policies are rarely framed as “win-win” situations in practice, because their properties and political implications are differently perceived and/or strategically constructed by the various actors concerned with the problem (Papadopoulos 2003). In fact, the relevant stakeholders rarely find an agreement concerning such a perspective; they normally understand the game as competitive, and they struggle for obtaining the most favourable compromise (Landry, Banville and Oral 1996).

## Procedural legitimacy

The literature proposes another way to solve the legitimization dilemma by providing the belief in enhanced accountability of regulatory governance by independent regulatory agencies (Baldwin, Scott and Hood 1998; Flinders and Buller 2006). The question of making agencies accountable is indeed a major concern (Flinders 2004; Hood and Scott 2000) and accountability is a mushrooming term that means, in its core sense, to be called to account for one’s actions, hence presupposing the existence of an “external” scrutiny (Castiglione 2006; Mulgan 1997; Mulgan 2000a; Mulgan 2000b; Mulgan 2003). Following Mulgan, in its current use, it may encompass different meanings: answerability, responsibility, control, responsiveness, openness and dialogue with citizens. Accordingly, instrumental and structural mechanisms for enhancing accountability can work ex-ante (through vetoing, performance management, quality standards, or contractualisation) or ex-post (i.e., in the case of audits, sanctions and rewards). Concretely, devices for improving accountability consist of goal setting, veto power, evaluation, committee inquiries, formal questioning, quality management systems, surveys, annual reports, and progress reports. Schedler calls “answerability” the need for giving information and justification, and “enforcement” the application of (formal or informal) rewards and sanctions (Schedler 1999). Finally, Bovens underlines the fact that accountability should be conceptualized as a social relation between an actor and its “accountability forum”, which can be an individual actor, such as a superior, a minister, an ombudsman, a journalist or a peer, or it can be a collective actor, such as a parliament committee, a court, an audit office or a stakeholder group (Bovens 2007).

Therefore, the link between accountability and legitimacy can be formulated in procedural terms. Actors, even if they disagree with a decision, should accept it as legitimate if it was taken in a way considered fair, namely if originated from an open and inclusive political process, ideally based on openness, transparency, equal access, and deliberation. In other words, according to some scholars – this solution is generally adopted by IRAs’ professionals as well – it is eventually possible to legitimise regulation by independent agencies thanks to a

‘legitimacy by the throughputs’, whatever the consequences the decisions may entail (Lodge 2004; Scott 2000; Stern and Holder 1999; Stern 1997). This corresponds to the procedural component of IRAs’ legitimacy (Majone 2001b). In this context, two different forms of accountability, potentially in tension, are usually distinguished: top-down (or “downward”) accountability; and bottom-up (or “upward”) accountability.

(1) *Top-down accountability.* Agencies should be accountable to their (democratically legitimate) principal: i.e., government, parliament, and administration (Thomas 1998). This accountability relation can work in various ways: for instance, hierarchical accountability in the context of NPM administrative reforms refers to the development of result-oriented accountability mechanisms as a substitute for traditional ex-ante accountability mechanisms, while non-hierarchical accountability is based on contracts and partnerships (Verhoest 2005; Verhoest et al. 2004). However, this kind of accountability is scarcely relevant for agencies that are formally independent by design. The point is that delegation to IRAs should not be understood in terms of a principal–agent relationship. Instead, the need for credibility requires a broad delegation of powers, which entails a substantial differentiation between the trustor and the trustee’s preferences and behaviour, according to a fiduciary mode of delegation (Majone 2001b). This model requires freedom from ex-ante controls and the minimization of ex-post controls, implying the transfer of political property rights—i.e., specific policy competencies—to independent regulators. The model also no longer considers the key problems of agency theory—hidden action and hidden information— as central (Majone 2001b). This fiduciary mode of delegation should in fact ideally allow agencies to be factually independent through the self-determination of their preferences and the execution of an autonomous day-to-day activity of regulation (Maggetti 2007; Maggetti 2009).

(2) *Bottom-up accountability.* From this perspective, agencies are said to be accountable to their stakeholders, organized interests, and the public at large if their regulatory action originates from an open and inclusive political process, ideally based on openness, transparency, equal access and deliberation. This involves the application of a number of measures such as: the development of standards for production and service delivery; the presence of interest groups, users and other stakeholders on the board; the production of customer satisfaction surveys; the availability of public reports about their performance; and, more generally, the improvement of participation, transparency, openness, and the requirement for officials to answer, explain and justify their actions (Lodge 2004; Majone 1994a; Majone 1997; Scott 2000). Nonetheless, once again, a double-sided criticism to this form of IRAs’ legitimacy has to be considered.

On the one hand, accountability and the delivery of expected outcomes may conflict, undermining the underlying assumption that justifies the delegation of powers to IRAs. It has been argued that participative and deliberative practices would weaken the efficiency/credibility of agencies’ regulatory action (Majone 1994b; Majone 2001b) because such procedures would significantly increase the political transaction costs of regulation. On the other hand, a minimal version of accountability probably cannot grant legitimacy to the IRA under consideration. In fact, when participation is reduced, and legitimacy is only based on procedural arguments, the regulatory order will risk being considered scarcely legitimised, in other

words, a 'weak democracy' (Barber 2004). This puzzle is inherent in all scenarios in terms of procedural accountability, as stated by Sosay (Sosay 2006). In her depiction of the participatory scenario, the diffusion of power is emphasised, and public involvement is improved. Decentralizing power and opening channels of access to decision-making facilitates the management of social complexity. This scenario appears roughly in line with the Habermasian ideal of communicative and collective deliberation. Nevertheless, apart from the criticisms about the idealisation of that assumption - the prospect that only certain powerful interest groups are actually able to influence the process, thus excluding ordinary citizens and looser organisations, such as consumer associations (Olson 1971) - it is plausible that the participation of an increasing number of actors does undermine the decision-making capacity of the agency, reducing its credibility/efficiency (Majone 1999), i.e., its *raison d'être*. Conversely, the technocratic scenario presents the merely procedural way to legitimise IRAs. The instrument is the implementation of a strict rule-based system providing expertise in order to maximise the performance of regulatory decision-making. It corresponds to the Weberian process of rationalisation and bureaucratisation that follows the development of a complex and differentiated society. This scenario implies the minimisation of the involvement of political representatives and public participation, generating the supremacy of technocratic rule over democracy.

### New forms of accountability

The arguments developed above suggest that regulatory governance by independent agencies, although uncontested at present, can hardly rely on a strong stock of legitimacy, while the development of the regulatory state and regulatory capitalism might reinforce the ongoing tendencies towards a weakening of the democratic quality of political systems. From a normative point of view, the scarce legitimacy of IRAs is particularly problematic because considerable public authority is delegated to these unelected non-majoritarian bodies, producing a "net loss" of legitimacy for political institutions. In addition, from an analytical standpoint, this shortfall means that delegation and "depoliticisation" should be considered as incomplete and fragile political strategies, and the new regulatory order potentially quite easily challenged in the case of exogenous pressures for a paradigmatic shift (Hall 1993).

Yet some recent trends entail new perspectives. The emergence and ongoing consolidation of transnational networks of regulators might configure a new potential mean for ensuring the accountability of regulatory governance by IRAs, which, in addition, might permit circumvention of the aforementioned trade-offs between autonomy, performance and control. Specifically, the literature on "multilevel" regulatory governance recently examined the creation of European networks of regulatory authorities, in line with the new style of network governance promoted by the European Commission (Kohler-Koch 2002), such as the Committee of European Securities Regulators, the European Regulators Group, and the European Platform of Regulatory Authorities (Coen and Thatcher 2008; Eberlein and Newman 2008; Eberlein and Grande 2005; Héritier et al. 2001; Scharpf 1994; Scharpf 1997). European networks of regulators – where domestic IRAs are involved, together with scientific committees, business actors, representatives of member states, the Commission, and other European actors – could provide agencies, 'as a more or less unintended by-

product' (Majone 2000), with incentives and instruments for mutual control. Given lasting cooperation among agencies, this institutional setting would ideally make them *horizontally* accountable (Moe 1985). Therefore, regulatory networks may directly contribute to legitimizing IRAs by providing the procedural component of legitimacy, which involves checks and balances, transparency and stricter procedural requirements by peer review and "mutuality" (Hood 2009; Hood, James and Scott 2000). However, this "internal" form of accountability may lack political and public recognition (Papadopoulos 2007), thus it hardly leads to significant legitimacy gains when considered on its own. Similarly, decision-making within networks should occur following a transparent, responsive and deliberative mode of interaction, which does not necessarily correspond to actual practices (Slaughter 2002; Slaughter 2003; Slaughter 2004).

Nonetheless, one should consider that if these institutional arrangements are effective, they could reinforce agencies' accountability, and contribute to the social construction of their legitimacy (Black 2008). The reciprocal control could foster mutual adjustment in order to achieve both factual independence and credible/efficient regulation, reconciling throughput- and output-oriented legitimization strategies. On the one hand, agencies that perceive themselves as part of a formal or informal transnational network of institutions, sharing similar aims and problems, are more likely to resist external influences and conduct their regulatory action properly (Majone 1997). Agencies' representatives have motivational incentives to maintain their reputation in the eyes of the other members of the network, to achieve international cooperation, and avoid public blame. In fact, organisational reputation is a valuable resource that allows agencies to build coalitions, to exert political influence, and to increase their manoeuvring room (Carpenter 2001a; Carpenter 2001b).

On the other hand, networks are expected to supply agencies with expertise and information derived from other (leading) regulators, to give them potential allies in front of political decision makers, while also offering a range of technical and symbolic resources that enhance their emancipation from the regulatees (Maggetti 2007). Therefore, regulatory networks may respond to the challenge of developing new, more adequate procedures for securing agencies' accountability because they do not contradict the principle of agency autonomy. At the same time, they do not hinder high-quality regulation, constituting rather a mechanism "where no one controls an independent agency, yet the agency is 'under control'" (Majone 1997). Whether this is enough to compensate for the democratic deficit remains an open question.

It is worth adding that previous evidence suggests that horizontal accountability is useful to stimulate learning among participating actors, but it still operates under the shadow of hierarchy (Schillemans 2008). In other words, this type of accountability relationship seems to require a certain amount of latent power to work, that is, the leeway of authoritative actions taken by the government (Papadopoulos 2007). However, the shadow of hierarchy may vary, especially when networks are highly transnationalized. In this case, one might formulate the hypothesis that this kind of institutional arrangement would potentially become self-enforcing (Weingast 1997) for two reasons. First, agencies have rational incentives to improve their reputation in regulatory networks in order to gain power, influence and organizational legitimacy. Second, any

reputational improvement provides them with additional means to develop their factual independence and performance, producing, again, positive reputational feedback.

## Conclusions

The argument developed throughout this review article is that the regulatory state suffers from serious legitimization problems. There exist a number of trade-offs concerning the simultaneous delivery of autonomy, performance and accountability, and reliance on a single dimension is hardly sufficient to legitimize the regulatory process. To sum up, it appears that factual independence produces a net loss of legitimacy for a political system. In addition, a collective agreement on a positive evaluation of results is tricky and would constitute a defective substitute of input legitimacy. Finally, the procedural legitimacy of regulatory governance, built upon traditional accountability devices, may challenge the IRAs' main *raison d'être*, that is, the supposed gains in terms of credibility and efficiency of regulation. As a consequence, the political decision of delegating public authority to independent regulatory agencies has quite fragile normative foundations and raises potential qualms concerning its social sustainability. Nevertheless, it is suggested that networks of agencies could offer the appropriate tools to reconcile these trade-offs and provide an integrative, complex and multi-pronged form of legitimacy. After having highlighted this theoretical possibility, ultimately more research is needed to appreciate the real impact of regulatory networks on independence, performance and accountability.

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