



Institutional change and the evolution of the regulatory state: evidence from the Swiss case

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Abstract

This article examines institutional change in a case that was expected to be particularly resilient but showed considerable structural transformation: the institutionalization of the regulatory state in Switzerland. This process is illustrated through the establishment of independent regulatory agencies (IRAs) in four areas: banking and finance; telecommunications; electricity; and competition. The theoretical framework developed by Streeck, Thelen and Mahoney is used to explore hypotheses about the modes of institutional change, with the methodology of diachronic within-case study. Results confirm only partially the expectations, pointing to layering and displacement as the prevalent modes of change. The concluding part discusses the type and the direction of change as additional explanatory factors.

Points for practitioners

This article examines the institutional development of the regulatory state in Switzerland through the establishment of independent regulatory agencies (IRAs). Different modes of change are illustrated through the analysis of the processes leading to agencification in four areas: banking and finance; telecommunication; electricity; and competition. Results suggest that the dynamics of re-regulation follow a quite different logic compared to the general trend towards liberalization. What is more, the empirical analysis indicates that independent regulatory agencies are mostly created by importing exogenous models in the case of the 'positive' reform of previously self-regulated sectors, while they are established along existing institutional arrangements when reforming former state-owned enterprises or publicly regulated sectors.

Keywords

agencies, autonomy, independence, institutional change, regulation, regulatory state, Switzerland

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Introduction

In recent decades the widespread establishment of independent regulatory agencies (IRAs) is considered to be the main public governance innovation that has taken place in advanced capitalist democracies (Christensen and Laegreid, 2006; Gilardi, 2008; Pollitt et al., 2004; Thatcher, 2002b). IRAs are public sector organizations with regulatory competencies and their own budgets, defined as legal entities under public law that are 'structurally disaggregated' from the ordinary civil service and constitutionally separated from the electoral cycle (Verschuere et al., 2006). They arguably represent the most autonomous type of organizations that possess and exercise some grant of public authority. Historically, IRAs were first established in the USA during the 'Progressive Movement' (1890s–1920s) in an effort to improve the efficiency of decision-making through 'depoliticization' and the use of technical expertise in the policy process. For a long time, they were considered a peculiar feature of the American regulatory state, with few exceptions. Then, quite suddenly, the agency model was adopted worldwide starting in the late 1980s so as to secure credible regulatory policies following the privatization, liberalization and re-regulation of sectors as diverse as finance, public utilities, environmental protection and health safety. Given their theoretical and empirical relevance, IRAs have been quite extensively studied from the point of view of their creation, diffusion, formal and de facto independence, accountability, legitimacy, mediatization, efficiency and performance (Carpenter, 2001; Christensen and Laegreid, 2006; Coen and Thatcher, 2005; Gilardi, 2005, 2007, 2008; Jordana and Levi-Faur, 2004, 2005; Levi-Faur, 2003, 2006a; Maggetti, 2009, 2012a; Thatcher, 2002a, 2002b, 2005).

However, the establishment of IRAs has been rarely framed from the point of view of macro-institutional analysis (Hollingsworth, 2000). In particular, the cross-sectoral process of institutional change, leading to a new mode of regulation, has not yet been studied in a systematic and comprehensive way. This dynamic view is crucial in order to put the phenomenon of agencification in the broader context of the long-term evolution of the modern state. In line with this argument, the main goal of this article is to characterize the institutional development of the regulatory state in a case that was expected to be particularly resilient to change and yet showed considerable macro-institutional transformations in the 1990s and 2000s – that is, the Swiss regulatory state. In this way, it is possible to test expectations based on the typology of the modes of institutional change identified by Streeck, Thelen and Mahoney (Mahoney and Thelen, 2009; Streeck and Thelen, 2005), with the methodology of diachronic within-case study (Gerring, 2007). The article is structured as follows: the next section presents the theoretical framework that Streeck, Thelen and Mahoney developed and transposes it to the study of the regulatory state. Then, this explanatory typology is operationalized to derive expectations about the modes of institutional change in Switzerland. The empirical section illustrates the process of agencification through the development of the

most prominent Swiss IRAs, covering four areas: banking and finance; telecommunications; electricity; and competition. Discussion and conclusions follow.

How institutions change

Institutional change is a classic topic for scholars in public administration and political science. Theories of institutional change are plural and sometimes contradictory. To explain the development of institutions, existing theoretical frameworks alternatively focus on the coordinative efforts of actors to overcome their collective action problems, or on the struggles that produce new institutional forms that create winners and losers (Tang, 2011). A way to move beyond this debate and to push the empirical agenda forward is to shift the analytical focus from the 'why' to the 'how' question by examining the modes of institutional change.

The relevance of contextual factors

The starting point for the study of institutional change is the historicization of the conditions under which institutions evolve (Streeck, 2009). In this view, following Streeck, Thelen and Mahoney, the overarching framework for characterizing institutional change during the past few decades is the general trend toward political and economic liberalization in advanced capitalist democracies. Many researchers have examined the processes of liberalization and its consequences for political-administrative systems as well as for the varieties of capitalism. It has been observed that institutional change occurs through the 'reform' of democratic capitalist institutions at the macro-level in a way that is transformative but not disruptive (Streeck and Thelen, 2005). Streeck and Thelen call this process a *gradual transformation*, where one can observe an institutional discontinuity stemming from incremental change. Nonetheless, quite surprisingly, the concomitant trend of re-regulation (Braithwaite, 2008; Levi-Faur, 2005; Majone, 1996; Vogel, 1996) has rarely been studied from the point of view of macro-institutional analysis. To fill this gap, this piece of research presents a transposition of the analytical framework that Streeck, Thelen and Mahoney developed regarding the gradual processes of change that shape the rise of the regulatory state. To begin with, to make these concepts 'travel,' it is important to define their functional equivalent in the context of the regulatory state (see Table 1 and the following subsections).

The modes of change

In their seminal collective volume, Streeck and Thelen (2005) identify four modes of gradual but nevertheless transformative institutional change: displacement; layering; drift; and conversion (exhaustion is mentioned as an additional mechanism). In a successive book, Mahoney and Thelen (2009) develop an explanatory

Table 1. The modes of change

Modes of change	Institutional change in the regulatory state
<i>Layering</i>	Incremental re-regulation and organizational development eventually alter the logic of the regulatory framework
<i>Displacement</i>	New rules and organizations imported from abroad redefine the regulatory framework
<i>Drift</i>	Existing rules and organizations are not updated so that the regulatory framework becomes less stringent
<i>Conversion</i>	Existing rules and organizations are reconverted to new goals

Source: Adapted from Streeck and Thelen (2005) and Mahoney and Thelen (2009).

model to associate the empirical occurrence of each mode of change with the existence of two conditions: the strength of veto possibilities and the discretion in the interpretation and enforcement of the investigated institution. The concept of veto possibilities is very close to the classic argument of Tsebelis (2002) and can be applied as such to the study of the regulatory state, meaning that actors who can potentially block regulatory change by institutional or extra-institutional means do exist. The concept of discretion refers to the extent to which the institutional model in place is open to contending interpretations and variations in enforcement – that is, to its degree of regulatory stringency and formalization of regulation.

Layering. According to Streeck and Thelen (2005), layering is a mode of gradual change effected not through a single critical juncture but through the progressive growth of new elements along traditional arrangements. These innovations may appear to be minor and may be unnoticed at the time of their enactment. However, after a certain level, they may reach a tipping point that may completely change the functioning of the system. By analogy, *regulatory layering* can be seen as a process of incremental change that builds on existing rules and organizations through apparently marginal and non-fundamental phenomena of re-regulation, which will, however, eventually alter the logic of the regulatory model. This is typically the case when a new regulatory framework supplements but does not replace the old one because new, stricter, more formalized regulation is required. Following Mahoney and Thelen (2009), layering is the result of a political context characterized by strong veto possibilities combined with a low level of discretion in interpretation and enforcement.

Displacement. Displacement occurs when the emergence and diffusion of new institutions call into question existing, previously taken-for-granted organizational forms. Traditional arrangements are progressively discredited and pushed to the side, while new institutions are activated and promoted. Change through displacement can be endogenous, but more frequently, it happens through the (more-or-less-coercive) integration of foreign models. *Regulatory displacement*

occurs when innovative regulatory instruments – ones that involve significant modifications of the existing regulatory model – are imported from abroad and become more and more common and legitimized over time, thus leading the way to the establishment of ‘colonies’ of new regulators, while the old regulatory model becomes less relevant for insiders and progressively disqualified for outsiders. Displacement is the expected product of weak veto possibilities and low discretion in the interpretation and enforcement of the targeted institution.

Drift. The concept of drift relates to the erosion of existing institutional arrangements, which may occur when they do not undergo active maintenance and adjustment according to social, economic and political changes. Policy drift might take place as the result of slow, unnoticed changes, but, more often, it is the product of a deliberate political strategy of non-decision aimed at the retrenchment of institutions. *Regulatory drift* can be conceived as a more-or-less-unintended process of regulatory obsolescence through which existing rules and organizations are not updated to new risks and opportunities: The result is that the regulatory framework becomes de facto less stringent or less effective. Drift possibly occurs when strong veto possibilities and high discretion in interpretation and enforcement exist.

Conversion. Institutions may be converted to different goals and functions. This mode of change is typically associated with the political contestation of institutions by the political actors who were excluded from their design. Contestation may appear following unintended consequences, renegotiation, the shift of power in favour of new coalitions of actors, or simply the change of structural conditions over time. *Regulatory conversion* indicates a phenomenon of regulatory reconfiguration that those who made the rules and defined the goals of the regulatory model simply did not expect. Following Mahoney and Thelen (2009), conversion is the product of the combination of weak veto possibilities and high discretion in interpretation and enforcement.

Institutional change and the regulatory state

The typology that Streeck and Thelen developed has been applied in many studies to illustrate the prevalent mode of institutional change following the liberalization of various areas, for example, the welfare state, corporate governance, vocational training, trade and finance (Streeck and Thelen, 2005). However, as mentioned before, a systematic assessment of the dynamics of institutional change at the macro level with reference to the other concomitant trend that is shaping the development of advanced capitalist democracies – re-regulation implemented through the establishment of independent regulatory agencies – is still pending. In the rest of this section, this analytical framework will be operationalized for the case of the Swiss regulatory state to characterize the process of change leading to the institutionalization of IRAs.

The regulatory state

Re-regulation is strongly intertwined with liberalization, as ‘freer markets’ require ‘more rules’ (Vogel, 1996), but it is useful to consider these two dimensions separately so as to underscore the apparently paradoxical nature of the regulatory state and regulatory capitalism. On the one hand, nation-states in advanced capitalist democracies are restructuring their modes of governance and redirecting their intervention in the economy to a more indirect approach, according to a ‘new division of labor between state and society’, which is famously summarized with the metaphor of ‘steering’ instead of ‘rowing’ (Osborne, 1993). As a matter of fact, by the beginning of the 2000s, most advanced capitalist democracies privatized and liberalized their public utilities and further opened their markets. On the other hand, this process did not imply the ‘retreat of the state’. Conversely, more regulatory capacity is required to supervise liberalized markets (Levi-Faur, 2005; Vogel, 1996), and public authority is expanding by colonizing new areas with more formalized regulation (Moran, 2003). In this context, the notion of ‘regulatory state’ connotes the shift from direct intervention in the economy to a mode of public governance based on the promulgation of rules and the creation of IRAs to monitor and enforce the respect of these rules (Levi-Faur, 2005). Regulation goes with agencification: this process of institutional creation and reform has been portrayed as the major reorganization of contemporary governments and public administration during the past few decades (Majone, 1996). This article offers an in-depth study of this macro-institutional change, corresponding with the establishment of sector-specific independent regulatory agencies in Switzerland.

The Swiss case

The development of the regulatory state in Switzerland is particularly interesting because it shows a considerable degree of structural change despite the presence of numerous conditions predicting stability, such as non-European Union (EU) membership, the presence of a complex and decentralized federal system with many partisan and institutional veto points, and low institutional complementarities with the ideal-type of the regulatory state (Mach et al., 2003; Varone and Genoud, 2001). As Mach et al. (2003) put it, Switzerland displayed during the 1990s an unexpectedly high degree of ‘adjustment’ to international and supranational regulations, particularly in the field of economic regulatory reforms. They explain this outcome with the activism of the government and of some administrative actors in shaping the decision-making processes. The opponents of the reforms were marginalized but were given ‘strategic concessions’ in order to reduce potential conflicts. The present study focuses on the next step – that is, the institutionalization of IRAs that are in charge of re-regulating markets following liberalization reforms.

The liberalization and re-regulation of the Swiss economy

After more than a decade, it is evident that the liberalization process of the Swiss economy has been quite spectacular. Figure 1 illustrates the aggregate trend of liberalization in Switzerland, defined as the progressive dismissal of ‘anti-competitive’ regulations, using product market regulation Organization for Economic Cooperation and Development (OECD) data (Conway et al., 2006). Figure 2 compares the reference years 1997 and 2007, sector by sector. All sectors show substantial liberalization except for financial markers, which were already fully liberalized, and roads, which reveal a modest decrease in liberalization due to a bilateral agreement with the EU that limited the transit of heavy vehicles. The case of electricity is peculiar because this sector was liberalized more slowly, but it is currently catching up.

The overall interpretation of these trends remains mixed, as evidence of path-dependent dynamics in the implementation of liberalization policies exists (Maggetti et al., 2011). It is too early to say to what extent the persistence of traditional regulatory arrangements, such as business actors’ enduring reliance on self-regulation, will disappear over time, or whether the coexistence of old practices along with new structures will constitute a long-term feature of the Swiss regulatory state (Mach et al., 2007). In any case, from a macro-institutional

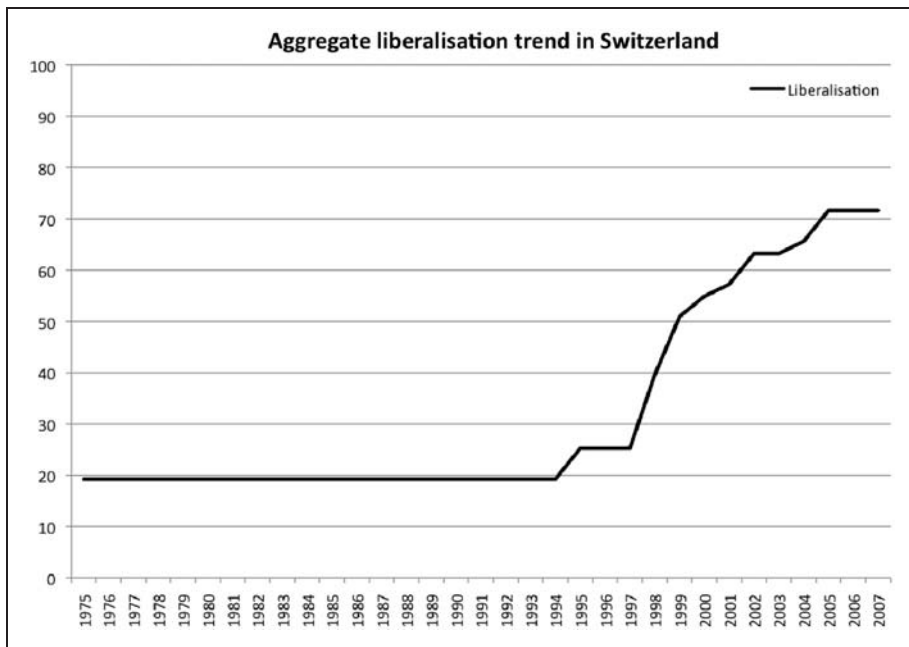


Figure 1. Aggregate trend of liberalization in Switzerland

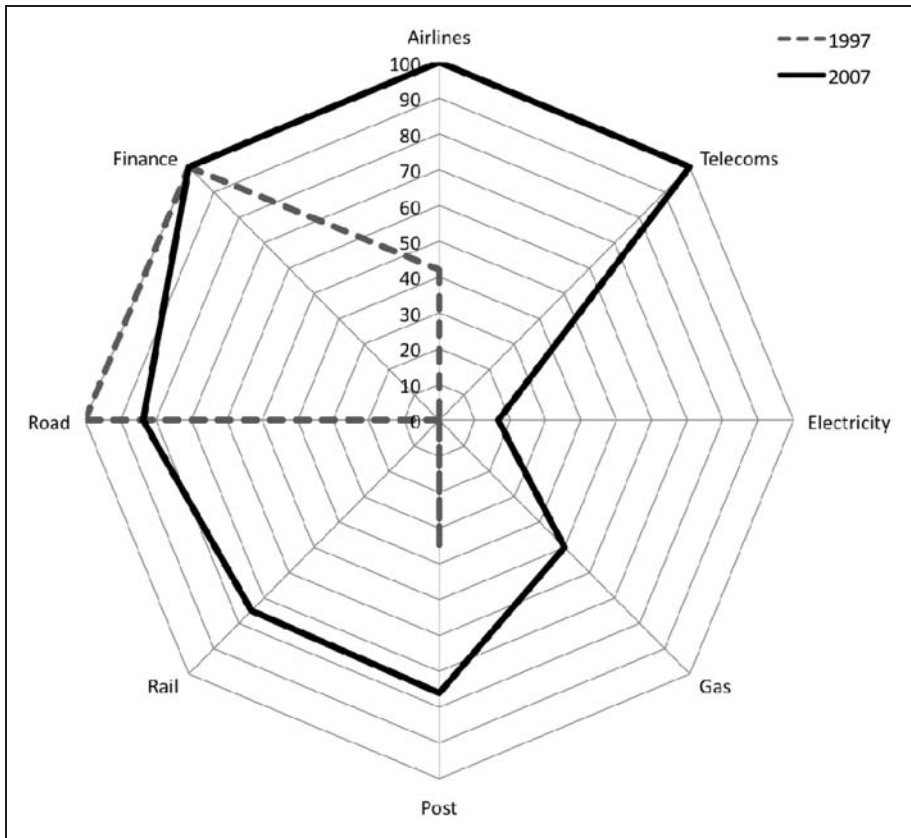


Figure 2. Sectoral liberalization in Switzerland in 1997 and 2007

perspective, change in the regulatory state is sizeable and coherent with the expectations of this approach. Table 2 summarizes the selected IRAs. The competition authority and three sectoral regulators, namely in banking and finance, telecommunications, and electricity, are in line with the agency model. Conversely, the aviation, post and railways sectors are not (yet) regulated by agencies that are formally independent from the public administration (Conseil federal, 2006b). The case of therapeutic products is peculiar because Swissmedic, the regulator in charge, is a well-staffed, legally independent institution disposing from key regulatory competencies. However, since the federal administration can steer this agency through contractualization procedures, this agency is not fully comparable with other IRAs (Gilardi et al., 2012).

Empirical research has shown that the drivers of agencification are diverse (Gilardi, 2008). Functional rationales exist, such as credibility, political uncertainty

Table 2. Selected IRAs in Switzerland

Area	Authority	Creation/reform	Structure
Banking and finance	Financial Market Supervisory Authority (Finma)	1934/2009	<ul style="list-style-type: none"> ● 7/9 board members ● 362 employees ● 84.784 expenses/ 93.379 income (mio CHF)
Telecommunications	Communications Commission (Comcom)	1997/2006	<ul style="list-style-type: none"> ● 5/7 board members ● 3 employees ● 4.076 expenses/ 0.792 income (mio CHF)
Electricity	Federal Electricity Commission (Elcom)	2007	<ul style="list-style-type: none"> ● 5/7 board members ● 31 employees ● 0.685 expenses/1.2 income (mio CHF)
Competition	Competition Commission (Comco)	1995/2003	<ul style="list-style-type: none"> ● 11/15 board members ● 64 employees ● 11.813 expenses/ 2.124 income (mio CHF)

Source: Agency annual reports and author's own survey inquiry. Data are for the year 2009.

and the need for expertise. Top-down factors including the pressure from the EU are relevant as well. Policy diffusion processes are also at work. However, how did the process of change unfold?

Expectations about the process of change

The process of macro-institutional change concerning the institutionalization of the regulatory state in Switzerland is characterized by the transition from the traditional regulatory model based on a complex mix of public intervention and self-regulation – which was predominant in Switzerland until the 1990s – to a more formalized, stricter, independently regulated model that IRAs implemented in line with the global development of regulatory capitalism (Levi-Faur, 2005). The explanatory model that Mahoney and Thelen (2009) developed to align each mode of change to the abovementioned explanatory conditions – the strength

of veto possibilities and discretion in enforcement – needs to be operationalized for the Swiss case.

To begin with, veto possibilities can be considered constantly significant across sectors. In fact, the Swiss political system is remarkably open to the influence of organized interests in the pre-parliamentary phase and in parliamentary commissions, and, if unsuccessful beforehand, the coalitions that oppose the reforms – business associations, political parties and trade unions – can also use referendums to prevent new legislation from becoming enforced (Kriesi and Trechsel, 2008).

Conversely, the discretion in the implementation of the regulatory framework presents cross-sectoral variations that can be described as follows. On the one hand, the regulation of banking and finance as well as general competition was not very stringent. In the banking and financial sector, light public regulation combined with private self-regulatory arrangements and reliance on ‘gentlemen agreements’ that conferred high discretion to regulators, business associations and other non-state actors existed (Maggetti et al., 2011). Competition regulation was also traditionally ‘lenient and low profile’, and the non-membership of Switzerland in the EU reinforced the existing room for manoeuvre in the enforcement of competition regulation (Gugler, 2007). On the other hand, public utilities such as telecommunications and electricity were state-owned and therefore were regulated with a much stricter regulatory framework (OECD, 2006a). In particular, prior to regulatory reforms, these state-owned enterprises were monopolistic, and the government was in charge of defining their goals, tasks and management structures quite precisely in dedicated pieces of legislation and ordinances.

Therefore, following the explanatory typology of Mahoney and Thelen (2009), the predicted mode of change is ‘regulatory drift’ in the cases of banking and finance and in general competition, in which strong veto possibilities combine with high discretion in the interpretation and enforcement of the regulatory framework. Respectively, the expected mode of change in telecommunications and electricity is ‘regulatory layering’ according to the combination of strong veto possibilities and low discretion. In order to test these expectations, the trajectory of the Swiss macro-institutional regulatory framework will be examined by paying attention to the evolution of the organizational model of regulatory authorities along with their main functional characteristics – that is, their independence, their resources and their formal competencies. To this aim, the empirical analysis follows a qualitative historical comparison based on diachronic within-case study. This implies the study of the process of creation and reform of different sectoral regulators in the same entity (Switzerland) over time. As anticipated, the four selected IRAs correspond with regulators that can be considered to be formally in line with the model of the IRA à la Majone (Majone, 1996, 1997, 2001a, 2001b).

The analysis of the evolution of the Swiss regulatory state

This section presents the process of establishing independent regulatory agencies in banking and finance, telecommunication, electricity and competition.

Banking and finance

The Swiss Financial Market Supervisory Authority (Finma) was established in 2009 as the integrated regulator of financial institutions and insurances. The Finma replaced the Federal Banking Commission (SFBC), which was responsible for the supervision of the banking sector since 1934 and of financial markets since 1996. For many decades, the SFBC acted as a traditional extra-parliamentary commission that only had a passive and reactive role: private actors used to set up self-regulatory measures, and then the commission adopted these rules as minimum standards for the supervised financial institutions (Bänziger, 1986). Then, in the 1990s, in line with the liberalization of the banking and financial sector, the SFBC's competencies were extended (Müller, 1997) and the scope of regulation widened to include additional activities such as the supervision of securities traders, investment funds, securities exchanges, capital markets, bank acquisitions, mergers and competition. However, the core strategies and structures of financial markets regulation – based on very light public intervention combined with a prominent role attributed to peak associations, not only in defining rules but also in enacting them – changed little until more recent times (Maggetti et al., 2011).

Then, the establishment of the Finma was a 'critical juncture' that constituted a considerable innovation for the Swiss political-administrative system. This agency was created as a new institution under public law – an institution that has functional, institutional and financial independence as well as a modern management structure with a governing board, an executive management and an auditing body. The board is composed of 7 to 11 members and includes a secretariat who assists in running day-to-day tasks. In 2009, the secretariat employed 371 full-time positions. The resources, provided after the regulated companies have paid associated compulsory fees, have considerably increased in number, in line with the extension of competencies. Finma's organizational model – characterized by the integrated supervision of banks, insurances and financial markets; by increased autonomy; and by more regulatory powers – was adopted in conformity with the IRA ideal-type that international actors, such as the International Monetary Fund (IMF), actively promoted (Conseil federal, 2006a). In fact, the choice of this organizational model in the pre-parliamentary phase was directly inspired by existing 'best practices' in other countries (Zimmerli Commission, 2003), with these practices being considered vital in reforming the regulation of the Swiss financial sector in the context of the growing integration of international and European financial markets (Zufferey, 2000).

Regarding regulatory functions, it can be observed that Finma became more and more active over time, namely in the context of the 2008 financial crisis. The regulatory agency proved to be particularly interventionist in the dispute between the two big Swiss banks (UBS and Credit Suisse) as well as the US fiscal authorities. What is more, Finma's recruitment policy seems to be coherent with its increased formal autonomy: the chairperson in office since 2011 has an independent academic professional profile, which is at odds with the traditional proximity

between Swiss political and economic élites. Finma is further exhibiting its regulatory policy's discontinuation by challenging the legitimacy of the most symbolic pillar of the Swiss financial sector, the banking secrecy (Le Temps, 2012). This new pro-active role of the financial regulator is confirmed by the increased presence of Finma in parliamentary debates and in the news media, which tend to cover regulatory issues when they are relevant for the public at large (Maggetti, 2012b).

This short overview shows that self-regulation, which has always been prominent in the Swiss financial sector, has been partially replaced with a formalized, independently regulated model following the establishment of a new IRA, Finma. This regulator is an innovative and powerful integrated supervisory body that was inspired by foreign models of financial regulation. Again, its organizational structure is in line with the ideal-type of the IRA, and it has proven to become an active actor in the regulation of the financial sector. Therefore, against the expectations of 'drift,' the regulatory reform of the financial sector can be interpreted as a process of *regulatory displacement* through the adoption of an exogenous model, which is producing an incremental but transformative change in the mode of regulation. This mode of change is clearly detectable based on the fact that experiences in other countries fostered the adoption of an extraneous institutional design that challenged indigenous public-private regulatory institutions, notwithstanding existing veto possibilities.

Telecommunications

The Federal Communications Commission (Comcom) was established as the authority responsible for regulating the telecommunications market in Switzerland. The new Swiss Telecommunication Act was enforced in 1997, following pressures for the liberalization of the communications market in Europe (Maggetti et al., 2011). This reform led to the partial liberalization of the sector, to the partial privatization of the incumbent monopolist (for example, Swisscom), and to the establishment of Comcom. In 2006, another reform liberalized the so-called last mile, the connection between the local centre and households. The unbundling of the last mile took place shortly following judicial disputes that have demonstrated the necessity of clarifying the legal basis regarding the competencies of Comcom, forcing Swisscom to share access with its competitors (Fischer, 2005).

Comcom's tasks and organizational structure are quite close to the IRA model, but this regulator also presents some markedly dissimilar features that typify it as an indigenous variety of regulator (Fischer, 2008). Comcom is the only authority in charge of regulating telecommunications and has the power to grant concessions for universal service; to decide in the case of disagreement between parties; and, where appropriate, to make administrative sanctions for infringements of existing regulations. The commission is composed of five to seven so-called independent experts from different backgrounds who are appointed by the government. Its financial resources are mainly provided through fees levied on concessions granted to communication companies. However, this regulatory agency displays key

elements of continuity with the traditional Swiss political-administrative system. Comcom was created as a classic extra-parliamentary commission that was part of the decentralized administration and has some discretionary decision-making powers (OECD, 2006a). It works in conjunction with the Federal Office of Communications (Ofcom), a body established in 1992 and subordinated to the Department of the Environment, Transport, Energy and Communications (DETEC). Another distinctive feature of Comcom is its very small secretariat. In fact, Comcom has to rely entirely on Ofcom for ensuring its day-to-day duties of regulation and supervision, for the preparation of decisions, for the drafting of proposals, and, more generally, for the implementation of its decisions.

Regarding the activism in front of the regulated industries, it should be noted that the regulation of telecommunications is not (yet) particularly stringent given the relative freedom left to providers in managing their own relationships. Notably, in 2007, a legislative reform prevented Switzerland from adopting new provisions that would have integrated further the Swiss communication sector into the European market by restricting that freedom. Any intervention of Comcom in the market definition, particularly with regard to the specific obligations of dominant suppliers, was discarded. This type of Comcom intervention can only follow the request of market participants that have already sought the advice of the Competition Commission (Comco). This means that this regulatory body is also highly dependent on co-regulators at the domestic level, both in the ministerial department in charge and in regards to general competition.

In conclusion, the institutional framework for the regulation of telecommunications changed only very incrementally and displays substantial elements of continuity. Comcom is a formally independent regulatory body that possesses important regulatory competencies; however, it presents ad hoc organizational and institutional features and has very limited capacity, as it has to rely on the federal office in place for the execution of its day-to-day tasks. Therefore, the IRA model has been, to some extent, adopted – but only in a much softer version that has been created in accordance with existing politico-administrative arrangements (Fischer et al., 2003). Thus, as expected following the typology of Mahoney and Thelen, the process of change was characterized by *regulatory layering*. This means that Comcom did not replace the previous regulatory model but rather emerged progressively on the top of existing arrangements. In fact, the new regulator heavily relies on traditional structures and procedures, while the previous mode of regulation, mainly based on public regulation at the federal level, remains partially in place along with the new one.

Electricity

The Swiss government initiated the reform in the electricity sector already in 1994, even before the adoption of the European directive in 1996. However, the Electricity Market Act (EMG) was only adopted in 2000 after a long decision-making process – and rejected in a popular referendum in 2002. After the

referendum vote, a new law was drafted, and, in 2007, the Electricity Supply Act was eventually adopted. The new law was enforced in 2008, and competition was introduced in 2009 (Maggetti et al., 2011). This law called for the opening of the Swiss electricity market in several stages and for the structural division between the manager and the owners of the transport network. Thus, a private company – now called Swissgrid – was established to ensure networks operations throughout Switzerland. Since 2007, the electricity sector has also been regulated by an IRA: the Federal Electricity Commission (Elcom).

Elcom is in charge of guaranteeing the autonomy of the transport network, ensuring the transition from monopoly to liberalized market economy and controlling the prices for the high-voltage network. Elcom accomplishes these goals through quite extensive judicial powers, competencies of monitoring and enforcement, and decision-making, namely regarding network access and electricity tariffs. On the organizational side, Elcom's board is composed of five to seven members who are independent from the electricity sector but represent different interest groups. A secretariat of 31 full-time equivalents assists the board. As for other cases, the fees cover the costs of the agency's activities. However, instead of representing a genuine innovation, Elcom follows the Swiss tradition of decentralized administration through extra-parliamentary commissions. Elcom's structure was indeed very explicitly inspired by Comcom's model (Conseil federal, 2004). Above all, as for Comcom, close collaboration exists between Elcom and the office affiliated with the government, namely the Federal Office of Energy (Ofen). The latter may submit proposals to Elcom and follows its instructions by preparing the caseload and executing decisions. The Elcom secretariat provides the intermediation between the two organizations, thus guaranteeing the technical follow-up of Ofen's day-to-day work.

Despite only being around for a short time, Elcom has proven to be quite active. For instance, this agency judged the transportation rates that Swissgrid set for 2012 as too high and as being unjustified. After investigating, the agency forced this company to set prices back to 2011 levels. However, many of the old regulatory model's features are maintained. As a matter of fact, the actors who guaranteed electricity supply prior to the introduction of the new law in 2007 – local monopolies at the cantonal or municipal levels – remain important in the implementation of new provisions even after Elcom's creation (Maggetti et al., 2011). Another element of continuity is the establishment of the so-called transmission system operators (TSOs), which were entrusted to the same large electricity firms that owned the network prior to the liberalization process (Etrans in 2000, then Swissgrid in 2004).

It is probably too early to draw conclusions about a regulatory framework that is still quite weakly institutionalized. This process of change can be provisionally interpreted as *regulatory layering*, as expected in Mahoney and Thelen (2009), as the new regulatory model heavily relies on Swiss traditional politico-administrative arrangements of public regulation, and the key actors of the pre-liberalization stage are still holding prominent positions in the regulatory framework. As for

telecommunications regulation, the veto possibilities that the institutional framework provides heavily constrained the reform process. However, in this case, the direction of change was horizontal since the new electricity regulator's organizational structure was largely inspired by a pre-existing Swiss agency, the aforementioned Comcom.

Competition

Comco was established in 1995 to ensure the regulation of competition in the Swiss market. Comco replaced the former Cartel Commission created in 1964 – which consisted of 11 to 17 members representing different interest groups and a small secretariat, with fewer than 10 employees – that was instructed to prepare the commission's duties and to conduct investigations directly dealing with stakeholders. The Cartel Commission's powers were limited to advisory duties regarding competition policy and to investigations in the case of suspected limitations of competition. It had no sanctioning capacity, and its decisions only consisted of 'recommendations' for the parties concerned. In the context of the internal pressures for the liberalization of the Swiss economy, these gaps in decision-making capacities led to a total revision of the Cartel Act in the mid-1990s and to the establishment of Comco, producing a 'qualitative' change in the regulation of competition (Mach, 2006).

Comco is a formally independent public sector body with regulatory powers, whose organizational structure consists of 11 to 15 members, appointed by the Federal Council and about 54 full-time positions in 2009. Besides advisory tasks, Comco has acquired decision-making capacities and, since 2003, a direct sanctioning power to be applied in the case of serious barriers to competition. Comco is therefore structurally very close to the IRA ideal-type. It should be noted, however, that the organization of this Swiss agency remains peculiar in comparison with that of its international counterparts, as the agency's board still includes representatives of interest groups, in accordance with the Swiss 'militia' approach (that is, reliance on non-occupational public service activity). This feature, which representatives of economic interests with veto power supported (Mach et al., 2003), is regarded quite suspiciously by international peers (GCR, 2006). What is more, when the Cartel Act 1995 came into effect, the Comco secretariat was a unit of the general secretariat of the Federal Department of Economic Affairs. Although the Cartel Act separated the two bodies, the practices of close cooperation seem to have survived, producing a 'grey area' that 'could be harmful to the objectives defined in the Cartel Act' (OECD, 2006b, p. 20). Therefore, the elements of continuity clearly exceed the elements of change.

However, in recent times, the activism of Comco increased so that it was able to challenge its reputation of a 'tiger without teeth' by sanctioning some key players in the Swiss economy for anticompetitive behaviour, namely in the communication sector and in the grocery market (*Tages-Anzeiger*, 2011). In summary, given the endogenous liberalization process, the peculiar development of the Comco, and the

elements of path dependence characterizing this agency, the institutionalization of the independent regulator in this field can be interpreted as *regulatory layering* – that is, a process of transformative change through the progressive growth of new elements along traditional arrangements. This agency was created with limited initial powers, the inclusion of industry representatives and linkages with the federal administration. It was able to evolve but in a way that is clearly shaped by existing institutional constraints and by the absence of a direct inspiration from a foreign model. Again, this result is against the expectations of a regulatory drift.

Discussion

The empirical analysis presented the historical trajectory of the regulatory state in Switzerland and the main features of the recently established regulatory agencies in four areas: banking and finance; telecommunications; electricity; and general competition. Two main points can be discussed on this basis: the macro-institutional characteristics of the Swiss regulatory state and the prevalent mode of institutional change.

The institutionalization of a hybrid and heterogeneous regulatory state

The analysis of the four processes of agencification showed that the Swiss case roughly follows the international trend toward the establishment of the regulatory state (Levi-Faur, 2005). The Swiss model configures, however, a specific variety of regulatory state (Levi-Faur, 2006b), which includes the following two characteristics. First, it is a hybrid system that combines the essential elements of the regulatory state – liberalization and re-regulation, delegation of tasks and establishment of independent agencies – while adapting them to the Swiss political-administrative system: for instance, through the inclusion of interest groups in IRAs.

The second element is the heterogeneity of sectoral regulatory arrangements (Mach and Trampusch, 2011). In banking and financial regulation, stricter public regulation was gradually established, whose enforcement was delegated to Finma – an independent regulator that is very close to the agency model, that gained independence, skills and resources, and that largely replaced traditional arrangements based on self-regulation. Instead, in the case of utilities such as telecommunications and electricity, the progressive opening of markets was accompanied by the centralization of regulatory tasks in the hands of regulators that rely on traditional organizational structures and on existing procedures. Similarly, in the case of general competition, a regulatory agency with decision-making capacity and sanctioning powers was established, but the regulatory model displays continuity with traditional arrangements in some important elements of its organizational structure and in regards to the practices of collaboration with the federal administration.

The modes of change

Therefore, expectations based on the explanatory typology that Mahoney and Thelen developed are only partially confirmed by the diachronic within-case study of the Swiss regulatory state (see Table 3 for an overview). The expectations of layering as the product of high veto possibilities and low discretion in interpretation and enforcement are supported in the case of former public utilities – that is, telecommunications and electricity. Conversely, the effect of the combination of high veto possibilities and high discretion is at odds with the expectations derived from the theoretical framework that Mahoney and Thelen (2009) developed, according to which the predicted mode of change would have been drift, a more-or-less-deliberate political strategy of non-decision aiming at the erosion of the institutional framework. In fact, in banking and finance, the new regulator was established following a process of displacement. In the case of general competition, a process of layering was observed instead.

These results partially deviate from Mahoney and Thelen's explanatory typology, as is also the case in Steinlin and Trampusch's work on the evolution of the banking secrecy (Steinlin and Trampusch, 2012). These findings call for a reassessment of the conditions under which this theoretical framework works. While offering powerful analytical leverage for explaining many cases of liberalization processes, seems less appropriate for conceptualizing the institutionalization of the regulatory state in Switzerland. It could be argued that the Swiss 'special case' is intrinsically challenging for a general theory of institutional change. However, the so-called specificities of Swiss political institutions – for example, direct democracy, federalism and the presence of 'private interest governments' – would have been even more consistent with the expected outcome of non-decision leading to institutional *drift* rather than with pro-active forms of gradual institutional transformation such as *layering* and, even more, *displacement*. Therefore, the Swiss case possibly indicates a more general need for extending the theory of Streeck, Thelen and Mahoney.

First, it can be argued that discretion in enforcement is not very relevant for regulatory reforms. Instead, *the type of institutional change* should be taken into

Table 3. Expected and actual modes of change

Area	Conditions	Expected mode of change	Actual mode of change
Banking and finance	Many veto possibilities and high discretion	Drift	Displacement
Telecommunication	Many veto possibilities and low discretion	Layering	Layering
Electricity	Many veto possibilities and low discretion	Layering	Layering
Competition	Many veto possibilities and high discretion	Drift	Layering

account. The framework of Streeck, Thelen and Mahoney has been developed to characterize phenomena of retrenchment or deregulation, driven by structural and international factors. The related processes of change are mediated by veto possibilities, which may hinder or re-orient deregulatory reforms. The patterns of agencification illustrated in this contribution – consisting of re-regulatory (not deregulatory) reforms and leading to increased bureaucratization and more formalized regulation – show that veto possibilities do matter but can be overcome. It can be argued that even in the presence of veto players, institutional change may go through layering or displacement rather than drift when its distributional effects are not directly challenging existing constituencies and when a common model, which is considered ‘best practice,’ exists (Majone, 2001). This was specifically the case with the integrated IRA model, which constituted the internationally ‘taken-for-granted’ (Gilardi, 2005) institutional blueprint (Blyth, 2002) for building a new financial regulator in Switzerland.

Second, it is plausible that *the direction of institutional change* shapes the mode of gradual transformation. Displacement is possibly more likely for the regulatory reform of a previously self-regulated model, such as banking and finance, because re-regulating this type of sector requires a ‘positive’ intervention that establishes a new regulatory regime with extended public authority. Conversely, layering is plausibly more common for phenomena of re-regulation of formerly state-owned or publicly regulated industries, for example, for telecommunications. Re-regulating these sectors implies introducing competition without necessarily disrupting the institutional arrangements that are already in place so as to ensure the coordination among different individual and collective actors. In this context, the existence of a previous reform in this type of sector, such as telecommunications, can also trigger a horizontal process of layering in another similar sector, such as electricity.

Conclusion

This contribution examined the institutional development of the regulatory state in Switzerland through the establishment of IRAs. Expectations based on the typology of the modes of institutional change identified by Streeck, Thelen and Mahoney were tested with the methodology of diachronic within-case study (Gerring, 2007). The modes of change were illustrated through the analysis of the processes leading to agencification in four areas: banking and finance, telecommunication, electricity and competition. Results confirmed the explanatory typology of Mahoney and Thelen (2009) only partially, as IRAs were established following regulatory layering and displacement – that is, the progressive growth of new arrangements along with old ones and the importation of exogenous institutional models, while regulatory drift was also predicted (see Table 3).

The outcome is a hybrid, heterogeneous variety of regulatory state that incorporates the essential elements of the standard model but that is sectorally fragmented and partially built around existing institutional structures. The concluding discussion pointed to the need for extending the framework that

Streeck, Thelen and Mahoney developed by taking into account the type and the direction of change in the explanatory typology. On the one hand, their original framework is more or less implicitly constructed to explain deregulation and retrenchment rather than re-regulation. It is suggested that in the case of regulatory reforms involving the creation of new regulators, the anticipated distributional consequences and the presence of a 'taken-for-granted' model may mediate the effect of veto players on the mode of institutional change. On the other hand, the direction of change may help in discriminating between displacement and layering. The former is likely to occur in the case of the 'positive' reform of self-regulated sectors, while the latter is expected when reforming former state-owned or publicly regulated sectors that are expected to be more resilient.

To say to what extent these findings are generalizable requires further systematic comparative research. However, a quick look at another IRA – the Financial Services Authority (FSA), which is in charge of regulating the British financial markets – allows us to illustrate some key points with a comparative perspective. The UK can be considered a 'most different' case when compared with Switzerland regarding regulatory policies (Maggetti, 2012b). Therefore, the 'unexpected' commonalities amid the two countries could indicate more general patterns. The FSA was created in 2001 to put an end to the self-regulation of the financial industry. It was established almost *ex nihilo* as an integrated regulator of banks, insurance companies, financial advisers, mortgages and insurance intermediaries, thus thoroughly following the ideal-type of the IRA model in the context of the 'agency fever' of the time (Pollitt et al., 2004). In this 'critical juncture', the mode of change can be interpreted as displacement, which also was the case for the Swiss Finma a decade later. The interesting point is that following criticisms made to this agency in the context of the 2008 financial crisis, the chancellor of the exchequer terminated the FSA in 2013 and separated its responsibilities between two new agencies: the Financial Conduct Authority, and the Prudential Regulation Authority, which is part of the Bank of England. This time, this reform can be considered to be an indigenous solution that builds on existing structures following a process of layering. This example counterfactually demonstrates the importance of the existence of a dominant model of regulatory agency. The integrated regulator was the taken-for-granted solution of the time and thus was adopted through displacement both in the UK and in Switzerland. When the financial crisis challenged the legitimacy of this model and no clear-cut alternative was available, institutional evolution tends to go through layering on the top of existing structures.

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