REGULATORY REFORM AND THE BETTER REGULATION AGENDA
Traveling from center to periphery

Alketa Peci

Introduction

This chapter discusses the processes and outcomes of regulatory reforms and the recent “better regulation” agenda in the developing context of Latin America. Two complementary forces shaped the apparently mimetic processes and outcomes of the regulatory reforms in the region: (1) pressure from the developed center to the developing periphery, fuelled by the actions of international organizations such as the World Bank and Organisation for Economic Cooperation and Development (OECD), as were the previous market-oriented reforms during the late 1980s (Dubash and Morgan 2012; Jacobs 2005; Kirkpatrick et al. 2004, 2003), and (2) the simultaneous role of important domestic factors that also influenced the processes and outcomes of such “center to periphery” diffusion of regulatory reforms.

Considering the political and institutional heterogeneity of the Latin American region, we will focus on specific countries which share a willingness to become an important part of the globalized agenda, by actively participating in international agreements beyond Latin American region, such as Brazil, Mexico, Peru and Chile (some examples are Trans-Pacific Partnerships, BRICS, OECD membership), rather than those focusing on a local or regional political agenda, as in Bolivia, Venezuela or Ecuador. The “Latin American” version of the “Regulatory State” (Levi-Faur and Jordana 2006; Majone 1997) is being expanded through independent or semi-autonomous regulatory (or executive arm’s length) agencies in different economic and social sectors, whose actual independence from the Executive varies from one sector to another. Although the “independence” of such regulatory agencies is contested, they constitute a central institutional innovation of important sectoral reforms.

Two cross-border aspects are particularly relevant for comprehending the diffusion of regulatory reforms in Latin America: the context of economic liberalization and regulatory reforms and the role of international organizations such as the OECD or World Bank. Many of the region’s countries have been deeply involved in structural economic changes related to privatization and liberalization since the late 1980s. The regulatory reforms in the region have embraced many different sectors and gone beyond privatization to involve large-scale economic and political changes addressing the problems of the import-substitution State-centered “developmental” model. In fact, since the early 1990s, most Latin American countries involved
in the introduction of new regulatory regimes have aimed to transform the manner in which the market operates by moving away from state protection and central control of the economy (Levi-Faur and Jordana 2006; Murillo 2002). The regimes have transformed the very nature of the state, weakening the direct protection, intervention and control of economic and social sectors while strengthening the state’s regulatory role.

The immediate outcomes of such reforms embrace the creation of independent (or semi-autonomous) regulatory agencies (IRAs) or the adoption of other regulatory instruments, such as contracts, to move towards a market-oriented economy, although the depth and nature of such reforms varies from one country to another (Guasch and Spiller 1997). More recently, several Latin American countries are embracing a better regulation agenda, following other international trends and OECD recommendations.

However, the Latin American countries are not merely copying international fads, and important domestic factors influence the outcomes of the regulatory policies diffusion in the region. The main objective of this chapter is to discuss the role of such domestic factors by focusing on two key processes of regulatory reforms: (1) the adoption of independent or semi-autonomous regulatory agencies, and (2) the adoption of a better regulation agenda.

The creation of independent or semi-autonomous regulatory agencies, and their impressive growth in the 1990s, has been the most astonishing outcome of regulatory reform (Gilardi et al. 2006). According to a study by Jordana and Levi-Faur (2005), in 19 Latin American countries and 12 economic and social sectors, the number of new regulatory entities has grown from 43 (mostly financial regulatory institutions) before 1979 to an overall number of 138 by 2002. Agencies were created in sectors such as: utilities, including telecommunication, electricity, gas, water, etc.; competition; social, including environment, pharmaceuticals, food safety, health insurance; and finance, including central banking, securities and exchange; among others. We will discuss how the regulatory agencies’ independence and autonomy is traduced in the Latin American context, focusing on Brazil.

The most recent trend in several Latin American countries, such as Brazil, Mexico and Chile, has been the adoption of a “better regulation” agenda through the introduction of administrative instruments and procedures, such as Regulatory Impact Assessments (RIAs), the Standard Cost Model, etc. (Jordana and Levi-Faur 2005; Kirkpatrick et al. 2004; Levi-Faur 2003). However, the formal diffusion of better regulation instruments has not converged in terms of actual practices because of domestic political forces or the low availability of institutional and organizational capacities (Peci and Sobral 2011; Kirkpatrick and Parker 2007). We will discuss these countries’ heterogeneous trajectories and demonstrate how local bureaucracies are changing the dominant perspective on RIA from an instrument of political control to an instrument used for their own benefit.

In other words, the Latin American version of the “regulatory state” (Levi-Faur and Jordana 2006; Majone 1997) influences the manner in which such instruments are adopted, interpreted and implemented by domestic political actors. Latin American countries are adopting/adapting regulatory labels to their political, institutional and legal contexts. Our analysis will privilege the pivotal role of bureaucracy in the region, aiming to show that the apparent homogenizing outcomes of the regulatory reforms might not overshadow the diversity of the institutional-building processes that are taking place in the different countries of the region.

Independent regulatory agencies: an institutional innovation?

Our first analysis will focus on the diffusion of the independent regulatory agency (IRA) in the Brazilian context, highlighting the historical role of the bureaucracy as a key political actor.
Brazil was an earlier adapter of bureaucratic reform in the 1930s, and the consolidation of a strong techno-bureaucracy was explicitly supported by an ambitious, import-substitution state-centered “developmental” project. One of its unintended consequences was the expansion of numerous state-owned companies into different sectors and levels of the government (the “bras”—model of companies such as Telebras, Eletrobras, Petrobras, among many others) with their respective techno-bureaucracies, although this expansion was also marked by huge regional and inter-governmental disparities (Bresser-Pereira and Diniz 2009; Bresser-Pereira 1981).

The great surge of regulatory reforms and privatizations of public services in the 1990s was propelled by many economic, social and political factors, generally denominated as the “state crises”. The reforms substantially modified the institutional design of several economic and social sectors, privatizing a good part of the “bras” and other state-owned companies. As a consequence, the economy shifted from a predominantly state-centered, highly centralized ownership and control model to a market-centered one (Abranches 1988).

Regulatory reform invaded the political agenda and was strongly associated with the privatization and liberalization reforms of the 1990s. Since 1996, more than 50 new IRAs, which were created as independent or semi-autonomous agencies, have been adopted at all three levels of the government and across different sectors. Agencies were established not only in privatized utility sectors, such as electricity, telecommunications, oil, gas, and transportation but also in non-infrastructure sectors and at other subnational levels.

Because of its relation to economic and liberalization reform, regulation was defined in terms of economic incentives and tools, as opposed to the broader image of regulation as encompassing the normative powers of the state translated into a body of rules that constrain the behavior of citizens or firms. The focus on regulation as efficiency-seeking “economic regulation” pervaded the Brazilian governmental and regulatory culture and continues to influence the perceptions of public officials regarding regulation today (Peci and Sobral 2011).

As non-economic sectors adopted regulatory agencies, the concept of a regulatory state conquered the Brazilian political agenda, and the agencies’ independence became very attractive to other public sector organizations. New RIAs were expanded in other sectors such as water, transportation, health, food, and drugs. RIAs also proliferated at the state and municipal levels, reaching their current number of 50 (Peci 2007; Martins 2004).

Despite their different regulatory purposes, these agencies are characterized by a high degree of organizational isomorphism. They are executive bodies dependent on their respective ministries or state/municipal secretaries responsible for developing regulatory policies. The agencies are more similar to European executive arm’s-length institutions instead of independent regulators (Faria 2004; Faria and Ribeiro 2002; Melo 2002). Table 20.1 presents a list of federal regulatory agencies, highlighting the characteristics of the regulated sector, their regulatory purposes, and the sectors where IRAs mainly operate.

As a consequence of such overreaching regulatory reform, Brazil can be considered an interesting case of a “Regulatory State” (Levi-Faur and Jordana 2006; Majone 1997) and is in a privileged position to understand how regulatory agencies are adopted, interpreted and implemented by domestic political actors. Although Brazil has experienced a boom of IRAs, the process of agencification was particularly curious, as some agencies were never implemented, some were extinguished and others have grown – in number of employees and budget, for example – and responsibility beyond their regulatory purposes. Exceptions are far from isolated cases. Brazil has probably the only IRA for the support, funding and regulation of the video, phonographic and cinematographic sector, but not the audiovisual sector as a whole, which is most common worldwide. At the state level, it is very common to find agencies that were formally created but never got off the ground, and it is even possible to find a multi-sectoral
Table 20.1 Federal regulatory agencies

<table>
<thead>
<tr>
<th>Agency</th>
<th>Type of Regulated Sector</th>
<th>Type of Regulation</th>
<th>Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANA</td>
<td>Private and public</td>
<td>Social and environmental</td>
<td>Hydric resources</td>
</tr>
<tr>
<td>ANAC</td>
<td>Private and public</td>
<td>Economic</td>
<td>Civil aviation, airports infrastructure</td>
</tr>
<tr>
<td>ANATEL</td>
<td>Public and private</td>
<td>Economic</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>ANCINE</td>
<td>Public and private</td>
<td>Social (funding)</td>
<td>Video, phonographic and cinematographic sector</td>
</tr>
<tr>
<td>ANEEL</td>
<td>Public and private</td>
<td>Economic</td>
<td>Generation, transmission and distribution of electrical energy</td>
</tr>
<tr>
<td>ANP</td>
<td>Public and private</td>
<td>Economic</td>
<td>Oil, gas, and biofuels</td>
</tr>
<tr>
<td>ANS</td>
<td>Private</td>
<td>Economic and social</td>
<td>Private health insurance</td>
</tr>
<tr>
<td>ANTAQ</td>
<td>Public and private</td>
<td>Economic</td>
<td>Water transportation and ports</td>
</tr>
<tr>
<td>ANTT</td>
<td>Public and private</td>
<td>Economic</td>
<td>Railways, highways, and railroad infrastructure</td>
</tr>
<tr>
<td>ANVISA</td>
<td>Public and private</td>
<td>Social</td>
<td>Sanitary surveillance of products, services, ports, airports and borders</td>
</tr>
</tbody>
</table>

Source: Elaborated by the author

IRA that regulates lottery activity or public–nonprofit partnerships. In sum, Brazilian IRAs are an excellent case of policy “innovation and reinvention” (Glick and Hays 1991).

Independence – what does it mean in the Brazilian context?

Theoretically, the legitimacy of delegation to autonomous IRAs, granting more autonomy to Brazilian regulators was justified based on (1) reduction of the cost of decision-making, and (2) insurance of credible commitments (Majone 2001). The presence of an independent IRA, then, can be attributed to the necessity of high levels of technical information when expected political benefits are low (Epstein and O’Halloran 1999) or simply when it politicians tend to avoid responsibility for negative consequences (Fiorina 1982). The arguments about credible commitments, political uncertainty, blame shifting and bureaucratic influence can also be found
Regulatory reform and the better regulation agenda

in the extant literature examining Brazilian IRAs (Prado 2012; Melo 2002; Mueller and Pereira 2002). It seems natural that this type of explanation has predominated, as the first IRAs were set up concomitant to the widespread privatization process that marked the opening of the infrastructure sector to private capital.

However, the diffusion of IRAs can also be seen as part of a broader agenciﬁcation process, which has been characterized as an international fad in the ﬁeld of public administration. Although the agency form and its global dissemination is a highly popular phenomenon, what each local context understands as an agency and the observed differences in their degree of autonomy and control indicate divergences – particularly because the agencies have unique trajectories given their countries and sectors (Verhoest and Laegreid 2010; Verschuere and Barbieri 2009; Yesilkagit and Christensen 2009; Levi-Faur 2006; Nakano 2004; Pollitt et al. 2001). As a result, agencies not only differ in their shapes and trajectories but also in the rhetoric that upholds them (Smullen 2010) in a process of “divergent convergence” (Tenbucken and Schneider 2004).

Formally, Brazilian IRA’s autonomy is traduced in a more ﬂexible organizational model based on traditional mechanisms, such as: (1) the creation as a “special autarchy” – a traditional form of indirect public administration; (2) independent and non-coincident terms for regulators; (3) independent funding; and (4) less formal internal and external controls.

Although IRAs are presented rhetorically as a more autonomous organizational model, there are strong indicators that this “autonomy” is more an ideal-type model than a genuine institutional innovation. In most of the IRAs, the independent and non-coincident terms for regulators are commonly “paralyzed;” “independent” funding is usually channeled to other governmental purposes, and IRAs suffer under the weight of internal and external controls that do not differentiate them from other traditional public administration entities. In practice, agencies have variable degrees of autonomy, indicating more independence in sectors like telecommunications that were previously characterized by a strong professional bureaucracy (Prado 2012).

However, over the years, the strengthening of the regulatory agencies’ technical skills through public competition entries and their growing specialized knowledge, combined with certain undeﬁned ministerial roles and responsibilities, concentrated the formulation and implementation process of public policies in regulatory bodies. The roles of the respective ministries and central government political leaders, which were traditionally pivotal in policy-formulating processes in Brazil, were weakened. Indeed, as Bianculli (2013) explains, the consolidation of IRAs entailed the establishment of a new arena for the deﬁnition of public policies. Although Brazilian IRAs are not highly independent because executive power still largely controls funding and political appointments, their bureaucracy is becoming a relevant force in the policy process. Consequently, IRAs have strengthened their political role, and there have been many attempts by discontented political leaders to inﬂuence agencies’ decision-making processes over recent years, thus threatening their autonomy (Peci 2007; Faria 2004; Martins 2004; Faria and Ribeiro 2002).

Despite an apparently adverse context, Brazilian regulators have been able to claim expertise to secure independence from political interference, particularly at the federal level, highlighting the role of the bureaucracy of regulatory agencies – regulocrats – as pivotal political actors. In fact, the main outcomes of Brazilian regulatory reform have been the growing legitimacy of IRAs as a more ﬂexible management model and the strengthening of such “regulocracy” (the stable technocrats and professionals of such arm’s-length bureaucracies), which spans a wide range of sectors beyond infrastructure (Gilardi, Jordana, and Levi-Faur 2007; Peci 2007).
Consequently, regulocrats are continuously strengthening their political role, which marks the diffusion of regulatory policies in the Brazilian context.

What is the typical professional profile and career path of a Brazilian regulocrat? In recent research we analyzed the bibliographical profiles of 10 federal agencies and 157 federal regulators, as well as 27 state-level agencies and 233 state regulators, and compared our data with Eckert’s (1981) and Spiller’s (1990) studies about United States’ (US) federal regulators. Table 20.2 highlights some important differences and similarities between Brazilian and US federal and state regulators.

Our research reveals that, differently from the US where lawyers are the majority of regulators, Brazilian regulocrats are predominantly engineers or sector-related graduates. Similarly to the US, Brazilians regulators demonstrate expansive prior experience in the regulated sector. This highlights technical expertise as the most important source of an IRA’s autonomy legitimation (Schrefler 2010; Majone 1996). As noted, important historical factors influence the current profile of Brazilian federal regulocrats. In Brazil, most of the currently regulated sectors used to be state owned before the privatization reforms of the 1990s, and most of the current Brazilian regulators originated from former state-owned and currently regulated companies.

However, there are strong similarities in the post-agency destination of Brazilian Federal and US regulators. Although for different reasons, both countries’ regulators had pre-agency experience in the public sector, they have similar patterns of post-agency behaviors: 45 per cent

![Table 20.2 Brazilian vs. US regulators](image)

<table>
<thead>
<tr>
<th>Characteristics of Regulators</th>
<th>Federal Regulators (Brazil)</th>
<th>State-Level Regulators (Brazil)</th>
<th>Federal Regulators (USA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field of graduate specialization</td>
<td>42.6% Engineers</td>
<td>33% Engineers</td>
<td>7% Engineers</td>
</tr>
<tr>
<td>Previous experience in the regulated sector</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(public or private)</td>
<td>82.2%</td>
<td>67.38%</td>
<td>Not measured</td>
</tr>
<tr>
<td>Previous experience in the public sector</td>
<td>79.8%</td>
<td>62%</td>
<td>74.4%</td>
</tr>
<tr>
<td>Previous experience in the regulated private sector</td>
<td>16%</td>
<td>Not measured</td>
<td>15.5%</td>
</tr>
<tr>
<td>Post-agency job in the regulated private sector</td>
<td>49%</td>
<td>13%</td>
<td>45%</td>
</tr>
<tr>
<td>Post-agency job in the public sector</td>
<td>41.5%</td>
<td>72%</td>
<td>17%</td>
</tr>
<tr>
<td>Post-agency job in another regulatory agency</td>
<td>8.9%</td>
<td>7.2%</td>
<td>Not measured</td>
</tr>
</tbody>
</table>

Source: Elaborated by the author
and 49 per cent, respectively, took private sector jobs in the regulated industries. In Brazilian infrastructure agencies such as electricity, telecommunication or petroleum, these numbers reach 80 per cent, indicating that almost all federal regulators are apparently being headhunted from private companies. However, these post-agency jobs can also be seen as a consequence of the learning and expertise accumulated during a regulator’s term.

In fact, when we compare the data with state-level regulators, we perceive different dynamics, particularly related to lower levels of post-agency jobs in the regulated sectors and the dominance of the public sector jobs. Most of the state-level agencies are multi-sectoral, inhibiting sector learning and expertise accumulation. Only 21 out of 157 regulators shifted to regulated industry-related jobs, and all of them did so after demonstrating expertise in the sector. Most of the regulators return to public-sector or political careers (being elected), indicating competing capture dynamics from the public-sector bureaucracy or politics in Brazilian states. Bureaucratic capture is a particularly compelling interpretation in the Brazilian context, especially considering the emerging trend of post-agency-related jobs inside regulatory agencies in both federal and state-level IRAs.

Such competing capture dynamics, as well as the pivotal political role of the bureaucracy, are central in comprehending how regulatory independence is actually traduced in the Brazilian context.

The adoption of a better regulation agenda: regulatory impact assessments in LA

The overly sectoral focus of the regulatory reform, which sustained IRA creation in LA countries, eclipsed a “whole-of-government” approach (Christensen and Lægreid 2006) and revealed pervasive institutional weaknesses (Minogue and Cariño 2006). Consequently, the current agenda has focused on strengthening the capacity for high-quality regulation and modernizing the institutional framework by defending the former approach (Christensen and Lægreid 2006).

The process of Regulatory Impact Assessments (RIAs) implementation is part of such efforts in countries such as Mexico, Chile and Brazil, revealing, again, the role of the OECD as an important “mechanism of external validation” (Minogue and Cariño 2006).

However, domestic factors have yielded great variability in RIAs across these countries. Brazil is developing RIA programs based on an incremental strategy fuelled by regulocrats and coordinated by the Presidential Program PRO-REG (Program for the Strengthening of the Institutional Capacity for Regulatory Management). In Brazil, RIAs are primarily focusing on independent regulatory agencies, whereas other countries, like Uruguay, are focusing on alternative local or regional policy priorities and RIAs are not yet part of the formal agenda.

In Mexico, the oldest Latin American member of the OECD, the diffusion of RIAs did not focus on a specific sector. It was supported by the creation of the regulatory oversight body COFEMER (Comisión Federal de Mejora Regulatoria) in 2000, in an attempt to overcome the overly sectoral focus of regulatory reform (Levi-Faur and Jordana 2006). The commission is a trans-sectoral oversight body that oversees a large number of legal dispositions, such as decrees, regulations, presidential pacts, departmental resolutions, and norms, among other legal instruments. Before issuing any official regulation, all centralized and decentralized entities of the Public Administration must submit their proposals to COFEMER for approval (Carballo 2012). As a small, functionally autonomous agency, its objective is to promote transparency in the elaboration and application of new regulations to obtain greater benefits and lower costs for society.

The creation of COFEMER, following RIA diffusion, was unique in Latin America. It is an attempt to introduce wiser regulation in the country in parallel with the development of
specialized regulatory institutions in sectors such as telecommunications, energy, food safety, and health (Levi-Faur and Jordana 2006). In an OECD report about the institutional capacity for regulatory reform, Mexico achieved a superior classification to the UK, the Netherlands, Germany and Canada (Carballo 2012).

The adoption of a better regulation agenda has produced positive outcomes for Mexico, such as the clarification of procedures for new regulations and quality controls, the introduction of a consultation process, and the introduction of stricter criteria for new proposed regulations (Levi-Faur and Jordana 2006: 46). As in other countries, certain failures in Mexico are attributed to the poor quality of available information, which hampers the reliable quantitative analyses of regulatory proposals (Kirkpatrick et al. 2003).

The role of a strong and professional bureaucracy, not found in the majority of the regions’ countries, associated with the influence of external pressures (particularly from the OECD, where Mexico holds a permanent member position) has helped to overcome a fragmented and sector-based regulatory reform. As a consequence, Mexico can be considered a pioneer in advancing a better regulation agenda.

However, the centralizing Mexican experience is unique in the region. Chile, which is also an OECD member, is an interesting case of ad hoc RIA diffusion without the existence of an oversight body or any institutional coordination mechanism related to regulatory governance. In fact, Chile has insulated itself from similar external pressures to adopt regulatory reforms (Levi-Faur and Jordana 2006) or a better regulation agenda, mainly because it did not experience the negative consequences of a fragmented and sector-channeled regulatory reform. Consequently, there is a high variability of RIA requirements and procedures in Chile. Such an ad hoc diffusion of RIAs may be due to alternative institutional arrangements that assure quality regulations and are related with the institutional strength, coherence, and inter-agency cooperation that exist within the Chilean bureaucratic landscape, as well as the liberal and market-oriented ideological consensus of the Chilean state (Minogue and Cariño 2006). These domestic factors may diminish the contribution that instruments like RIAs may play in improving the overall quality of regulatory governance.

The Brazilian RIA experience demonstrates the interplay of international pressures with domestic factors and is illustrative of the uniqueness of the processes and outcomes of such a center to periphery diffusion. Triggered by a 2008 OECD recommendation, RIAs have been progressively adopted by independent regulatory agencies (IRAs) at the federal level on a voluntary basis and without the supervision of an oversight body.

In fact, IRAs were introduced as a presidential initiative by the Casa Civil da Presidência da República’s (Office of the President) chief advisers and its Program to Strengthen the Institutional Capacity for Regulatory Management (PRO-REG). They never assumed a mandatory or compulsory nature, indicating the more flexible nature of the Brazilian “coalition presidentialism” (Abranches 1988). RIAs seemed to be a promising tool for politically controlling the bureaucracy (Radaelli and Francesco 2007; Radaelli 2005), and we previously demonstrated that they were actually perceived as such by regulatory bureaucrats (Peci and Sobral 2011). However, in a short period of time, initial resistance was overcome, and the latter became the RIAs’ main supporters.

 Agencies that did not fit the traditional model of regulatory institutions were pioneers in RIA adoption. Such non-utility IRAs, for which regulatory competence or sector are not clearly defined, embraced RIAs as a new form to legitimate their position in the regulatory arena. The first RIA pilot project was adopted by Anvisa (National Health Surveillance Agency), a federal multi-sectoral agency that was not covered by the OECD report (2008a). Anvisa established a strong relationship with PRO-REG and played a leading role in the RIA diffusion process by serving as a benchmark for other regulatory agencies. It gradually gained the support
of Anvisa’s directors and a wider audience of regulocrats by demonstrating the contribution of RIAs in improving the quality of regulatory decisions.

In the context of scarce conditions for actual regulatory independence, RIAs rapidly became an instrument of bureaucratic (regulocratic) legitimation. The Anvisa case and the immediate adoption of RIAs by non-utilities agencies, such as Ancine (National Cinema Agency), demonstrate the symbolic nature of the instrument’s utilization to gain legitimacy vis-à-vis other policy actors – in the Brazilian case, typical utility IRAs (Schrefler 2010). Other agencies, including ANP (National Petroleum Agency), Aneel (National Regulatory Electricity Agency), ANS (National Health Agency), Antaq (National Water Transportation Agency), Anac (National Aviation Agency), and ANA (National Water Agency), followed gradually. In Brazil’s vertically-oriented federalism, new initiatives generally originate at the federal level and disseminate to the subnational levels of the government, and so RIAs have been adopted in several Brazilian states.

The Brazilian case of RIA diffusion is interesting because it demonstrates how the initial vision of RIA as an instrument for political control of bureaucracies was rapidly substituted with a positive assessment, shielding IRA regulocrats from exogenous political pressures. Again, the growing political role of the regulocracy is key to comprehending the displacement of the traditional vision of RIAs as instruments of political control. Such a regulocracy, with its technical-rational orientation, has provided fertile ground for RIA adoption. There is still some resistance, particularly from the high-level administration of traditional utilities’ IRAs. Although they support RIA as an instrument for improving regulatory decision-making, they are resistant to the idea of creating a regulatory oversight body to supervise RIAs’ quality, as in Mexico. This resistance has to be seen in the context in which most Brazilian IRAs still struggle to ensure and strengthen their independence, an institutional feature that is relatively new to the Brazilian executive branch.

Conclusions

This chapter discussed the processes and outcomes of regulatory reforms and the more recent “better regulation” agenda in developing contexts, as seen in the specific Latin American countries Brazil, Mexico and Chile.

As in other developing contexts, most of the regulatory reforms embraced by the LA countries might be observed from a center to a periphery (or, better, north–south) perspective. Here, the role and the pressure of international organizations such as the World Bank and the OECD are pivotal in understanding the earlier adoption of several regulatory reforms after the market-oriented processes of the late 1980s (Dubash and Morgan 2012; Jacobs 2005; Kirkpatrick et al. 2004, 2003). These international organizations have been crucial in introducing several institutional regulatory innovations, particularly in selected LA countries that share a willingness to become an important part of the globalized agenda, participating in several international forums (such as the OECD, BRICS, Trans-Pacific Partnership) rather than focusing on a local or regional political agenda.

However, the connotation of the Latin America region as developing may hinder or excessively homogenize regulatory diffusion processes, thereby reducing the outcomes of such processes to a lack or insufficiency of institutional or organizational capacities to adopt more advanced regulatory reforms (Kirkpatrick et al. 2004). This has been the main focus of best practices recommended by international organizations. Instead, the divergent processes and outcomes of regulatory reforms indicate the need to comprehend how local actors understand and rely on instruments such as RIA or adapt the principles of IRAs’ autonomy to their own interests.
The processes of regulatory diffusion are complex and present heterogeneous outcomes because of the interplay of important international and domestic factors. To demystify the dominant vision of weak institutional capacities, we privilege the analysis of bureaucracy as a key political actor in the institution-building processes of regulatory reforms in countries such as Brazil and Mexico. The growing bureaucracy of recent independent regulatory institutions (IRAs), although still distant from actual autonomy, is strengthening its role and building new sources of legitimation in expertise and professionalization or adopting, in innovative and unexpected ways, instruments such as Regulatory Impact Assessments (RIAs).

The Latin American version of the “Regulatory State” (Levi-Faur and Jordana 2006; Majone 1997) is characterized by a complex triad of regulatory capture, where the market, bureaucracy and politics compete in menacing the recent and unfamiliar concept of regulatory autonomy. As opposed to the US experience, where there are clearer indicators of a market capture, Brazilian regulators are pressured from other constituencies, particularly bureaucracy.

When we analyze the most recent diffusion of a better regulation agenda, the role of bureaucracy is still prominent. In fact, the rational ideal-type model of impact assessment reflected in RIAs (Radaelli 2005) is echoed in strong bureaucratic constituencies, which are also characterized by a rational–legal authority dimension. The three countries that have championed RIA adoption in the region are characterized by strong professional bureaucracies, although the latter permeate their institutional landscapes in different ways. In such contexts, the malleability of RIAs beyond their technical dimension is evident. The Brazilian case demonstrates that the regulocrats are using RIAs to shield themselves from political pressure and gain legitimacy relative to other policy actors, thereby overcoming the initial perception of RIAs as instruments of political control. Mexico constituted a centralized organizational model to challenge overly sector-oriented regulatory reforms, whereas Chile, with its state exceptionality, avoided the negative consequences of a fragmented reform and opted for an ad hoc RIA diffusion.

A closer look at the regulatory diffusion processes in developing contexts reveals a complex interplay of international and domestic political factors and demonstrates the malleability of apparently homogeneous institutional models such as IRAs, or “neutral” regulatory instruments such as RIAs, beyond their technical dimensions.

References


