THE IMPACT OF REGULATORY ORGANIZATION STRUCTURE: IRCs OR DRAs?

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Government regulation of private business has been an acceped part of the federal government's policy-making activities since the creation of the Interstate Commerce Commission in 1887. Despite the long history of government regulation, the perceived shortcomings are legion. Regulatory agencies have been criticized for distorting the positive benefits of price competition, subsidizing inefficient producers, restricting competition, restricting technological progress, reducing the diversity of products, being captured by special interests, lacking universal standards for regulation, fostering administrative delays and backlogs, and just plain bad judgment. (Daly and Brady, 1976:177-181) One recurring explanation for many of the problems is the structural weaknesses of regulatory organizations.

The most recent and most widely publicized criticism of regulation centering on structural weaknesses is the Ash Council's report to President Nixon on the status of government regulatory efforts. The Ash Council's criticisms focused on regulatory commissions (1) arguing that "Inherent deficiencies in the commission form of organization prevent the commissions from responding effectively to changes in industry structure, technology, economic trends, and public needs." (Ash Council, 1971:4) The "inherent deficiencies" of commissions include limitations of the collegial form, reliance on adjudication rather than rulemaking, delays resulting from judicialized proceedings, and inability to fix individual responsibility for commission actions. The changes recommended by the Ash Council were primarily structural; the most prominent was replacing the commission form with a single administrator appointed by and responsible to the President.

The Ash Council was not the first to consider regulatory reform in strictly structural terms. The First Hoover Commission recommended that the size of independent regulatory commissions be made as small as possible (perhaps even to the point of one commissioner) with the President appointing the commission chairman. (Cushman, 1941) Kohlmeier (1969) also found major faults with the structure of regulatory commissions; he proposed abolishing the commissions and transferring all functions that do not conflict with anti-trust to executive departments.

Clearly, the Ash Council proposals will not be the last recommendations for regulatory reform based on structural changes. The emphasis of the Carter administration on structural reorganizations has already affected existing agencies in energy policy, agriculture, health care, and foreign affairs. Given the staff devoted to general questions of reorganization, a proposal for reorganizing the government's regulatory efforts can be expected.

The argument that agency structure has an impact on regulatory policy is not without controversy. The excellent analysis by Noll (1971) of the Ash Council's report suggests several other equally plausible explanations for regulatory-agency failure unrelated to structure. Crampton argues that the Ash Council presents no evidence to show that structure affects regulatory policy; he suggests that "perhaps a more crucial question is how the structure of an agency affects the performance of its regulatory tasks." (Crampton, 1972:285)

The absence of information on regulatory structure is surprising since the independent regulatory commission, so roundly condemned by the Ash Council, is not the only federal administrative structure used for regulation. Several federal government bodies are headed by single administrators and located within executive departments, including the Packers and Stockyards Administration in the Department of Agriculture; the Food and Drug Administration in the Department of Health, Education, and Welfare; and the Occupational Health and Safety Administration in the Department of Labor. The federal government, in fact, has at least one single-headed regulatory agency outside an executive department (the Environmental Protection Agency) and a regulatory commission located within an executive department (the Federal Energy Regulatory Commission). The latter two forms are exceptions, however, since the preference of Congress is for either independent regulatory commission (IRCs) or dependent regulatory agencies (DRAs). (2)

This article will address the question of how structure affects regulatory processes and performance by focusing on the differences between independent regulatory commissions and dependent regulatory agencies. First, the theoretical reasons why structure should affect regulatory activities will be discussed, supplying the theoretical support lacking in the Ash Council report. Second, the implications of different structural options will be elucidated. Third, several independent regulatory commissions will be compared to several department regulatory agencies to determine the difference between these two structures in regard to the organization's environment, its decision-making processes, and its policy outputs. Finally, this information will permit us to assess the impact of organization structure on regulatory performance.

THEORETICAL JUSTIFICATIONS

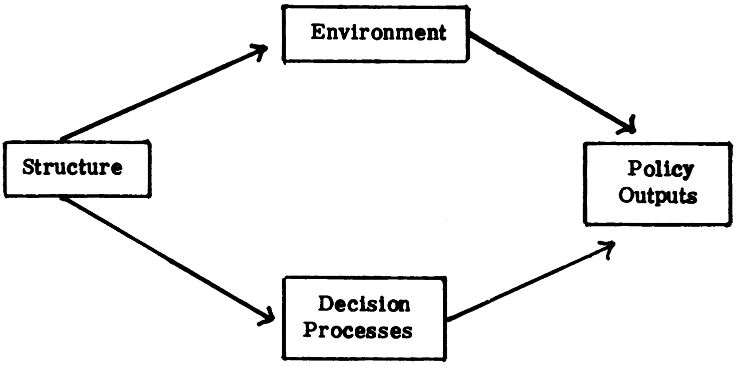
Although the Ash Council presented neither theoretical nor empirical support for their contention that regulatory structure affects regulatory performance, it could have provided at least some theoretical support for its arguments based on organization theory. Briefly, some organization theorists (Thompson, 1967; Woodward, 1965; Downs, 1967; Bernstein, 1955) argue that organization structure helps shape the organization's environment and its decision processes, both of which in turn affect the organization's policy outputs (see Figure 1). These relationships will be clearer if the specific case of regulation is discussed in greater detail with some specification as to what the environment, decision processes, and policy outputs are.

The major structural options for a regulatory body can be simplified into two distinct structural choices. The first structural decision is whether the regulatory body should be an independent body or a departmental body. The designation, "independent," means more than merely placement outside the executive departments. According to Bernstein (1955), an independent body is also independent from presidential supervision and its executives cannot be removed by the President.

The department/independent decision affects the

FIGURE 1

THE IMPACT OF REGULATORY STRUCTURE



organization's environment because the political environment within executive departments is distinctly different from the environment for independent organizations. The environments of executive departments usually contain strong, well-organized political forces because departments conduct continuing efforts to attract clientele supportive of their mission. (Rourke, 1976; Seidman, 1975) Agencies placed within executive departments must reach accommodation with these clientele. Any regulatory body, lodged in an executive department charged with regulating the department's clientele, would receive little, if any, support from the department or its environment. If, for example, pesticide regulation programs were placed in the Department of Agriculture rather than the Environmental Protection Agency, the pressures of agricultural interests would make vigorous pesticide regulation difficult.

Department regulatory bodies, therefore, are usually designed to regulate in the interests of the regulated. (Sabatier, 1975) Even if these agencies are not designed to be "captured," the continued pressure of the department and the environment will eventually wear the agency down. In short, a department regulatory body's environment affects the body's policy outputs by "encouraging" regulation in the interests of the regulated.

The environment of an independent regulatory body is less certain. Although independent regulatory bodies may eventually respond to environmental pressures created by the regulated, their initial environment has less structure. Bernstein (1955) contends that many independent regulatory bodies were established in response to strong public pressure for regulation. Capitalizing on this public support, the organization can regulate in the "public interest" for a short time. As public support for regulation wanes with the detail of implementation, the President and most members of Congress become less concerned with the independent regulatory body and shift their interest and support elsewhere. An independent regulatory body's environment changes slowly from supporting regulation to opposing vigorous regulation because the only persons who remain interested are the regulated; and they oppose non-protective regulation.

Desiring to survive, the regulatory body seeks an accommodation with the regulated to gain environmental support. Once established, this support becomes a trend difficult to reverse because the President cannot replace members of independent commissions nor can he directly overrule their decisions. Bernstein (1955) believes that the presidential guidance and support that departmental agencies receive is vital to avoid industry capture and maintain effective regulation. Noll, in fact, feels that independent status for a regulatory body "serves primarily to insulate the agency from the general public." (Noll, 1971:35) Over a longer period of time, therefore, "independent" regulatory structures affect the organization's environment and consequently the organization's policy outputs.

Although the arguments presented above might imply that structure does not matter since either a department or an independent regulatory body will eventually respond to an anti-regulation environment, this is not the case. The difference is one of degree. The department regulatory body must conform to the demands of the regulated from its inception. The independent regulatory body has a grace period before the decline of public and presidential support where it can accomplish objectives that may be opposed by the regulated.

Arguments about the independent/department decision and its impact are not simply academic rationalizations. Congress is cognizant of these structural implications when creating regulatory bodies. Congress, for example, deliberately vested responsibility for regulating packers and stockyards in the Secretary of Agriculture rather than the Federal Trade Commission. (Seidman, 1975) More recently, Congress created the independent Commodity Futures Trading Commission and the semi-autonomous Federal Energy Regulatory Commission to avoid control and biases of two executive departments.

The second structural option for regulatory bodies is the nature of its chief executive(s). Regulatory bodies are headed either by a multi-member commission or by a single administrator (i. e., an agency). The commission/agency distinction does not affect the organization's environment as much as it affects its decision-making processes (see Figure 1). Regulatory policy processes include both rulemaking, a quasi-legislative process resulting in rules with general application, and adjudication, a quasi-judicial process resulting in decisions applicable only to the specific instance under consideration. If the objective of regulatory policy is to perform a quasi-legislative function, then a quasi-legislative structure should facilitate this performance. A regulatory commission is, in fact, a quasi-legislative structure with an odd number of members from both political parties with overlapping terms for continuity. Regulatory commissions, as a result, should be better at rulemaking than single-headed agencies. Agencies, on the other hand, are hierarchical with only a single head designed to produce quick decisions. Adjudication, therefore, is a more compatible process with the structure of regulatory agencies.

Similar to the environment of a regulatory body, the process used by a regulatory body has an impact on the policy outcomes for that body. Adjudication has been condemned by leading students of government regulation as lacking general guidelines and being designed to povide the regulated many opportunities to delay the process. (Davis, 1965). Adjudication has been judicialized, slowed through the introduction of eleborate procedural safeguards. Since adjudication places a premium on the ability to wait and the ability to incur substantial legal expenses, adjudication is perceived to favor the regulated rather than the consumer. (Davis, 1965) Rulemaking, on the other hand, is proposed as a vehicle for quick, effective regulation.

In theory, therefore, the decision between creating an independent regulatory commission and a department regulatory agency is important. The independent/departmental decision determines the initial environment of the agency which in turn affects the policy outputs. The commission/agency decision affects decision-making processes of the organization which in turn influence the organization's policy outputs.

Despite the failure of the Ash Council to include even these justifications, they are only theoretical. No empirical study has ever examined regulatory bodies to determine if these theoretical linkages actually exist. This article will examine a few of these questions empirically in the remaining sections.

REGULATORY BODIES EXAMINED

Twenty-three regulatory bodies will be used to assess the impact of regulatory structure. The twenty-three regulatory bodies represent all the independent regulatory commissions and departmental regulatory agencies in existence from 1970 to 1975 in the non-banking areas of regulation. Banking regulatory bodies were omitted since they generate most of their own operational funds and, thus, are not subject to the fiscal controls of either Congress or the President. Too few department regulatory commissions or independent regulatory agencies exist to make meaningful comparisons.

The department regulatory agencies included are: the Animal and Plant Health Inspection Service (Agriculture); the Commodity Exchange Authority (then in Agriculture); the Agricultural Stabilization and Conservation Service (Agriculture); the Agricultural Marketing Service (Agriculture); the Food and Drug Administration (Health, Education, and Welfare); the Mining Enforcement Safety Administration (Interior); the Office of Interstate Land Sales (Housing and Urban Development); the Federal Aviation Administration (Transportation); the Occupational Safety and Health Administration (Labor); and the Labor Management Services Administration (Labor).

The eleven independent regulatory commissions are: the Consumer Product Safety Commission; the Federal Trade Commission; the Civil Aeronautical Board; the Equal Employment Opportunity Commission; the Federal Maritime Commission; the Federal Power Commission; the Interstate Commerce Commission; the National Labor Relations Board; the National Transportation Safety Board; and the Securities and Exchange Commission. (3)

FINDINGS

Are the Environments of DRAs More Supportive?

Determining whether the environments of departmental regulatory agencies are more supportive than those of independent regulatory commissions is difficult because much of the opposition and support for regulatory bodies is covert. The only stage of the policy process, continually open to public view with interest groups registering their feelings about regulatory bodies, is the annual appropriations hearings. During subcommittee hearings, concerned individuals appear before Congress and express their opinions about regulatory bodies. If the individuals who testify before appropriations subcommittees are representative of the body's clientele, then comparing the number of supporting groups should provide some indication about the supportiveness of a regulatory body's environment. (4)

Examining testimony before House appropriations subcommittees for FY1974-1976 reveals that department regulatory agencies' environments contain more supportive elements than those for independent regulatory commissions. The average department regulatory agency received supportive testimony from 11.2 groups while the average inependent regulatory commission received positive support from only 2.2 groups. (5)

Structural differences between independent regulatory commissions and department regulatory agencies are, therefore, related to the political supportiveness of their respective environments. The relationships, however, may be more complex than the data indicate. Independent regulatory commissions usually perform only regulatory functions. Since department regulatory agencies are located in departments that encourage clientele advocacy, Congress and Department

Secretaries have placed a variety of non-regulatory programs in department regulatory agencies. The distinction between advocacy or development and regulation, a distinction responsible for the demise of the old-Atomic Energy Commission, is not crucial in such a departmental setting. The Federal Aviation Administration, for example, not only regulates airline safety but also provides air transportation development grants. The Agricultural Stabilization and Conservation Service not only regulates crop production but also distributes subsidies and conducts conservation projects.

The willingness of Congress to lodge non-regulatory functions within department regulatory agencies translates into other structural differences between them and the independent regulatory commissions. The average department regulatory agency employs more personnel (7,330 versus 1,340); is more decentralized (20 percent of DRA personnel work in the Washington metropolitan area versus 74 percent of IRC personnel); and has a larger budget ($295 million a year versus $33 million). All these differences can be attributed to non-regulatory functions that require additional field-level personnel and more funds to deliver these services.

Despite the larger size of department regulatory agencies, they tend to be leaner agencies. Independent regulatory commissions employ a greater percentage of employees at higher levels than do department regulatory commissions. This holds true not only for the average GS grade level (9.36 for DRAs and 9.74 for IRCs) but also for the portion of agency employees that holds supergrade positions (1.3 percent for DRAs and 3.7 percent for IRCs). If grade creep is one criterion of efficiency, then the Ash Council may have been correct about the inefficiency of independent regulatory commissions, though the grade differences can probably be explained by the centralized nature of independent regulatory commissions and the higher grade levels in Washington, D.C.

Presidential and Congressional Support

Bernstein (1955) believes that a crucial element of a regulatory body's environment is the support the body receives from the President and Congress because this support permits the agency to fend off the advances of the regulated. Tradition and later conscious effort have designated independent regulatory commissions as congressional agencies and departmental regulatory agencies as presidential agencies. (Seidman, 1976) If this structural distinction affects the body's ability to generate support from these two institutions, independent regulatory commissions should fare better at the hands of Congress while department regulatory agencies should find the President a stronger supporter.

One way of illustrating this reliance on different political institutions is to compare the effectiveness of each set of agencies at different stages of the budget process. Department regulatory agencies, with the support of the President, should achieve greater budget growth in the executive budget from year to year than should independent regulatory commissions. From FY1970 to FY1976, this pattern held with department regulatory agencies receiving an average annual increase of twelve (12) percent from the President while independent regulatory commissions received only a five (5) percent increase. Before Congress, however, this pattern was reversed with department regulatory agencies suffering a three (3) percent larger cut in their budget requests than did the independent regulatory commissions. Using budget support as an indicator, therefore, the structure of regulatory agencies was related to presidential and congressional support.

Structure and Agency Processes

Department regulatory agencies, because they are located in environments with strong political forces, can be permitted more discretion than independent regulatory commissions with predictable results. The nature of the department environment will structure the regulatory agency discretion in a manner more amenable to the needs of the regulated. Although discretion is a difficult term to measure, some partial indicators of an agency's discretion can be found. One such indicator is the detail of the regulatory body's enabling legislation. All things being equal, agencies with shorter enabling legislation have greater flexibility because the legislation must of necessity be less specific. Examining the enabling legislation of the twenty-three regulatory bodies supports this view; the enabling legislation of departmental regulatory agencies averages some thirty-nine pages in the U.S. Code while those for independent regulatory commissions average sixty-six pages. Department regulatory agencies have shorter enabling legislation despite the fact that they have additional, non-regulatory functions.

Another indicator of agency discretion is the detail of the annual congressional budget review. The scrutiny of budgets for independent regulatory agencies is far more detailed than that for department regulatory commissions. Despite the larger size of most department regulatory agencies, Congress devotes less space to the analysis of department regulatory agencies' budgets than it does examining budgets for independent regulatory commissions. (6)

A second aspect of agency processes, more important than discretion, is rulemaking. Most critics of the administrative process believe many of the evils of regulation can be attributed to the use of adjudication rather than rulemaking in setting policy. Since independent regulatory commissions are designed to be rulemaking bodies, they should be able to produce rules easier than the more hierarchical department regulatory agencies. In fact, the reverse is true; department regulatory agencies issue more rules than do independent regulatory commissions (887 pages per DRA versus 781 for IRCs). The comparative advantage of department regulatory agencies is even greater if one compares rulemaking outputs while controlling for the length of an agency's enabling legislation (DRAs have a 19:1 rules to laws ratio while IRCs have a 13:1 ratio). (7)

Given the quasi-legislative design of independent regulatory commissions, why can department regulatory agencies make greater use of their rulemaking powers? The most probable explanation is the difference in political environments. Since the environments of department regulatory agencies are more supportive, these agencies can issue rules with little opposition from the regulated. This ability would be especially pronounced if the rules, as they are likely to be, are supportive of the regulated. This assumes, of course, that the agency and the regulated share a common perspective as to the objectives of regulation.

On the other hand, the independent regulatory commission, especially in its earlier years, faces a hostile regulated interest intent on delaying the impact of regulation. A normal tactic would be opposition to agency rulemaking through the courts, thus making adjudication more attractive to the commission. As the commission ages and loses general support, it must also pursue regulation more slowly and that means adjudication rather than rulemaking.

CONCLUSION

This article examined the impact of regulatory structure on portions of the organization's environment and decision-making processes. The empirical evidence indicates that regulatory structure does make some difference.

First, the structure of the regulatory body determines to some extent how supportive the organization's environment is. Departmental regulatory agencies have environments much more supportive of regulation than do independent regulatory commissions. Second, the structure of regulatory bodies has an impact on other structural elements of the organization. Department regulatory agencies usually have additional non-regulatory functions that translate into more personnel, larger budgets, and greater geographic decentralization. Finally, regulatory structure is related to decision-making processes in the regulatory organizations. Department regulatory agencies appear to have greater discretion and are able to make greater use of their rulemaking powers.

This article has not been able to answer the most important question about regulatory structure: Does regulatory structure affect the policy outputs of the regulatory body? More specifically, are independent regulatory commissions or department regulatory agencies more likely to regulate in the "public interest," avoid the rigidity cycle of regulatory agencies, and remain open to new environmental demands?

If the theory about regulatory structure and its impact is sound, the findings of this research imply that structure may well affect policy outputs. Structure does affect the nature of the organization's environment and is related to the decision-making process of the organization. Both the environment and the decision-making process of regulatory bodies are, in theory, related to policy outputs. Any conclusions, however, must remain tentative without further research on this question.

We need to develop indicators of effective regulatory performance and relate that performance to regulatory structure. We also need to observe the struggle of the Environmental Protection Agency (EPA) to avoid capture by industry on one hand and environmentalists on the other; and we need to observe the performance of the Federal Energy Regulatory Commission (FERC) to determine how the commission form functions within an executive department. Both EPA and FERC are hybrid structures that could reveal if independence or the commission form is the more important structural variable. Crampton (1972) is correct; the important issue is the relationship, if any, between regulatory structure and regulatory performance.

NOTES

1. Three terms will be used in this article to refer to regulatory organizations: "agency," "commission," and "body." Each term will be used in reference to particular types of regulatory structure. A "regulatory agency" is headed by a single administrator who may or may not be responsible to the President. A "regulatory commission" is a regulatory body headed by a multi-member commission. "Regulatory body" is a generic term that includes both agencies and commissions. For variation, the term "organization" may be used; it is equivalent to "body."
2. A good indication of this preference for either independent regulatory commissions or department regulatory agencies is the congressional action on the Commodity Exchange Authority. In 1974, after much criticism of the Authority's ability to regulate, the Authority was moved out of the Department of Agriculture to insulate it from the clientele pressures of that department. In moving the Authority to independent status, Congress also converted it to commission form (the Commodity Futures Trading Commission).
3. Some of the agencies in this study are no longer in existence. The Commodity Exchange Authority was replaced by the Commodity Futures Commission; the Federal Power Commission was replaced by the Federal Energy Regulatory Commission.
4. An examination of the groups appearing for several agencies would reveal that most of the major clientele groups appear to express their opinions. The number of groups that testify on regulatory agencies is lower than the number for other groups, but this can be explained by the functions performed by regulators which are not conducive to attracting large clientele support.
5. If these were independent random samples, the difference between the two groups would be significant at the .03 level. Most differences

reported in the article were not as striking. Since the groups are not samples, significance figures will not be reported.

6. The average departmental regulatory agencies require one page of analysis per 43 million dollars in expenditures in the BUDGET APPENDIX, while the average independent regulatory commission requires one page per 14 million dollars in expenditures. Although this indicator of discretion is fairly weak, it is consistent with both the hypothesis and other indicators. Departmental regulatory agencies, for example, reprogram three (3) percent more of their funds than do independent regulatory commissions.
7. Longer enabling legislation probably means more regulatory functions so that such an agency would naturally issue more rules. The correlation between rules issued and length of enabling legislation is +.7.

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