

The Politics of Regulation: From New Institutionalism to New Governance

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Abstract

The study of the politics of regulation has followed two distinct paths in recent years. “New institutionalism” research has focused primarily on the policy-making process, particularly the interplay between regulators (who implement policy) and their political principals (who attempt to control regulators’ activity). In contrast, “new governance” scholarship has focused on strategies other than traditional “command-and-control” regulation that can encourage compliance with socially valued norms of behavior. Although these two lines of research approach highly distinct facets of regulation and have developed largely independently of each other, they exhibit a generally unacknowledged and extensive overlap in their theoretical structure and associated results. In this article, we compare these two approaches to regulatory politics. For each, we discuss how the interactions of key actors are conceptualized, consider the types of regulatory mechanisms used to manage behavior, and examine the breadth of outcomes that flow from these controls. We suggest that greater acknowledgment of the commonalities in the two approaches can advance each approach, even if they continue to be pursued separately, and can also help generate important synthetic avenues for further research.

INTRODUCTION

Regulation, both in its creation and in its implementation, is the product of actions by decision makers and staff in government agencies, legislatures, and executive offices, as well as by representatives from businesses, advocacy groups, and other nongovernmental organizations. Understanding how regulation gets made and implemented—and who influences regulatory decisions in order to get what, when, and how—has been a long-standing, persistent research challenge for political scientists, economists, and legal scholars. The process of regulating involves complicated interactions among a variety of governmental and nongovernmental actors in a constantly changing environment. As a result, research on regulation can be both highly particularized and vastly complicated. Such complexity has undoubtedly reinforced the tendency by regulatory scholars to focus their attention on discrete parts of the regulatory process. In particular, social science research on regulation has followed two related but heretofore largely separate paths. One route explicitly analyzes the activities of regulatory agencies; the other track fixes its sights firmly on alternative regulatory strategies to impact the behavior of businesses and other organizations. In this article, we refer to the former path as “new institutionalism” (March & Olsen 1984) and the latter as “new governance” (Lobel 2004, de Búrca & Scott 2006)—although in fact neither of these research trajectories is entirely new anymore.

New institutionalism concentrates on the relationships between electorally accountable institutions and the unelected regulators who draft and enforce binding rules. New governance focuses on the interplay between regulators and the entities they seek to govern. When viewed together, these two scholarly paths highlight the fact that regulation comprises a nested set of relationships, with politicians influencing regulatory agencies and those agencies, in turn, influencing regulated entities (e.g., Laffont & Tirole 1991, Scholz 1991). Although nested, these relationships have, for the

most part, been subjected to separate lines of scholarly inquiry, which we review in the sections that follow. In doing so, we seek to expose areas where researchers may derive further insights by considering new institutionalism together with new governance (and vice versa) to examine the full collection of regulatory interactions.

We find it helpful to compare these two research trajectories along three major dimensions: the types of regulatory actors they focus on, the mechanisms of control these actors use, and the outcomes associated with actors’ attempts to influence others’ behavior. We examine each line of research with an eye toward applying its insights to the other area. Our analysis is predicated on the belief that greater recognition of the commonalities shared by new institutionalism and new governance can yield fruitful cross-fertilization between the two traditions, encourage more general insights into regulatory processes, and generate avenues for inquiry that have previously remained neglected.

NEW INSTITUTIONALISM

Most efforts to understand the forces that control government regulators arise from the belief that these actors are not motivated solely to achieve outcomes that best serve the overall public interest. Admittedly, some scholars have argued that regulators—particularly those with no direct electoral accountability—can rise above biased or self-interested policy making, or at least that they can do so better than elected officials can (Mashaw 1985, Levine & Forrence 1990, Spence 1997). The very fact that such regulators are not elected may contribute to a longer time horizon and, because they want to protect and enhance their reputations (Carpenter 2001), also to a tendency on their part to try to advance society’s longer-term and perhaps broader interests. Yet despite these more hopeful claims, many social scientists and legal scholars studying regulation accept a more skeptical view of regulators and their motivations (Breyer 1982).

The historical interaction between the Interstate Commerce Commission and the railroads that fell under the Commission's jurisdiction remains the classic example of the phenomenon of regulatory capture (Huntington 1952, Bernstein 1955). Although initially charged with protecting farmers and shippers, over time the Commission developed a partnership with the railroads, with each defending efforts to subvert competition both from other government bodies and from other forms of transportation. Regulatory capture results when an agency aligns itself primarily with those it is supposed to regulate (Stigler 1971). Under conditions of capture, regulation can look less like an attempt to protect the public from industry abuses and more like an entry barrier erected by regulated firms to protect them from competition (Stigler 1971). A tendency toward capture may always exist because regulated firms are better able than diffuse publics to overcome collective action problems (Olson 1965, Wilson 1980) and, thus, these existing firms are in a better position than ordinary citizens to offer the regulator benefits for cooperation (Peltzman 1976).

Not surprisingly, the influence of capture theory on the research of regulatory politics has been deep and far reaching. Its adherents point to many instances of regulatory activity that are difficult to explain in terms of service to the public interest. These include licensing requirements that protect existing professionals from entry by newcomers (Stigler 1971) and rate-making regimes that do not appear to follow economic principles (Kolko 1965). Vintage-differentiated regulations, such as rules that apply stricter environmental standards to new sources of pollution or exempt existing sources from new standards, may also be understood as a discrete manifestation of capture (Stavins 2006; but see Thornton et al. 2008).

Although the existence of industry pressure on regulatory policy is undeniable, such pressure may well explain only a limited set of decisions by regulatory agencies. In all likelihood, industry influence fluctuates over time,

especially across different administrations. As an empirical matter, the more hopeful view of regulation is also not entirely without warrant (Quirk 1981). Extensive and costly regulation exists in situations where capture theory might predict it would not exist—that is, in those arenas in which costs are concentrated on a relatively small segment of the population and the benefits are broadly dispersed (Wilson 1980). Social movements in the United States in the late 1960s, for example, seem to have succeeded in pressuring legislatures and regulatory bodies to impose costly environmental, labor, and consumer protection controls on industry (Vogel 1989). These and other expansions of consumer protection, civil rights, and worker safety laws that impose additional costs on firms are difficult to reconcile with the view that business interests dominate regulation (Kamieniecki 2006). Efforts to deregulate industries in the 1970s and 1980s are hard to square with the idea that incumbent firms control regulatory policy in order to maintain entry barriers to new competitors (Derthick & Quirk 1985). Although established pharmaceutical firms generally incur shorter waiting times for drug approvals from the U.S. Food and Drug Administration (FDA) than new firms do, public-interested regulatory officials might well vary approval time simply because they can base their decisions for established companies on a history of good interactions (Carpenter 2004). Undoubtedly, the notion of capture—at least, the strong claim that industry consistently dominates the policy game—represents an overly simplistic view of regulatory politics.

One reason industry does not always prevail may be that concerns about capture have given rise to the creation of political institutions that inhibit capture's ability to take hold (Weingast & Moran 1983). The capture tradition in social science research tends to overlook the mechanisms by which Congress and the president seek to control what regulatory agencies do—mechanisms of primary importance to the new institutionalism, a literature that is new in the sense that it adds institutions to a model of regulatory politics that previously

had included mainly just regulators and interest groups.

Initially, new institutionalist research on U.S. policy making focused on Congress as the primary actor engaging with regulatory agencies. New institutionalist research showed how legislators use the legislative committee system to maximize their chances of future electoral success (Shepsle & Weingast 1987). Because voters in one district or state have different interests from those in another, lawmakers gain considerably by allowing each other to exercise specialized authority over issues of specific importance to each member's constituents. By designing committees to oversee particular areas, such as agriculture and transportation, members of Congress both respond to voter needs through legislative proposal power and minimize the ex post temptation to renege on vote-exchange agreements (Shepsle & Weingast 1987). Once legislation has been passed, legislators then leave responsibility to agencies that they control (Weingast & Moran 1983).

Although early institutionalist research explained why the legislative branch is structured as it is, it did not really explain why Congress delegates authority to regulatory agencies in the first place (Rose-Ackerman 2007)—nor how Congress oversees the agencies to which it assigns tasks. In fact, even today the extent to which Congress effectively oversees agency activities remains unclear (Niskanen 1971, Wilson 1980, Croley 2008). In addition to the paucity of noticeable, direct evidence of the effects of congressional oversight on agency behavior, the theoretical advantages that agency officials hold over legislators in their areas of expertise and the relatively low public salience of agency choices would suggest that agency regulators can operate with substantial discretion (Niskanen 1971, Wilson 1980). Of course, the fact that Congress does still voluntarily delegate regulatory policy making and implementation to agencies might appear to suggest that at least members of Congress themselves have confidence that they can manage how agencies use their discretion (Weingast 1984). But we

would caution against inferring too much about the effectiveness of oversight from the existence of delegation itself. Members of Congress may simply reap electoral rewards from the symbolism of creating agencies to respond to public problems and then, later, from showing their constituents they are working for them by battling with these same agencies (Mayhew 1974).

In battling with agencies, Congress can wield two types of mechanisms of control (McCubbins & Schwartz 1984). The first, often called “police-patrol” oversight, focuses on direct congressional efforts to uncover evidence of agency decision making that conflicts with congressional preferences. The second, “fire-alarm” oversight, relies on interest groups and citizens to alert government officials when problems arise. If offered the choice, Congress will typically prefer the latter because it both minimizes costs borne by legislators and focuses attention on those issues most important to constituents (McCubbins & Schwartz 1984).

Congress can create rules and procedures to facilitate fire-alarm oversight. For example, the Administrative Procedure Act (APA) of 1946 mandates that agencies give advance notice before adopting new policies, solicit feedback from interested parties, and provide a clear statement of the link between evidence and decisions (McCubbins et al. 1987, 1989). Through its various procedural requirements, the APA can be said to facilitate interest-group monitoring of agencies. Administrative procedures may also be used by an enacting coalition in Congress to try to “stack the deck” in favor of the law's intended beneficiaries, both currently and into the future. For example, the National Environmental Policy Act (NEPA) of 1969 helped environmental groups by forcing agencies to assess the environmental impacts of their actions and allowing environmentalists the opportunity to sue agencies for failing to weigh these impacts seriously (McCubbins et al. 1987). Of course, procedures have their limits as instruments of congressional control. They may merely keep agency discretion within wide bounds that do not set off fire alarms (Moe 1987). Furthermore, by requiring greater

transparency, participation, and rational analysis, procedures may actually serve to insulate regulators from ad hoc pressures by individual members of Congress on behalf of their constituents (Croley 2008).

Discerning the extent to which Congress as an institution controls regulatory policy making cannot be divorced from an assessment of the influence of other branches of government (Spence 1997). Under the principal-agent framework that has dominated the study of regulatory policy making for decades (Miller 2005), the presence of additional overseers with competing agendas can limit the ability of any one institutional actor to control an agency very well—providing another reason why regulators can operate with substantial autonomy (Wilson 1989, Miller 2005). The presence of additional principals may, however, have the opposite effect by creating a contentious environment that impedes regulators instead. The Consumer Product Safety Commission’s ability to regulate consumer products, for example, is generally thought to have been hampered by multiple reorganizations, procedural changes, and mission reorientations, all driven by the struggle between Congress and the president—not to mention competing interest groups—to control its activities (Moe 1989).

However, adherents of the “presidential dominance” view of regulatory agency control have not been content simply to point out that presidents can hamper the ability of legislators to control regulators (Moe 1987). They have argued, on the contrary, that presidents actually possess greater influence over agencies than legislators do. Although legislators have the power to approve budgets and confirm appointments, they typically respond to the proposals and priorities issued by the president, who holds considerable agenda-setting power (Moe 1987, Moe & Wilson 1994). The Civil Service Reform Act of 1978 also allows the president to restructure agencies at lower levels through reductions in force or transfers (Wood & Waterman 1991). The White House even retains subtle but effective mechanisms to control the so-called independent agencies—those

whose administrators are appointed to fixed terms and can be removed only for special reasons, and whose decisions are not formally subject to White House review. Even at these agencies, the Department of Justice (headed by the president’s Attorney General) still plays a role in regulatory enforcement. Furthermore, in practice, the heads of independent agencies often resign at the beginning of new presidential administrations, allowing presidents to appoint their own nominees (Moe 1982).

Presidents’ willingness to act unilaterally can also influence regulators (Moe & Wilson 1994, Howell & Lewis 2002). With relatively little resistance from Congress, the role of the Office of Management and Budget (OMB) in the regulatory process greatly expanded with President Ronald Reagan’s Executive Order 12291, which mandated that agencies submit economic analyses for major regulatory proposals to the OMB and, whenever legally possible, only adopt those regulations for which the societal benefits exceed the costs (Moe & Wilson 1994, Kagan 2001). All subsequent presidents have retained the OMB’s role in reviewing proposed regulations, and OMB oversight has come to be regarded as an important mechanism in presidential control of regulation (Moe & Wilson 1994). President Bill Clinton sought to expand executive authority still further through his use of directives to agency leaders and public announcements of regulatory activities (Kagan 2001), and President George W. Bush’s administration espoused a theory of the unitary executive that emphasized presidential power over the bureaucracy.

Whether the president or Congress exercises more control over regulatory agencies is ultimately an empirical question. Numerous studies have sought to measure congressional control, which definitely exists even though the results of these studies have sometimes been mixed. The volume of FDA inspections over a 50-year period ending in 1995 appears to have been substantially impacted by the ideological views of the oversight committee and of Congress overall (Shipan 2004). Federal Trade Commission antitrust enforcement in

the 1970s seems to have been highly affected by turnover in Congress (Weingast & Moran 1983); however, subsequent examination of the Commission has suggested more limited legislative branch influence (Moe 1987). Furthermore, analysis of case selection during the 1970s and early 1980s at the Department of Justice Antitrust Division, another antitrust enforcement agency, reveals that the Division was influenced not by congressional oversight but rather by internal organizational changes (Eisner & Meier 1990). Although some work shows that budget cuts in the early 1980s had only minor impacts on enforcement at the Environmental Protection Agency (EPA) (Ringquist 1995), congressional oversight and appropriations decisions have been found to be important predictors of activity levels at the EPA and other agencies through the late 1980s (Wood & Waterman 1991).

Researchers have also studied how agency outcomes might be affected by specific administrative procedures. This research suggests that specific policy analysis requirements, such as requiring agencies to conduct benefit-cost analyses, appear to be more constraining to current agency decision making than general notice-and-comment procedures (Morgenstern 1997, Potoski & Woods 2001). So far, however, research findings have generally not supported the early new institutionalist view that procedures can be used to stack the deck so that future regulatory decisions favor certain groups or ideological positions (Balla 1998, Shapiro 2002; but see de Figueiredo & Vanden Bergh 2004). Structural choices, such as defining the institution's mission and jurisdiction, apparently affect agencies' behavior more than mere procedural restraints (Spence 1999).

When comparing congressional control with presidential control, most studies confirm that both branches of government can influence regulatory decision making (Moe 1985, Wood & Waterman 1991, Furlong 1997). The National Labor Relations Board's voting patterns reveal that the legislative and executive branches influenced the Board's members from the late 1940s through the 1970s (Moe 1985).

In addition, the EPA's implementation of hazardous waste law suggests the presence of vigorous competition between Congress and the White House to control the pace of enforcement (Whitford 2005).

Divided party control of government in the United States accentuates the competition for control between the legislative and executive branches. When the policy preferences of agency heads (appointed by the president) diverge from those of members of Congress, Congress can be expected to try to reduce agency discretion by imposing substantive and potentially procedural constraints on regulatory agencies (Epstein & O'Halloran 1996, Volden 2002, de Figueiredo & Vanden Bergh 2004, Yackee & Yackee 2009). At the state level, experience with Medicaid implementation suggests that legislative efforts to control agencies increase in the presence of divided government if legislators are capable of writing detailed legislation and if few alternative vehicles for controlling bureaucrats exist (Huber et al. 2001). Of course, such control efforts on the part of the legislative branch can be expected to prompt counter-efforts by the executive branch (Howell 2003). President Clinton actively used his oversight of executive branch agencies to push his agenda in the face of a hostile Republican Congress (Kagan 2001).

Although most new institutionalism research on regulatory policy making has focused on the interplay between the legislative and executive branches, research on the courts—a third overseer of U.S. regulatory policy making—also shares the new institutionalist emphasis on mechanisms of control. Most research focuses on the courts' use of their authority to review agency rules and set aside those found to be “arbitrary or capricious” (Melnick 1983, McGarity 1992). Under the “hard look” doctrine developed in the 1970s and 1980s, courts articulated a role for judicial review that considered whether the agency had followed a rigorous decision-making process that considered all of the relevant evidence (Seidenfeld 1997). The Supreme Court later appeared to relax, in at least some respects, the judiciary's

role in overseeing agency decisions; a widely cited example is the Court's decision in *Chevron v. Natural Resources Defense Council*, which holds that courts should defer to reasonable agency interpretations of ambiguous statutes (Merrill & Watts 2002). However, despite doctrinal suggestions that courts should defer more readily to agencies, empirical research suggests that cases such as *Chevron* have had remarkably little impact on courts' actual propensity to affirm agency rulings (Schuck & Elliott 1991).

Legal scholars have criticized judicial review for discouraging bureaucratic action, leading to the "ossification" of agency rulemaking (McGarity 1992, Pierce 1995). Of course, as already suggested, oversight by any branch of government—and, in particular, competitive oversight by multiple branches of government—could discourage agency action (McGarity 1992, Seidenfeld 1997). Nevertheless, most legal scholarship on ossification treats the judiciary as the primary institution discouraging agency output. Specifically, the claim has been that hard look review creates uncertainty because what one court views as reasonable another might consider arbitrary and capricious (Melnick 1983, Seidenfeld 1997). Scholars have argued that this uncertainty not only has driven a decline in rulemaking but also has pushed agencies to substitute policy statements, guidance documents, and other forms of "nonrule rulemaking" for more formal rules (McGarity 1992, Spence 1997).

The early empirical evidence for ossification came from case studies of individual agencies (Mashaw & Harfst 1991, McGarity 1992). More recent statistical research has failed to find support for that hypothesized outcome (Shapiro 2002). Not only did the number of pages in the Code of Federal Regulations almost double from 1976 to 1996 (Coglianese 2002), but agencies that more frequently appear in court cases also appear to enact a substantial portion of their rules more quickly (Yackee & Yackee 2010). Furthermore, the significant uptick in regulatory rulemaking that typically occurs at the end of presidential administrations belies any simple belief that

agencies have retreated from making rules in response to heightened judicial oversight (O'Connell 2008).

The scholarship on judicial review and the ossification of rulemaking might be said to symbolize the literature of new institutionalism more generally. Initial theoretical predictions in this field, as in other areas of scholarly inquiry, sometimes fail to withstand empirical scrutiny. But this should not be too surprising, especially given the complexity of the regulatory process and the variation that can exist across different domains of regulation. Any analysis of a process that can have so many moving political parts and institutional features will undoubtedly make it difficult to derive and sustain empirically broad generalizations (Wilson 1989).

Nevertheless, new institutionalism has so far yielded substantial payoffs with respect to improving our understanding of regulatory politics, even if some of its insights may remain, for the moment at least, largely tentative conjectures. First, new institutionalism has made clearer the ways that regulatory agencies can evade capture and even at times wield substantial levels of discretion, notwithstanding various attempts by overseers to control what agencies do (Carpenter 2001). Second, in conjunction with more celebrated forms of oversight such as appointments and hearings, other mechanisms such as procedures and institutional structures may at times play important roles in shaping agency behavior. Finally, studies of oversight and control mechanisms—most particularly the literature on the ossification of rulemaking—have highlighted the importance of considering not only intended or positive effects of institutional controls but also their potential unintended or undesirable effects.

NEW GOVERNANCE

As we have seen, new institutionalism developed in part as a reaction to the overly simplified view of the relationship among politicians, interest groups, and regulators—the actors in the regulatory process.

Similarly, new governance research has grown up in response to an earlier, simplified view of regulation—in this case, a view focused on the mechanisms by which regulators seek to control business behavior. Under the traditional view, these mechanisms—sometimes referred to as “command-and-control” regulations—would impose specific, unyielding mandates on firms in an effort to solve public problems. These kinds of mandates would direct regulated entities to take specific actions (or refrain from taking specific actions), or to achieve highly specific, desired outcomes but through means that the regulated entity chooses on its own. Either way, the actual application of these traditional approaches has frequently been viewed as either blunt and costly or too rigid or inflexible to deal with complex, changing regulatory problems. As a consequence, researchers have increasingly taken an interest in alternative mechanisms that regulators can use to achieve regulatory goals (Dorf & Sabel 1998). Such alternatives include:

- management-based regulation, which requires regulated entities to gather information and develop plans to solve regulatory problems but not necessarily to take other steps imposed by government or even to implement their own plans;
- information disclosure requirements, which mandate the release of information but not necessarily any substantive behavioral change; and
- voluntary programs and self-regulation initiatives, which have no formal mandated requirements.

In contrast to the many varieties of new governance mechanisms, traditional regulation has largely taken two forms. When such regulation dictates the particular activities in which businesses must engage (such as installing smokestack scrubbers) (Breyer 1982), it can be called means-based regulation, or technology, design, or specification regulation. Means-based regulation imposes the same required action or technology on each regulated entity, even if other actions or technologies would be

more effective or less costly for specific firms. It also locks in particular actions, as firms cannot adopt more innovative approaches that differ from what the regulation mandates. An alternative, but still traditional, regulatory approach is to set a performance standard telling regulated entities what end state must be achieved but not dictating how to achieve it (Viscusi 1983). Under performance-based or ends regulation, regulated entities are granted flexibility to find the best or most cost-effective steps to take to meet the performance limit, and thereby are encouraged to innovate (Gunningham 1996).

In practice, performance-based regulation can be applied at the firm or industry level. When established industry wide, performance standards can be structured to permit greater flexibility across firms, since the performance achieved by individual firms within the industry does not need to be uniform as long as the overall or average level of performance meets the regulatory goal. An example of an industry-wide performance standard is an environmental regulatory approach called emissions trading or market-based regulation. Under market-based regulation, firms with relatively low marginal costs have reason to achieve greater-than-average emissions control, while allowing those with high marginal costs to realize less stringent and more optimal compliance levels (Ackerman & Stewart 1985, Hahn & Hester 1989, Tietenberg 1990, Stavins 1998).

Although performance-based regulations can have certain advantages over means-based regulations (and vice versa), they both have their challenges. Both types of traditional regulation may less effectively address diffuse sources of regulatory damage; an example is the environmental problem of nonpoint pollution—that is, pollution from disperse sources such as farm run-off rather than discrete industrial pipes (Segerson 1988). Part of the challenge traditional regulation faces in addressing problems from diffuse origins is that, even when set up broadly, both means-based and performance-based standards require government regulators to obtain substantial

information. With means-based regulation, the regulator must understand both how business operations contribute to the policy issue and what specific actions should be required in order to alleviate the problem. Performance standards do not require that the regulator understand what particular means will work best for every firm, but they do require that the regulator be able to set a meaningful outcome standard and then monitor and assess actual outcomes in such a way that the standards can be enforced (Ayres & Braithwaite 1992). Even a market-based regulation such as emissions trading requires affordable and effective monitoring technologies (Huppes & Kagan 1989, Stavins 1998). In addition to the information demands associated with traditional mechanisms, some scholars have worried that traditional tools encourage regulators to become too rigid in their application of the rules (Bardach & Kagan 1982). Instead of working with the natural variations in the abilities of firms to adhere to particular standards, inspectors may simply enforce the rules as stated, thereby encouraging adversarial interactions and unnecessary firm resistance (Kelman 1981, Bardach & Kagan 1982, Scholz 1984).

In reaction to some of these perceived inadequacies in traditional forms of regulation, new governance researchers have taken interest in alternatives that provide more flexibility to regulated entities and impose fewer information demands on regulators (Richards 2000). Although in this way new governance scholars focus on the interplay between regulators and those entities whose behavior they seek to change, unlike the new institutionalists they have not generally conceived of the relationship between regulators and firms as one akin to a principal-agent relationship. One reason is that many of the alternative regulatory mechanisms new governance scholars have studied typically require substantial cooperation between the principal and agent (Kagan 1994). Another is that new governance approaches encompass mechanisms that involve entities besides the principal and agent. In fact, under new governance, changed behavior by regulated

entities may be induced as much by public pressure as by fear of regulator-imposed sanctions (Mehta & Hawkins 1998, Vogel 2005). Organizational and occupational culture as well as managerial attitudes can also play important roles, encouraging employees to believe it is their duty to comply regardless of any punishment associated with noncompliance (Braithwaite & Makkai 1991, Gunningham et al. 2003, May 2004).

New governance mechanisms vary considerably. Some, such as management-based regulation, more closely resemble traditional regulatory tools but afford the regulated entity much more flexibility. Under management-based regulation, firms must engage in planning activities associated with achieving certain socially desirable goals (Coglianese & Lazer 2003). Although management-based regulation provides flexibility to firms' managers in their choice of appropriate mitigation actions, such an approach does still mandate the development of internal planning and procedures—but without necessarily mandating the attainment of a particular output, as performance standards do, or the adoption of any specific actions beyond the general planning steps, as means standards do. As a result, management-based regulation has sometimes been described as “enforced self-regulation” or “mandated self-regulation” (Bardach & Kagan 1982, Ayres & Braithwaite 1992, Hutter 2001). No matter what it is called, such regulation aims to encourage good management practices for dealing with regulatory problems—practices that include monitoring procedures, policies for employee training, and internal evaluation efforts (Coglianese & Lazer 2003).

In addition to its use in areas such as food safety and industrial accident prevention, management-based regulation has been adopted by several states to reduce pollution (Bennear 2007). In Massachusetts, for instance, the Toxic Use Reduction Act (TURA) mandates that firms that handle substantial quantities of toxic chemicals analyze their use, develop plans to reduce their emission, and submit reports to the state environmental

agency for approval (Karkkainen 2001). Although plans must be approved by a certified pollution-prevention planner, the law does not require a firm to comply with its toxic use reduction plan nor even to make its plan available to the public. As a result, management-based regulation, at least when designed like TURA, operates on the premise that directing firms to engage in the planning process encourages them to find ways to help achieve social goals. By allocating decision-making responsibility to the company's managers, management-based regulation can both encourage innovation and reduce internal resistance, since employees will likely view internally created rules as more reasonable than government directives (Ayres & Braithwaite 1992).

From the standpoint of the government regulator, management-based regulation reduces the costs of gathering information that would otherwise be needed to promulgate more traditional rules. But while management-based regulation seeks to make use of the informational advantages that firms have over the regulator, it creates a risk that the regulator will be taken advantage of by the firms. Businesses may respond to management-based mandates by doing only the bare minimum required, treating required management planning as merely a paperwork exercise (Coglianese & Lazer 2003). Furthermore, when companies can keep their plans private, they can also lessen any potential community or public pressures to undertake corrective action (Gunningham et al. 2003). Therefore, in these situations, regulators that implement management-based mechanisms may have to augment them with other mandates, inspections, or third-party audits (Scholz 1984, Braithwaite 2002). In the end, enforcement of management-based regulation can be problematic—both costly and potentially ineffectual—because the same informational demands that may lead regulators to leverage firms' own planning may simultaneously make it hard for regulators to decide whether those firms are truly acting responsibly (Coglianese & Lazer 2003).

Information disclosure is another new governance alternative to traditional regulation. Instead of requiring firms to produce plans, regulators simply compel companies to gather and disclose data about their current operations (Kleindorfer & Orts 1998, Karkkainen 2001, Graham 2002). Like management-based regulation, information disclosure does not legally necessitate any explicit change in firm behavior, either in terms of outcomes or in terms of specific control or mitigation actions. In addition to its long association with regulating securities markets (Ferrell 2007), mandatory disclosure has more recently become a mechanism of social regulation, implemented in areas such as auto safety (Graham 2002) and consumer products (Fung et al. 2007).

One recent example involves disclosure of restaurant inspection results (Jin & Leslie 2003). By merely requiring establishments to post inspection grades prominently near restaurant entrances, regulators seek to use public pressure to encourage hygiene improvements. This may occur with information disclosure regulation because the disclosure "shames" entities into making improvements (Graham 2002) or facilitates media scrutiny (Hamilton 2005). If the information is readily available and has clear implications for consumer behavior, a firm's incentives to keep its clients will help align its behavior more closely to broader public goals (Jin & Leslie 2003).

Another set of new governance mechanisms—voluntary programs—are even further removed from traditional forms of regulation and even more flexible than management-based regulation and information disclosure. Whereas both management-based regulation and information disclosure require the regulated entity to do something, even if only to collect information, no requirement exists with voluntary regulation. Governments instead seek to encourage socially desirable behavior by offering educational resources, financial assistance, awards and certifications, and exemptions from more formal requirements, especially for firms that have a history

of solid regulatory performance or that meet standards of excellence.

Rewarding businesses that meet program standards has been used extensively to address environmental issues. In fact, during the past several decades, the U.S. EPA has developed more than 60 such programs, and state governments have adopted dozens of similar programs (Borck et al. 2008). From 2000 to 2009, for example, the EPA ran a program called the National Environmental Performance Track. To join Performance Track, a facility, such as a manufacturing plant, had to meet several requirements, including the execution of a formally assessed environmental management system, a record of sustained environmental compliance, and a demonstrated commitment both to making ongoing environmental improvements and to engaging with the facility's local community. If accepted into Performance Track, a facility could remain a member for three years, during which time it was expected to make progress toward its commitments as well as to complete annual performance reports. These reports were made public both through the member and through the EPA. In return, firms would receive benefits such as reduced inspections, limited regulatory exemptions, and public recognition.

Voluntary programs such as Performance Track seek to induce better behavior through positive rather than negative incentives (Mehta & Hawkins 1998, Vogel 2005). Unfortunately, because these programs are voluntary, it can sometimes be difficult to know whether they actually cause companies to improve their behavior, or whether instead these programs simply attract facilities that already (for other reasons) behave well. The EPA has been unable, for example, to demonstrate that pollution reductions made by Performance Track members came about because of the program. This has made the program politically vulnerable. Environmental groups, including the Natural Resources Defense Council and the Environmental Integrity Project, have criticized Performance Track, arguing that it amounted in effect to a public relations ploy and an abdication of

the EPA's traditional enforcement responsibilities (Coglianese & Nash 2009). Apparently in response to this kind of criticism, the EPA shut down Performance Track in early 2009.

Although they are voluntary, programs like Performance Track still originate in government action that creates and enforces participation requirements. Still other new governance initiatives derive from actions of the private sector. Such efforts at self-regulation typically are administered by a standards-setting organization or an industry group (Cheit 1990, Haufler 2001, Nash 2002). In 1996, for example, the nongovernmental International Standards Organization (ISO) established a series of voluntary norms for environmental management called the ISO 14000 standards. Since then, more than 50,000 facilities have certified their environmental management systems to ISO's standards (Prakash & Potoski 2006), many doing so voluntarily but others only when their customers imposed contractual requirements to do so.

In addition to voluntary standards like ISO 14000 that are produced by nongovernmental and nonprofit organizations, business groups themselves have created self-regulatory programs, such as the Sustainable Forestry Initiative of the American Forest & Paper Association (Meidinger 2003), the Institute of Nuclear Power Operations created by the nuclear energy industry (Rees 1994), and the American Petroleum Institute's Strategies for Today's Environmental Partnership for oil companies (Eisner 2007). Sometimes these industry programs or codes of conduct develop as a result of a newsworthy disaster caused by one of its members (Rees 1997). Such was the case with the Chemical Manufacturers Association's Responsible Care program, which emerged with industry vigor following a 1984 accident at a Union Carbide chemical facility in India (Haufler 2001, Nash 2002). Although Responsible Care did not initially require firms to disclose information about compliance with industry standards, the trade association did eventually respond to perceived weaknesses

in the program both by requiring members to certify their internal health and safety systems and by making members' environmental, health, and safety records available to the public (Nash 2002).

Like voluntary government programs, efforts at self-regulation raise concern that such mechanisms will become mere symbolic gestures. Worse still, they may have the effect of lessening the likelihood of needed governmental intervention if policy makers mistakenly conclude that industry has adequately addressed the problem (King & Lenox 2000, Lyon & Maxwell 2004). Precisely because self-regulation can stave off more stringent government regulation, members can find it to their benefit to comply with an industry-wide system of self-regulation (Segerson 1999). The interests that firms have in being members of trade associations—such as the ability to engage in information exchange or the benefit from joint representation before government agencies—may also provide incentives to join organizations that have self-regulatory requirements. Like other new governance instruments, successful self-regulation requires both the presence of credible disciplinary mechanisms (Braithwaite 2002) and legitimate social pressure (Gunningham et al. 2003, Howard-Grenville et al. 2008).

Given new governance's focus on a range of alternative regulatory mechanisms, many researchers have sought to discern whether these various types of mechanisms can actually work. Attempts to ascertain empirically the impact of these tools on regulatory outcomes have been plagued by two related omitted-variables concerns. First, as already noted, the firms that participate in voluntary or self-regulatory programs may be those that would have performed better even in the absence of such a program (Gunningham et al. 2003). Second, any purported results of these programs must be disentangled from simultaneous factors that might amplify apparent program effects, such as economic causes or the adoption of other policy programs or regulatory interventions (Greenstone 2004). These sources of potential

bias need to be considered in assessing concrete examples of new governance.

The EPA's 33/50 program, launched in 1991, provides a good example of the difficulties associated with determining the impact of alternative regulatory instruments, particularly government-organized voluntary programs. In inviting about 8,000 companies to mitigate their emissions of any of 17 designated chemicals, the EPA hoped to reduce aggregate toxic releases of these chemicals by 33% by 1992 and 50% by 1995, relative to 1988 levels (Khanna 2007). Although both goals were achieved, not all of the reductions can be attributed to the 33/50 program—including, most obviously, those achieved before the program was instituted (1988–1991) (Innes & Sam 2008). Several other factors must also be considered. These include the EPA's conventional regulations, which were adopted around the same time that 33/50 was established and which targeted some of the same designated chemicals. They also include the Montreal Protocol's ban on ozone-depleting chemicals, which entered into force in 1989. Two of the 17 chemicals targeted by 33/50 were being phased out under the Montreal Protocol, and these two chemicals alone were apparently responsible for about 15%–20% of the total decline observed in 33/50 chemicals (Khanna 2007). Releases of other, similarly hazardous chemicals—but ones that were excluded under the 33/50 program—also fell during this period, suggesting that factors other than the program were at work (Gamper-Rabindran 2006). Some studies have attempted to address these inferential challenges and have indicated that the 33/50 program may have contributed at most a 28% decline in targeted chemicals through 1993, although others have suggested that even that number may be overstated (Khanna & Damon 1999, Morgenstern & Pizer 2007).

Some researchers have nonetheless expressed cautious support for the notion that new governance efforts like the 33/50 program can have measurable positive impacts on regulatory outcomes (Ayres & Braithwaite 1992, Braithwaite 2002). Toxic emissions in states

with management-based regulation similar to Massachusetts' TURA are statistically significantly lower than emissions in states with no comparable laws, at least for a period up to six years after these laws are enacted (Benneer 2007). Furthermore, Los Angeles County's imposition of mandatory public disclosure by restaurants of health inspection grades has been associated with a 20% decline in food-related hospitalizations (Jin & Leslie 2003).

Outside the context of restaurant hygiene, and perhaps also outside securities regulation, the impact of information disclosure on firm behavior has been less clear. The same problems that plague studies of new governance instruments more generally apply to mandatory disclosure as well. Although a substantial decline in toxic releases followed the creation of the EPA's Toxics Release Inventory information disclosure requirement in the late 1980s (Fung & O'Rourke 2000, Thaler & Sunstein 2008), this decrease has also been attributed to conventional regulation, such as the hazardous air pollutant requirements first established in the 1990 Clean Air Act (Hamilton 2005). Artifacts of the reporting requirements themselves might also explain part of the decline. Because the disclosure requirement applies only to facilities that use large amounts of toxic chemicals, companies that reduce their use to below the threshold specified in the regulation may still release emissions from the toxic chemicals but their level of reported emissions misleadingly drops to zero (Benneer 2008).

For governmental and private-sector voluntary programs, the results are similarly mixed. A cross-country study of seven government-sponsored voluntary programs revealed that participants performed better with respect to environmental and energy-related outcomes but that the impact was certainly not "dramatic" (Morgenstern & Pizer 2007). The establishment of ISO 14000 standards appears to have had some statistically significant impacts on firms' regulatory compliance and pollution-control performance in studies that seek to control for selection bias, but the magnitude of the improvement of

ISO-certified facilities does not appear to be very large (Prakash & Potoski 2006). Although the self-regulatory Institute of Nuclear Power Operations formed after the Three Mile Island nuclear accident in Pennsylvania in 1979 seems to have decreased the risks of nuclear accidents (Rees 1994), research on the chemical industry's Responsible Care program has suggested that participating companies paradoxically reduced pollution more slowly than nonparticipants (King & Lenox 2000).

Some of the differences in the effects of these programs may be the result of differences in their design features or the conditions under which they are applied. For example, the nuclear industry is more concentrated than the chemical industry and it interacts with just one regulator. Concentrating regulatory accountability in a single regulator may make it more likely that poorly performing plants will be targeted with enforcement actions, thereby giving firms in the nuclear industry more of an incentive to make their self-regulatory regime successful (Gunningham 1995, King & Lenox 2000). Perhaps differences like these help explain why self-regulation works more effectively in some settings than in others.

As with new institutionalism, new governance scholarship leaves many empirical issues yet to be considered. Nonetheless, also like new institutionalism, new governance analyses do suggest some general conclusions that can guide future inquiries. First, new governance research has demonstrated that alternatives to traditional forms of regulation exist and are being used in practice (Kagan 1994). Second, new governance research suggests that tools such as management-based regulation, information disclosure, and voluntary programs can and apparently do sometimes advance public policy goals while reducing the costs and informational demands on government that are associated with more traditional means-based regulation and performance standards (Braithwaite 2002). Third, the specific characteristics of the firms targeted by new governance efforts, including their organizational cultures, management attitudes, and

placement in their surrounding communities, may well help one predict how effective new governance mechanisms will be (Gunningham et al. 2003, May 2004). Finally, both theory and evidence indicate that at least some of the impact of alternative governance tools stems from the presence of, or threat of, more conventional forms of regulation (Scholz 1984, King & Lenox 2000, Lyon & Maxwell 2004).

LINKING NEW INSTITUTIONALISM AND NEW GOVERNANCE

Research on regulation has undergone a remarkable transformation over the past several decades. Recognition of the importance of evaluating the institutions that facilitate relationships between politicians and regulators, along with appreciation of the design of governance in the relationships between regulators and the firms they attempt to control, has yielded conceptual insights and new empirical findings about these relationships and the mechanisms of control used to moderate them. Such inquiry has moved scholarly understanding beyond the overly simplistic ideas of regulatory capture or “command-and-control” regulation.

At the same time, specialization by those interested in either new institutionalism or new governance has, perhaps ironically, created a somewhat disjointed view of the politics of regulatory policy. Despite all their circumstantial differences, the literatures on new institutionalism and new governance both describe parts of the same process of using regulatory institutions to control behavior that otherwise leads to market failures, distributional concerns, or other public problems. New institutionalism is primarily concerned with the formation of policy by regulatory agencies, but new governance’s consideration of implementation by regulators seeking to control firms should flow naturally from any consideration of policy making. To date, however, little research has considered whether the institutions chosen by politicians to control regulatory agencies have any relationship to the resulting control

mechanisms selected by the regulators themselves. In some cases, agencies may be compelled to use prescriptive forms of traditional regulation by the very legislation that creates the regulatory body. In other cases, even if agencies have the discretion to select new governance strategies, concerns about generating so-called fire alarms may keep agencies from experimenting with greater use of alternative, new governance strategies, as may have been the case with the Obama administration’s decision to abandon the EPA’s Performance Track program. Oversight by legislators may well have ripple effects on the willingness of regulatory agencies to experiment with various methods at their disposal. Maybe the real policy ossification arises over agency efforts to experiment with more flexible regulatory approaches. Alternatively, perhaps in the wake of the implementation of institutional arrangements that prevent capture, regulatory agencies could be more inclined and trusted to deploy more flexible regulatory strategies.

The similarities between new institutionalism and new governance provide opportunities for valuable cross-fertilization between these approaches to regulatory research. In this article, we have analyzed both literatures by focusing on actors, mechanisms, and outcomes. Using these features, we can now identify some of the cross-cutting characteristics of new institutionalism and new governance that could provide fruitful opportunities for future inquiry. For example, at their core, both new governance and new institutionalism describe relationships that are predicated on behavioral control. In each, one or more organizations (principals) attempt to manage one or more other organizations (agents) that, by definition, do not share the same goals. Furthermore, as in the classic principal-agent problem, for both new institutionalism and new governance, the agent’s actions impact the principal’s payoffs but are, nonetheless, difficult or impossible for the principal to observe (Miller 2005).

Notwithstanding new institutionalism’s and new governance’s shared emphasis on control, scholars in each tradition have approached the

study of regulatory control in different ways. Although analyzing policy making from the principal-agent perspective has been fundamental to new institutionalism, principal-agent theory has garnered much less explicit emphasis from scholars of new governance. On its face, though, it would seem that principal-agent theory should be relevant to both the relationships between regulators and their overseers and the relationships between regulators and those they regulate. Much as regulators implement authority granted to them—either directly from the public through an electoral process, or indirectly from legislative bodies—they also authorize or prohibit certain behaviors by regulated entities. Regulated firms would hardly consider themselves to be the regulators' agents, but just as the principal-agent problem arises because agents' interests diverge from those of their principals, so too does the problem of regulation surface because the interests of regulated firms obviously depart from those of their regulators (at least when regulators pursue the public-oriented goals they are charged to achieve).

The principal-agent framework might prove useful in understanding the relatively understudied tradeoffs created by new governance strategies that shift regulatory accountability from government officials to regulated firms (May 2007). Although new institutionalists have long recognized the role of drift in designing control mechanisms (Epstein & O'Halloran 1994, Bawn 1995), the potential for drift by entities subject only to flexible regulations has received much less systematic attention from those interested in new governance. Yet the systematic rigor associated with implementing the principal-agent framework could undoubtedly help scholars of new governance develop more precise accounts of the interplay between agencies and the firms they oversee. Some initial work directly applying principal-agent theory to new governance has begun to yield insights about when and how regulators use flexible or voluntary approaches. An analysis of the EPA's voluntary programs shows that the agency's effort to manage a type

of principal-agent relationship between itself and participating firms (and, correspondingly, to protect itself from criticism from Congress and the president) actually leads the agency to design its voluntary programs in ways that significantly constrain the reach and likely impact of these programs (Coglianese & Nash 2009).

Just as new governance might benefit from new institutionalism's rigorous application of principal-agent theory, new institutionalism might benefit from new governance's tendency to consider firms and regulators to be engaged in cooperative interaction built to some degree on trust. The principal-agent structure underlying new institutionalism assumes that the principal seeks to control the bargaining between the two parties (Moe 1987, Miller 2005), whereas the simultaneous nature of regulatory interaction emphasized in new governance scholarship suggests a relationship predicated more on cooperation or coordination than on control (Scholz 1984). Coordination may well be a more suitable concept for understanding the relationships between agencies and their political overseers. Given the evidence that bureaucrats sometimes retain considerable discretion and autonomy from their political overseers (Wilson 1989, Eisner & Meier 1990, Ringquist 1995, Spence 1997, Carpenter 2001), regulatory policy making may be a game between rough equals rather than a relationship between superior (and controlling) principals and inferior (and constrained) agents.

The divergence in orientation between new institutionalism and new governance appears to have affected the extent to which different actors in the regulatory process have been studied. New institutionalism's reaction against capture theory's almost exclusive focus on regulators and interest groups has usefully drawn attention to political principals such as Congress and the president; however, in recent years this has resulted in a greater neglect of agencies themselves and of affected interest groups (Moe 1987). In contrast, new governance, both in its reaction to the narrow focus of traditional regulatory approaches and in its positioning of the agency as an approximately equal player with

the firm in the implementation game, has productively focused attention on the behavior of firms—at times neglecting the explicit study of the regulators.

Given new institutionalism's emphasis on Congress, the president, and, to a lesser extent, the courts, and new governance's emphasis on firms, the relatively neglected party in both research fields has been the regulatory agency. We are not suggesting that the bureaucracy has not been studied intensely; on the contrary, public administration scholars and political scientists have studied it for many decades. Research on the bureaucracy has, among other things, forced scholars to appreciate that it is too simplistic to characterize public servants as interested only in shirking their duties or maximizing their private gain (DiIulio 1994, Golden 2000). An impressive array of different motivations drive the behavior of different government regulators, some public spirited and others more privately interested, such as the desire to maximize their domains of control (Niskanen 1971), to maintain their jobs (Wilson 1980), and to support their organizations' missions (Wilson 1989).

Recently, researchers have begun to shift their focus from describing bureaucrats' alternative motivations to analyzing the implications of these multiple motives for observed behavior. As discussed, if regulators at the FDA are risk averse, they may be more apt to approve drugs made by companies with which they are familiar, a result that has the outward appearance of capture but can still advance the public interest (Carpenter 2004). Alternatively, agency personnel may be sufficiently inspired by the organization for which they work that they do not require incentive contracts but may be intensely resistant to change (Besley & Ghatak 2005). The degree of agreement between the agency's principals and the firms it regulates may explain why mission-oriented public servants are variously either responsive or hostile to those they are supposed to serve (Prendergast 2007).

Existing research on regulatory agencies, and their employees' motivations and behavior,

represents only a small step toward understanding these large and varied organizations. Right now, these organizations largely fall into a crack between new institutionalism and new governance. Fully explaining either overseer-agency relationships or agency-firm relationships depends on better understanding the common element in these relationships: the agency. For example, knowing whether imposing procedural requirements on agencies enhances the policy process or ossifies it depends on a better understanding of what motivates regulators (Seidenfeld 2009), as that is likely to be the linchpin of how these officials respond to the imposition of additional procedural requirements. Furthermore, differentiating between collaborative regulatory relationships that advance social goals and those that result in capture will be aided by knowing better how and why regulators behave the way they do. Some researchers are beginning to address these questions (Huber & McCarty 2004), but much work still remains if both new institutionalism and new governance are to move forward.

Opportunities also abound for improved understanding of mechanisms of control in the regulatory process. Tools available to control behavior exhibit extensive overlap in the new institutionalism and new governance literatures, ranging from direct monitoring and control to the enlistment of third parties. Although information disclosure and management-based regulation are techniques most closely associated with the new governance literature, closer inspection suggests they are not much different in spirit from the notice-and-comment procedures and mandated benefit-cost and environmental impact analyses that have garnered so much attention in the new institutionalism literature—although those affinities have so far been seldom acknowledged, let alone exploited for explicit study. Formal directives by the president are much more akin to the traditional means standards promulgated by regulatory officials, but again new institutionalism scholars have not systematically compared this common mechanism of control with more flexible methods of agency control. In overseeing

regulatory agency behavior, would politicians do better to regulate the means by which regulatory agencies develop rules (means-based regulation) or to focus on agencies' regulatory output (performance-based regulation)? If government regulators sometimes should allow businesses to regulate themselves, when should Congress and the president allow regulatory agencies to regulate themselves? These kinds of questions, which one commonly associates with new governance, have yet to find a firm foothold within new institutionalism.

Also deserving of greater study are the types of consequences that are wielded in efforts to control. Implementing voluntary approaches that delegate control to the agents necessitates incorporating rewards, in addition to punishments, to encourage behavior that accords with the principal's goals. Just as employers in the classic principal-agent scenario have a variety of incentives for shaping employee behavior—from strict discipline to soft suasion—so too do regulators have available a range of consequences to affect the conduct of their regulated entities, from positive reinforcement for a job well done to direct punishments for regulatory infractions. Given how much attention has been paid to positive incentives in the new governance literature, it is striking that, with few exceptions (de Figueiredo et al. 1999), they have been rather overlooked within new institutionalism.

Both new institutionalism and new governance have faced perhaps their most daunting challenges in the study of outcomes. Researchers in both traditions have certainly considered outcomes, but not always with great rigor or, in the end, with consistent findings. As discussed above, empirical analyses seeking to discern the impacts of new governance tools such as information disclosure and voluntary measures have struggled with confounding factors such as omitted variables and selection bias. Moreover, we have seen that throughout both new institutionalism and new governance, numerous research studies reach varying conclusions about the outcomes of regulatory procedures or governance strategies. More

work is especially needed on the effects of different combinations of control mechanisms. Admittedly, scholars of new institutionalism have recognized that when Congress has created effective general procedures, such as notice-and-comment, it may need to rely less on more specific efforts at control, such as legislative hearings (McCubbins & Schwartz 1984, Weingast 1984). However, few studies have specifically tried to assess the effects of different combinations of regulatory oversight, both specific and general. Similarly, although there is reason to think that more flexible, new governance instruments will work better with business firms when combined with at least the specter of stringent, traditional regulation (Scholz 1984, Segerson 1999), far too little research exists on the impact of regulators' combinations of different regulatory tools on industry behavior (Gunningham et al. 1998).

A final lesson to be drawn from a comparison of new institutionalism and new governance may be that researchers gain important insights by thinking broadly about the types of outcomes they study. New institutionalism has taken an interesting turn by investigating the impact of procedures not only on the alignment of bureaucratic behavior with congressional and presidential preferences, but also on the pace and frequency of decision making (Schuck & Elliott 1991, McGarity 1992, Coglianese 2002, Yackee & Yackee 2010). By comparison, few new governance analyses have taken in outcomes beyond effectiveness at solving the underlying regulatory problem and (sometimes) the economic costs incurred. For example, comparatively little work exists on the impact of flexible regulatory approaches on innovation. Do more flexible approaches, such as management-based regulation, actually result in more technological or operational innovation? To date, much new governance work has been focused on a different issue: whether such "soft" regulatory approaches can ever achieve the main goals of regulation. Having found evidence that they sometimes can, researchers now have still stronger reasons to assess other impacts as well.

CONCLUSION

New institutionalism and new governance share many similarities, including the structure of the relationships among regulatory actors, the types of mechanisms available, and some similarly mixed findings on outcomes. Despite their different areas of emphasis, both new institutionalism and new governance are centrally concerned with behavioral control. Precisely because of their similarities, the two literatures provide possibilities for productive cross-fertilization. Now that neither literature

is truly new any longer, maintaining a firm separation between them seems only to inhibit social scientists' ability to acquire a more robust and less context-dependent theoretical and empirical account of the regulatory process—an account that seems only more likely to remain elusive when these approaches are pursued separately. Increased attention on the interaction between, and the integration of, new institutionalism and new governance may well yield demonstrably and genuinely “new,” and more generalizable, ways of understanding the politics of regulation.

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