



The Rise & Rise : of the Regulatory State

David Levi-Faur

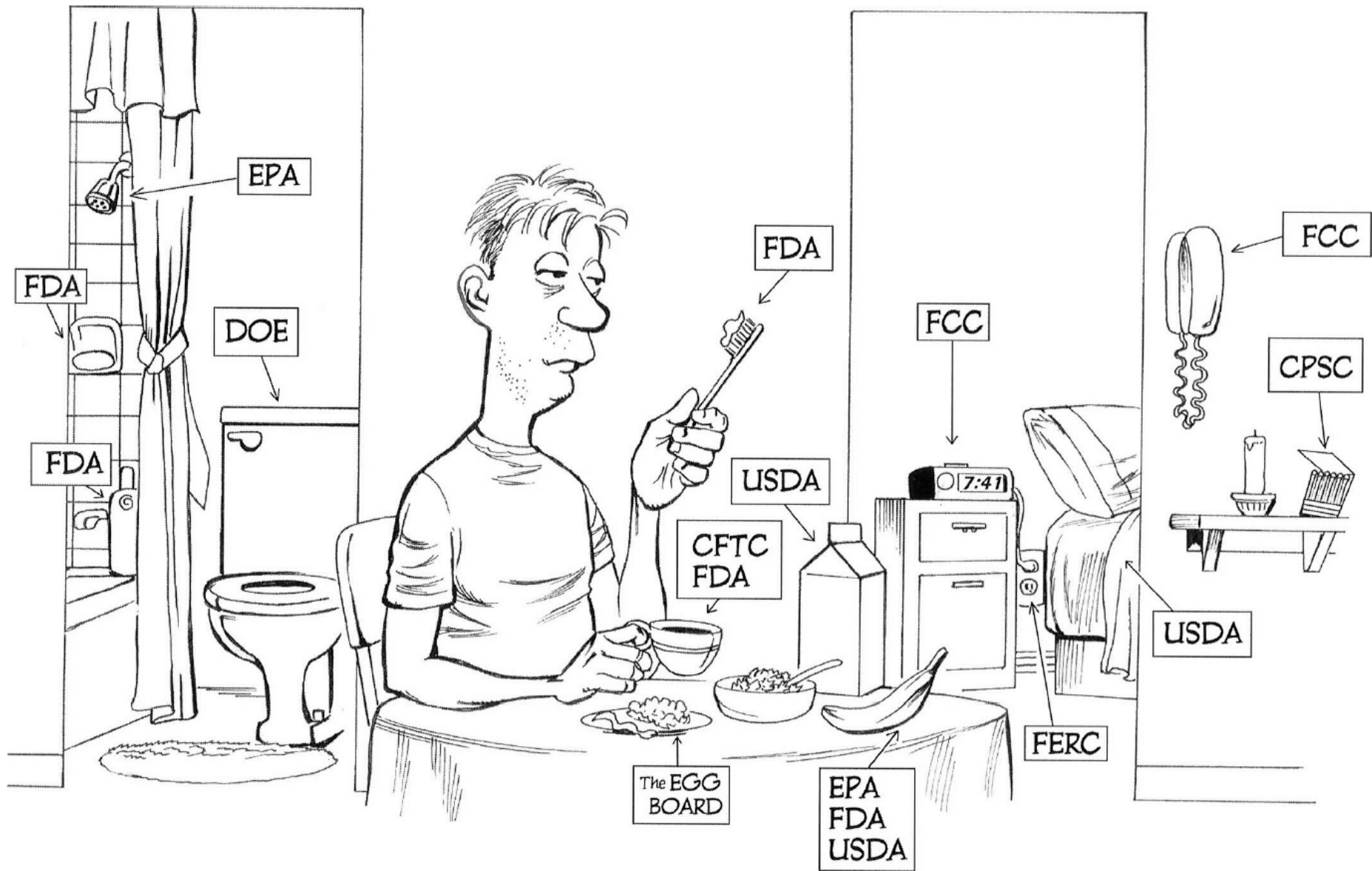
**The 5th RDW conference: The Future of
Work (3-5 July 2017, Geneva, Switzerland)**

*Far from living in an age of deregulation,
we live in the golden age of regulation*

Scott Jacobs

(Head, regulatory reform, OECD, 2005)

**But also of the
Regulatory Agency, Regulatory State, Regulatory Capitalism**



Dudley SE, 2004

Number of Pages of Regulations Added to the Federal Register Each Year, 1936-2011



Source: Ten Thousand Commandments

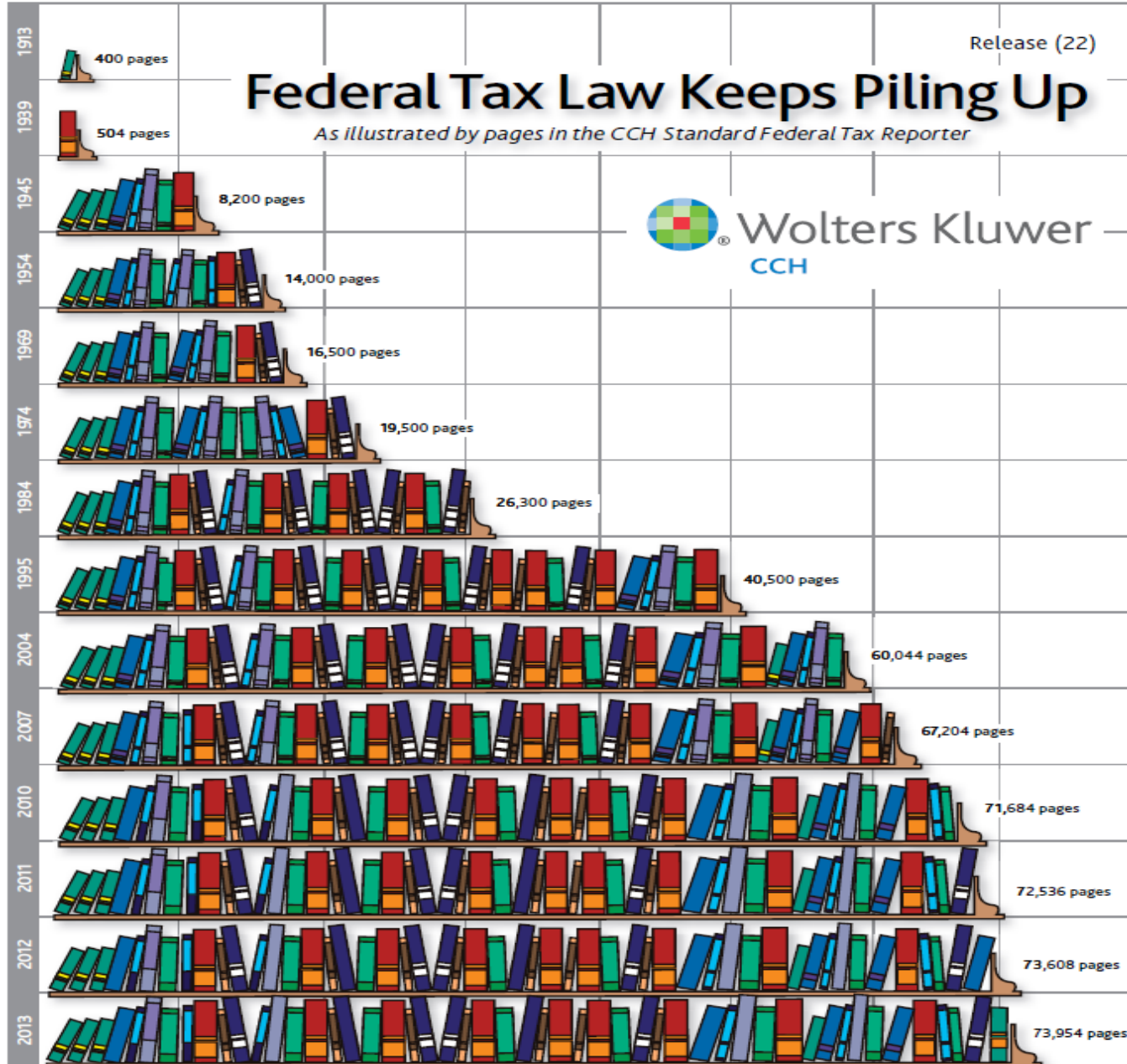
© Political Calculations 2012

Federal Tax Law Keeps Piling Up

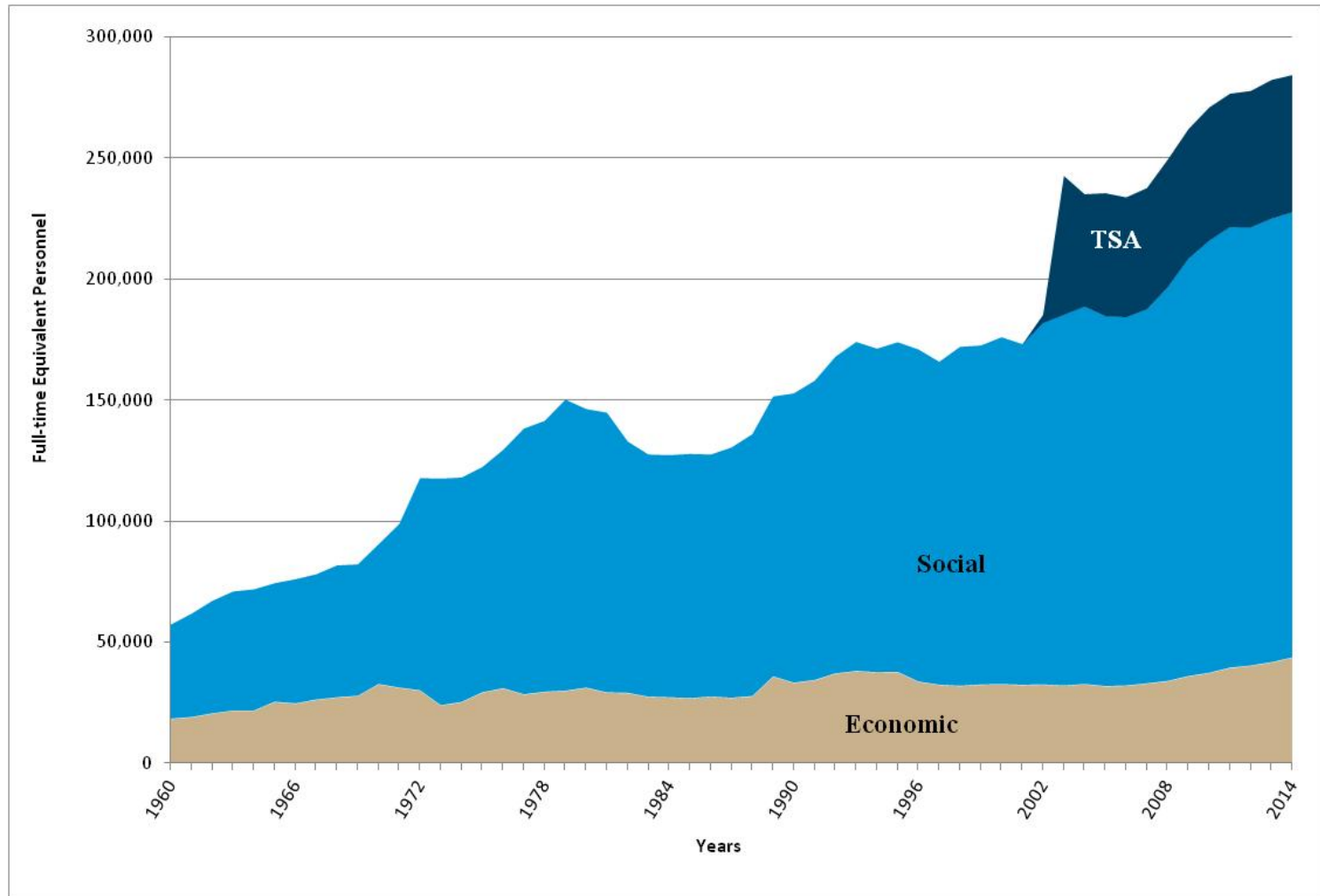
As illustrated by pages in the CCH Standard Federal Tax Reporter



Wolters Kluwer
CCH



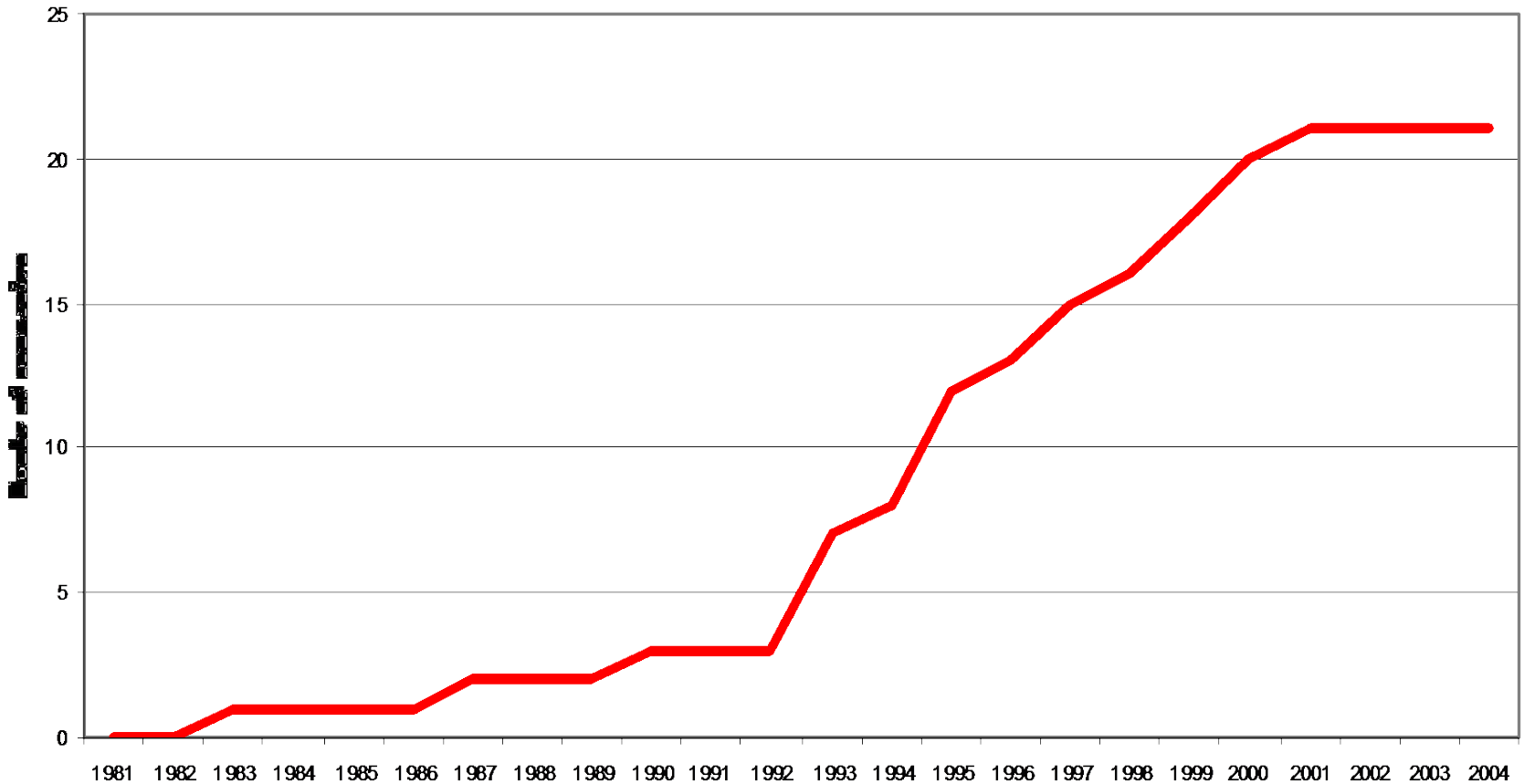
Staffing of Federal Regulatory Agencies



Source: Weidenbaum Center, Washington University and the Regulatory Studies Center, the George Washington University.
Derived from the *Budget of the United States Government* and related documents, various fiscal years.

Regulation within Corporation

Establishment of Regulatory Affairs Department (Telec & Elec; N=32)



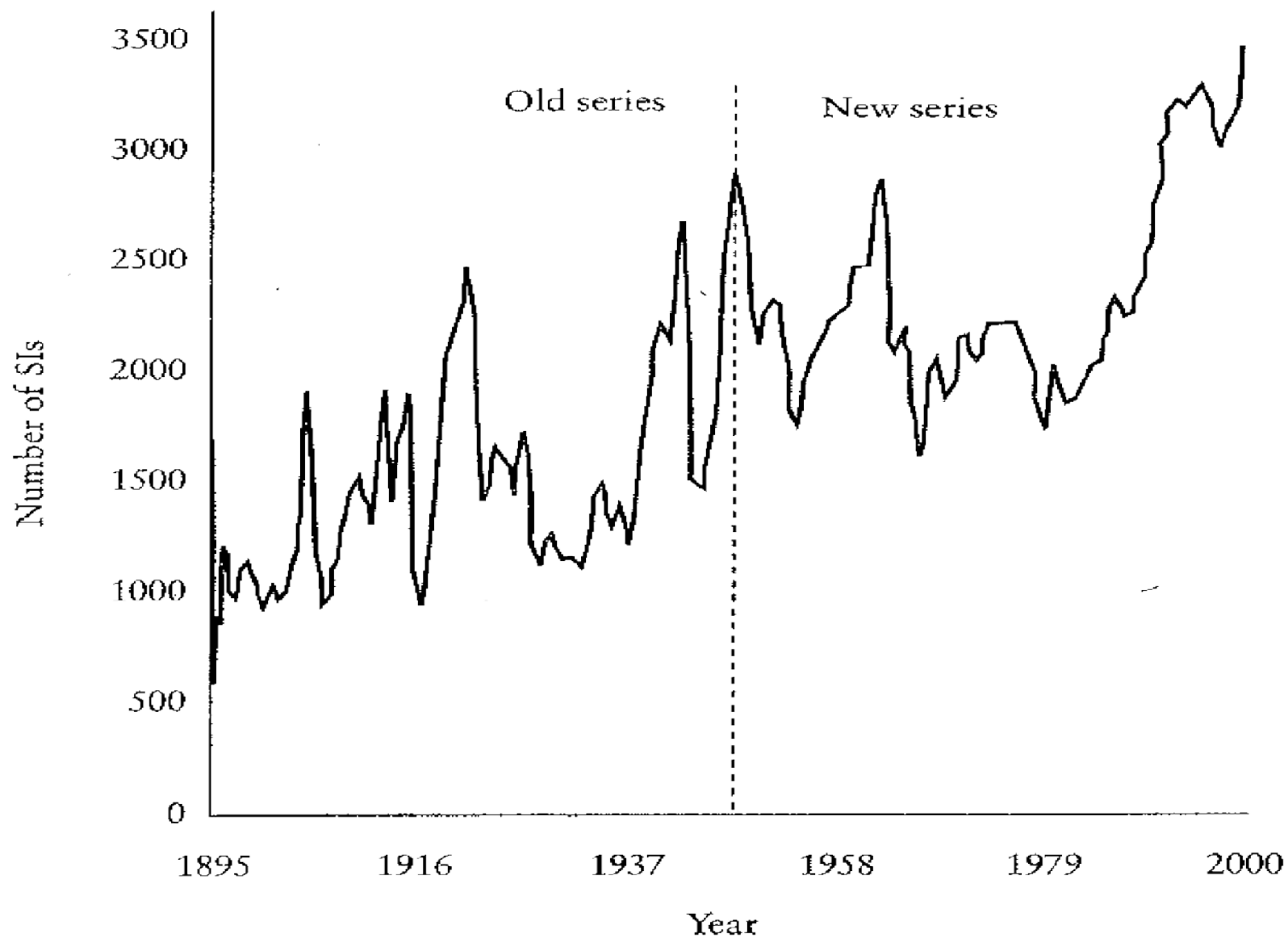
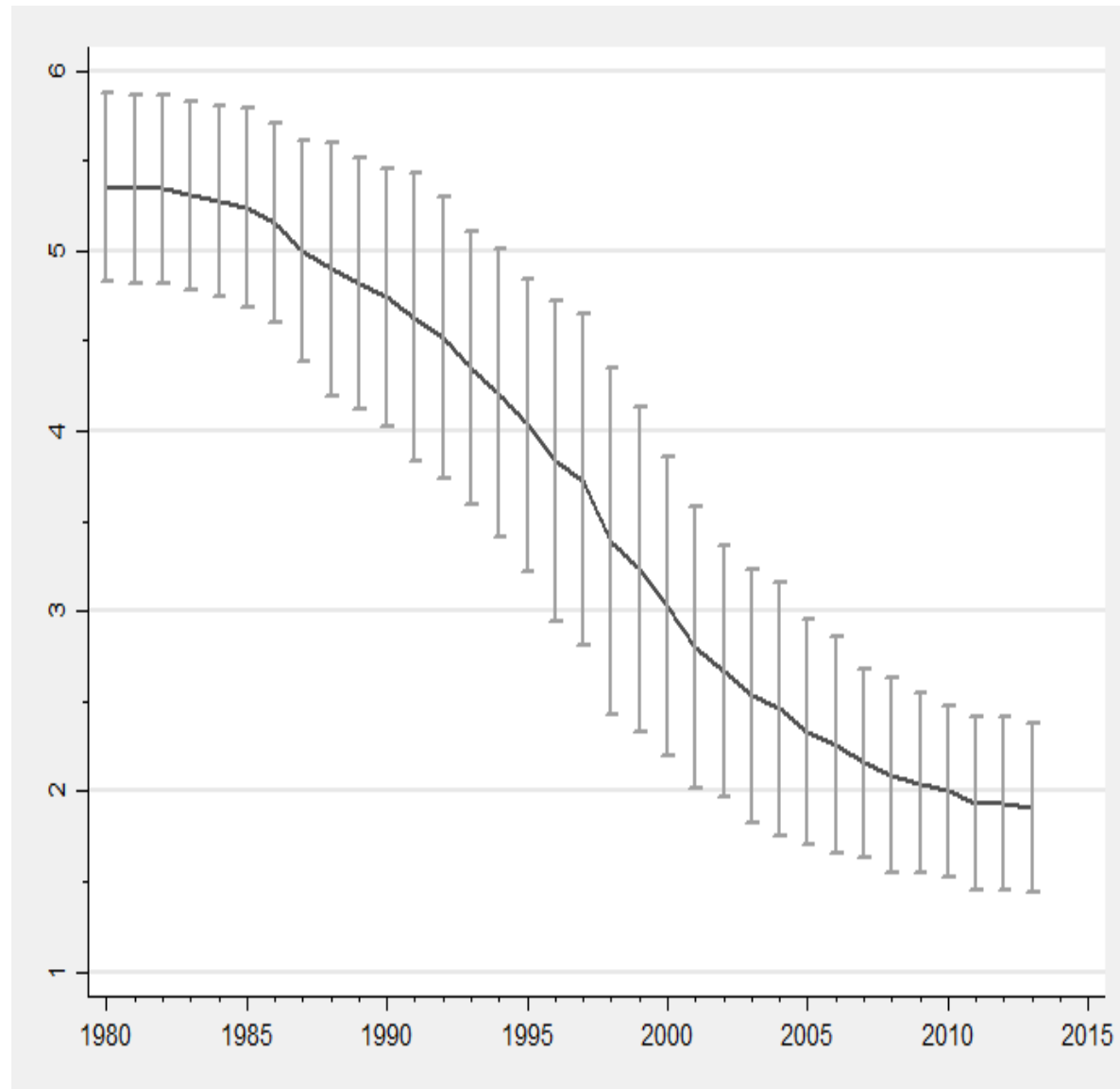


Figure 2.1 Volume of delegated legislation: number of regulations 1895–1999

Product market regulation, OECD-21, 1980-2013

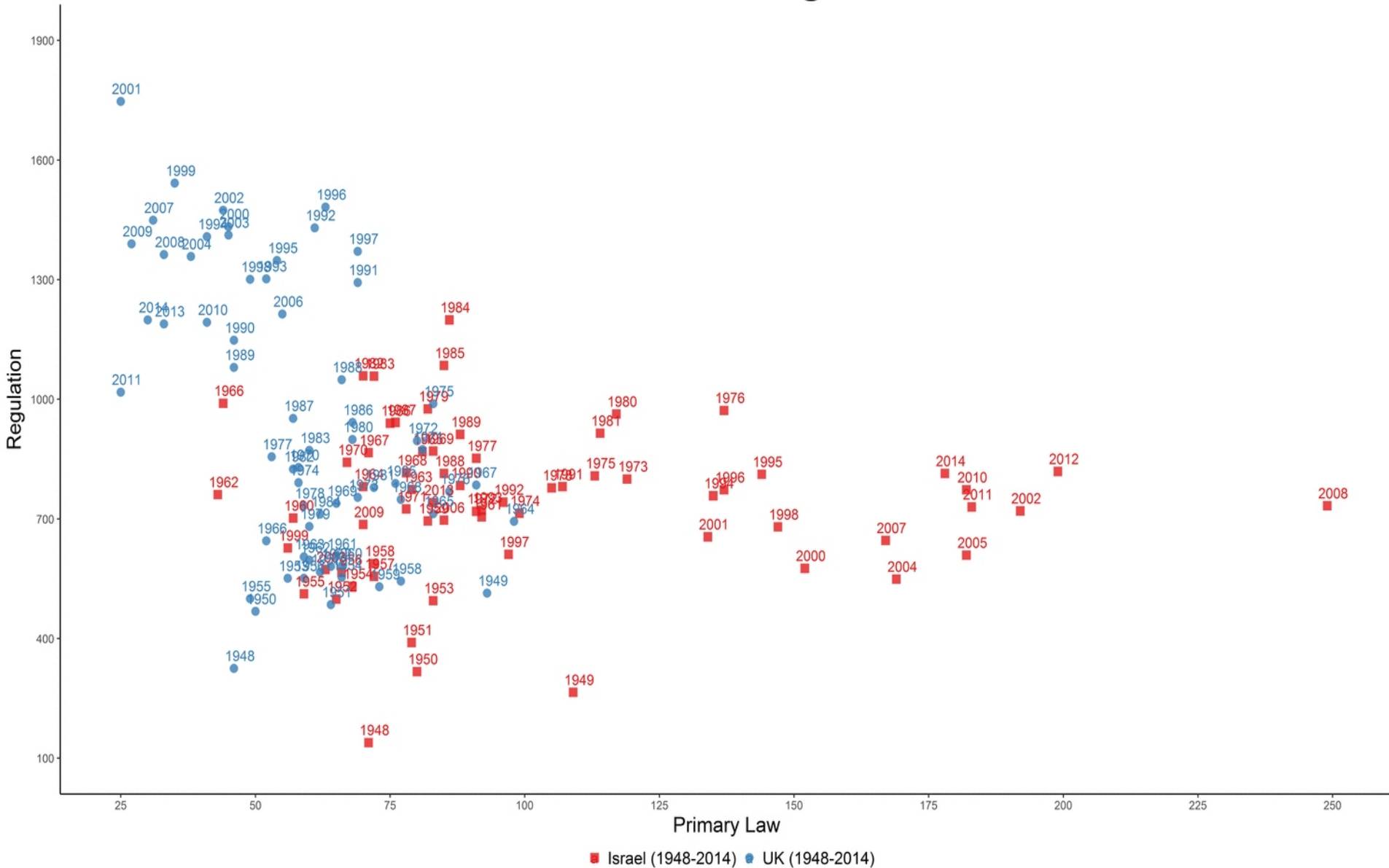


Source: Reimut Zohlnhöfer, Fabian Engler and Kathrin Dümig, *The Retreat of the Interventionist State in Advanced Democracies* (2013).

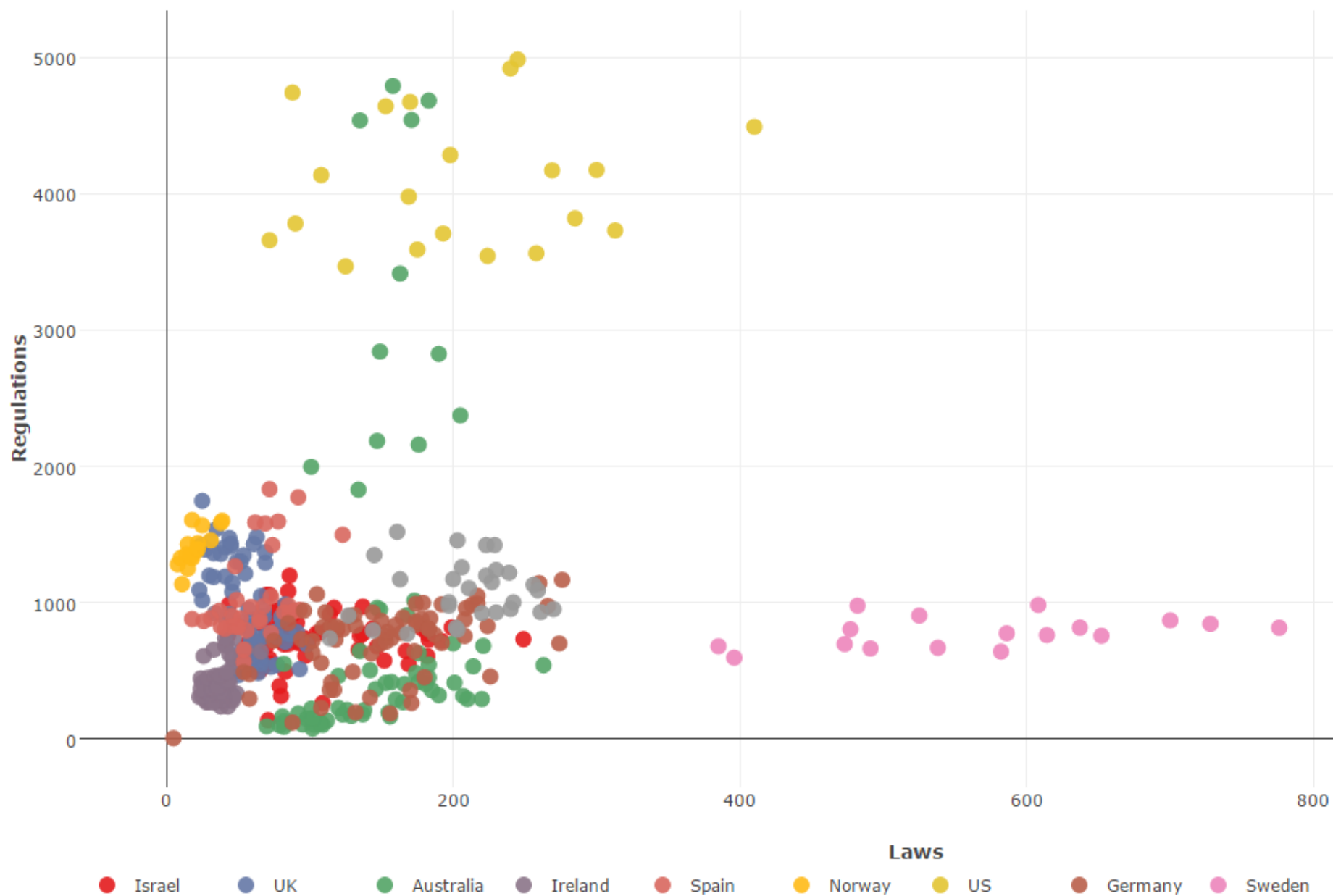
Data source: OECD Indicators of Product Market Regulation (Conway and Nicoletti, 2006).

Note: Data for the United States are largely missing.

Annual National Outputs of Laws and Regulations in Israel and the United Kingdom: 1948-2014



Laws and Regulations in 10 Countries (1948-2016)



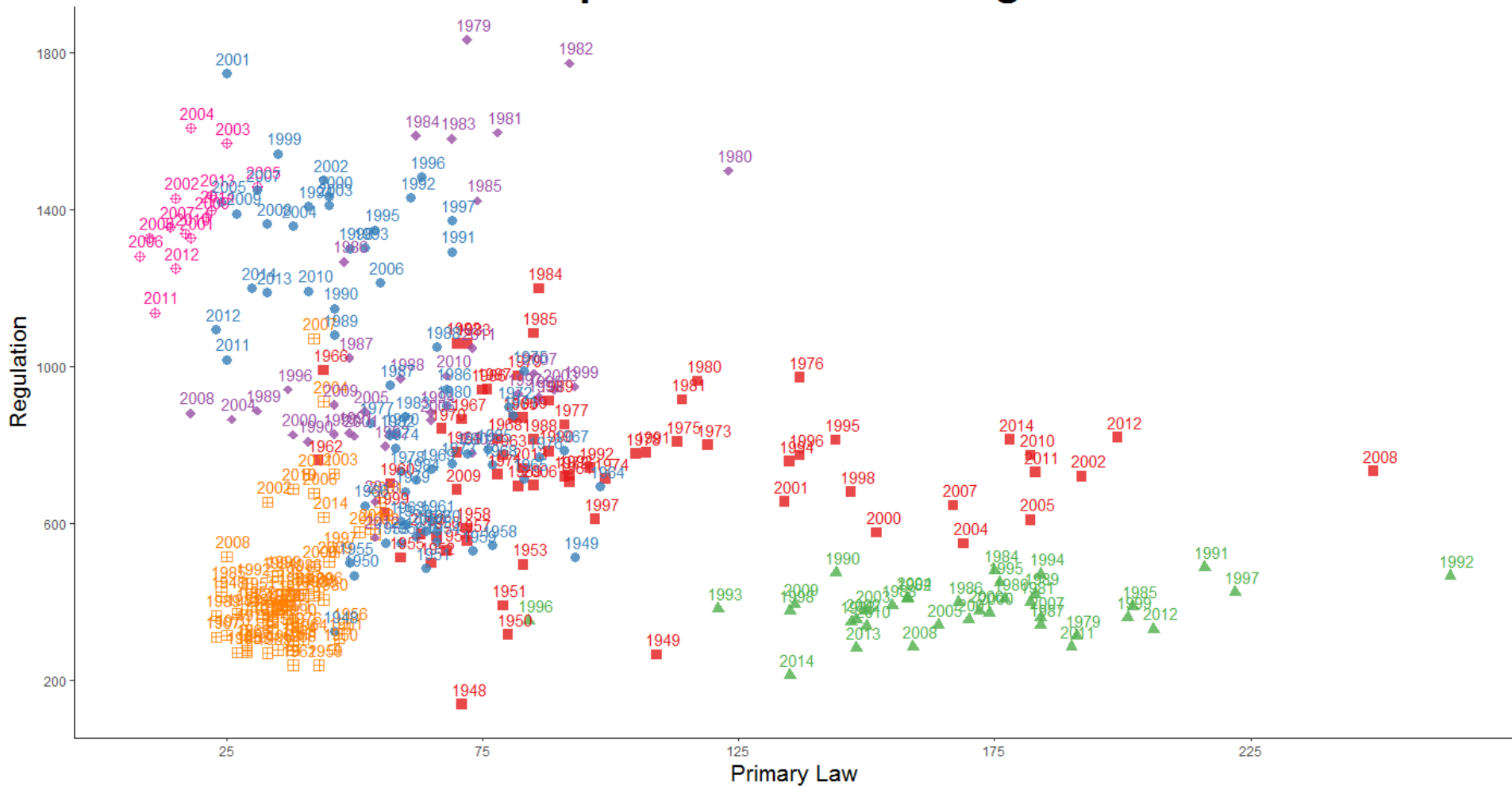


Making Sense

THE REGULATORY AGENCY



Annual National Outputs of Laws and Regulations: 1948-2014



■ Israel (1948-2014) ● UK (1948-2014) ▲ Australia (1979-2014) ◆ Spain (1979-2013) ■ Ireland (1979-2014) ◆ Norway (2001-2014)

Conceptualizing Regulation

- **Regulation is:** a bureaucratic (organizational) legislation that constitutes rights and obligations; constraining some actors and actions (while privileging others)
- **Three major processes:** rule-making, rule-monitoring and rule-implementation
- **Three types:** state, business and civil
- **Many levels:** global, regional, national, local
- **A Shift:** from Regulatory Government *to* Regulatory Governance

The History of British Regulatory Agencification

Between 1833 and 185

the Factory Inspectorate

the Poor Law Commissioners

the Prison Inspectorate

the Railway Board

the Mining Inspectorate

the Lunacy Commission

the General Board of Health

the Merchant Marine Department

and the Charity Commission

Source; Michael Moran, 2003, pp. 41-42

Federal Regulatory Agencies and Commissions

Interstate Commerce Commission (1887)

Federal Reserve System (1913)

Federal Trade Commission (1914)

International Trade Commission (1916)

Federal Energy Regulatory Commission (1930)

Food and Drug Administration (1931) [NHS]

Securities and Exchange Commission (1934)

Federal Communications Commission (1934)

National Labour Relations Board (1935)

Federal Aviation Agency (1948) [DOT]

Equal Employment Opportunity Commission (1965)

Environmental Protection Agency (1970)

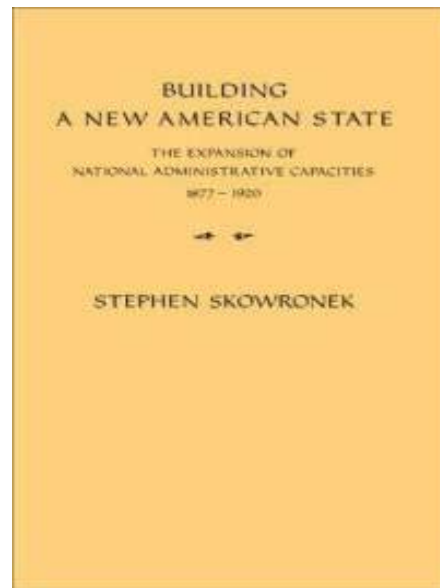
National Highway Traffic Safety Administration (1970)

Occupational Safety and Health Administration (1973)

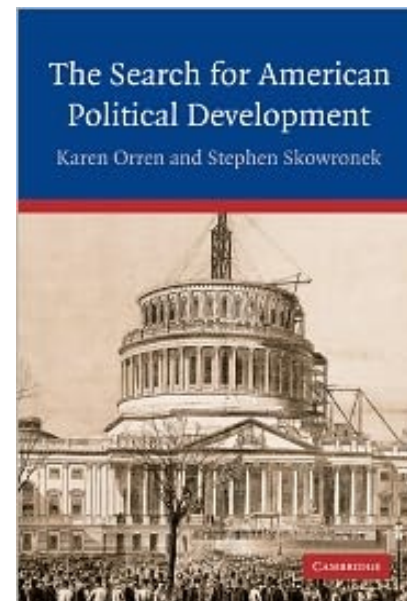
Nuclear Regulatory Commission (1975, formerly Atomic Energy Commission)

An Undistinguished Career in America

Skowronek (1982)



Oren and Skowronek (2006):



Giandomenico Majone,

***From the Positive to the
Regulatory State, Journal
of Public Policy, 1997***

	Positive State	<i>Regulatory State</i>
<i>Main Functions</i>	Redistribution, stabilization	<i>Correcting market failures</i>
<i>Instruments</i>	Taxing and spending	<i>Rule-making</i>
<i>Main Arena of Conflict</i>	Budgetary allocations	<i>Review and control of rule making</i>
<i>Characteristic Institutions</i>	parliament, ministerial departments, nationalised firms, welfare services	<i>Parliamentary committees, independent agencies, tribunals</i>
<i>Key Actors</i>	Political parties, civil servants, corporate groups, labor organisations	<i>Single issue movements, regulators, experts, judges</i>
<i>Policy Style</i>	Discretionary	<i>Rule-bound, legalistic</i>
<i>Policy Culture</i>	Corporatist	<i>Pluralist</i>
<i>Political Accountability</i>	Direct	<i>Indirect</i>

Defining the Regulatory State

- I define the regulatory state on the basis of its instrument of control, that is, the application and extension of rule making, monitoring and enforcement via and by administrative agencies.
- The Regulatory State is therefore a state that increasingly relies on regulation as a mode of governance (rather than bureaucratic discretion, direct monetary transfer and service provision)

**Welfare
State**

**Democratic
State**

**Development
al State**

**Risk
State**

Regulatory State

Old vs. New Regulatory State

- I distinguish the Old from the New Regulatory State by looking at the extent to which the state centralize or decentralize regulation (a governance approach).
- While the Old Regulatory State is centralizing regulation, the New Regulatory State is decentralizing it.

Liberal and illiberal Regulatory States

- **Liberal Regulatory States** signifies a commitment to limited and responsive government. In rule making for example, it institutionalize mechanism of control (parliamentary, judicial, participatory, transparency, accountability) over both the regulators and the regulatees.
- **Illiberal regulatory States** limited commitments for the rule of law and open government. For example reject or limit the extent of second and third party controls over the regulatory process.

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Two Types of Illiberal Regulatory States

- **Autocratic Regulatory States** accepts the principal of the “rule of law” in regulatory rule making and enforcement as well as the primacy of primary legislation. Yet, it is not committed to the idea of limited and responsive government in regulatory rule making and enforcement
- **Despotic Regulatory State** rejects the principal of the ‘rule of law’ and the primacy of primary legislation as well as the idea of limited and responsive government



Regulatory Growth and Regulatory Capitalism

Summary

1. Departure: We are living in a world of regulatory explosion My Task was to make sense out of that
2. The means: developing the concepts of regulation, the regulatory state, regulated competition and regulatory capitalism
3. Challenging : (a) the idea that deregulation is the dominate trends; (b) that politics, law, states and governance are on the decline as markets are on the rise; (c) the state vs. market idea; (d) the competition vs. regulation idea;