Temporal Consistency and Policy Credibility: Why Democracies Need Non-Majoritarian Institutions

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1. Time and the Democratic Process

As Juan Linz has recently argued, many problem of democratic government would be difficult to understand without including the time dimension in our analysis of the democratic process. This is because government *pro tempore* is an essential and defining characteristic of democratic governance (Linz, 1995). The time limit inherent in the requirement of elections at regular intervals is a powerful constraint on the arbitrary use by the winners of the electoral contest of the powers granted to them by the voters. At the same time, the fact that those defeated in the elections can look forward to victory at the next elections, a few years hence, is an essential incentive to stay in the democratic game (Przeworski, 1991).

But if it is true that accountability and democratic legitimacy are crucially dependent on the requirement of elections at regular interval, the segmentation of the democratic process into relatively short time periods has serious negative consequences when the problems faced by society require long-term solutions. Thus, it has been often observed that under the expectation of alternation, democratic politicians have few incentives to develop policies whose success, if at all, will come after the next election.

Such "short-termism", however, is only the most obvious consequence of the temporal limitations on the exercise of democratically legitimate power. Recent theoretical advances in institutional analysis suggest that the problem goes deeper. For example, the new institutional economics emphasizes the importance of well-defined property rights for the efficient allocation of resources through markets. In particular, the manner in which producers and consumers use environmental resources depends on the property rights governing those resources. An owner of a resource with a well-defined property right has a powerful incentive to use that resource efficiently because a decline in the value of the resource represents a personal loss. Conversely, serious misallocations ensue where property rights are poorly defined, as in the case of common property resources.

Recall that transferability and enforceability are two key characteristics of an efficient structure of property rights: all such rights should be transferable from one owner to another in a voluntary exchange, and they should be secure from involuntary seizure or encroachment by others. Now, the right to exercise public authority can be thought of as a species of property rights-- political property rights (in fact, the distinction between economic and political property rights tended to be fuzzy in pre-democratic times: under

the 17th century system of sale of public offices, for example, one type of property rights could be converted into the other). Political property rights are used by politicians to make choices about policy and the structure of government.
However, in a democracy such rights are ill defined:

In democratic politics... public authority does not belong to anyone. It is simply "out there", attached to various public offices, and whoever succeeds under the established rules of the game in gaining control of these offices has the right to use it.. While the right to exercise public authority happens to be with existing office holders today, other political actors with different and perhaps opposing interests may gain that right tomorrow, along with legitimate control over the policies and structures that their predecessors put in place. Whatever today's authorities create, therefore, stands to be subverted or perhaps completely destroyed-- quite legally and without any compensation whatever-- by tomorrow's authorities (Moe, 1990, p. 227).

As Terry Moe shows, the uncertainty created by the lack of well-defined political property rights has profound consequences for public policy making and institutional design. One consequence with which this paper is particularly concerned is the commitment problem: the fact that it is extremely difficult for democratic politicians to credibly commit themselves to a long-term policy. Before addressing this problem, however, let us consider a dilemma of democratic policy making which can arise even within the time segment defined by two successive elections; that is, during a period when the democratic politician is, in theory, given the power to pursue a preferred policy independently of changes in public opinion. This dilemma has been discussed in the economics literature under the heading of rules versus discretion.

2. The Dilemma of Policy Credibility

Central to the long-running debate on rules versus discretion in monetary policy is the question whether governments should tailor policies to current economic conditions (discretionary policy) or conduct policy according to pre-announced rules, such as a constant rate of monetary growth.

Critics of government discretion such as Milton Friedman had argued that governments and central banks lack the knowledge and information necessary for successful discretionary policy. Also, there is often a considerable lag between the moment when a policy decision is announced and the time when the decision is actually implemented. Hence, there is the risk that discretionary policy could make the economy less stable rather than more stable, as intended. The debate on rules versus discretion was given a new twist in the late 1970s. In an article published in the *Journal of Political Economy*, Kydland and Prescott (1977) argued that the central problem of public policy is its credibility: fixed rules are preferable because they increase policy credibility while discretion leads to "time inconsistency".

Time inconsistency occurs when a policy which appears to be optimal at time to no longer seems optimal at a later time tn. Without a binding commitment holding them to the original plan, governments will use their discretion to switch to what now appears to be a better policy. The problem is that if the market anticipates such a policy change, it will behave in ways which prevent policy makers achieving their original objectives.

Clearly, the phenomenon of time inconsistency does not arise only in the context of monetary policy, but is relevant to all discretionary policy making. To illustrate, suppose that at time to parliament enacts strict anti-pollution legislation. This seems to be, at

the time, the optimal response both to the severity of pollution problems and to the wishes of the voters. After passage of the law, however, there is a sharp economic down-turn, so that unemployment replaces environmental quality as the main concern of large numbers of voters. Especially if an election is nearing, the government will be tempted to ask parliament that the law be amended in order to make it less stringent and hence less costly to implement. Or, more simply, the government may decide to reduce the level of implementation by cutting the budget of the pollution inspectorate. But industrial polluters, anticipating such developments, will assume that they can violate the relevant regulations with impunity and the original policy objectives will not be achieved. The policy lacks credibility because it is seen to be time-inconsistent: the incentives of the policy makers at time tn differ from their incentives at time to.

Although time inconsistency is a general phenomenon, the solution suggested by Kydland and Prescott-- fixed rules-- is not applicable to environmental and other regulatory policies. Because regulation consists in applying general rules to particular situations, regulatory discretion is unavoidable. But there are other methods for increasing policy credibility. Especially important in the present context is the delegation of policy-making powers to institutions which, by design, are not directly accountable to voters or to their elected representatives; in other words, delegation to non-majoritarian institutions. Before examining the relationship between delegation and policy credibility, it may be useful to briefly consider the reasons for the recent emergence of credibility as a prominent topic of research and public debate.

The issue of policy credibility first attracted sustained analytic attention in the 1970s, roughly at the same time as terms such as "interdependence" and "international policy coordination" became prominent in the field of international economic relations. This is no mere coincidence: growing economic, financial, ecological and political interdependence among nations has the effect of weakening the impact of policy actions on the home country and strengthening their impact on other countries. Thus, public policies are increasingly projected outside the national borders, but they can achieve their objectives there only if they are credible. At the national level, there is a trade-off between credibility and coercion: a policy lacking credibility may be enforced by coercive means, even if such a strategy entails high implementation costs and a potential loss of legitimacy. However, coercive means cannot be used outside the national borders, except under very special circumstances. Hence, increased openness of the national borders changes the nature of the trade-off by making it impossible or very costly to use coercive power as a substitute for policy credibility.

Even domestically, the growing complexity of public policy continues to erode the effectiveness of the traditional command-and-control techniques of government bureaucracy. Until fairly recently, most of the tasks undertaken by national governments were simple enough to be organized along classical bureaucratic lines. Once a programme was enacted the details of its operations could be formulated and appropriate commands issued by highly centralized command centres. By contrast, the single most important characteristic of the newer forms of economic and social regulation is that their success depends on affecting the attitudes, consumption habits, or production patterns of millions of individuals and thousands of firms and local units of government. Such tasks are difficult not only because they deal with technologically complicated matters but even more because they aim ultimately at modifying individual

expectations and behaviour (Schultze, 1977). Hence, credibility becomes an increasingly crucial resource of policy makers even at the domestic level.

Democratic politicians are caught in a serious dilemma: while policy credibility becomes increasingly important both at the national and the international level, the means of achieving it continue to be seriously constrained by the rules of the game. As already noted, in a democracy political executives tend to have short time horizons-- shorter, for example, than their counterparts in the private sector-- so that the efficacy of reputational mechanisms (Milgrom and Roberts, 1992) is more limited in the political sphere. It is also well known that in any situation of collective choice there are many possible majorities, and that their respective preferences need not to be consistent. Because political property rights are attenuated-- a legislature cannot bind a subsequent legislature and a majority coalition cannot bind another-- public policies are always vulnerable to reneging and hence lack credibility.

3. Delegation and Policy Credibility

Traditional analyses of the delegation problem-- why political sovereigns are willing to transfer important policy-making powers to independent, and in particular to non-majoritarian institutions-- tend to stress cognitive factors. Politicians, it is said, have neither the expertise to design policies in detail nor the capacity to adapt them to changing conditions or particular circumstances. Specialized agencies, staffed with neutral experts, can carry out policies with a level of efficiency and effectiveness that politicians cannot.

Such explanations have merit, but the above discussion suggests that they miss what today may be the main reason for delegating responsibilities to independent institutions: to achieve policy credibility at a time when it is becoming increasingly difficult to impose policy objectives by legislative or administrative fiat. Another element missing from most analyses of the delegation problem is the international dimension. Yet, this dimension is becoming crucially important as deepening ecological interdependence and the globalization of markets for products and services emphasize the need of international regulatory regimes. The European Community (EC) provides the most advanced examples, and the greatest stock of practical experience, in the field of supranational regulation. Therefore, understanding the logic of delegation in the EC may be helpful in designing new regulatory arrangements at the international level.

Particularly in the area of social regulation (environment, consumer protection, health and safety at work, equal rights for male and female workers) the delegation of regulatory powers to the European institutions has gone well beyond the functional needs of the single European market. Thus, while the first environmental directives were for the most part concerned with product regulation, and hence could be justified by the need to prevent that different national standards would impede the free movement of goods, later directives increasingly stressed process regulation (emission and ambient quality standards, regulation of waste disposal and of land use, protection of flora and fauna, environmental impact assessments, and so on), aiming at environmental rather than free-trade objectives.

Today European environmental regulation includes more than 200 pieces of legislation, and in many member states the corpus of environmental law of Community origin outweighs that of purely domestic origin. How can one explain such a massive transfer of regulatory powers by member states always jealous of their national sovereignty, and

moreover in a policy area not even mentioned in the founding treaties? Widespread popular concern about environmental quality does not in itself explain delegation to the European institutions since national governments could have responded in less constraining ways to domestic demands for more environmental protection at the supranational level. For example, environmental objectives could have been promoted by means of intergovernmental arrangements, as in the case of a common foreign and security policy, or in the fields of justice and home affairs.

The problem with intergovernmental agreements in the field of regulation, however, is that it is often very difficult for the parties concerned to know whether or not such agreements are properly kept. Since regulators lack information that only regulated firms have and governments are reluctant, for political reasons, to impose excessive costs on industry, bargaining is an essential feature of the process of regulatory enforcement. Regardless of what the law says, the process of regulation is not simply one where the regulators command and the regulated obey. A "market" is created in which bureaucrats and those subject to regulation bargain over the precise obligations of the latter (Peacock, 1984). Since bargaining is so pervasive, it may be difficult for an outside observer to determine whether the spirit, or only the letter, of an international regulation has been violated.

When it is difficult to observe whether national governments are making an honest effort to enforce a common agreement, the agreement is not credible. Sometimes member states have problems of credibility not just in the eyes of each other but also in the eyes of third parties, such as regulated firms and governments outside the European Union. For example, where pollution has international effects and fines impose significant costs on firms that compete internationally, firms are likely to believe that national regulators will be unwilling to prosecute them as rigorously if they determine the level of enforcement unilaterally rather than under supranational supervision. Hence the transfer of regulatory powers to a supranational authority like the European Commission, by making more stringent regulation credible, may improve the behaviour of regulated firms. Because the Commission is involved in the regulation of a large number of firms throughout the Union, it has more to gain by being tough in any individual case than a national regulator; weak enforcement would damage its reputation in the eyes of more firms (Gatsios and Seabright, 1989). For the same reason, the risk of "regulatory capture" should be less acute, *ceteris paribus*, at the supranational than at the national level.

However, the reason for delegating powers to politically independent institutions is the same at both levels. As Gatsios and Seabright (ib., p. 46) write: "The delegation of regulatory powers to some agency distinct from the government itself is... best understood as a means whereby governments can commit themselves to regulatory strategies that would not be credible in the absence of such delegation. And it is an open question in any particular case whether the commitment is most effectively achieved by delegation to national rather than to supra-national agencies".

4. Commitment and Reputation

The statement that governments can credibly commit themselves to a strategy by delegating powers to an independent body is so central to our argument that it deserves to be examined from different theoretical perspectives. The theory of non-cooperative games is an obvious starting point since this theory is crucially concerned with situations where binding commitments are either impossible or too costly. A standard result is that

a non-cooperative game such as the Prisoners' Dilemma has no Pareto-efficient solution if it is played only once. If the game is played an indefinite number of times, however, "defecting" is no longer the dominant, but inefficient, strategy. This is because a collapse of trust and cooperation carries a cost in the form of a loss of future profits. If this cost is large enough, defection will be deterred and cooperation sustained. For this to be the case, the discounted value of all future gains must be larger than the short-run gain from non-cooperation. As already mentioned, cooperation and credible commitments are hard to achieve in politics precisely because the time beyond the next election counts for little.

Consider now a modified version of the Prisoners' Dilemma known as the trust game (Kreps, 1990; Milgrom and Roberts, 1992). Player A must first decide whether or not to trust player B. If A chooses to trust B, B is made aware of this and has the option either to honour the trust, in which case both players gain 10 utiles, or to abuse it; in such a case A loses 5 and B earns 15. If A decides not to trust B, then both A and B get zero--zero being the value arbitrarily assigned to whatever the two players might do in the absence of trust.

If the game is played only once we can predict that A will not offer trust and B will not honour trust in case it is offered-- a sub-optimal outcome. Again, the situation is different if the game is played repeatedly. For example, A can inform B that he will begin by offering trust and will continue doing so as long as B honours that trust. The moment B abuses the offered trust, however, A will never trust B again. Now it is in B's interest to honour the trust: abuse in any round will increase the payoff in that round by 5 utiles, but the payoff will be zero in all subsequent rounds (if any). Thus, if B's discount rate is not too high, so that he has a substantial stake in the future, the combination of strategies (Trust B, Honour A's trust) is a Nash equilibrium since neither player has an incentive to deviate from that pattern of behaviour: the "contract" between A and B is self-enforcing.

So far it was assumed that the same individuals engage in a transaction repeatedly. This would seem to limit the game's applicability since many transactions between individuals (or organizations) do not recur frequently. But as Kreps (1990) has shown, this assumption is not necessary. It the same B faces a series of individuals A1, A2, ... who each offer trust only if B honoured trust when it was last offered, then B's calculation about whether to honour trust is exactly the same as if B were repeatedly facing the same A. The resulting arrangement is again self-enforcing as long as B's opportunities in later transactions can be tied to his behaviour in earlier transactions. In each transaction B honours trust in order to maintain a reputation for honesty that will encourage future partners to offer trust.

In many situations it is convenient to think of B as an organization (a regulatory agency, for example) so that the system of reputation does not depend only on individual behaviour, but is supported by the entire history of the organization as well as by its "corporate culture" and *esprit de corps*. In this perspective, an organization is an intangible asset carrying a reputation that is beneficial for efficient transactions, conferring that reputation to present and future members of the organization (Kreps, 1990, pp. 108-111).

In the trust game, reputation is the mechanism that keeps the game going. Let us now examine more complex situations where both reputation and delegation play a role in maintaining cooperation over time. In the contracting approach to organizations one

distinguishes between complete and incomplete contracts, where "contract" denotes not only a legally enforceable promise, but any informal or even tacit agreement. A complete contract would specify precisely what each party is to do in every possible circumstance, and how the realized benefits and costs are to be distributed in each contingency. However, in most ongoing transactions contingencies will arise that have not been accounted for because they were not even imagined at contracting time. In other words, actual contracts are usually incomplete and hence unenforceable.

Incomplete contracting leads to problems of imperfect commitment. There is a strong temptation to renege on the original terms because what should be done in case of an unforeseen contingency is left unstated and ambiguous and thus open to interpretation. The problem of time inconsistency analyzed by Kydland and Prescott (see section 2) is of course the policy equivalent of imperfect commitment in incomplete contracting. In both cases the root difficulty is the fact that the incentives of policy makers or contractual partners in the implementation phase may no longer be the same as their incentives in the planning stage. Hence the temptation to renegotiate the terms of the original agreement, but the possibility of renegotiating deprives that agreement of its credibility and prevents it from guiding behaviour as intended.

One response to contractual incompleteness is an arrangement known as "relational contracting". Under relational contracting the parties "do not agree on detailed plans of actions but on goals and objectives, on general provisions that are broadly applicable, on the criteria to be used in deciding what to do when unforeseen contingencies arise, on who has what power to act and the bounds limiting the range of actions that can be taken, and on dispute resolution mechanisms to be used if disagreements do occur" (Milgrom and Roberts, 1992, p. 131).

Crucially important in this approach is the choice of the mechanism for adapting the relationship to unforeseen contingencies. In many transactions one party will have much more authority in saying what adaptation will take place. But if the other contractual partners are to delegate such discretionary authority, they must believe that it will be used fairly and effectively. The source of this belief is, again, reputation. The party to whom authority is delegated should be the one with the most to lose from a loss of reputation. This is likely to be the one with the longer time horizon, the more visibility, and the greater frequency of transactions. In a policy context, this means a politically independent, expert agency rather than generalist bureaucrats subject to direct political control.

5. Institutional Design

Laws may be thought of as incomplete contracts between legislators and their voters. This is because legislation always concerns conduct and conditions in the future, so that there are always contingencies which legislators cannot foresee. The concrete application of a regulatory statute is usually delegated to a specialized agency which, however, may be designed in a number of different ways. The agency may be more or less independent from the political process, single-headed or multi-headed, its decision-making procedures may be more or less tightly prescribed, and its objectives narrowly or broadly defined. Such issues of institutional design are being discussed with increasing theoretical sophistication in the most recent literature on public bureaucracy (see, for example, Moe 1989 and 1990; Kiewiet and McCubbins, 1991; Horn, 1995), but to enter this debate would take us too far afield. For the purpose of this paper it is sufficient to refer briefly to the experience of the United States, the country with the

longest experience in administering statutory regulation by means of independent bodies.

The independent regulatory commissions (IRCs) are the most characteristic institutions of the American regulatory state. Although the IRCs cover an extremely wide range of administrative activities-- from the control of prices, routes and service conditions of surface transportation companies by the Interstate Commerce Commission, created in 1887, to the licensing of nuclear power plants by the Nuclear Regulatory Commission created in 1975-- they all share some organizational features that are meant to protect their decisional autonomy: they are multi-headed having five or seven members; they are bi-partisan; members are appointed by the president with the consent of the Senate and serve for fixed, staggered terms.

The IRCs are independent in the sense that-- unlike the single-headed line agencies-- they operate outside the presidential hierarchy in making their policy decisions, although subject to the same budgetary review by the Office of Management and Budget (OMB) as line agencies. Also, as the US Supreme Court asserted in *Humphrey's Executor vs. United States* (1935), commissioners can be removed from office only for official misbehaviour, not for disagreement with presidential policy.

The degree of effective independence of the IRCs has changed in the course of their century-old history. In the earliest period and through the New Deal era, Congress was strongly in favour of independence. Indeed, the independence of the important regulatory bodies created during the New Deal-- Federal Communications Commission, Securities and Exchange Commission, Civil Aeronautics Board-- was the price president F.D. Roosevelt had to pay for acceptance by Congress and the Supreme Court of far-reaching public interventions in the economy. The president would have preferred to assign the new functions to executive departments under his immediate control; but his the other branches of government were not willing to accept (Shapiro, 1988).

However, criticism of the IRCs, in the 1950s and 1960s, for their lack of political accountability and their alleged tendency to be captured by private interests, produced a reaction in favour of presidential control. Legislative amendments changed the chairperson terms from fixed to service at the will of the president in most regulatory commissions, and gave the chairperson stronger administrative authority over the other commissioners. As another important consequence of the academic and political critique of the IRCs, most of the regulatory bodies created in the 1970s-- the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Highway Traffic Safety Administration, among others-- were organized as single-headed executive agencies either reporting directly to the president (the case of the EPA) or in the line of command from the president down through the executive-branch hierarchy.

Ironically, the most dramatic steps to ensure centralized direction of regulation have been taken not by Democratic presidents but by president Reagan with two executive orders that concentrated supervisory authority in the Office of Management and Budget. Executive Order 12291, issued in 1981, permits OMB to review and comment on regulations proposed by executive agencies, testing the regulations proposed by executive agencies, to see that they are justified in cost-benefit terms. Executive Order 12498, issued in 1985, goes one step further requiring agencies to submit for OMB approval an "annual regulatory plan" outlining proposed actions for the next year. Such centralization was meant to ensure that policy would be managed by an institution with a view of the entire regulatory process. The emphasis on cost-benefit analysis was

designed to discipline agency decisions by comparing the social benefits produced by regulation with its full costs, that is, not only the administrative costs of producing and enforcing the rules but, what is more important, the costs imposed on the economy by the regulatory requirements. However, public-interest groups have accused OMB to use cost-benefit analysis to delay passage of regulatory measures, especially by the EPA, with which it did not agree.

At the same time Congress, concerned about the mounting costs of social regulation-- environmental and consumer protection, health and safety at the workplace, equal opportunities for minorities, transportation policy for the disabled, and so on-- and the consequent threats to employment and to the international competitiveness of American industry, was not pushing the agencies very hard to implement the statutes of the 1970s. Faced by a reluctant congress and by a president with strong anti-regulatory views, the same scholars and public interest groups who in the past had supported presidential supervision of the regulatory agencies, began arguing that not only the IRCs but also agencies dealing with social regulation should be viewed as an independent "fourth branch of government" not answerable to either Congress or president. As Martin Shapiro (1988, p. 108) writes:

If you don't trust Congress and know that the president is the enemy, who is left to love and nurture the health, safety and environmental legislation of the sixties and seventies? All that is left is the bureaucracy of the new federal agencies who were recruited only recently and retain their enthusiasm for doing what they were hired to do. They want to regulate in behalf of the great public values of health, safety, and environmental purity. So it becomes attractive to those favouring regulation to turn the federal bureaucracy into an independent branch of government. Such a branch would be free of the president, even free of the Congress of the eighties, but loyal to the sweeping statutory language of the sixties and seventies.

This citation nicely illustrates how people strongly committed to certain policy objectives may be willing to sacrifice agency responsiveness to changing political majorities in favour of greater policy consistency. The need of expertise in highly technical matters has also played a significant role in the debate about an independent fourth branch. Thus, scholars of the New Deal era defended the independence of the regulatory commissions as necessary to the acquisition and use of that expertise which was the very *raison d'être* of the Commissions. Regulatory Commissions emerged and became important instruments of governance for industry precisely because Congress and the courts proved unable to satisfy the "great functional imperative" of specialization. In the words of Merle Fainsod, independent commissions "commended themselves because they offered the possibility of achieving expertness in the treatment of special problems, relative freedom from the exigencies of party politics in their consideration and expeditiousness in their disposition" (Fainsod, 1940, p. 313).

Two more arguments have been advanced in favour of agency independence. First, all regulatory agencies are created by congressionally enacted statutes. Their legal authority, their objectives and sometimes even the means to achieve those objectives are to be found in congressional statutes. Regulatory discretion is legitimated by the fact that the programmes the agencies operate are created, defined and limited by law. Moreover, since passage of the Administrative Procedures Act (APA) in 1946, regulatory decision-making in America has undergone a far-reaching process of judicialization. Under APA, agency adjudication (a case-by-case, trial-type process for the formulation

of an order) was made to look like court adjudication, including the adversarial process for obtaining evidence, and the requirement of a written record as a basis of agency decisions. In the 1960s, the courts began to develop a large body of procedural rules and strict standards of judicial review for rule-making (e.g., standard-setting) proceedings. Finally, in the 1980s there were serious attempts to make the exercise of regulatory discretion-- the residual category of what agencies do, which is neither adjudication nor rule making-- court-like as well (Shapiro, 1988).

The progressive judicialization of regulatory proceedings makes the argument in favour of an independent regulatory branch more plausible by making the agencies more and more court-like. After all, one of the most important characteristics of courts is their independence. If it is improper for a president or member of Congress to interfere with a judicial decision, the same ought to be true with respect to the decisions of a court-like agency.

We shall come back to the question of regulatory legitimacy in section 7 of this paper. There it will be shown that the American debate on an independent fourth branch provides useful insights into the general issue of the role of non-majoritarian institutions in a democracy. Before addressing the normative problem, however, we discuss another institutional arrangement now emerging in Europe and which may provide a viable model for regulation at the international level.

6. Regulatory Networks

Agencies, commissions and boards operating outside the hierarchical guidance and control by the central administration are becoming increasingly important also in Europe (Majone, 1996). Well-known examples are the French Autorités Administratives Indépendantes, the Regulatory Offices in Britain, and the specialized European agencies created by the member states of the European Union in October, 1993. The list of new bodies includes, in addition to the European Monetary Institute, - the forerunner of the European Central Bank, - the European Environmental Agency, the Office of Veterinary and Physosanitary Inspection and Control, The European Centre for the Control of Drugs and Drug Addiction, the European Agency for the Evaluation of Medical Products, and the European Agency for Health and Safety at Work.

It is true that the new European agencies are not (yet) fully - fledged regulatory bodies such as the American independent commissions with their powers of rule-making, adjudication of individual cases, and enforcement. The functions assigned to the agencies are essentially the collection, processing and dissemination of information, and networking with national and international institutions. This latter function is particularly relevant to the present discussion.

As stated above, the trend toward delegating important policy-making powers to specialized agencies is evident everywhere in Europe. These bodies are expected to deal with a certain range of problems on their own merit rather than on the basis of party political considerations. Governments are aware of the importance of policy credibility in an increasingly interdependent world; they understand that delegation to independent agencies is the price to be paid for achieving more credibility. However, the same governments are often driven by considerations of political expediency, and by a long tradition of ministerial interference, to intervene in agency decisions. The organizational design of the great majority of new agencies reveals these conflicting tendencies: independence is formally acknowledged, but agency powers and decision-making

procedures are so defined that the government still retains considerable powers of intervention.

As a consequence, even if regulators are personally committed to the statutory objectives assigned to their agency, that commitment lacks credibility as long as the agency remains isolated and politically too weak to withstand the ministerial interference on its own. However, commitments may be strengthened by teamwork (Dixit and Nalebuff, 1991). Although people or organizations may be weak on their own, they can build resolve by forming a group or a network. Thus, a regulatory agency which sees itself as part of a trans-national network of institutions pursuing similar objectives and facing analogous problems, rather than as a new and often marginal addition to a huge central bureaucracy, is more motivated to resist political pressures. This is because the regulator has an incentive to maintain his/her reputation in the eyes of fellow regulators in other countries: a politically motivated decision would compromise his/ her credibility and render co-operation more difficult to achieve in the future.

Such a trans-national network appears to be emerging, in Europe, in the area of competition policy. The Competition Directorate of the European Commission (DG IV) has recently initiated a decentralization project with the long-term goal of having one Community competition statute applied throughout the European Union by a network including DG IV itself, national competition authorities, and national courts. Direct links already exist between the competition inspectors and national competition authorities in the case of investigations carried out by the Commission. Moreover, a high level of harmonization of national competition laws has already occurred spontaneously in the member states, while national competition authorities everywhere are becoming more professional and increasingly jealous of their independence.

There is no reason why the network model, given the right conditions, could not be extended to other areas of economic and social regulation, and indeed to all administrative activities where mutual trust and reputation are the key to credibility and greater effectiveness. An example is the emerging pattern of coordinated partnership between the Community statistical office, Eurostat, and the national statistical offices of the member states (McLennan, 1995). Another indication of the same trend: at a meeting of the Council of Ministers of the Environment in 1991, it was agreed that member states should establish an informal network of national enforcement offices concerned with environmental law. Against this background, the networking function of the European Environmental Agency and of the other new European agencies, with both national and international institutions, appears to be potentially quite significant. Indeed, informal networks of national and supra-national regulators, rather than formal policy co-ordination at ministerial level, seem to offer the best possibility of developing effective regulatory structures at the international level.

It is, however, important to notice that a high level of professionalization is crucial to the viability of the network model. Professionals are oriented by goals, standards of conduct, cognitive beliefs and career opportunities that derive from their professional community, giving them strong reasons for resisting interference and directions from political outsiders (Moe, 1987, p. 2). In turn, political independence is important because serious differences concerning, for example, the role of competition principles in economic policy or the relationship between environmental protection and economic development, are likely to persist at the level of national governments. However, such

differences are much less pronounced between professional regulators from different countries, just as the commitment to price stability tends to be stronger among central bankers than among politicians from the same country. In sum, both expertise and political independence are needed to create a common basis of shared beliefs without which a co-operative partnerships of national and supranational regulators could not function effectively.

7. Independence and Accountability

A principle of democratic theory, which many consider to be self-evident, is that public policy ought to be subject to control only by persons directly accountable to the electorate. Independent agencies seem to violate the principle and hence are viewed with suspicion by the advocates of parliamentary sovereignty and unrestricted majority rule. The technocrats who head such agencies are appointed, not elected, officials yet they yield considerable power. How is the exercise of that power to be democratically controlled? The suspicion extends to all non-majoritarian institutions: not only independent regulatory bodies, but also independent central banks, supranational institutions such as the European Commission (the much debated issue of the "democratic deficit" of European policy-making processes), and even courts or, at least, substantive judicial review.

At the same time, the growth of judicial review in Europe, and the multiplication of regulatory bodies exercising, in a limited sphere, legislative, judicial and executive functions, show, at the very least, that the triad of government powers is no longer considered an inviolable principle. Also, courts find their policy-making role enlarged by the public perception of them as guarantors of the substantive ideals of democracy when electoral accountability in the traditional forms seems to be waning (Volcansek, 1992).

In practice, it has always been understood that for many purposes reliance upon qualities such as expertise, professionalism, consistency, and independence has more importance that reliance upon majoritarian rule. To clarify the purposes for which the principle of majority rule may be modified to allow for more indirect forms of democratic control and accountability, it is useful to distinguish between efficient and redistribute policies. The nineteenth century Swedish economist Knut Wicksell was probably the first scholar to emphasize the importance of this distinction and the need to deal with efficiency and redistribution through separate processes of collective decision. Efficient policies attempt to increase aggregate welfare, that is, to improve the conditions of all, or almost all, individuals and groups in society, while the objective of redistributive policies is to improve the conditions of one group at the expense of another. Now, in a democracy, redistribution of income and wealth can only be achieved by majority decision since any issue over which there is unavoidable conflict cannot be resolved by unanimous agreement. Efficient policies, on the other hand, may be thought of as positive-sum games where everybody can gain. Hence, such policies could be decided, in principle, by unanimity. The unanimity rule guarantees that the result of collective choice is a Pareto-efficient outcome, since anybody adversely affected by the collective decision can veto it. It follows that redistributive policies can only be legitimated by the will of the majority, while efficient policies are basically legitimated by the results they achieve.

There are, of course, well-known practical difficulties connected with the use of the unanimity rule in a large group of decision-makers (Buchanan and Tullock, 1962). Some

second-best solutions to such difficulties are the use of qualified majorities, or -- the solution of greatest interest here -- the delegation of problem-solving tasks to expert, non-majoritarian institutions such as independent regulatory agencies and commissions. In fact, the correction of market failures as, for example, monopoly power, negative externalities or failures of information, is the task and also the normative justification of economic and social regulation. To the extent that it succeeds in correcting such market failures, regulation increases efficiency and thus aggregate welfare. Regulatory policies, like all public policies, have redistributive consequences; but for the regulator such consequences represent constraints rather than objectives. Only the commitment to the maximization of aggregate welfare can justify the political independence of regulators. By the same token, decisions to redistribute resources from one group of individuals, regions, or countries to another group, cannot be taken by independent experts, but only by elected politicians. This, as I have argued elsewhere (Majone, 1993) is one reason why the European Union, as presently constituted, cannot and should not engage in large-scale redistributive policies.

To say that delegation to non-majoritarian institutions is legitimate for a certain class of issues is not to deny that a problem of accountability exists. Rather, the challenge is to develop a concept of accountability that is compatible with democratic principles but which, at the same time, does not contradict in practice the *raison d'être* of such institution. A strict application of the majoritarian principle of direct accountability to the voters or to their elected representative would lead to the conclusion that political independence and democratic accountability are mutually exclusive. But it is a mistake to apply the standards of legitimacy and accountability derived from a particular model of democracy -- the majoritarian or Westminster model -- to other models where non-majoritarian institutions play a significant role (Lijphart, 1984).

Majoritarian standards of accountability correspond to the conventional view of control as "self-conscious oversight, on the basis of authority, by defined individuals or offices endowed with formal rights or duties to inquire, call for changes in behaviour and (in some cases) to punish" (Hood, 1991, p. 347). For the technical and discretionary activities usually delegated to non-majoritarian institutions such as independent agencies, a more appropriate notion of control is one which Christopher Hood has called "interpolable balance": a view of control that takes as its starting point a need to identify self-policing mechanisms which are already present in the system, and can contemplate a network of complementary and overlapping checking mechanisms instead of assuming that control is necessarily to be exercised from any fixed place in the system" (ib. pp. 354-355).

Applying this broader notion of control to our case, we conclude that politically independent expert agencies can be monitored and kept politically accountable only by a combination of control instruments: clear and narrowly defined objectives; strict procedural requirements; judicial review; professionalism and peer review; transparency; public participation. It will be recalled from the discussion of section 5 that the institutional evolution of American regulatory agencies and commissions has in fact been guided by these or similar principles. The record shows that when such a multi-pronged system of controls works properly, no one controls an independent agency, yet the agency is "under control" (Moe, 1987).

8. Summary and conclusions

This paper has analyzed the tension between the pro tempore nature of democratic governance and the long-term commitments necessary to deal effectively with the environmental, risk, and other regulatory issues of contemporary society. In the past, the tension between continuity and change has been resolved by constitutionalizing the basic rules of governance as well as the basic rights and duties of citizens. A written constitution is a prime example of a non-majoritarian institution since it can only be changed by special majorities and through time consuming procedures. There are, however, well-known limits to what can be achieved by constitutional and judicial means. At any rate, contemporary democracies need politically independent institutions not only to protect basic constitutional values but also at the mundane level of policy-making.

I have argued that the growing role of such non-majoritarian institutions reflects not only the need of expertise and independent judgement in highly complex issues, but, more generally, the changing nature of public policy making. In a world where national borders are increasingly porous, the possibility of achieving policy objectives by coercive means is severely limited; credibility, rather than the legitimate use of coercion is now the most valuable resource of policy-makers. Unfortunately, it is quite difficult for democratic politicians to credibly commit themselves to a long-term strategy: because a legislature cannot bind another legislature, and a government coalition cannot tie the hands of another coalition, public policies are always vulnerable to reneging and thus lack long-term credibility. Hence, the delegation of policy-making powers to independent institutions is a means whereby governments can credibly commit themselves to strategies that would not be credible in the absence of such delegation.

The credibility problem is even more acute at the international level. Thus, purely inter-governmental agreements on complex regulatory matters lack credibility because, in the absence of a supranational monitoring agency, it may be quite difficult for the parties concerned to determine whether or not the agreements are properly kept. But when it is difficult to observe whether national governments are making an honest effort to enforce a cooperative agreement, the agreement is not credible. The one possible solution is to delegate regulatory power to an independent supranational body such as the European Commission.

Could the same strategy of delegation be viable also on a scale broader that the European Union? In the field of international cooperation the EU represents a special case and a very advanced solution since it is based on a binding legal order and a dense web of relationships at all levels of government. Such a level of integration was made possible by the fact that the member states, despite their diversity, share a number of basic values and common traditions. It is not to be expected that less homogeneous groups of states would be able or willing to develop a set of institutions comparable to those existing at the European level.

However, a weaker version of the network model discussed in section 6, where a small international body monitors the implementation of joint agreements by national authorities, and where coordination is achieved by mutual adjustments and "soft law", could be viable also at the international level -- at least in some regulatory areas such as environmental protection, the testing of new medical drugs, technical standardization, and competition policy.

For the reasons given above, the success of the network model at the international level depends, even more crucially that at the European level on the reputation of the participating institutions and on their commitment to a problem solving rather than a bargaining style of decision-making. Also in this case, national regulators must enjoy sufficient professional autonomy and political independence to convince fellow regulators in other countries and international public opinion that they are implementing joint agreements in good faith, and are capable of resisting pressures to favour narrow domestic interests.

Thus, for somewhat different but complementary reasons, contemporary democracies are forced to delegate important policy-making powers to non-majoritarian institutions at the national, supranational and international levels. As already noted, this development requires the elaboration of criteria of legitimacy and accountability better adapted to the realities of an increasingly interdependent world than those derived from the traditional, but largely mythical model of pure majoritarian democracy.

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