

# Apples and oranges: problems in the analysis of comparative regulatory governance

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## Abstract

Interest in regulation as a mode of governance is now a central feature of the literature on regulation in developed economies. Extending this area of study to developing and transitional economies gives rise to problems in comparative analysis, which are explored in this paper. Four categories of problem are considered:

- the problem of contested *concepts*, arising in part from the intervention in the traditionally economic literature of disciplines such as law and political science;
- the problem of *scope*, which remains ambiguous because of the difficulty of separating out regulation from the normal range of state activities;
- the problem of *comparisons*, in which cross-sectoral or cross-national studies display familiar weaknesses;
- the problem of *measurement*, where quantitative studies too often rely on weak data and untested assumptions, and qualitative studies are rarely in evidence.

The paper emphasises the crucial significance of legal, political and administrative structures in determining the design, implementation and outcomes of regulatory reforms, and brings into sharp focus the analytical problems set out above in relation to the application of this approach to regulation in developing countries, in particular in relation to the notion of ‘independent’ regulation.

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*Keywords:* Comparative regulatory governance; Regulatory reforms; Regulation in developing countries; Policy transfer

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## 1. Introduction

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## 2. The definitional problem

‘Concepts of regulation are . . . legion’ (McGregor, Prosser, & Villiers, 2000, p. 1)

‘Governance has too many meanings to be useful’ (Rhodes, 1997, p. 52)

According to the OECD (1997), regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes laws, formal and informal orders and rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies, which enjoy delegated regulatory power: ‘Constitutions, parliamentary laws, subordinate legislation, decrees, orders, norms, licenses, plans, codes, and even some forms of administrative guidance can all be considered as “regulation” (OECD Council document, quoted in Black, 2002, p. 9). In this approach, regulation is straightforwardly based on rules, which may give strict directives, or be broadly enabling in ways which permit further negotiation; rules may also be framed in ways which concede discretion over their detailed application. Any enquiry into rulemaking must establish what are the institutions of rule-making, who are the rule-makers, how rules are implemented, and by whom, and the forms that compliance and accountability take (Ogus, 2002, p. 639–645).

Another simple yet broad definition (Hood, Scott, James, Jones, & Travers, 1999) takes regulation to be ‘the use of public authority to set and apply rules and standards’ (p. 3). The authors, however, make a distinction between the regulation of business (private, non-state activities) and regulation inside government (within and between government agencies, and

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