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32. Expertise and regulatory agencies

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INTRODUCTION¹

Expertise is considered to be the *raison d'être* of regulatory agencies operating at various levels of government, that is, national, supranational, and international. Unlike political institutions that are expected to be responsive to their constituencies, regulatory agencies are founded to exclusively rely on reliable sources of expertise and technical knowledge in their regulatory day-to-day activities, as illustrated in the quote provided by the director of the European Food Safety Authority (EFSA), Dr. Bernhard Url, in response to grave public allegations concerning EFSA's regulatory role: "It is the role of politicians to represent the values, needs and expectations of their constituents through democratic processes. This is outside the responsibility of organizations such as EFSA, which were created to advise EU policymakers on scientific matters" (Url 2018, p. 381).

One of the rationales for the creation of independent regulatory agencies – that produce or contribute to expertise-based regulatory policy-making – is to assure that the ever-rising need for credible policy solutions is provided by specialized expertise bodies working at arm's length from their political superiors (Majone 1996). To that end, regulatory agencies are instituted to draw on high-quality data and scientific knowledge to elucidate regulatory challenges that range from food safety, pharmaceuticals, and chemicals to financial or security-related issues. Regulatory agencies' outputs are devised to provide an analytical means for assessing scientific knowledge regarding potential hazards and risks to humans, animals, and the environment. This, in turn, implies that regulatory agencies' duties are primarily a highly technical quest predominantly entrenched in the use of scientific knowledge and technical data to arrive at regulatory outputs that later inform (political) regulatory decisions.

The mainstream literature on expertise and regulatory agencies has emphasized technocratic expertise and performative conduct as the key criteria for regulatory agency legitimacy (see, for instance, Majone 1998). Expertise-based conduct – that is the core basis for credible and efficient regulatory solutions – is deemed to be the key means through which regulatory agencies justify their organizational liabilities, enhance their regulatory authority and legitimacy: "policies [...] are basically legitimated by results, and hence may be delegated to such [non-majoritarian] institutions" (Majone, 1998 p. 28).

However, an increasing body of empirical studies has found that regulatory agencies' scientific or technical activities – that is, the ways in which scientific knowledge and technical data is used by regulatory agencies – can vary considerably. In other words, expertise can have many functions in regulatory policy-making (Hertin et al. 2009; Radaelli 2009; Rimkutė 2015; Schrefler 2010; Weiss 1979). Recent scholarship has observed that although regulatory agencies are keen on emphasizing the technical and performative character of their activities to justify their regulatory processes and results vis-à-vis relevant stakeholders, expertise as 'the be-all-and-end-all' criterion for regulatory agencies' legitimacy does not always hold as regulatory agencies may also draw on diverse strategies to justify their organizational conduct

(Busuioc & Rimkutė 2020a, 2020b; Rimkutė 2018, 2020a, 2020b). That is to say, regulatory agencies' legitimacy is regarded as an outcome of effective handling not only of technical conduct, but also of performative aptitudes, legal-procedural appropriateness, and moral standing (Carpenter, 2010b; Carpenter & Krause 2012; Rimkutė 2018). This more differentiated understanding of regulatory agencies' behavior – drawing on bureaucratic reputation theory – has opened multiple avenues to study agency behavior when it comes to their technical conduct and other organizational liabilities that agencies rely on to respond to multifaceted stakeholders observing, assessing, and judging their regulatory processes and outputs.

Scholarship on expertise and regulatory agencies is long-established and received much scholarly attention. However, its potential could be unlocked by exploring diverse theoretical perspectives to explain why regulatory agencies behave differently in terms of their technical conduct as well as diversifying analytical tools to explain varied agency behavior patterns which could, in turn, bring new empirical insights into the field. This chapter aims to review the extant scholarship on expertise and regulatory agencies and put forward propositions on how the field could be advanced by focusing on new research avenues that draw on more differentiated understanding of regulatory agency behavior concerning its technical conduct.

This chapter is structured as follows. First, expertise as a key rationale for regulatory agency creation is introduced and discussed. Following the functionalist argument, the core scholarly contributions linking expertise to creditable commitment, regulatory autonomy, and legitimacy arguments are introduced. Second, the chapter then moves on to introducing a strand of literature concerning the role of expertise in regulatory policy-making and how expertise is actually used by regulatory agencies. Third, after identifying the prevailing conceptual, theoretical, and empirical gaps in the literature, the chapter discusses how the scholarship on expertise and regulatory agencies could be brought forward by tailoring new theoretical accounts to explain agency technical conduct.

RATIONALE FOR REGULATORY AGENCY CREATION: EXPERTISE AS A KEY LOGIC

Regulatory agencies constitute a large share of the global phenomenon called the 'rise of unelected' (Vibert 2007). Although political institutions have multiple choices regarding how regulations could be prepared and executed (e.g., regulatory agencies, quasi-regulatory bodies, regulatory networks), increasingly they have opted for the delegation of regulatory tasks to independent agencies (Elgie & McMenamin 2005; Gilardi 2008; Levi-Faur 2011; Rimkutė 2021). Political systems operating at national, supranational, and international levels have experienced a so-called 'phenomenon of agencification', that is, extensive delegation of (regulatory) powers to non-majoritarian institutions working at arm's length from their political superiors. In recent decades across various political systems worldwide, regulatory agencies were instituted to contribute to policy- and decision-making *by providing technical expertise-based solutions* to emerging regulatory challenges that modern societies face. For example, in the period between 1975 and 2020, EU lawmakers have established 46 agencies including regulatory bodies working on diverse regulatory domains (for detailed discussion see Rimkutė 2021). Similar agencification patterns have been observed at national-level political systems (see, for instance, Gilardi 2008).

One of the mainstream rationales for the independent regulatory agency creation is the increasing need for high quality expert advice to address grave issues that contemporary societies are facing (e.g., recent financial and migration crises, global pandemic). This reasoning is rooted in the functionalist argument. The reference to the functional argumentation or functionalism entails that “institutional choices are explained in terms of the functions that a given institution is expected to perform, and the effects on policy outcomes it is expected to produce” (Pollack, 2006, p. 167). Scholars following the functionalist reasoning have argued that the prompt and extensive processes of delegating regulatory tasks to independent agencies can be explained by the functional need to generate unbiased expertise-based solutions in order to attain credible policy commitments (Majone 1996, 1999). Following this line of argumentation, the increased powers of regulatory agencies have been associated with regulatory crises (Boin et al. 2014). A standard response to crises has often been to strengthen ‘credible’ and ‘expertise-based’ regulation, whether it is related to food safety (e.g., establishment of the European Food Safety Authority), the financial crisis (e.g., creation of the unprecedentedly powerful European Supervisory Authorities (ESAs): the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA)), or the migration crisis (creation of the European Asylum Support Office (EASO) and the significant expansion of responsibilities, budget, and powers of the already existing agency dealing with border security issues, i.e., Frontex).

More specifically, with the delegation of regulatory responsibilities to independent agencies, political actors limit their own choice to opt for political intervention. Such a decision is made to send strong signals to private and public stakeholders about political institutions’ commitment to regulatory stability. In the case of nondelegation, or when political institutions are in charge of regulatory matters, the possibility of regulatory inconsistencies increases because a change in political majorities may lead to an overhaul of regulatory decisions. This is the case because political uncertainty is a direct outcome of the democratic process. Furthermore, a crucial defining characteristic of democracy is government *pro tempore* (Linz 1998). Political decision-making processes are marked by the high levels of responsiveness to prevailing external demands as well as a focus on short-term gains. This results in policy outcomes that are marked by time inconsistency issues and may be skewed to policy outputs favoring particularistic interests rather than pareto efficient solutions. As a result, credible commitments are difficult to achieve provided they remain a core responsibility of majoritarian institutions. To that end, to enhance the credibility of long-term policy commitments, political institutions delegate regulatory tasks to independent authorities and provide them with institutional designs allowing them to conduct these tasks.

In order to ensure the attainment of credible commitment, regulatory agencies are delegated with a certain degree of independence and autonomy so that they can freely exercise their mandates to provide *independent expertise-based regulatory solutions*. The anticipated effect of instituting independent regulatory agencies is the supply of *impartial expertise and a credible commitment* in order to achieve unbiased and predictable regulatory outputs and outcomes. Independence from their creators and autonomy serve to insulate agencies’ experts from ‘undue’ political influence by majoritarian actors in regulatory policy-making. And *vice versa* impartial expertise in regulatory policy-making is argued to be a key prerequisite for bureaucratic autonomy and independence from political institutions.

Empirical contributions in the field have found support for the claim that agencies with regulatory tasks tend to be more independent compared to their nonregulatory counterparts

(Wonka & Rittberger 2010). As it has been argued, this is the case because there is a need to signal strong commitment to credible solutions, that is, strong commitment to expertise-based regulation rather than favoring short-term electoral motivations (Gilardi 2005; Majone 1996). As a result, expertise and independence have been regarded as the two cornerstones of regulatory institutions (Maggetti 2007, 2009; Ossege 2016). In other words, regulatory agencies are provided with protection from 'political interference' in order to assure long-term policy consistency that could not be achieved if political actors were in charge. It seems that such a logic has been respected by the formal institutional justification surrounding agency creation in national and supranational political systems, as embodied by the European Commission defending the decision to create EU agencies that function independently from EU institutions: "The independence of their [agencies'] technical and/or scientific assessments is, in fact, their real *raison d'être*. The main advantage of using the agencies is that their decisions are based on purely technical evaluations of very high quality and are not influenced by political or contingent considerations" (European Commission, 2002, p. 5).

Against this backdrop, regulatory agencies are expected to contribute to or generate regulations that are exclusively based on expertise that is independent from external influences. To that end, according to the functionalist argumentation, the legitimacy of regulatory agencies is argued to predominantly rest on their role as an independent expertise bodies delivering outputs that are rooted in scientific knowledge and technical data. As a result, *expertise forms the central point of reference to the legitimacy of regulatory agencies*: "Regulation depends so heavily on scientific, engineering and economic knowledge [...] expertise has always been an important source of legitimization of regulatory agencies" (Majone, 1997, p. 157). As opposed to majoritarian-institutions that derive their legitimacy drawing on democratic legitimacy sources, non-majoritarian institutions draw on "non-democratic" justifications to legitimize their existence (Majone, 1996).

More specifically, regulatory agencies are expected to follow the consequentialist take of political rule in which they legitimize themselves by proving their pledge to the efficiency and effectiveness of their regulatory undertakings. By relying on *output-oriented* sources of legitimacy (or also referred to as 'performance-based'/'results-oriented' legitimacy) (Scharpf 1999), regulatory agencies shape their regulatory power and authority by delivering efficient outputs that are expected to translate into effective regulatory outcomes that are deemed to directly originate from the use of reliable evidence/scientific knowledge/technical data. Following this line of reasoning, the legitimacy of regulatory agencies is dependent on their appropriate use of expertise and the strength of their technical rationale to justify regulatory policy- and decision-making (Majone 1996; Vibert 2007). In other words, "[t]he positive evaluation of regulatory performance is presented as the first alternative source of legitimacy" (Maggetti 2010, p. 2).

However, granting regulatory powers to regulatory agencies functioning at arm's length from majoritarian institutions fosters a democratic legitimacy problem for issues that cannot be addressed with reference to expertise and technical knowledge to justify regulatory decisions. The processes of agencification and the rise of the regulatory state, as a significant body of literature argues, have created an issue of "democratic deficit" (see, for instance, Eriksen & Fossum 2004; Majone 1999). The arguments of functionalist literature have sparked an intense normative debate arguing that the extensive delegation of regulatory tasks to regulatory agencies should be normatively justified on the basis of legitimacy standards that are in line with democratic standards (see, for example, Follesdal & Hix 2006; Holst & Molander

2019). The core values of representative democracy are argued to become less important due to the growing role of regulatory agencies that rely on expert-based regulatory policy-making (Papadopoulos 2003). To that end, there was a quest to address the “democratic deficit” issue in regulatory policy-making that tends to rely on technocratic justification to defend its legitimacy.

Against this backdrop, an increasing body of literature has argued that the normative debates regarding the legitimization standards that regulatory agencies should draw on could benefit from empirical studies on whether, how, and under what conditions independent regulatory agencies use expert knowledge and technical information. Increasingly scholarship focusing on expertise and regulatory agencies argued that the long-established literature stream leaves many research gaps (Schrefler 2010; Wonka & Rittberger 2010). While it puts forward a compelling argument explaining why expertise is the key rationale for delegating extensive powers to regulatory agencies, it does not address a very critical question – that is, *how do regulatory agencies actually cope with their primary duty to provide sound and reliable expert advice?* It does not inform us how regulatory agencies use expertise and scientific knowledge to apprise regulatory policy- or decision-making. This knowledge gap is considerable given that the prompt developments of ‘agencification’ are often justified by referring to the need for credible regulatory solutions that are directly derived from available expert knowledge and technical data.

A new generation of scholarship focusing on expertise and regulatory agencies has attempted to go beyond normative debates, that is, should regulatory agencies draw on technocratic or democratic legitimization sources when justifying their contribution (see, for instance, Mathieu 2016; Ossege 2016; Rimkutė 2020a; Schrefler 2010; Wood 2018). These scholars have broadened our theoretical and empirical understanding on how regulatory agencies legitimize their regulatory power and authority with reference to the provision of expertise. They have attempted to unravel the following questions: What is the role of expertise in regulatory agencies’ day-to-day activities? How do regulatory agencies use scientific expertise? How do they communicate about their technical conduct and respective activities?

To that end, the scholarship in the field responded to the quest to address the prevailing research gaps by providing conceptual, theoretical, and empirical contributions on regulatory agencies’ expertise-based conduct. Scholars have started to explore the role of expertise in regulatory policy-making in order to explain agencies’ *de facto* activities when it comes to their technical conduct. In the remainder, the chapter further addresses and elaborates on this body of literature.

EXPERTISE AND REGULATORY AGENCIES: DE FACTO TECHNICAL CONDUCT OF REGULATORY AGENCIES

The contribution of the “unelected” to policy processes has been increasingly contested (Gornitzka & Holst 2015; Vibert 2007). A considerable body of literature suggested that one can witness not only the “expertization” or “scientization” of regulatory politics, but also the “politicization” of so-called scientific activities or evidence-based policy/decision-making (Fischer 2009; Jasanoff 1990; Radaelli 1999). Consequently, scholars in the field have identified a need to study how regulation is carried out in everyday regulatory practices. Boswell, for instance, argued: “there is a striking lack of research on the utilisation of expert knowledge

in public policy” (Boswell, 2009, p. 165). Endeavors to examine how regulators use scientific knowledge and technical expertise in their day-to-day regulatory activities have been scarce due to the limitations in the theorization and conceptualization of diverse scientific knowledge utilization modes, that is, scientific practices (Schrefler 2010). To that end, scholarship attempted to bring the field forward by closing prevailing conceptual, theoretical, and empirical gaps.

Scholars focusing on the technical side of regulation suggested that the use of expertise in regulatory policy-making and the increasing reliance on scientific (risk) assessments can be explicated not only by its analytical role, but also by its importance as a symbol of rational policy-/decision-making (Rothstein et al. 2013). That is, although regulatory agencies are expected to offer a technical foundation for regulatory policy-making, at times agencies’ scientific outputs are considered as relevant regardless of their actual scientific, technical, or methodological contribution.

Scholars have detected that regulatory agencies’ scientific activities – that is, the ways in which scientific knowledge and technical data is used in regulatory policy-making – can vary considerably. That is, expertise can have many roles and functions in regulatory policy-making (Boswell 2008, 2009; Hertin et al. 2009; Radaelli 1995, 2009; Rimkutė 2015; Rimkutė & Haverland 2015; Schrefler 2010; Weiss 1979). To give an example, science-based risk assessments produced by regulatory agencies are often inconsistent: that is, agencies simultaneously working on the same base of evidence recurrently arrive at conflicting conclusions. To illustrate, an EU-level agency, the European Food Safety Authority (EFSA), concluded that bisphenol A (a chemical used in plastics) poses no health risk, whereas the French agency, the French Agency for Food, Environmental and Occupational Health & Safety (ANSES), claimed that exposure of pregnant women to bisphenol A poses a risk to the fetus and also identified bisphenol A risks to infants. Consequently, bisphenol A is restricted in France but not in other EU member states (for further elaborations, see Fox et al. 2011; Rimkutė 2018). Another example is that the regulatory agencies of the United States, Canada, Australia, Japan, and the EU have conducted independent risk assessments of glyphosate and concluded that glyphosate is unlikely to pose a carcinogenic threat and customarily authorized glyphosate with specific warnings regarding conditions for safe use. However, the International Agency for Research on Cancer (IARC) – an independent cancer center of the World Health Organization – announced that the most glyphosate is genotoxic, carcinogenic to animals, and ‘probably cancerogenic’ for humans (see more detailed discussion in Rimkutė 2020b). Similar scientific divergences resulting in substantial differences in regulatory measures to protect consumers have been reported in fields as diverse as food safety, chemicals, medicines, and environmental protection (see, for example, Bazzan & Migliorati 2020; Lodge & Wegrich 2011; Vos 2017).

Against this backdrop, scholars working on expertise in regulatory policy-making focus on exploring the role of expertise in regulatory policy-making, that is, how expertise, evidence and scientific knowledge are used by regulatory agencies and what explains the substantial inconsistencies in scientific conclusions across regulatory agencies (see, for instance, Boswell 2008; Rimkutė 2015, 2020b; Schrefler 2010). Scholarship in the field has discovered that evidence in regulatory policy-making can be used in many ways depending on the conditions under which regulatory agencies have to deliver their scientific outputs. For example, agencies can use science not only to search for the best evidence-based solution but also for substantiating the predefined policy preferences in order to respond to prevalent external criticism.

To elaborate, in her seminal work on expertise, evidence, and research utilization, Carol H. Weiss (1979) has identified different types of knowledge use that policy makers can employ in policy-making. Weiss (1979) has argued that the use of expert knowledge, evidence and research in policy-making does not always respect “the following sequence of events: basic research → applied research → development → application” (Weiss, 1979, p. 427). Weiss argued that knowledge in policy-making can have different roles ranging from the actual use of knowledge to inform policies to more symbolic roles: the knowledge-driven model, the problem-solving model, the interactive model, the political model, the tactical model, and the enlightenment model. Scholars working on the role of expertise in regulatory policy-making have adapted the typology to explore how expertise is used by regulatory agencies (see, for instance, Jennings & Hall 2012; Mantzari & Vantaggiato 2020; Radaelli 1995, 2009; Rimkutė 2015; Rimkutė & Haverland 2015; Schrefler 2010, 2013; Zarkin 2021).

This literature stream has advanced the field by suggesting that the role of expertise goes beyond a simple dichotomy of use and non-use of expertise by regulatory agencies. Expertise in regulatory policy-making has multiple roles. For instance, expertise can be used to solve existing regulatory policy issues (problem-solving mode of expertise use). However, regulatory agencies can also engage in the strategic use of expertise: (1) expertise can be used to enhance one’s regulatory power, influence, or/and to strengthen status and reputation (political use of expertise); (2) expertise can be used to justify predefined preferences (substantiating use of expertise). Furthermore, (3) expertise can be utilized to emulate or imitate the most important actors/institutions (symbolic use of expertise) (for more elaborations see Boswell 2008; Schrefler 2010).

While this typology has significantly advanced the field by introducing the idea that expertise can be used by regulatory agencies in different ways, it suffers from insufficient conceptual clarity (e.g., the knowledge utilization modes are not analytically mutually exclusive) and a lack of comprehensive theorization (e.g., under what conditions do agencies engage in different expertise use practices?). That is, scholarship on the role of experts and expertise in general “has revealed significant theoretical weaknesses and barriers to empirical study that have not been seriously addressed within the respective literatures” (Christensen, 2020, p. 13). Furthermore, the major contributions in the field exclusively rely on qualitative methodologies, that is, single or comparative case study research designs relying on interview data or primary document analysis (Boswell 2008, 2009; Mantzari & Vantaggiato 2020; Rimkutė 2015; Schrefler 2010; Zarkin 2021) with a very limited use of quantitative methodologies (a couple of examples include: Costa et al. 2019; Jennings & Hall 2012; Rimkutė & Haverland 2015). The above-mentioned conceptual, theoretical, and empirical limitations call for considerations of how the field could be brought forward by addressing the core gaps in the extant literature.

AVENUES FOR FUTURE RESEARCH ON EXPERTISE AND REGULATORY AGENCIES

This section, first, invites scholarship on expertise and regulatory agencies to explore the potential of a relatively new theoretical perspective – bureaucratic reputation theory (Carpenter 2010b) – to fill the prevailing conceptual, theoretical, and empirical gaps in the literature on expertise in regulatory policy-making. Second, it suggests how the field could be brought forward by incorporating insights from the broader literature on expert knowledge and

policy-making (Christensen 2020). Third, it invites scholars in the field to address the urgent need to discuss and study the effects of the rise of populism and democratic backsliding on democracy–technocracy relationships in general and the role of expertise in regulatory politics in particular.

Novel Theoretical Avenues: Bureaucratic Reputation and Technical Agency Conduct

The use of a bureaucratic reputation perspective to explain technical agency conduct has been scarce regardless of its high potential to provide novel conceptual, theoretical, and empirical insights into our understanding of the use of expertise by regulatory agencies. A bureaucratic reputation account puts forward, first, a compelling argument regarding differentiated agency behavior that complements and further enhances mainstream arguments about expertise as a key prerequisite for regulatory legitimacy. Second, it provides well-defined and analytically mutually exclusive concepts to study agency technical conduct and, in so doing, opens many future research avenues on expertise use by regulatory agencies. Third, it offers coherent theoretical explanations regarding causal mechanisms leading to differentiated agency behavior that enables scholars working in the field to address relevant theoretical gaps. Last but not least, it offers analytical tools and reliable measures to empirically explore the technical aspects of regulatory agency conduct.

More specifically, an organizational reputation account offers a more differentiated understanding of regulatory agency behavior patterns and provides solid conceptual and analytical tools to study how regulatory agencies carry out their core mandates to provide credible solutions to emerging regulatory issues (Busuioc & Rimkutė 2020b). It enriches the literature on expertise by arguing that regulatory agencies can engage in diverse strategies to enhance their legitimacy. While functional literature argues that the ways in which regulatory agencies legitimize themselves are set in stone (i.e., regulatory agencies can legitimize themselves by delivering effective results-based outputs that are directly derived from reliable sources of evidence), reputational scholarships put forward a more nuanced argumentation stating that the legitimization sources on which agencies can draw to justify their conduct or even their existence are multidimensional. That this, regulatory agencies can engage in various reputation-balancing activities to establish, maintain, or enhance their legitimacy.

This suggests that the available array of reputation-balancing strategies creates some degree of latitude for agencies in handling their organizational legitimacy. That is to say, regulatory agencies' legitimacy is regarded as a consequence of the effective management not only of technical conduct, but also performative excellence, legal-procedural appropriateness, and moral image (Carpenter 2010b; Carpenter & Krause 2012; Rimkutė 2018). Agencies can concurrently engage in diverse reputation–advancement strategies. They can choose to emphasize diverse organizational liabilities (i.e., technical, performative, procedural, moral) when carrying out and communicating about their core technical tasks (Carpenter & Krause 2012). The successful handling of organizational reputation involves finding effective ways to respond to the most vital external expectations by emphasizing the 'right' organizational liability or striking the 'right' balance between technical, procedural, performative, and moral organizational conduct.

More specifically, regulatory agencies may choose to legitimize their regulatory activities and processes by sending strong professional and technical signals by emphasizing the technical, scientific, or professional features of their tasks, that is, by highlighting reputa-

Table 32.1 *Summary of organizational reputation dimensions*

Reputation dimensions	Agency focus	Agency signals to external audiences
Technical	Scientific/technical conduct	Professionalism and adherence to ‘scientific gold’ standard
Performative	Effectiveness and efficiency	Successful goal attainment
Legal-procedural	Due process	Adherence to legal procedures
Moral	Moral and ethical implications	Commitment to moral aspects of its organizational conduct

Source: Adapted from: Carpenter (2010b) and Carpenter and Krause (2012).

tional aspects such as methodological expertise, scientific precision, and analytical capacity (Carpenter 2010b; Carpenter & Krause 2012). Regulatory agencies may also choose to emphasize the performative dimension of their organizational conduct, that is, the agency’s duty to effectively realize its core mandate and ‘execute charges on its responsibility in a manner that is interpreted as competent and perhaps efficient’ (Carpenter 2010b). Furthermore, Carpenter argued that procedural organizational conduct may also, at times, be emphasized by regulatory agencies. Procedural reputation “relates to the justness of the processes by which its behavior is generated” (Carpenter, 2010b, p. 47). Last but not least, agencies may choose to pay special attention to its moral reputation and focus on the following questions: Does it protect the interests of consumers? Does it “exhibit compassion for those adversely affected by its decisions or those in its environment who are less fortunate or more constrained? Is it flexible with respect to human needs?” (Carpenter, 2010b, p. 46). See Table 32.1.

In short, rather than contrasting the technocratic and democratic justifications to defend regulatory agency legitimacy, the reputational account integrates a broader range of legitimation strategies that regulatory agencies can draw on to rationalize their regulatory responsibilities (Busuioc & Rimkutė 2020b). It argues that technical expertise – regarded as the key criterion for legitimation within the mainstream literature stream – is merely one of the available ways for regulatory agencies to legitimize their regulatory outputs, processes, outcomes or even their right to exist.

Furthermore, reputational literature puts forward an argument that the multidimensional legitimacy profile of regulatory agencies is affected by the vigorous interface with their audiences (or stakeholders). The legitimacy criteria of regulatory agencies are “dependent on agency success in coalition-building and engendering support from its environment” (Busuioc & Rimkutė, 2020b, p. 1266). A bureaucratic reputation account suggests that the legitimacy principles are in ‘the eyes of the beholders’, including a wide variety of formal and informal stakeholders possessing diverse expectations that often are conflicting with each other.

The above-mentioned theoretical claims provide not only a more differentiated understanding into the legitimation means of regulatory agency conduct, but also offer a comprehensive and lucid theoretical framework as well as concepts and analytical tools for scholars working on expertise and regulatory agencies to further theorize when and under what conditions agencies engage in different technical/scientific practices. Bureaucratic reputation literature suggests that regulatory agency outputs may incorporate a wide variety of outcomes ranging from purely expertise-based to more reputation-induced deliverables. This is the case, as reputational literature argues, because the environment in which agencies perform may affect how agencies use expertise by posing a wide set of reputational threats that agencies have to

actively handle to prevent organizational failures that would lead to disempowerment and even de-legitimatization of the agency (Carpenter 2010b).

More specifically, in order to explain agency behavior (e.g., how expertise is used by regulatory agencies), one should examine the context in which agencies perform as well as identify relevant actors and threats that they pose to regulatory agencies: “when trying to account for a regulator’s behavior, *look at the audience*, and *look at the threats*” (Carpenter, 2010a, p. 832). A positive reputation can be earned among various constellations of formal (e.g., political superiors) and informal (e.g., civil society, media) stakeholders. Whether a regulatory agency is regarded as contributing to credible commitment will depend on the alliances of stakeholders and their preferences regarding a certain regulatory result (Busuioc & Rimkutė 2020b). To that end, as reputational literature argues, regulatory agencies will do their utmost to address the expectations of the most relevant audiences, on which their legitimacy, regulatory power, and autonomy depend the most.

Reputation literature suggests that agencies have to carefully manage external expectations. This may require careful management of external claims among conflicting formal and informal audiences by, for example, the strategic use of available expertise to shape regulatory agency’s image and actively manage audience expectations. Unsuccessful management of expectations of relevant stakeholders can lead to controversy, loss of regulatory power, and decreased legitimacy of regulatory processes, outputs, and outcomes (Busuioc & Rimkutė 2020b). And vice versa, successful attempts to build a strong reputation can result in a powerful organizational reputation that “can be deployed to tie the hands of legitimate political principals, to deflect oversight of agency action, and to disguise—at least for some time—regulatory failures” (Bertelli & Busuioc, 2020, p. 8).

As a result, the behavior of regulatory agencies is affected by their initial reputational standing and vulnerabilities. For example, recent studies argued and provided empirical evidence that agencies that possess a strong bureaucratic reputation enjoy more latitude in choosing how to respond to grave public allegations concerning their scientific conduct (Gilad et al. 2015; Maor et al. 2013; Rimkutė 2020b). On the contrary, agencies with a weak or fledgling reputation were found to be more liable for responsiveness to external expectations and demands.

Last but not least, bureaucratic reputation literature provides analytical tools and measures to empirically examine how expertise is used and how regulators communicate about their technical processes, outputs, and outcomes. The scholarship of bureaucratic reputation has employed various research methods ranging from comparative case studies, surveys, automated text analysis, and machine learning techniques to explore agency behavior (including technical conduct) and stakeholders’ assessment of it (see, for instance, Busuioc & Rimkutė 2020a; Lee & Ryzin 2019; Müller & Braun 2021; Overman et al. 2020; Rimkutė 2018, 2020b; Rimkutė & De Vos 2020). Tailoring these analytical tools to explore technical agency conduct could enhance the field that is exclusively based on single or comparative case study designs (e.g., Schrefler 2010).

To summarize, a reputational perspective has a high potential to bring the scholarship focusing on expertise forward by proposing alternative explanations that could be examined against the long-established claims regarding the use of expertise by regulatory agencies. It suggests comprehensive expectations regarding agency technical behavior. Namely, a reputational account provides conceptual and analytical tools to unravel what regulatory politics entail, which stakeholders are relevant in regulatory politics and why, which reputation-balancing strategies regulatory agencies draw on to establish, maintain, or enhance their legitimacy

(Busuioc & Rimkutė 2020a). This, in turn, provides a rich theoretical background for scholarship focusing on technical agency conduct to tailor bureaucratic reputation arguments to explore how regulatory agencies use expertise and why their technical conduct varies across time, domains, and regulatory regimes.

Towards a New Research Agenda: The Influence of Experts and Expert Knowledge

Scholarship on expert knowledge and policy-making has introduced a promising research agenda focusing on the question of the influence of experts and the administrative foundations of expert influence (Christensen 2020; Christensen & Yesilkagit 2019). More specifically, first, this literature stream suggests focusing on capturing the role of experts or expert knowledge in policy-making and provides theoretical explanations regarding the varying role of expert knowledge in policy-making. It suggests focusing on the influence of expert knowledge and expertise rather than the use of expert knowledge. Such an approach would enable “a ‘normalization’ of research on expertise and policy-making, seeing experts as one type of actor among others providing input in the political system rather than granting them a special status as providers of neutral and apolitical evidence” (Christensen, 2020, p. 2). Second, scholarship on expert knowledge and policy-making suggests that in order to explain the influence of experts and expert knowledge on policy-making one needs to pay more attention to how the organizational arrangements of expert knowledge within public administrations affects expert influence (see, for example, Christensen & Hesstvedt 2019; Hesstvedt & Christensen 2021). While this research agenda is discussed in the field of advisory/expert commission politics, it has a high potential to provide new insights into regulatory politics and expertise.

Regulatory Agencies Amidst the Rise of Populism and Democratic Backsliding

In recent years, long-established democratic systems have experienced significant changes in their democratic outlook as a result of the rise of populism and democratic backsliding. Political scientists have extensively discussed these new dynamics and warned that the effects of populism on democracy is burgeoning (Norris & Inglehart 2019). In a similar vein, public administration scholars have focused our attention on the implications of these changes on the functioning of bureaucrats that are expected to rely on neutral bureaucratic competencies, however, at the same time engage in bureaucratic responsiveness to their political superiors. In particular, scholars focusing on the technical character of non-majoritarian institutions have emphasized that the rise of populism and democratic backsliding bring new dynamics to bureaucratic politics, that is, the challenge to rely on expertise and specialized knowledge in view of political failure (Bauer & Becker 2020; Caramani 2017; Meier et al. 2019). These new tendencies have significant implications for the technical character of the (European) regulatory state in general and the use of expertise by regulatory agencies in particular. However, research on how the rise of populism and democratic backsliding affect the technical nature of regulatory agency activities has been scarce. This chapter therefore invites scholarship on expertise and agencies to consider the implications of political failure on the technical outlook of regulatory agencies: what are the implications of changing political and administrative relations on the role of expertise in regulatory politics? How is the use of expertise by regulatory authority affected by the increased demands for responsiveness to multifaceted external actors (e.g., political principals, private interest groups, the general public)? Can regulatory

agencies legitimize their processes, output, and outcomes by exclusively drawing on the 'results-oriented' legitimization sources?

CONCLUSION

Scholarship on expertise and regulatory agencies has been led by the long-established functionalist argument, emphasizing the need for expertise that is independent from external influences in order to achieve credible policy commitments. The swift processes of 'agencification' and the growing role of regulatory agencies worldwide were deemed to be driven by the need to address regulatory challenges using independent expertise-based advice. To achieve this goal, regulatory agencies were created to draw on high-quality data and scientific knowledge to inform regulatory policies that range from food safety, pharmaceuticals, chemicals to financial and security. The provision of impartial expertise in regulatory policy-making therefore is argued to be the fundamental prerequisite for bureaucratic legitimacy. As a result, the legitimacy of regulatory agencies is argued to be dependent on the appropriate use of expertise and the strength of the technical rationale justifying regulatory policy-/decision-making.

While the functionalist literature puts forward a compelling argument explaining why expertise is the key motive for delegating extensive powers to regulatory agencies, it does not address the very critical question of how regulatory agencies actually cope with their primary duty to provide sound and reliable expert advice. This chapter explored how a bureaucratic reputation account could bring scholarship focusing on expertise and regulatory agencies forward by providing (1) a differentiated understanding of regulatory agency legitimization sources, (2) well-defined and analytically mutually exclusive concepts to study agency technical conduct, (3) theoretical arguments explaining differentiated agency behavior, and (4) analytical tools and reliable measures of technical agency conduct.

Furthermore, the chapter suggested future scholarship to consider a multi-disciplinary research agenda that suggests focusing on the influence of experts and expert knowledge in regulatory policy-making as well as the administrative foundations of expert influence. In addition, it drew attention on the urgent need to address the challenges that regulatory agencies face to provide neutral bureaucratic competencies and expertise amidst the rise of populism and democratic backsliding.

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