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**Politicians, Regulators and Regulatory Governance: The
Neglected Sides of the Story**

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Title

Politicians, Regulators and Regulatory Governance: The Neglected Sides of the

Story**Abstract**

We offer a series of reflective insights about the state and direction of studies related to the politics of regulation. Notably we argue that the field is characterized by persisting divisions between Americanists and Europeanists. Largely focused on the actions taken by political principals, the former regularly report a substantial politicization of regulatory behaviour. Reflecting on recent developments in US politics however, we show that political influence could be overestimated in the US. Symmetrically, this same influence could be under-estimated by Europeanists, who for now have largely focused on regulators and agencies. This is notably suggested by a discussion of recent development in European politics, as revealed by contributions systematically measuring agency politicization in Western European democracies. On this basis, we identify some promising research questions and agendas for future studies on the politics of regulation.

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38 **1. Introduction**
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45 If one posits that regulation materialises through a range of intentional and direct
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48 government interventions to steer the activities of private-sector actors (see Koop &
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52 Lodge, 2015), then understanding the design, institution and monitoring of regulation
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55 by politicians should be key to reveal some of its critical purposes. This seemingly
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59 simple assumption has formed the guiding thread of a sizeable array of contributions
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3 concerned with the many roles played by political actors in what is defined as
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7 regulatory governance and regulation. Over the years, this term has gradually served
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10 to encompass a growing range of different profiles, including members of government,
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13 legislators, party politicians and executive leaders. The wide diversity of their activities
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16 in regulation, too, was increasingly acknowledged – ranging from the forging of
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19 regulatory orders and instruments to the more or less aggressive strategies politicians
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22 deploy to control regulatory agencies. It is arguably in part due to this variety that many
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25 scholars have considered the politics of regulation to be a standpoint through which its
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28 ultimate functions were best understood. During recent decades, therefore, much has
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35 been written on political-regulatory relations.

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41 In this paper we argue that much has still to be said on the subject.¹ Indeed, what we
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45 would like to stress is that the study of the politics of regulation is marked by persisting
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48 divisions that hinder a full understanding of its contemporary appearances. Crucially,
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52 these same divergent lines of thought could also be a source of biased or incomplete
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55 estimations and inferences. We argue here that remedying these pitfalls could help to
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59 improve our understanding of the realm of political-regulatory relations in a more
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3 holistic manner. Perhaps even more importantly, we think that such efforts could
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7 generate a more accurate appreciation of the interdependencies between economics
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10 and politics under regulatory capitalism (Levi-Faur, 2005), a point to which we will
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14 return.

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21 The divisions we are referring to mostly stem from two divergent conceptualizations of
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24 the ‘political’ in the study of the ‘politics’ of regulation – thus making the field largely
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26
27 two-sided. In effect, the term might either refer in the literature to “the relationship
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30 between electorally accountable institutions and the unelected regulators who draft
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33 and enforce binding rules”; or, alternatively, to the often complex “interplay between
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36 regulators and the entities they seek to govern” (Carrigan & Coglione, 2011).
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41 Crucially, these conceptualizations come with their own research questions,
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44 approaches and methodologies – especially when each tries to locate the politics in
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47 the study of regulation. While the first conceptualization tends indeed to envision it
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50 essentially through the lens of what political actors (narrowly defined) do to impose
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53 their preferences on regulators; the second one prefers to focus on regulators and the
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56 actions they undertake to maintain or to increase their autonomy in the face of variable
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3 political pressures – here understood to encompass the regulated as well as various
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7 other entities, thus on the basis of a broader understanding of the political.
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13 But there is arguably more than that in these fault lines. As shown throughout the
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17 paper, each conceptualization is not equally distributed across the two sides of the
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20 Atlantic – as they largely overlap with notable differences in terms of research
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23 questions, conceptual orientations and methodologies that exist between Americanists
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25
26 and Europeanists interested in the politics of regulation. Despite notable exceptions,
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28
29 the former are mostly students of political institutions, focus on how politicians try to
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32 design and monitor agencies through various mechanisms and devices, and rely on
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35 formal modelling and econometric techniques to prove their assertions. Conversely,
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38 many prominent contributions made by Europeanists came from public policy and
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41 administration scholars concerned with how regulators seek to increase their political
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44 autonomy in large and ‘polycentric’ regulatory regimes (Black, 2008). Authors from this
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48 branch typically use in-depth case studies and qualitative methods to arrive at their
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55 conclusions.
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4 There are both disciplinary and historical conditions that explain this geographic
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7 discrepancy. In the US, the politicization thesis largely stems from the neo-
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10 institutionalist 'turn' observable from the 1980s onwards, which has led to a gradual
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13 dominance (yet increasingly disputed) of the principal-agent framework in the
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16 conceptualization of regulation, regulatory politics and regulatory policymaking (Miller,
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19 2005). In Western Europe, the interest for regulators, their agencies and their
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22 autonomy is partly an outcome of the transformation of the regulatory order under the
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25 neoliberal era – associated with an unprecedented development of (nominally)
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28 independent agencies tasked with intervening in new or existing regulatory domains
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35 previously placed in the hands of political actors.
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42 Perhaps predictably, these two lines of scholarship tend to report opposite findings.

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45 The “principal-focus” of Americanists often depicts regulators as being in the hands of
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48 politicians, whether inside or outside the US. In stark contrast, “agency-focus”
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52 Europeanists regularly conclude that regulators are rarely completely subjected to
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55 political control, due to their overall ability to cultivate many relationships with their
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58 various audiences. This, we think, is problematic – and while we see no reason to
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4 doubt these broad results, we think it is time to discuss their respective implications in
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7 a more comparative and reflexive manner. The present paper offers some critical and
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10 prospective reflections in that respect. In a nutshell, we suggest that contributions
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13 informed by both conceptualizations could, due to their respective focuses, orientations
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16 and methodologies, ignore a significant share of the variation they seek to explain.
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19 More specifically, the paper advances a twofold argument. We first contend that
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22 Americanists face the risk of overestimating the ‘politicization’ of regulators, as they
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25 often neglect subsequent strategies, ability to shift and to resist political influence, or
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28 even to build their own coalitions of audiences. Symmetrically, Europeanists face the
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31 risk of under-estimating political influence on regulatory behaviours, as this is rarely
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34 formally tested in their studies, yet when it is considered, appears significantly larger
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37 than expected. To demonstrate that claim, we introduce critical landmarks and turning
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40 points in the field associated both with the rise of new institutionalism in American
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43 scholarship, and with the development of new regulatory governance and its
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46 acknowledgement by Europeanists. Our discussion is illustrated with a mixture of
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49 secondary material that allow us to shed light on blind spots, neglected sides and
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3 points of intersection between each of these conceptualizations of the politics of
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14 The paper is structured in two sections. In Section 2 we first reflect on the evolutions
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17 of American scholarship. Here much of the discussion is focused on studies influenced
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20 by rational-choice institutionalism and principal-agent models, a choice that largely
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23 stems from the fact that it has become a gold standard to study the politics of regulation
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26 over the recent decades in the US, notably in political science (Miller, 2005) and in
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29 economics (Laffont & Tirole, 1993). We first introduce the recurrent finding reported by
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32 this literature, namely that regulators and regulatory agencies are heavily politicized.
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38 Then we discuss the possibility of a more nuanced account by reflecting on the politics
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41 of regulation under President Trump's disruptive administration, building on secondary
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44 data and on the already abundant empirical literature dedicated to this question.
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48 Organized in a similar fashion, Section 3 is devoted to a critical discussion of
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51 contributions made by Europeanists and their focus on the conditions for regulatory
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54 autonomy. Here we more specifically discuss a series of contributions focused on
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57 independent regulatory agencies of Western Europe – entities that have attracted
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3 much of scholarly attention in European political research over the recent decades.
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7 We then show that these contributions may underestimate political influence, on the
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10 basis of a discussion of recent findings reported by studies on agency design and their
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13 termination in Western European democracies. By systematically measuring political
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16 involvement and influence, these contributions suggest that agency politicization in
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19 Europe could be greater than previously expected.
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28 The findings that emerge from the discussions of recent empirical contributions in both
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30 sections, aimed at illustrating the value added at factoring regulatory behaviour on one
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33 hand and political influence on the other, are arguably not concluding debates on the
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36 politics of regulation. What they more surely do nevertheless is to help identify future
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39 research agendas for the study of political-regulatory relationships. At the end of each
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45 section these agendas are presented and we return to them in our conclusion.
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52 **2. The Regulatory Politics That Principals Make**

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59 **2.1 Americanists and the politicization of the regulatory order**

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7 Starting a critical discussion of the literature concerning the politics of regulation with
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10 a reflection on the state of American scholarship is an inevitable choice. It is in effect
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13 in this country that the field largely originated and developed during the 1980s, with a
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16 number of seminal contributions still shaping current debates. Thanks to these works,
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19 the politics of regulation rapidly became a rich area of enquiry for students of political
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22 science, political economy and administrative law – and two decades later,
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25 Europeanists learned about the topic and its relevance from Americanists (Pollack,
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28 2002).
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38 This early interest in the politics of regulation in the US arises from the reconfiguration
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41 of several disciplines. At the beginning of the 1980s, scholarly interest for the politics
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44 of regulation was rather scant. Notable exceptions include Stigler's seminal article on
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47 regulatory capture (Stigler, 1971) – though arguably it touches more upon interest
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50 group politics than the politics of regulatory decision-making per se. Other important
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53 contributions include Wilson's collection featuring case-studies on regulatory entities
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56 or programmes in the US (Wilson, 1980) and Mitnick's ambitious attempt at reviewing
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3 the rationales for regulation and to account for its operations and removal (Mitnick,
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7 1980). However, there was a large consensus at that time that the topic was of
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10 relatively little importance for its own sake. The main reason was a widespread
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13 consensus in political research according to which the growth of the administrative
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16 state since the Great Depression gradually resulted in a loss of Congressional
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19 influence over the newly created domains of governmental intervention and regulation.
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24 In turn, this situation favoured a range of factional and special interests and, ultimately,
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27 a sort of “interest groups liberalism” (Lowi, 1979). According to this conception, the
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30 politics of regulation thus hardly differed from a purely distributive game involving
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35 various groups seeking government support.
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42 From the early 1980s onward, a new generation of scholars started to critically re-
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45 examine this broad brushstroke depiction. Most of them were students of American
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48 politics and political institutions, particularly of the legislative branch. Meanwhile,
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51 legislative studies were indeed experiencing an important shift towards rational choice
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54 institutionalism (Benoît and Rozenberg, 2020). While the study of Congress and
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57 Congressional behaviour was until then largely influenced by “structure-free” economic
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3 models of majority rule, a number of contributions developed subtler mathematical
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6 conceptualizations intended to reflect the many institutional features, arrangements
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10 and procedures said to govern legislatures (Shepsle & Weingast, 1994). It is in this
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13 broad context that the study of political-regulatory relations significantly increased in
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16 legislative studies. The growing reliance of the field on principal-agent models played
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19 a crucial role in this change. As in other domains where it is applied, this approach
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21
22 envisions the relation between legislators and regulatory agencies (or possibly any
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25 other kind of enforcers of regulatory provisions) as one where both actors are deprived
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28 of something that is possessed by the other. Political principals in Congress are indeed
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31 tasked with deciding laws and regulations without being able to implement them;
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35 meanwhile, regulators are tasked with executing laws and regulations without being
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38 able to decide them. Such a “mismatch of incentives and capabilities” (Fiorina, 1979)
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42 leaves formal authority to politicians while conferring discretion to regulators, whose
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45 actions can potentially impact the payoffs for both players. This would be particularly
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48 crucial in the US context, where regulation-making powers are susceptible to be
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51 delegated to agencies, thus possibly reinforcing the mismatch between changing
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55 Congressional goals and regulatory decisions (an issue that for long manifested
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3 differently in European settings, as discussed in the next section). As a consequence
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7 of both disciplinary reconfiguring and the institutional features of regulation in the US,
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10 how political principals try to mitigate the so-called “agency loss” resulting from
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14 delegation became a significant matter of concern for students of Congress and then,
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17 of the politics of regulation.
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24 These early developments are associated with a complete reconsideration of the
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27 “Congressional abdication” thesis that prevailed in the 1970s (Kiewet & McCubbins,
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30 1991). The initial idea of this thesis was largely based on the observations that
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34 Congress rarely overrides regulatory decisions, and that legislators would have little
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37 control over the actions taken by bureaucrats due to information asymmetries
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41 (Niskanen, 1971). Yet a number of empirical analyses found the exact opposite. In
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44
45 stark contrast with Lowi’s vision, they showed that legislators simply do not have to
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49 override agencies, as agencies would already be doing exactly what legislators want
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52 them to do (McCubbins, 2014). More precisely, a wide range of incentives put in place
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56 by political principals to control and monitor the decision-making of federal regulators
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59 or to oversee the enforcement of regulatory provisions was identified. These efforts
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3 include both ex-ante and ex-post controls, such as “overt oversight of agencies”,
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7 leading to “bureaucratic reactions to changing Congressional preferences” and
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9
10 “sophisticated design of administrative procedures to control agencies” (Bawn, 1995).
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14 The field was rapidly structured around the findings of seminal contributions, notably
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16
17 McCubbins and Schwartz’s (1984) famous article on the “fire-alarm” system
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20 established by Congress to enable interest groups to charge agencies with violating
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24 Congressional goals, or Weingast and Moran’s (1983) influential work proving
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26
27 systematic legislative influence over the Federal Trade Commission decisions.
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34 Dating from the end of the 1980s, another series of contributions used a similar
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38 framework to demonstrate that instead of having one political principal, bureaucrats
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41 and regulatory agencies also need to cope with the Presidency – an institution proving
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44 to be, as notably argued by Moe (1987), a more influential actor than the legislature in
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48 this multiple-principal setting. Myopic and obsessed with the next election, members
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51 of Congress would be unable to genuinely manipulate regulatory agencies beyond
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54 mere position-taking and credit-claiming (Mayhew, 1975). This is not to say that their
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58 influence is null. Yet the presidency as a unified institution would be more able to
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3 impose its preferences on agencies, notably through executive orders (Moe & Howell,
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7 1999). Without challenging the idea that regulatory behaviour in the US was in fact
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9
10 heavily politicized, prominent studies thus argued that any omission of the Presidency
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12
13 would face a high risk of overestimating Congressional influence, as notably
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16 established in Lewis' classic study on Presidents and agency design, which covers
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19 both regulatory and non-regulatory areas (Lewis, 2003).
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28 Most, if not all of these contributions embrace a similar focus (a contractual approach
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31 to political-regulatory relations), a similar orientation (driven by a strong interest for
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34 hierarchical control) and common methodological approaches, anchored in the formal
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37 or quantitative study of principal-agent relationships (Moe, 1984). A similar statement
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41 also applies to the numerous contributions in economics (Laffont and Tirole, 1993) and
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44 administrative law (for example Berry and Gersen, 2017) that examine similar or
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47 related topics. In spite of undeniable controversies and internal debates, most also
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51 picture the regulatory order in the US in a similar fashion, namely as being a political
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54 product *by design*. A significant share of agency behaviour would accordingly result
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59 from various manipulations undertaken by political principals – themselves responding
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3 to various clientele groups and powerful coalitions of interests to ultimately ensure their
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7 survival in political competition.
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14 A review of more recent accounts reveals that this conception hardly changed over the
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17 years. Thanks to better research techniques and methodologies, more accurate
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20 studies have emerged without, however, substantially challenging the broader picture.
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24 Political influence was notably shown to be conditional upon the legislature's internal
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27 organization (Bawn, 1997); its resources (Huber and Shipan, 2009); anticipation of
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30 other actors' likely actions, such as courts (McGrath, 2012); ideological orientation
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33 (Meagher & Vander Wielen, 2012); the saliency and complexity of a policy area
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36 (Ringquist et al., 2003); and a number of contextual factors, including the degree of
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39 government unity (MacDonald & McGrath, 2016) or legislators' capacity to monitor
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42 regulatory agencies cheaply (McGrath, 2012). A similar approach was also used on
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45 the presidential systems of Latin America (for example Haggard & McCubbins, 1999),
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48 the Japanese parliamentary system (Ramseyer & Rosenbluth, 1995), and a series of
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51 international economic organizations (Hawkins et al., 2009). In most instances,
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3 application of agency theory returned similar findings in support of the politicization
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7 thesis.
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14 The idea that politics ultimately drives a great degree of regulatory behaviour,
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17 decisions and outcomes was therefore reinforced by many empirical illustrations.
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21 However, and bluntly put, we think that there are good reasons to believe that many of
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24 these contributions overestimate political influence. Clearly, we are not the first to raise
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26
27 this concern – and it is precisely in American scholarship that objections to the
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30 politicization thesis were first, and arguably most convincingly, raised. Carpenter
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33 (2001), in particular, contended in his seminal study on the “forging” of bureaucratic
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38 autonomy that most of the literature in public administration and on the politics of
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41 regulation tends to undermine the role of regulatory action due to its excessive focus
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44 on the initiatives taken by political principals to mitigate agency loss. According to
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48 Carpenter, regulators, even in critical times, always possess real “capacities to
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52 analyse, to create new programs, to solve problems, to plan” as well as “to administer”
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55 (Carpenter, 2001). In a recent critique of the use of principal-agent models, Maggetti
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58 and Papadopoulos (2018) more formally identified three sets of arguments supporting
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3 the thesis of an overrated political influence in regulation. They first suggest that
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7 politicians often lack the cognitive capacities to effectively monitor regulatory action;
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10 second they argue that agency relations are always multidimensional, as both
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13 politicians and regulators cultivate networks with various actors such as the media,
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16 organized citizens, or even the public at large; third, they assert that regulatory actions
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19 do not only happen within the *discretionary* range left by their contractual relations with
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22 political principals because, when their *autonomy* increases, regulators are often able
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25 to proactively alter the very parameters of the contract. These arguments connect with
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28 those of several studies that refuse to draw a sharp line between purely political and
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31 regulatory behaviors – as regulators are always able to shape policy and political
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34 agendas, a point famously made by Huber in his study of the US Occupational Safety
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37 and Health Administration (Huber, 2007). Eventually, politicians, too, might thus be
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45 subject to regulatory influence.
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52 Overall, these critics pushed towards a broader understanding of what constitutes the
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55 politics of regulation beyond merely the influence of politicians – and perhaps, also,
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59 beyond overt correlational evidence of agencies shifting their conduct in light of political
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3 pressures. More recent research suggests that understanding regulatory agents
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6 through this lens often leads to viewing political-regulatory relationships in a very
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10 different manner. Regulators, in sum, respond to political signals, though not
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13 necessarily from their political principals, and not necessarily at the expense of their
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17 autonomy either.
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24 In most of the literature that has emerged following Carpenter's initial arguments,
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27 regulatory agencies were viewed as fundamentally acting to protect their moral,
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30 technical, procedural or performative reputation (Carpenter & Krause, 2012).
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34 Inherently multifaceted, an agency's reputation is maintained or enhanced in relation
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37 to the many expectations of multiple audiences, posing various "reputational threats"
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40 to an agency – but symmetrically constituting opportunities for an agency to advance
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43 its reputation and ultimately, its autonomy (Maor, 2016). The Israeli banking regulator,
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46 for instance, was shown to respond to public expressions of opinions only when they
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49 relate to areas in which its reputation is weaker – and to remain silent when opinions
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52 concern areas for which it already enjoys a strong reputation (Maor et al., 2013).
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59 Reputational threats were found to shape the performance as well as the outputs of
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3 Centrelink, an agency operating in the field of social policy in Australia (Maor &
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7 Sulitzeanu-Kenan, 2016). In a similar vein, Krause and Douglas' (2005) comparative
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10 study of the (presidential) Council of Economic Advisers and Office of Management
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13 and Budget, part of the (Congressional) Budget Office, and of the (independent)
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17 Federal Reserve revealed that resisting political pressures is more important for an
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21 agency when its reputation is at stake.
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28 **2.2 Questioning political dominance**

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34 If scholars focusing on regulatory agents were able to draw a more complex picture
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38 than those that only shed light on principals' action, their arguments received only a
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42 limited echo in American scholarship. Part of the reason for this is disciplinary.
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3 independence and political control” (McCubbins, 2014). More broadly, this relates to
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7 the exact meaning of what one understands to be “political” in political-regulatory
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10 relations, an issue we return to in the next section.
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17 More fundamentally still, some real-world observations seem to justify this position.
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20 The presidency of Donald J. Trump is a case in point, as it apparently brings a frank
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24 refutation to the idea that the politicization of regulatory decisions would be
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28 overestimated in the US. Having campaigned against the “deep state”, Donald J.
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31 Trump indeed adopted a clear deregulatory stance, “using presidential powers
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34
35 aggressively in pursuit of regulatory reforms” (Belton et al., 2017). And in effect, his
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38
39 presidency has been ostensibly punctuated with a significant amount of measures and
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41
42 initiatives aimed at refashioning the very practice of regulation in the country.
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45 Appraising President Trump’s first three years in office, Sepulveda and De Lazari
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47
48 (2019) found an impressive series of measures intended to shape behaviours,
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52 decisions and outcomes of regulatory agencies: in 2017, President Trump issued the
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56 so-called two-for-one executive order (E.O. 13771), which calls on agencies to
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58
59 eliminate two existing rules for each new rule they intend to issue; in addition, it was
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1
2
3 demanded that the cost of new regulations be strictly managed and controlled. Recent
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6
7 figures suggest that the effects of this executive order were significant as, by the end
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9
10 of 2018, agencies had already taken 243 deregulatory actions. In 2018, regulators also
11
12
13 received explicit instructions from the Office of Information and Regulatory Affairs
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15
16 (OIRA) calling for a “net reduction in total incremental regulatory costs”. Trump’s
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18
19 deregulatory agenda was pushed a step further in 2019, when the Office of
20
21
22 Management and Budget (OMB) imposed additional burdens on any new policies and
23
24
25 rules issued by agencies. Crucially, Congressional reviews are now required for any
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27
28 major regulation or guidance. At the end of the same year, Trump issued a new
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31 executive order (E.O. 13875) under which any state agency must terminate “at least
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33
34 one-third of its current committees” (Sepulveda and De Lazari, 2019). These various
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36
37 measures were paralleled with additional deregulatory initiatives in specific sectors
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40 (typically in environmental protection, where more than 80 rules were removed or
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43 planned to be so) and with an overall reduction in agency rule-making, according to
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51 the most recent figures assembled by the Brookings Institution.²
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3 Spectacular though it is, President Trump's relationship with the regulatory order does
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5
6
7 not come as a surprise for most students of American politics. For several authors, it
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9
10 is no more than an additional illustration of the propensity of political actors to shape
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12
13 regulation to their own image, in order to serve the various groups from which they
14
15
16 received electoral or financial support. Milkis and Jacobs (2017) argue that "far from
17
18
19 deconstructing the administrative state" as promised, Trump has in fact embraced "the
20
21
22 levers of presidential discretion and power inherent within the modern executive office".
23
24
25 According to them, American political development came to a point where "political
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28 contestation [...] is no longer a struggle over the size of the State; rather it is a struggle
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34 between liberals and conservatives, to seize and deploy the State and its resources".
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38 And indeed, while the presidential agenda eventually imposed deregulation in some
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40
41 areas, others (which conspicuously include Veteran's Affairs and Homeland Security)
42
43
44 remained largely protected from it. In a similar vein, Lewis (2019) argues that although
45
46
47 different "in tone and tenor", Trump's "approach to regulation is consistent with the
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49
50 actions of previous presidents", as it combines politicization of administrative
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52
53 policymaking, a certain centralization of control and some reform plans. Lewis further
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55
56 notices that Trump's actions find parallels with earlier Republican administrations, and
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1
2
3 argues that it is essentially in his posture “as president but not as chief executive” that
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5
6 he demarcates himself from his predecessors. According to Lewis’ figures, there is
7
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9
10 more fundamental evidence of a deep erosion of the administrative state before the
11
12
13 Trump presidency – an erosion he largely attributes to a set of political and institutional
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15
16 dynamics incentivising politicians to care more about programmes and regulations
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18
19 than the structural framework through which the administrative state operates (Lewis,
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21
22
23
24 2019).
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31 While it is arguably too early to draw appropriate conclusions about the broader effects
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33
34 of Trump’s administration on political-regulatory relations, some evidence does
35
36
37 suggest that this was not a one-way process – and thus that political influence could
38
39
40 once again be over-imputed. Four basic observations support this interpretation. First,
41
42
43 while the Trump administration was able, in its initial months in office, to repeal recently
44
45
46 promulgated regulations of the Obama era, empirical evidence shows that not every
47
48
49 recent regulation was deleted – and that organizational factors account for this finding
50
51
52 (Thrower, 2018). A second observation is that although Trump’s administration greatly
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54
55 reduced the “flow” of new regulations, it “barely scratched the surface” of the “stock” of
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2
3 existing ones (Dooling, 2019). A third observation is that much of the regulatory
4
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6 cooperation with third parties (such as with the European Union) has proven resilient
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8
9
10 to change in crucial sectors, particularly in financial regulation where the Covered
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13 Agreement prepared by President Obama's administration was rapidly endorsed –
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16 despite the fact it ostensibly sets additional regulatory burdens to the powerful
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18
19 insurance industry (Zaring, 2019).
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28 The fourth and arguably more profound observation is that strong political constraints
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31 do not deprive regulators of their own agency.³ In other words, they are still capable of
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34 resisting, curbing, or even enhancing their autonomy in the face of overt attempts to
35
36
37 align their decision-making with political preferences⁴ – investing precisely the various
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39
40
41 reputational assets they possess. Environmental and pharmaceutical regulations are
42
43
44 two obvious cases in this respect, as both these politically salient domains have been
45
46
47 faced with explicit attacks from President Trump during his time in office.
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55 A look back at their respective histories reveals that this situation is hardly new for
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57
58 regulatory agencies in two areas, namely the Environmental Protection Agency (EPA)
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1
2
3 and the Food and Drug Administration (FDA). In a recent monograph on the history of
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5
6
7 the EPA, Demortain (2020) asserts that it is true that there has always been a strong
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9
10 link between the agency's way of operating and the broader political context. Yet a
11
12
13 careful examination of major controversies (including the ozone standard, arsenic,
14
15
16 chemical substances or passive smoking) reveals that political pressures alone never
17
18
19 accounted for the agency's decisions. Crucially, over a period of time it was able to
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21
22 cultivate an enduring network of actors (notably scientists) through which it managed
23
24
25 to establish its fundamental concepts, definitions of what constitutes an environmental
26
27
28 risk, a system for its measurement and communication – and thus influenced the
29
30
31 conceptual architecture in which the various audiences of environmental regulation
32
33
34 operate (Demortain, 2020). Carpenter (2010a) developed a similar argument in his
35
36
37 seminal study of the FDA. Granted, pharmaceutical regulation was repeatedly
38
39
40 politicized and faced with strong pressures from a wide range of powerful groups (from
41
42
43 patient advocates to the medical profession and the pharmaceutical industry). Yet the
44
45
46 FDA was able to impose itself as a pivotal actor in the field, precisely through the
47
48
49 intense scientific, political and bureaucratic work deployed by its agents over time in
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52 various networks. It thus gradually established a strong and multifaceted reputation
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3 that the regulator is now able to mobilize when faced with explicit attacks on its
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7 autonomy. This independence is echoed in the agency behaviour under Trump's
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11 presidency: to counter explicit presidential support for the pharmaceutical industry, for
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13
14 instance, it published a list to "name and shame" pharmaceutical companies suspected
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16
17 of purposely blocking competition from the industry producing generic medicines
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19
20 (Yadin, 2019). During the current Covid-19 pandemic, it used expanded power to
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23
24 maintain its reputation of a protector of the public, while trying to maintain its scientific
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27 credibility in front of strong political demands – especially when it revoked emergency
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29
30 authorization of chloroquine and hydroxychloroquine to treat the virus, while the
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34 treatment was heavily promoted by President Trump.⁵
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42 Combining a reflection on what political principals do to monitor their agents with a
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45 reflection on what agents actually do in response and in a more systematic manner
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48
49 could thus, it seems, generate a more accurate understanding of political-regulatory
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52 relations in the US. To date, too few studies of American regulatory politics have
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56 adopted such a broad perspective, which could offer a better understanding of the
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59 interdependencies between those generic actors and the larger "forums" in which they
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3 operate (Maggetti and Papadopoulos, 2018). More importantly in our view, this could
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5
6 also help to connect the study of the politics of regulation to broader research
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9 questions, such as the effect of political-regulatory interactions and (dis)alignments on
10
11
12 overall trust in regulators and regulatory outcomes (Carpenter, 2010b). Further
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14
15 examining political-regulatory relations could also help, we think, to account for the
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17
18 striking differences in terms of citizens' appreciation of the job done by regulatory
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20
21 agencies and their variation over time.⁶ More fine-grained studies, as exemplified by
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23
24 Carpenter (2010a) and Demortain (2020), could also examine how regulatory agents
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26
27 influence – in turn – the perceptions of the regulated objects and their effect on political
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30 principals. In sum, greater integration of the research focus could help understanding
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33 the politics of regulation in the broader sense of the term.
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45 **3. Regulatory Politics and the Power of the Agent**

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52 **3.1 Dodging the principal?**

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3 In a number of respects, the study of the politics of regulation has followed a different
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5
6 path in European scholarship. Interest for the topic essentially emerged at the end of
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8
9 the 1990s, at a time when most European countries (as well as the European Union
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11
12 itself) were facing the development of a significant number of regulatory agencies
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14
15 (Majone, 1996). Most of these entities were in fact former ministerial directorates or
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17
18 industrial monopolies replaced with independent entities endowed with statutory
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20
21 powers (Yeung, 2010). In most instances, these regulatory agencies did not have the
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23
24 capacity to forge regulations with the same (important) legal status as their sister
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26
27 agencies in the US. However, it became rapidly clear that their regulatory powers,
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29
30 though different in shape, were considerable. In a variety of sectors (ranging from
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33 environmental protection, transportation or healthcare to financial regulation),
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36 independent regulators played a growing role through making important decisions, by
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38
39 formulating guidelines that many sectoral actors are required to follow, and through
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41
42 their effective participation in the policy process. More than their legal status, it is their
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45 reliance on expertise and scientific 'gold standards' that effectively protect their
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48 autonomy and are the main source of their power (see Maor, 2007). A rapid
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51 burgeoning literature witnessed a profound transformation of the governance of
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3 European capitalisms, where states became “increasingly preoccupied with the
4 regulation part of governance” as opposed to directly influencing economic activity
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7 through unilateral actions (Braithwaite, 2011). Faced with the rapid development of
8
9
10 new organizations, structures and actors, many scholars identified the formation of a
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14 “regulatory capitalism”, whose obvious expression – governance through regulation –
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18 required dedicated and careful attention (Jordana & Levi-Faur, 2005).
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28 Most of these pioneering authors were largely aware of the fact that forging regulatory
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31 orders involves a strong political dimension. A first generation of studies in European
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33
34 scholarship thus focused on the delegation stage through which regulatory agencies
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36
37 and instruments were created (Thatcher & Stone Sweet, 2003). Comparing a selection
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40
41 of regulatory agencies in Britain, France, Germany and Italy, Thatcher (2002)
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43
44 emphasized the importance of contextual factors in the pressures faced by politicians
45
46
47 to delegate, including isomorphism; administrative traditions, structures and reforms;
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49
50
51 and political leadership. Gilardi (2008) undertook an influential comparison of 17
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53
54 European countries, in which he showed that governments are more prone to create
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58 regulatory agencies when they need to increase the credibility of their regulatory
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3 commitments and when they attempt to tie the hands of their successors. However,
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6
7 most of these studies were not explicitly connected to a fully-formed theory of political
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10 or partisan control. This was largely due to the fact that essentially the principal-agent
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12
13 theory was used here in a much more metaphorical and flexible manner than in studies
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15
16 of delegation in the US (see for example, Thatcher & Stone Sweet, 2002). Some core
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19 assumptions of the original framework were often relaxed, and qualitative – instead of
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21
22 quantitative and formalistic – approaches were most commonly used.
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31 As in the case of American scholarship, some disciplinary dynamics also account for
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34 this situation and for the subsequent evolutions of the field, which in Europe is
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37 dominated by public policy and administration scholars, organizational sociologists and
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39
40 legal scientists. Their typical research questions thus usually differed from
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43
44 Americanists – and the focus of most studies in Europe has remained the structural
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46
47 blocks of the regulatory state (namely agencies), not the larger political system in which
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49
50 they are inserted. Some deep contextual factors were also at play here. Regulatory
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53 agencies, both at the national and at the supranational levels, developed in line with a
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55
56 series of governance doctrines in which autonomous expertise and the insulation of a
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3 formal agency from political pressures were seen as key for their daily functioning.
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7 Most of these doctrines in fact stemmed from core New Public Management principles
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10 (see Hood & Scott, 1996). In the literature, questions of accountability and control were
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12
13 thus often posed at the agency level, in order to determine some possible mismatches
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15
16 between the general principles of good governance and how agencies actually operate
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18
19 (see Busuioc, 2009). In the years following the initial wave of studies on the politics of
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21
22 delegation, these disciplinary and contextual dynamics pushed the study of regulatory
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24
25 agencies and regulation towards a different direction where regulators – not their
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27
28 political principals – gradually became the focus of scholarly attention.
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38 To a large extent, this still holds true today. Understanding regulation in European
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41 scholarship often means understanding modes and types of regulation, as well as the
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43
44 many and complex forms regulation takes in modern-day governance (Baldwin et al.,
45

46
47 2011). For the same reasons, it is the study of the relations between regulators and
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49
50 regulated entities or third parties, such as the media (see Maggetti, 2012) that attracted
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52
53 much of scholarly attention. Production and use of expertise by regulators, which
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56 became central in regulatory governance for policy and legitimation purposes, also
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1
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3 imposed itself as a major area of study (see Schrefler, 2014 for a discussion).
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6
7 Regulatory agencies were also examined through their involvement in the policy
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9
10 process itself (Maggetti, 2009).
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17 Political dynamics, seen as essential by American scholarship, thus seemingly do not
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20
21 enjoy the same importance for Europeanists. Does that mean that the subject was
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23
24 completely ignored? Not exactly. First, it is possible to find notable exceptions in the
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26
27 literature, and it would therefore be wrong to say that the topic was completely ignored
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29
30 in Europe (see for example Christensen & Lægreid, 2007). Second and more
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33 fundamentally, an important body of scholarship on the “politics” of regulation in
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36 Western Europe exists, but it conceptualizes and measures the political in a way that
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39 is different to the approach typical of Americanists.
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49 The study of regulatory implementation is an obvious case in point. This domain is
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52 arguably one that has received greater attention in European scholarship, as well as
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55 from a number of Americanists who come from the sociological and legal study of
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58 regulation. Crucially, one can note that political factors clearly stand at the forefront of
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3 scholarly interest in this domain, as recently shown by Short (2019) in her
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6
7 comprehensive review of the literature on the politics of regulatory enforcement and
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9
10 compliance. In particular, she identifies more than thirty different sources of political
11
12
13 influence in both (mostly US) quantitative and qualitative literatures, ordered in eight
14
15
16 broad categories (elected officials, government institutions, interest groups, economic
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18
19 context, public opinion, political culture, sub-politics and individual politics).
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28 Though not only focused on European scholarship, Short's study is informative for
29
30 understanding the implications of a distinctive European "way" in the field. Predominant
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32
33 in the group of qualitative contributions are studies of European regulatory entities, or
34
35
36 empirical analyses authored by European scholars on Chinese or Latin American
37
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39 regulations. Most, if not all of these contributions embrace a similar focus, as the
40
41
42 majority of them study the politics of regulation through "specific moments of
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44
45 contestation by groups or individuals", sometimes shown as determined by "structural
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47
48 factors like culture or ideology" (Short, 2019). Short also points out that they adopt a
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51 broadly similar orientation, driven by a "multi-faceted" and often contingent
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58 conceptualization of the political and how it affects regulatory outcomes. Contrary to
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3 American political scientists and political economists, scholars thus do not derive the
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7 contours of political-regulatory relations from formal hierarchies; in the same vein, they
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9
10 do not see political influence as being a narrow form of control exerted by politicians
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13 over regulators; and, methodologically, they often draw inferences from qualitative or
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15
16 mixed-method approaches. A variety of regulatory settings are also subject to study –
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19
20 and in this sphere there is more research on regulatory areas other than those
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23 delegated to specific agencies. In a study of governmental influence on environmental
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26 law enforcement in China, for example, Van Rooij et al. (2012) show, on the basis of
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29 interview and survey data, the increasing influence of societal forces on regulatory
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31
32 implementation. Using about 50 interviews on the regulation of industrial risks in
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35 France, Etienne (2015) challenges the dominant view according to which a regulator's
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37
38 resources and information asymmetries would be instrumental in detecting the politics
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41 of non-compliant behaviour. Among other factors, he notably identifies an overall
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44 concern for "reputational risks" as key for a regulator's motives and behaviour.
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56 In these works, politics in its most common and obvious appearances (executive
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59 leaders, elected officials, party politicians and political organizations) is not assumed
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3 to be non-existent in regulatory environments. Yet it is typically viewed as not having
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5
6 the capacity to fully control their internal dynamics and interactions. These studies thus
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8
9 present a fair deal of similarities with those informed by the reputational approach in
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11
12 American scholarship – except, perhaps, that they are widespread and predominant in
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14
15 Europe, and arguably less so in the study of US regulatory politics.
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24 An ever more pronounced departure from principal-agent and quantitative approaches
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26
27 can be noticed quite recently in European scholarship, where significant theoretical
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29
30 efforts have been made to further demarcate the study of the politics of regulation from
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32
33 early American accounts. In two influential articles, Busuioc and Lodge (2016; 2017)
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36
37 have offered a sharp critique of the principal-agent framework, formalizing the
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39
40 arguments made by Carpenter (2001; 2010a) and a number of Europeanists. In their
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42
43 first article, they notably argue that a hierarchical, vertical conception of political control
44
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46 is misleading, as in most instances politicians do not seek to mitigate the loss resulting
47
48
49 from delegation to their agents (Busuioc & Lodge, 2016). In fact, this would rarely be
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51
52 at stake in accountability relations, as both agents and principals always operate in a
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54
55 larger network of actors from which they draw their legitimacy. Thus, accountability is
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3 more clearly “about managing and cultivating one's reputation vis-à-vis different
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6 audiences” (Busuioc & Lodge, 2016). Busuioc and Lodge further extended these
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8
9 assumptions in a second article, in which they seek to explain the significant variations
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11
12 in “organizational interest, intensity, and investment in accountability relationships”
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15 (Busuioc & Lodge, 2017). Mapping different scenarios, they argue that the extent to
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17
18 which the reputations of account-giver and account-holder are at stake, and whether
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21 both (or neither) simultaneously face reputational concerns, explain the form and the
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24 intensity of accountability relations.
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34 **3.2 Accounting for political influence in regulation: legislative involvement in agency design** 35 36 37 38 **and termination** 39 40 41 42 43

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45 The idea that one should adopt a broad conception of the politics of regulation is thus
46
47 well established in Europe. To be sure, it is certainly not a European peculiarity (see
48
49 Short, 2019) – even if it is arguably in European scholarship that the politics of
50
51 regulation was most systemically envisioned in its broadest sense (Baldwin et al.,
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58 2010).
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7 This posture is not solely a matter of epistemological or ontological orientation, as one
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9
10 might expect. It is also based on some empirical evidence suggesting that the role of
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13 political principals would not be as central in European regulatory orders as it is
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16 elsewhere. Some fifteen years ago, Thatcher published a persuasive article in this
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19 regard. On the basis of descriptive statistics, he showed that elected politicians in
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22 France, Germany, Italy and in the United Kingdom were not using their powers to
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25 appoint party politicians, to force the early departures of regulatory agency members,
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28 to reverse their decisions, or to reduce their budgets and powers (Thatcher, 2005).
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34 Others have found that formal independence of regulatory agencies in Western Europe
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36
37 was an important determinant of actual independence, with independence measured
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40 through political appointments of regulatory agencies' chief executives (Hanretty &
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43 Koop, 2013). Overall, a recurrent observation has been that political principals
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46 seemingly choose "not to hold their agents accountable" (Schillemans & Busuioc,
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52 2015).
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3 In our view, these solid and almost entirely converging results are nonetheless
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7 questionable on at least two dimensions. The first is that they heavily focus on ex-post
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10 controls, namely on the levers that politicians possess to monitor regulatory agencies
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13 once they are created. Yet a largely shared finding in the US literature is that using
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16 such mechanisms always comes with a certain, possibly high, cost for politicians – and
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19 this due to their high visibility and because their utilization often requires substantial
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22 information gathering on a given policy sector. In addition, it is doubtful whether
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25 politicians might expect valuable benefits from these operations, as political
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28 appointments or budgetary cuts can easily be reversed. Even in critical times (for
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31 example, when an agency takes a controversial decision of high political importance)
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34 research has established that the simultaneous involvement of multiple political actors
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36
37 in regulatory decision-making creates obvious collective action problems (Gailmard,
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40 2009) which a regulator might in turn easily exploit to curb or to mitigate the
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43 consequences of these pressures.
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55 More fundamentally, one can also note that studies concluding that political influence
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58 in regulation in Europe is weak tend to adopt a similar, arguably problematic stance.
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3 Indeed, their authors usually ignore politicians' actual interventions and test instead a
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5
6 series of political variables at the agency level. For example, they report whether or
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9
10 not an agency executive has political affiliation, or look at the share of resignations of
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12
13 agency members before the end of their term. At best, political influence is indirectly
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16 measured, typically by controlling for the presence of veto-players. Still, the motivations
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18
19 and the actions effectively taken by political principals remain largely unobserved. In
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21
22 this context, it is rather unsurprising to note that Europeanists have drawn similar
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24
25 conclusions to those of Theodore Lowi in late 1960s America – namely that political
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28 actors are not so influential in regulation, as they apparently rarely turn against
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30
31 regulators and their decisions. In the quasi-absence of studies that measure more
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33
34 precisely what political principals really do (though see below), we thus have to admit
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38 that we still do not know if this is because regulatory agencies have become a “third
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40
41 force” in European politics (Thatcher, 2005) or because agencies are acting
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44 consistently with their principals' preferences, and thus that such ex-post control is less
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49 necessary (McCubbins, 2014).
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4 What are we able to observe when these pitfalls are remedied, namely when scholars
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6
7 look at ex-ante controls and directly account for actual principal involvement? Over
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10 the last few years, a range of studies have started to examine, more systematically
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12
13 than before, political influence in regulation – and surprisingly they have found that
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16 agency politicization was in fact greater in Western European politics than traditionally
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19 assumed.
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28 For instance, Benoît (2021) has recently examined legislative involvement in the
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31 creation of 48 independent regulatory agencies in France, therefore examining a
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34 moment of the policy process that is widely regarded in the US literature as crucial for
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37 the subsequent monitoring of regulatory agencies – the moment when legislators are
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40 able to design appropriate administrative procedures (McCubbins et al., 1987) and,
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43 more fundamentally, to draft detailed legislation to limit agency discretion (Huber &
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46 Shipan, 2009). The results were enlightening: legislative involvement was shown to be
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49 substantial for all agencies included in the dataset, and this both in terms of tabled
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52 amendments, size of plenary debates or increase of bill size. He also reported that
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55 legislators were more involved in agency design when the government proposal has
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3 already granted them more powers to appoint members to an agency board, or to be
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6 appointed as board members themselves. This suggests that political efforts to design
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10 regulatory procedures and to manipulate agency discretion is important even for the
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13 case of a legislature portrayed as weak (see Kerrouche, 2006 for a discussion) and in
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16 a country that is widely regarded as a 'latecomer' in the adoption of new public
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21 management reforms (Bezes, 2008).
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28 There is in fact a burgeoning literature which, by directly measuring political influence,
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31 shows that politicians are quite substantially involved in regulatory politics. Using
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34 survival models for United Kingdom agencies, James et al. (2015) have shown that
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37 "politics was trumping agency survival", even in a parliamentary country where political
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41 influence was traditionally deemed weaker. Extending these findings, Holmgren (2018)
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43
44 has shown that in the case of Sweden the risk of agency termination significantly
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47 increases, following partisan shifts in government. Interestingly however, Greasley and
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51 Hanretty (2016) have found for the UK that agencies 'intended to generate credible
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55 commitments in regulation were less likely to be terminated'.
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4 In a similar vein, other studies have sought to provide more accurate measures of ex-
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7 post control, typically by adopting subtler research designs and techniques and by
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10 trying to rely on more exhaustive databases. Their findings are often convergent, even
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12
13 for this particular dimension of political influence or intervention, deemed as costlier for
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16 individual politicians. Fernández-i-Marín et al. (2016) have for instance shown for the
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18
19 case of Spain that board members of regulatory agencies who have an administrative
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21
22 profile were more vulnerable to political changes than those with political ties.
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25 Comparing independent regulatory agencies in 16 European countries, Enner-
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28 Jedenastik (2016a) found that individuals with ties to a government party were more
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30
31 likely to be appointed to an agency's head as formal agency independence increases
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34 – typically in domains where agencies enjoy greater regulatory powers, often very
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36
37 similar to regulation-making agencies in the US. Pérez-Durán (2019) recently
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40 demonstrated that at the supranational level, the European Parliament, was more likely
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43 than the Commission to appoint individuals having career ties to politicians.
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What these preliminary results more fundamentally suggest is that the politicization of regulators and regulatory agencies is not a peculiarity of the separation-of-power

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3 systems of North and Latin America, on which much of scholarly attention has for now
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5
6 concentrated. It is interesting to note however that a greater focus on the politicization
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8
9 of regulatory agencies in Western Europe could well reveal a different kind of politics
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11
12 than traditionally examined by Americanists.⁷ Indeed, and in the more fluid and
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14
15 dynamic multi-party systems of continental European democracies, ideology – rather
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18 than pure signalling, position-taking and struggles between governmental branches –
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20
21 could play a more substantive role. This could also prove true in parliamentary systems
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23
24 more generally (as many European polities are), in which “it is very difficult for any
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27 incumbent coalition to credibly pre-commit the governmental apparatus to a course of
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30 action that cannot be completely overturned at the next election” – thus reducing the
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33 effect of any attempts at insulating regulatory agencies and provisions from a change
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36 of government (James et al., 2015). In addition, and as suggested by James et al.,
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39 shifts in the balance of power within parties (typically between antagonist ideological
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42 factions) might substantially alter policy emphasis, and thus political attempts to
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45 manipulate regulatory agencies and instruments (for a discussion of the implications
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48 of parties’ ideological complexion, policy emphasis, and perceived issue competence
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51 in regulatory agency creation, see Ennser-Jedenastik, 2016b).

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3 control of politicians) that were delegated to independent regulators and experts during
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5
6 the neoliberal era. Crucially, it clearly seems that the newly resurgent populism
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10 apparently characterizing the condition of European democracies now constitutes (in
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12
13 part) a rejection of expert and regulatory governance (see Hay & Benoît 2019; see also
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17 Bertou & Caramani 2020a for a discussion). It is also for this reason that paying more
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20 careful attention to the politics of regulation in Europe seems much needed – as it
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22
23 touches upon the interdependence of the economic and the political spheres under
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26 regulatory capitalism, an interdependence currently being challenged by a growing
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29 number of adverse political forces.
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38 **4. Conclusion**

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45 This paper has sought to reveal and discuss the implications of a persisting divide
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48 between Americanists and Europeanists in the study of the politics of regulation. We
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51 have argued that the former face the risk of overestimating political influence in
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54 regulation due to their excessive focus on principals and their narrow conception of the
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57 political. Symmetrically, the latter could underestimate political influence in spite of (or
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3 possibly due to) their broader conception of the politics of regulation – as they rarely
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6
7 focus on what political principals actually do, while their involvement in regulation
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10 seems significant when directly tested.
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17 We concluded our discussions of each line of scholarship by drawing some basic
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20 research agendas. More fundamentally, when considered jointly, they indicate that a
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24 greater integration of these two lines of scholarship is desirable, particularly of their
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28 research focuses and questions. This seems particularly necessary in a context where
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32 regulatory governance is now firmly established as the main form of political and public
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35 intervention on economic activity –both in advanced liberal democracies and in other
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38 regions of the world, particularly in Asia and Latin America.
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45 For the same reasons, regulation, as already foreseen by Braithwaite et al. (2007), is
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48 now at the very core of the current challenges faced by governments in many countries.
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52 It literally mirrors the tension between persisting “demands for competent and
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55 responsible policymaking, in combination with the simultaneous populist resistance to
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59 experts” (Bertsou & Caramani, 2020b). Whatever their preferred research interests,
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3 conceptual orientations and methodologies, regulation scholars must pursue their
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7 efforts to understand the very rationale and implications of the politics of regulation as,
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10 perhaps more than ever, arguably its study constitutes a key standpoint to address the
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14 issues openly and comprehensively.
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19 **Notes**

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22 ¹ The literature on regulation is vast, and many contributions other than those
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25 presented here might rightly have been included in our discussion. See Chang
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28 (1997) for a reflection on the politics and economics of regulation with a broader
29
30
31 historical perspective. For an examination on the politics of regulation less focused
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33
34 on regulatory agencies than the present one, see Short's (2019) review on regulatory
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37 compliance. Interestingly though, other reviews with a similar (though not an
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40 identical) focus have reported fault lines close to those on which this paper largely
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46 builds. This is notably the case in Carrigan & Coglionese (2011), who were the first,
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48
49 to our knowledge, to explicitly characterize the tension between a neo-institutionalist
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52
53 and a new governance approach in the study of the politics of regulation – without
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5 characterizing however the largely geographical distribution of studies informed by
6
7
8 these two respective conceptualizations.
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11 ² Brookings Institution (2020) Tracking Deregulation in the Trump Era,

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15 <https://www.brookings.edu/interactives/tracking-deregulation-in-the-trump-era/>.

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18 Accessed 9 July, 2020.
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22 ³ Qualitative methods are certainly not the only way of establishing this claim. Using
23
24
25 formal models, Schinkel et al. (2020) have shown that even when faced with heavy
26
27
28 budgetary cuts or constraints, regulators may decide to pursue different tasks.
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31
32 Notably, they may either focus on major cases with an uncertain outcome or on
33
34
35 minor cases with a higher probability of success, depending on the public image the
36
37
38 head of the agency wants to promote.
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42 ⁴ Correa et al. (2019) develop a related argument on Brazil, showing strong
43
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45 regulatory resilience in the country in spite of a range of political interference by
46
47
48 powerful presidents.
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53 ⁵ See New York Times, "F.D.A Revokes Emergency Approval of Malaria Drugs
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56 Promoted by Trump". June 15, 2020.
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⁶ See the recent waves of Gallup Surveys available at

<https://news.gallup.com/poll/27286/government.aspx>. Accessed 9 July, 2020.

⁷ We thank Reviewer 2 for this suggestion.

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