Jerusalem Papers in Regulation & Governance

Working Paper No. 39
November 2011

THE ODYSSEY OF THE REGULATORY STATE

EPISODE ONE: THE RESCUE OF THE WELFARE STATE

David Levi-Faur

Senior Research Fellow, KFG, Free University of Berlin, The Department of Political Science the Federmann School of Public Policy & Government

The Hebrew University, Mount Scopus,

Jerusalem, Israel, 91905

E-Mail: davidlevifaur@gmail.com

הפורום הירושלמי
לרגולציה וממשליות

Jerusalem Forum
on Regulation & Governance

האוניברסיטה העברית
הר הצופים
ירושלים, 91905

The Hebrew University
Mount Scopus
Jerusalem, 91905, Israel

Email: regulation@mscc.huji.ac.il
http://regulation.huji.ac.il

ISSN: 2079-5882

The Odyssey of the Regulatory State:

Episode One: The Rescue of the Welfare State

Abstract: This paper explores and analyzes "the odyssey" of the regulatory state from a mere label to a thick theoretical concept. Taking the regulatory state seriously means that we need to define it, rather than only characterize it. And we need to do so in a manner which will allow us to move beyond the specific institutional features of a certain era, nation, region or political arena or issue. This is done in this paper by a theoretical definition that identifies the regulatory state with widespread applications of informal and formal rule-making, rule-monitoring and rule-enforcement. The paper then assesses the future and the limits of the regulatory state. It suggests what it is, and what it is not, and discusses at length to what extent it is the flip-side of the welfare state. This allows me to point to the constitutive role of regulation in the welfare governance and in consequence to turn the welfare state on its head, the latent regulatory layer first, followed by the more visible fiscal layer. No more a shift from a welfare state to a regulatory state but a regulatory rescue of the welfare state. The paper concludes with a short discussion of the limits of the regulation as both progressive and regressive and the concomitant costs and benefits of the rescue operation.

Paper for the Workshop on “The Future of the Regulatory State: Adaptation, Transformation, or Demise?”, Oslo, 15-16 September 2011, SOG WORKSHOP, Conveners Nick Sitter and Martin Lodge. I am grateful for comments and suggestions from Sharon Gilad, Hanan Haber, Arie Krampf, Deborah Mabbett, Motti Talias and Clifford Shearing and the participants of the workshop. All usual disclaimers apply

The Odyssey of the Regulatory State:

Episode One: The Rescue of the Welfare State

Before we start to assess the limits, prospects, emergence and decline of the regulatory state, it might be useful to revisit the concept. If we are serious about the regulatory state - as a core concept in political, social and economic analysis we need to develop an understanding that goes beyond a specific historical period, a specific region, a particular institutional design and a specific political regime. Regulation, either in its rather loose definition as any form of government intervention, or in its stricter definition as any form of formal or informal bureaucratic legislation, has been prevalent from the early days of the modern state and so are processes of bureaucratization, de-bureaucratization and re-bureaucratization (Eisenstadt, 1958). As I will demonstrate in relation to the working of welfare states, regulation and the regulatory state are here to stay. Yet, before we deal with this aspect it might be useful to explore the odyssey of the regulatory state from its origins in the United States to its current status as a rather "global brand" (Jayasuriya, 2001, Dubash and Morgan, 2011). Unlike Homer's Odyssey where Ithaca is the definitive destination, the odyssey of the regulatory state is only just beginning and the future is still wide open. Pursuing the metaphor, Penelope is still waiting and unlike Homer's epic we are not likely to be saved at the very end, *deus ex machina* by the goddess Athena. We better stop waiting and peruse our own intellectual odyssey.

This paper therefore explores and analyzes the odyssey of the regulatory state from a mere label to a thicker theoretical concept. It strives to release it from the confines of Americanization, or more recently Europeanization, and to make it a concept that can travel. This is done by moving away from both historically-specific connotations, and from characterization strategies, towards a theoretical definition that identifies the regulatory state with the applications of informal and formal bureaucratic rule-making, rule-monitoring and rule-enforcement. It then assesses the future of the regulatory state and its centrality in the constitution, maintenance and architecture of the current political, economic and social context by looking into its relationship to and interaction with the welfare state.

Much of the conceptualization of the regulatory state was carried out *vis-à-vis* the welfare state. Most importantly it was done by contrasting these two forms of states (Seidman and Gilmour, 1986; Majone, 1997). This contrast serves a number of good purposes but as I will show here, it has its limits. It does not capture the resilience of the welfare and developmental roles of the state. The rise of the regulatory state does not necessarily entail the decline of the welfare state, nor of other forms of activist state. These issues were already been discussed elsewhere (Levi-Faur, 1998; 2007). Here I take one more step in analyzing the relations between the regulatory state and the welfare state and assert that the former is a constitutive element of the welfare state and welfare capitalism. Regulation, that is, rule-making, rule-monitoring and rule-enforcement as a bureaucratic enterprise builds on the foundations created by the growth of the welfare state and in the age of austerity, transnationalization and governance is likely to go on expanding. To get better understanding of the relationship between the regulatory state and the welfare state we need to identify the hidden welfare state that operates beyond the confines of 'fiscal transfers' (Howard, 1999, 2007). At the same time we must look first beyond the state, to the welfare society and the welfare economy and secondly beyond the peculiar welfare-state formation processes in Europe and the United States. This will give a clearer picture of the extent to which welfare-via-social regulation has emerged as a key pillar and layer of welfare capitalism and how the relations between the welfare state and the regulatory state are constitutive and mutually supportive rather than competitive and substitutive.

The paper starts with a discussion of the historical origins of the label ‘regulatory state’ in the United States. The second section discusses its 'homecoming' and enthusiastic reception in Europe and the rest of the world. The third section clarifies the notion of the new regulatory state and points to the happy marriage between the literature of regulation and governance. The fourth section defines the regulatory state and relieves it of unnecessarily narrow characterizations. It clarifies not only what the regulatory state is but also what it is not. This allows me, in the fifth section, to assess the regulatory state *vis-à-vis* the welfare state. I point to the ways the regulatory state is not the welfare state but also to the limits of this opposition. In section six I present ten reasons why welfare politics is likely to be shaped increasingly by regulation and thus extend the boundaries of the regulatory state to the core of the welfare state, and in doing so significantly change the way we think about the welfare state.

I. The Origins of the Odyssey: The Regulatory State as a Thin Label

For a long time the regulatory state was a mere label - an empty signifier of the growth of administrative structures within the United States Federal Government. The notion had originated most visibly in the title of a book written by James Anderson: *The Emergence of the Modern Regulatory State* [1962].[1] Anderson's book analyzed government and bureaucratic expansion via specialized independent agencies such as those which originated in the US progressive period. He did not however define or conceptualize the term. He also did not employ it in a comparative or theoretical manner and instead, his main effort was towards understanding the organization and expansion of the administrative state at the Federal level in the context of the revolt against the power of big business. The term caught on only slowly in the United States, and its uses were confined to scholars who studied American administrative law and American public administration. Its slow diffusion and marginal position was probably because American political science - and American social sciences more generally - did not have an elaborated theory of the state. Neither pluralists, nor Elitists and Marxists, saw state theory as a central element of their analyses (Nettl, 1968; Skocpol et al., 1985; Dunleavy & O'Leary, 1987, King & Lieberman, 2009). The enormous power of the American administrative state was and still is largely hidden not only because it reflects an inconvenient truth but also because it is widely distributed among an exceedingly complex web of institutions, jurisdictions, branches, offices, programs, rules, customs, laws and regulation (Novak, 2008, 765).

[1] It had probably originated in an earlier dissertation with the same main title (1960). The notion was used occasionally in the literature even before that but as far as I can find never as centrally as in the title of Anderson's work.

Whatever the reason, the loose use of the term as a mere label is still prevalent in the United States. There it is most often applied to the administrative state and captures its development in the second half of the nineteenth century (e.g., Eisner, 2000). In this academic discourse, it reflects the exceptionalism of the American administrative system - decentralized agencies which are answerable to the Congress and which operate via specific legislative mandates and with comparatively clear limitations of power and scope. The term conveys enough descriptive power for American authors generally not to make any effort to characterize, define or theorize it in a more thorough and systematic manner. Indeed, the notion of the regulatory state never captured the imagination of American scholars in the way it has European ones since the mid 1990s. Most of the research efforts of regulation scholars were focused on the benefits and costs of administrative forms of regulation, the characteristics and the pitfalls of agencies, the relations between the agencies and other branches of the government and the particular American adversarial style (Mitnick, 1980; Wilson, 1980; Bardach & Kagan, 1982; Vogel, 1986). Despite the efforts to bring the state back in (see Skocpol et al., 1985), the notion of the regulatory state has gained little visibility.

Some insights into the genealogy of the notion can be gained from books that took a comparative perspective. Thus one of the first uses of the term outside the United States is in a chapter on the economic policy of Egypt under Gamal Abdel Nasser (Dekmejian, 1971). The chapter is devoted not to the progressive building of regulatory regimes and agencies but to the restrictive application of regulation by the Egyptian regime that kept the balance of payment stable and at the same time updated and strengthened the hold of the regime and its protégées on the economy. More influential was, however, Chalmers Johnson's classic *MITI and the Japanese Miracle* where he used the notion of the regulatory state in order to contrast the Japanese state and business relations with the American: In Johnson's formulation: "A regulatory, or market-rational, state concerns itself with the forms and procedures - the rules, if you will - of economic competition, but it does not concern itself with substantive matters" (Johnson, 1982, 19). The notion of the regulatory state was also used in Yergin and Stanislaw's *The Commanding Height* [1998] in order to capture the efforts of postcommunist Russia to create order after the crisis of the collapse of the Soviet system and the resultant chaos in its economy. Citing Thane Gustafson, an expert on Russia's new capitalism, they pointed to the efforts of Boris Yeltsin's government to create "a regulatory state that is the referee over the playing field". (1999 edition, p. 296).

A renewed interest in the notion in the United States has been evident in US law-and-society and law-and-economics circles since the late 1980s (Sunstein, 1990; Rose-Ackerman, 1992). But still it was relegated to the subtitle of major works. Thus Cass Sunstein's, *After the Rights Revolution* [1990], includes the subtitle *Reconceiving the Regulatory State*. Similarly, Rose-Ackerman's *Rethinking the Progressive Agenda* [1992] is subtitled "*The Reform of the American Regulatory State*". The reform she has in mind is that of "the modern regulatory-welfare state" (p. 3; p. 190) and reflects the fact that in the post-war period the distinctions between regulatory governance and service provision at the Federal level became blurred even in the United States. By contrast, major works on American political development that brought the state back in ignored the idea. Skowronek (1982), for example, mentioned the regulatory state only once and even this was done in passing. In a later work by Orren and Skowronek (2006) there is no mention of it at all.

Most notably, for our purposes, the term appeared in the subtitle of the fourth edition of the late public administration scholar, Harold Seidman's *Politics, Position and Power*: *From the Positive to the Regulatory State* (1986). Like his predecessors, Seidman does not define the regulatory state but there is something new in his understanding of the concept. He sees it not as one which is connected necessarily with the rise of public administration in the progressive period and as the product of a social movement fighting big-business, but as one which is closely connected to outsourcing and privatization. For Anderson, the regulatory state was a Command & Control or hierarchical and progressive state which was born - at least at the Federal Level - at the end of the nineteenth century as a result of political struggles by popular movements against big business. For Seidman, however, the notion of the regulatory state is used to make sense of Ronald Regan's "revolution":

> "The evolution from the positive to the regulatory state commenced in the 1960s, but President Reagan was the first to redefine the federal government's role as limited, wherever possible, to providing services without producing them" (Seidman and Gilmour, 1986, 119)

The context is no longer that of popular movements but of a general dissatisfaction with the administrative state which was followed by the outsourcing of administrative functions by the Federal government. Unlike Anderson, who equated the regulatory state with the independent regulatory agencies at the Federal level that were established in three waves from the end of the nineteenth century onwards, for Seidman the rise happened after the mid 1970s. In other words, Seidman and Anderson understand the regulatory state in different ways, depending on different periods and different characteristics. Still, the regulatory state was not central to Seidman's work and he did not develop it further. In the fifth edition of the book that came out ten years later, he dropped the subtitle of the regulatory state (instead he opted for *The Dynamics of Federal Organization*). Nonetheless, it seems that the transformation from the positive state to the regulatory state had captured the interest of Giandomenico Majone, and with this a new chapter in the Odyssey had begun

II. European Homecoming

In a series of path breaking papers, Giandomenico Majone set the agenda for the study of regulation first in the EU and later well beyond it, making the concept common currency in social sciences discourse (Majone,1991, 1994, 1997). In his 1997 paper, he explicitly adopted Seidman's subtitle and transformed it into a title: *From the Positive to the Regulatory State*. Majone's conceptualization is similar to Seidman's: limited government by proxy - a state that puts administrative and economic efficiency first. Majone does not define the notion of the regulatory state but instead does an excellent job of characterizing the politics of regulation and of the regulatory space (building to some extent on Lowi, 1964 and Wilson, 1980 and highly influenced by the US experience, see Majone 1991). Majone's level of analysis is at the EU level, seeing the growth of the European regulatory state in the context of the severe limits on taxation and spending imposed by Brussels. Regulatory agencies at the EU level are not part of Majone's conceptualization, partly because the EU at the time concentrated regulatory powers in the Commission rather than in agencies (a radical change occurred only in the 2000s) and partly because the EU member states were only then frantically beginning to establish and reform regulatory agencies across various sectors.

	The Positive State	**The Regulatory State**
Main Function	Redistribution, macroeconomic stabilization	Correcting Market Failures
Instruments	Taxing (or borrowing) & Spending	Rule-making
Main arena of conflict	Budgetary allocation	Review and Control of Rule-making
Characteristics institutions	Parliaments, Ministerial departments, nationalized firms, welfare services	Parliamentary Committees, independent agencies and commissions, tribunals
Key actors	Political parties, civil servants, corporate groups	Single issue movements, regulators, experts, judges
Policy Style	Discretionary	Rule-bound, legalistic
Policy Culture	Corporatist	Pluralistic
Political Accountability	Direct	Indirect

Table 1: Majone's Characterization of the Regulatory State

Source: Majone, 1997, p. 149

Majone begins by making distinctions between functions, instruments, and two indicators of institutions (arenas of conflict and main institutions), followed by actors, and finally three political indicators (policy style, culture and accountability). Looking first at functions, for Majone the main purpose of the regulatory state is to correct market failures. This is contrasted with other types of states that are dealing with Keynesian macro-economic stabilization and redistribution. In other words, the regulatory state is a rather neo-liberal state which confines itself to the correction of market failures. This liberal function is then expressed in peculiar institutions and arenas of conflict: no more centralized, party led and class-oriented budgetary conflicts but dozens of conflicts over fine rules that require a high degree of expertise or at least intimate knowledge of the institutions and the implications of the rules. Accounting for budgetary allocations, which had always been a difficult task with the budget books ever growing in number of pages and sections, became even more complicated with rules that were enacted with, at best, a rough estimate of cost and benefits and without any framework of national accounts or regulatory budget. Majone's characterization of the regulatory state, one which allows and encourages a move from distributive and redistributive politics to regulatory politics and policy is highly influential. Still his characterization of the positive and regulatory state does not allow us to distinguish between varieties of positive states and varieties of regulatory states. His notion of the positive state amalgamates the developmental state, the risk state and the welfare state into one 'positive' entity. Most important, however, his regulatory state is neoliberal in the sense that it is essentially built around problems of market-failure and identifies economic efficiency with market governance (Levi-Faur, 2007). I will return to the contrast between the regulatory state and the welfare state later when dealing with role of regulation in the welfare state.

Michael Moran's *The British Regulatory State* [2003] provides yet another layer of conceptual characterization by discussing four 'images' of the regulatory state. The first is of the regulatory state as something American. This image of 'origins', as was discussed in the preceding section, rests on four foundations: (a) the historical precedence of inventing the characteristics of the specialized regulatory agency; (b) on the way its range has widened over time from economic to social regulation; (c) on the evidence of the problems that have afflicted it including adversarialism, inflexibility and arbitrary rule-making and rule-enforcement; and (d) on the evidence of its global spread and influence. A second image is of the regulatory state as a European Madisonian one. It is built largely on the work of Majone and projects the transformation of interest in the notion of the regulatory state from the US to Europe. If the challenge of the regulatory state in the US as identified by Bardach and Kagan (1982), Sunstein (1989) and Rose-Ackerman (1992) were that of adversarialism, inflexibility and arbitrary rule-making and rule-enforcement, the major challenge identified by Majone is that of legitimacy. New modes of policy making, including the importance of experts and the transnationalization of policy making, suggest that the majoritarian aspirations of tight political control via elected officials are becoming less and less relevant. The solution is a Madisonian form of legitimacy, that of limited government and protection of the minority against the tyranny of the majority: In other words, non-majoritarian institutions that are regulated by other non-majoritarian institutions such as the courts. The third image of the regulatory state discussed by Moran is that of 'a smart state' (Gunningham and Grabosky, 1998) a template of good governance and innovative forms of control against which to measure the new institutions and the ongoing performance of the state. The final image is of a risk state where the focus is on the role of the state as an institution that struggles with deep-seated social and cultural crises (Moran, 2003, 13-30).

Beyond his four images Moran's notion of the regulatory state emphasizes the destruction of an anachronistic governance system that was based on trust and tacit agreements between business and governmental elites and its replacement by a modern system of arm's-length regulation. For the first two-thirds of the twentieth century, Britain, according to Moran, was the most stable and least innovative country in the capitalist world. Once a byword for stagnation, since the 1980s Britain has been a pioneer of institutional and policy change resulting in a system of governance of "increasing institutional formality and hierarchy, where the authority of public institutions has been reinforced … by substantial fresh investment in bureaucratic resources to ensure compliance". (pp.20-22). This new hierarchical system is at the same time made more transparent and open 'by the provision of systematic information accessible both to insiders and outsiders, and by reporting and control mechanisms that offer the chance of public control' (albeit a few islands of closed communities immune to external control remain) (p. 7). This allows and encourages higher levels of politicization. Thus, in contrast to images of withdrawal and hollowing-out of the state, with a transfer of power to international agencies and domestic actors that is emphasized by other concepts (or shall we say images or characterizations) of the regulatory state, the change described by Moran is one of a vigorous regulatory state whose central ambitions have not diminished. On the contrary, it uses command and control regulation to colonize new areas, develop new agencies and reform old ones (p. 20-21). The tools it applies are entirely congruent with 'high modernism': that is, standardization, central control, and synoptic legibility to the centre. (pp. 6; 8). If Majone's regulatory state is mainly about market-failures via liberalization and some correcting instruments in the form of social regulation, then Moran's regulatory state is about popular sovereignty, democratization and modernization from above. The differences in interpretation are striking.[2]

III. The Odyssey Continues: The Matrimony of Regulation & Governance

The first decade of the second millennium saw yet another interesting development in the process of thickening the notion of the regulatory state. The term the 'new regulatory state' best expresses the rising interest in a theory of a regulatory state outside the United States but also for the first time involving a systematic effort to connect regulation with the literature of governance. To some extent the shift from 'government to governance' and the metaphor of steering as a regulatory procedure are echoes of earlier works (Seidman and Gilmore, 1986; Grabosky, 1995; Scott, 2000, Majone, 1997) yet it comes to a full and intriguing conceptualization with the notion of the "new regulatory state" (Braithwaite, 2000). For Braithwaite, the new regulatory state it is using more steering than rowing and is contrasted with the night watchman state on the one hand and the old regulatory state that was characterized by Keynesianism and direct control by the state. The new regulatory state differs from the old in its reliance on self-regulatory organization, enforced self regulation, compliance systems, codes of practice and other responsive techniques that substitute for direct command and control. The new regulatory state is therefore about the decentering of the state, 'rule at a distance', ranking and shaming and other forms of soft-regulation (Braithwaite 2000). Braithwaite's conceptualization reminds us that there was an old regulatory state which is identified with the centralization of

---

[2] King (2007) continues with the tradition of characterization - rather than definition and distinguishes between (a) the ambiguous regulatory state (most visible in higher education); (b) the insuring regulatory state (healthcare); (c) the globalized regulatory state (accountancy); and (d) the meso-regulatory state (legal services).

government and Command and Control. This observation was made at the same time by Michael Moran (without using the term 'new regulatory state):

> "In shorthand, 'regulatory state' is a product of the rise of the 'governance school' – of those who see distinctive governing systems emerging to match contemporary conditions of high complexity. The subtle shift in usage from 'government' to 'governance' is itself intended to announce a move away from the old command modes of hierarchical, classic bureaucracy to a world of negotiation within, and between, self-steering networks. In these accounts the regulatory state is more or less openly identified as the successor to, and the antithesis of, command" (Moran, 2000, 6).

The marriage of the governance and regulatory agenda was also captured by Levi-Faur and Jordana (Jordana & Levi-Faur, 2004) and later on, by Levi-Faur and Gilad (2004) who identified four characteristics of this new regulatory state. These characteristic include firstly, the bureaucratic functions of regulation are being separated from service delivery. With the withdrawal of the state from direct provision of services (i.e. via privatization of existing services and the nurturing of private provision of value-added services), regulatory functions are becoming increasingly salient and are the new frontiers where the state redefines itself. The visible element of this division of labor is the popularization of the regulatory agencies as institutional best practices; less salient but no less important is the expansion in role and number of 'regulatory auditors', mainly lawyers and accountants, who are dispersed in various government ministries and are involved with various forms of contracting out (Power 1997). Secondly, the regulatory functions of government are being separated from policy- making functions and, thus, the regulators are being placed at arm's-length from their political masters; the autonomy of regulators and regulatory agencies is institutionalized and thus further extends the sphere of 'apolitical' policy-making. Regulatory agencies became the citadels which fortified the autonomous and influential role of the regulocrats in the policy process. We are witnessing the strengthening of the regulators at the expense of politicians on the one hand and of the managerial elite on the other. Thirdly, and as a result of the first two elements, regulation and rule-making emerge as a distinct stage in the policy-making process. Accordingly, regulation is emerging as a distinct professional and administrative identity. The Weberian bureaucratic model is being augmented or even replaced by a new bureaucratic model: a regulatory model. From now on say regulocracy and not only bureaucracy. Fourthly, a degree of arm's-length and rule-based relations becomes the norm and replaces the club-style, intimate and informal relations that characterize older styles of decision-making. The relationships among regulators, and between regulators and other players, are based on formal rules and contracts rather than discretion.

The notion of the new regulatory state and the coupling of regulation and governance literature sometimes generate slightly different formulations. Two important works by Scott (2004) and Lobel (2004) contribute significantly to our understanding of the new regulatory state but still use somewhat confusing labels: 'post-regulatory state' in the Case of Scott and the "fall of regulation and the rise of governance"' in the case of Lobel. Both Scott and Lobel's notions of the new order largely fit the convergence of governance and regulation as suggested by Braithwaite. Thus, Scott writes in the spirit of the governance school that "the post-regulatory state is a state of mind which seeks to test the assumptions that states are the main loci of control over social and economic life or that they ought to have such a position and role. In the age of governance, regulatory control is perceived as diffused through society with less emphasis on the sovereign state" (Scott, 2004, 166). Similarly, Lobel's fall of regulation is really the fall of Command and Control regulation and the rise of governance is really the rise of new regulatory governance. This state is slowly becoming not only about a reliance on new style of regulation but also about sharing the regulatory task with social and business organization.

All in all it can be argued that the distinction between governance and regulation is narrowing. There is a happy marriage here as governments shed their responsibilities for service provision and shift more of their energies to regulating the service provision of diverse types of actor, including other state actors (Parker and Braithwaite, 2003, p.119; Jordana and Levi-Faur, 2004, Braithwaite, Coglianese and Levi-Faur, 2007). This recognition was also quick to emerge when the rise of the governance agenda in EU studies (Hooghe and Marks, 2001; Jachtenfuchs, 2001) met, half way, Majone's conceptualization of the EU as a regulatory state (Wallaby, 1999). Bringing governance and regulation together allowed a broader view of the ways capitalism is regulated, and the creation of a more diverse group of scholars with a broader outlook on the political economy of capitalism. The attractiveness of this formulation became evident with the successful launch of the ECPR Standing Group on Regulatory Governance (2005) and with the establishment of the Regulation & Governance journal in 2006 (the first issue came out a year later in 2007).

IV. Defining What the Regulatory State is and what it is not

It should also be clear by now that we need to look for a definition of the regulatory state that will help us to distinguish core features from characteristics, essence from image, historical context from core features, national from the transnational and global, and the normative from the factual. The strategy I adopt here defines the term regulatory state broadly enough to allow it to be useful beyond specific historical contexts or institutional dimensions but narrow enough to allow us to distinguish it from competing conceptualizations such as the Welfare State, the Developmental State and the Risk State. Unlike definitions of the welfare, developmental and risk states, my definition does not attach to the regulatory state any positive or negative goals or aims *per se*. Instead, I define the regulatory state on the basis of its instruments of control, that is, the regulatory state is a state that applies and extends rule-making, monitoring and enforcement via bureaucratic organs of the state. The regulatory state claims a legitimate monopoly over the deployment and distribution of power through rule-making, rule-monitoring and rule-enforcement. It is this *claim* for monopoly, which it may delegate or share at will, rather than a legitimate monopoly of the means of violence. Of course the claim for a monopoly does not suggest *actual* monopoly either nowadays or in the past. A claim is just a claim, not more and not less, and gaps in regards to the *actual* monopoly over the distribution regulatory authority similar to the gaps in regards to the actual monopoly on the means of violence.

This definition of the regulatory state allows it to promote equality or economic growth; to emphasize either efficiency or efficacy; to enslave and to empower or all at the same time. It does not require it to have preferences or an inclination towards judicial or quasi-judicial mechanisms of conflict resolution. This definition is also agonistic to the substantial centralization and decentralization of the state; it also agnostic to the extent of delegation employed. It does not suggest that regulatory agencies are unique or *sine qua non* to the regulatory state, nor that capture or autonomy are *sine qua non* to it. The overarching premise is the entrenchment of the rule of regulatory law in the internal and external working of the administrative state. In this way, the regulatory state concerns itself with the administrative process of governing capitalism. The purpose of the regulation, the procedures of rule-making, the type of monitoring, the agents of enforcement, the moral judgment, and the day-to-day relations with the regulatees vary from one regulatory state to another and from one period to another. The defining feature however remains the capacity and preference for governing via regulation.

Five distinctions allow us to clarify better what is or is not the regulatory state. **First,** this definition is inclusive for both old and new regulatory states. What makes the difference is the extent of decentralization of regulatory power, that is, the formal separation of the political and the legislative from the regulatory, and at the same time also the degree of decentralization of the regulatory between different specialized agencies. In brief we can say that while the old regulatory state is centered and hierarchical, the new one is decentered or poly-centered. Decenteredness is often expressed via a growth in delegation and increased specialization and diversification of regulatory institutions. Note that the new regulatory state is not necessarily liberal. I will come to that issue later.

Secondly, this definition allows us to draw the distinction between mature and immature regulatory states. Rule-making, rule-monitoring and rule-enforcement are administrative and legal capacities that are highly dependent on other democratic institutions such as the parliament and the court. Their development is a lengthy and punctuated process that requires time, resources and is closely related to the culture, interests and values of the elites. It is only by looking at the gradual process of institutionalization of systems of regulation that we can distinguish tipping points of maturity. Still maturity is not a historical, value-free or 'objective' criterion. What we need at the moment is not necessarily objectivity and ability to measure but clarity in both our thinking about the regulatory state and our ability to communicate our distinctions. Thus, maturity of the regulatory states is always *vis*-à-*vis* other regulatory states or one historical period *vis*-à-*vis* another. Maturity can be expressed via more elaborate systems of regulation, more 'rational' and 'efficient' or more 'legitimate'. One advantage of the distinction between mature and immature regulatory states is that it allows us to suggest that not all the new regulatory states are 'mature'. Conversely not all old regulatory states are immature.

Thirdly, one of the clearest definitions of the regulatory state identifies it with the expansion of regulation. Hood and his colleagues argue that the term "suggests [that] modern states are placing more emphasis on the use of authority, rules and standard-setting, partially displacing an earlier emphasis on public ownership, public subsidies, and directly provided services. The expanding part of modern government, the argument goes, is *regulation* …" (Hood et al., 1999, 3). This definition rightly identifies the regulatory state on the basis of the instrument that it deploys but the regulatory state also exists when regulation is not expanding or when policy makers have preferences for other instruments of control. While it is probably true that regulation is expanding (thus making the regulatory states more visible and crucial to our understanding of the political economy of democratic capitalism) expansion is not a *sine qua non* according to my definition.

Fourthly, the definition suggests that the regulatory state is neither neoliberal nor socialist. This goes against the widely held perception that the regulatory state represents a neoliberal alternative to the positive state (e.g., Majone's interpretation). Thus, for example McGowan and Wallace argue that the regulatory state is: "likely to intervene to underpin the market rather than replace markets; it is concerned to make markets work better and thus to compensate or substitute where markets fail" (1996: 63). Similarly, but from a critical perspective, Kanishka Jayasuriya (2001) suggests that the emerging regulatory state is best understood in terms of the notion of negative coordination as opposed to the positive coordination of economic management within social corporatist and developmental state structures. For him the regulatory state is a product of globalization, part of the negative coordination. If the regulatory state is about negative coordination then the developmental state and welfare state are about positive coordination. Holding to my own definition and with reference to regulation as an instrument of control it does not make sense to me to equate socialist or neoliberal policies with instruments of control. Public ownership, for example, can serve any purpose including the reassertion of markets. It is not more socialist than the regulatory duty to allow labor organizations a privileged position in collective bargaining. Similarly, private ownership in itself does not define the nature of the regime. What counts in deciding whether a policy regime is neoliberal are the goals of the regime and the social results, not necessarily the instruments. This does not suggest that policy instruments, regulation included, do not have strategic implications. The choice of instrument itself is political and the decision to draw on regulation rather than on fiscal transfers is often strategic. Nonetheless, the strategic choice in favor of one instrument over the other does not suggest that one instrument is inherently or systematically more just, fair, liberal or efficient.

Fifthly, the definition of the regulatory state that I offer here does not tell us the extent to which the state is autonomous or dependent. The autonomy is compounded of the autonomy of its regulatory institutions, agencies and procedures, norms and actors and its dependence on the legitimacy and the competition it faces from other actors and institutions. The issue arises out of the theory of regulatory capture (Stigler, 1971). In addition, in public discourse as in the scholarly discourse on regulation, the issue of autonomy of the state is often translated or transformed and reduced to the question of the autonomy of the agencies. Thus, economists like Cukierman (1992) and political scientists such as Gilardi and Maggetti (2011) made a concrete and impressive effort to measure the formal and informal independence of agencies across sectors and countries. The implicit assumption by the latter is about the possibility of state autonomy or regulatory autonomy. Adopting Nordlinger's concept of autonomy (1987), this means that regulators can adopt and promote their own regulatory preferences. They have both preferences and policy capacities. The possibility of autonomy might seem natural to my readers but it stands in contrast to Stigler's dictum, “as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." (1971, 3) Given the dominance of the capture approach in the theoretical discussions about regulation, the very idea of the regulatory state as an autonomous institution that may govern with the public interest in mind seems brave. Still this is the modernizing project upon which much of the reform of the state all over the world stands - both before and after the great financial crisis.

V. The Regulatory State vs. the Welfare State ?

There is, however, one more thing that may help us to understand what is the regulatory state and what it is not. The regulatory state is not the welfare state. The two are often contrasted as has been previously shown, most notably in the work of Majone. Yet, the contrast between the two forms of state rests on more than Majone's influential work. There are five, supportive conditions, that makes the distinction a convenient metaphor in comparative politics, policy and political economy. The contrast rests first of all on the distinctive administrative trajectory of state-building in the United States and Europe. In other words, it captures something of the distinctiveness of Europe and the exceptionalism of the United States. While the United States responded to the rise of big business with regulation, the Europeans responded with nationalization. While the United States was a laggard and reluctant provider in welfare state development, the Europeans were not only welfare pioneers but also more generous and universalist. And while social democratic parties did not thrive in the United States, in Europe they did. In this 'frame', what was unique about Europe was its welfare state, while what was unique about the United States was its regulatory state. It was a framework of convenience: a manner of speaking and writing, more than a tool of analysis. It existed in the discourse as a loose term despite the fact that welfare was provided increasingly across the Atlantic for most of the twentieth century, and that European states and social-democratic parties were not shy of using regulation. The notions of regulatory state and welfare state help us capture the historical specificities of divergent development in the United States and Europe but a closer look reveals that the attributes were only loosely connected.

A second reason is the memory of paternalistic and punitive social policy before the twentieth century, when social policy was used more as a tool of social control (Poor Laws) and not so much a tool for social betterment (a war on poverty rather than a war against the poor). The power of the poor laws was mostly regulatory, costs were levied on local communities and financial transfers were few. In this historical, mostly pre-twentieth century sense, the regulatory state and social regulation had a punitive character or at least served as tool to stabilize the social order (Piven and Cloward, 1971). By contrast, the progressive, post-war welfare state, was widely understood not as punitive form of social control but as the generous and visible hand of a democratic commitment to social equality. In other words, the scholarly community which is largely pro-welfare, and the politicians who promoted welfare both had good reasons to dissociate the regulatory state, with its punitive and conservative characteristics from the welfare state.

A third reason for the popularity of the contrast between the two forms of state is rooted in a more recent period. The economic reforms and transnational market integration processes both in Europe and elsewhere, since the 1980s, have led to the creation of new economic regimes which are based on the regulatory role of the state. Processes of market-making in administrative and political spheres that included everything from antitrust to finance and from telecom networks to water networks owe much to economic regulation and the effort to promote efficiency. The regulatory state that emerged from these processes is understood as a sphere of economic regulation rather than social regulation. This concurrent emphasis strengthens the distinction between the welfare state as the sphere of social regulation and the regulatory state as the sphere of economic regulation. Again, this is not the case, the social and the economic are enmeshed. They are intertwined and the distinction is a mere framing (Leisering, 2011; Mabbett, 2011, Haber, 2011).

Still, the list of reasons for this popular distinction does not end here. Probably the most important reason (our fourth) is the seminal distinction between four different types of policies, made by Theodore Lowi (1964, 1972). This seminal distinction which is often cited but rarely used was effectively refuted by Wilson (1980) but still has a grip on our scholarly imagination. Most relevant for our purpose are two of the distinctions Lowi made - between redistributive and regulatory policies. Each of these is characterized by the different structure of costs and benefits of the policy process and therefore also by different types of political organization. Regulation is the domain of interest politics, closed policy communities, high costs of entry to lay people and with unclear costs and benefits. The welfare state by contrast is the area of class politics (meaning political parties and elected officials) with relatively clear budgetary implications of any decision. Different political processes, different degrees of visibility and different cost structures give another and this time a non-historical dimension to the distinction between the welfare and the regulatory state..

Finally, the strength of the contrast between these two forms of state is that while the regulatory state was identified with rule procedures, good governance and expertise, the welfare state is identified with social justice, some commitment to equality of opportunity and affirmative action. While level, form and scope of commitment for justice, equality and affirmative action vary across welfare states, they are all about social engineering. One is procedural and 'natural' while the other is essentialist and 'positive'. Looking from this point of view, the regulatory state might seem more minimal in its ambitions. And indeed, the association of the regulatory state with the less ambitious forms of social engineering completed and to some extent sealed the contrast. But the limit of the contrast is also evident here. Regulation may indeed be less intrusive than nationalization, yet, the content, scope and regulation can be very intrusive. See, indeed, neo-mercantilists (Levi-Faur, 1998) and high modernists (Moran, 2003). The content of regulation is not necessarily procedural. It can carry values and other preferences as much as any other instrument of governance.

Taken together, these distinctions created conceptual walls. Walls sometimes make good neighbors but not always. It depends. As I showed above, there are costs to these walls. They do not come for free. The contrast helped to legitimize the emergence of two separate communities: the regulatory governance community and the welfare and social policy community. The walls between them are too high for the good of either (Leisering, 2011, Mabbett, 2011). I therefore suggest that regulation is an important and constitutive element of the welfare state and thus help to bring down the barriers. In turn, as the next section demonstrates, results in a rather new understanding of the boundaries of the regulatory state and of the welfare state.

VI. Rescue: The Welfare State as Penelope

That "policy" makes "politics" (Lowi, 1964) and that costs and benefits vary across groups is now widely acknowledged. Our ideas and ideologies are grounded in a certain range of experiences that is confined and limited by the dominant policy and instruments of the period. To understand this argument better and to connect it directly to our discussion, consider the three-way-metonymy of *redistribution policies*, fiscal transfer as an *instrument* and the welfare *state*. Redistribution we tend to believe rests on fiscal transfers and the welfare state involves fiscal transfers from one group to another. Large scale fiscal transfers, high-politics, class and head-to-head conflicts about crucial junctures, large-scale economic crises, world wars, class compromises and the emergence of new political parties or at least new political leaders. This is the narrative of the heroic welfare state as it was written in Europe, North America and Oceania in the twentieth century. Yet there is a hidden welfare state: one of low politics, back-room deals and rule-making rather than fiscal transfer. Much of what is hidden from our understanding of the welfare state is hidden by regulation. Rule-making, rule-monitoring and rule-enforcement are at the heart of welfare capitalism. The hidden parts of what we call the welfare state are as important, if not more so than, the visible parts; the heart is the core and the core is regulatory.

Those readers who are familiar with the literature know that the term ‘welfare state’ is as ambiguous and contested as that of ‘regulatory state’ (Briggs, 1961, 221; Titmuss, 1968, 124; Esping-Andersen, 1990, 18-20; Veit-Wilson, 2000). It has become increasingly apparent that the notion of the welfare state is too narrow to encapsulate the complex architectures, strategies and communities that provide welfare (Esping-

Andersen, 1999). Welfare-state regimes, varieties of welfare-state regimes and welfare capitalism have been suggested, but are not without their limitations (Kasza, 2002; Wincott, 2001). What is being increasingly recognized in the last few years (but is still largely underdeveloped theoretically) is that the welfare state has hidden parts which are not visible via national budgets (Howard,1997; 2007). They include tax expenditures, loan and loan guarantees and the costs of social regulation. The pillars of welfare in our capitalist systems include not only the welfare state but also the welfare economy (sometimes known as private welfare, surrogate social policy, occupational welfare, industrial welfare, corporate welfare or enterprise welfare) and the welfare-society (also known as third-sector welfare, cooperative welfare, labor union based social insurance, religious welfare, communal welfare). When we consider the hidden parts of the welfare state and the non-state pillars and the importance of transnational social regulations, the importance of regulation becomes clearer and welfare and social policy escape the confines of fiscal transfer and statism more generally. The scope, form and depth of redistribution via regulation becomes clearer, the boundaries of the regulatory state are set much wider than is usually believed and our understanding of welfare provision and welfare governance change.

The major observation I would like to make here is that regulation is increasing in the welfare state arena. While elsewhere it was suggested that regulation is exploding on the basis of the number of agencies, regulatory regimes and rules(Levi-Faur, 2005), it is now possible to extend the argument and point to the multiple sources for the growth of regulation in welfare state arenas. **First**, the growth reflects the demand for transparency, accountability, fairness and equality by the administrative machinery of the welfare state (from physicians to teachers, from politicians to bureaucrats, from front office to back office officials). These demands - which are being translated into regulation - are directed both towards the high-priests of welfare (Scott, 2000; Lodge, 2004, 2008) as well as towards street-level bureaucrats (Piore, 2011). Regulation-within-the-state (meaning not of business or society) is one important source of the growth of regulation in the welfare state (Hood et al., 1999). **Secondly**, regulation is growing as a reflection of the demand for the same values by the business- and civil-society actors that are outsourced to supply these services (Benish and Levi-Faur, 2011). Outsourcing welfare services is often associated with the growth of regulation of the contractors who serve as the agents of the state (Sol and Westerveld, 2005;

Henman and Fenger, 2006). **Thirdly**, as a reflection of the demand for working in an efficient manner and to be able to demonstrate it, we can expect the growth of cost-benefit analysis of everything from laws to policy to regulation and at the same time the emergence of performance indicators that demonstrate efficiency (Radaelli, 2011; Shapiro, 2011, Wegrich, 2011). All these create a new layer of regulation-for-efficiency. **Fourthly**, through the preference of some political actors for replacing direct and visible financial transfer by more invisible tax expenditures, loans and loans-guarantees as tools of social policy. The choice of instrument is strategic (Lascoumes and Le Gales, 2007) and regulation allows these actors a more sophisticated and protracted ways to achieve their goals.

Fifthly, the emergence of the 'welfare economy' in the workplace and via economic actors creates new regulatory challenges. The notion of a 'welfare economy' refers to the institutional role of business, corporations and market actors in the provision of welfare (Shalev, 1996). The provision of welfare, in the welfare economy, is supplied either as a formal or informal right of the recipients, as negotiated outcomes, or as voluntary contributions. In this formulation the welfare economy appears as the coercive or voluntary internalization of welfare and social goals by actors who are essentially economic, meaning dealing with production of goods and services and most often for profit. The welfare economy is the least visible pillar of the supply of welfare in capitalism. It is both the substitute and the competitor of the provision of welfare by the state, and its supplement. The welfare economy can be mandated and incentivized by the state, negotiated with labor unions, designed by human-resources of the corporation in order to attract skilled labor or provided voluntarily by the corporation as part of social responsibility commitments either to their employees or to their communities. The welfare economy includes market actors who work in non-welfare markets but still find themselves involved in welfare issues as well as being the providers of for-profit welfare. Both types find they are involved in the bureaucratic management of welfare and therefore become regulators of the welfare they supply and the regulatee of other institutions, most often states. The scope of the welfare economy is big and it is expanding. Just consider the following finding by Klein:

> "More than two-thirds of the American population under age 65 depend on employer-sponsored health plans; job-based health insurance has remained the primary door to health plans; job-based health insurance has remained the primary door to health coverage for nonelderly Americans. In 2000, employers spent $874 billion on employee benefits, including $186 billion on employee retirement programs and $300 billion on health insurance … " (Klein, 2003, 3)

Katz (2008) reaffirmed this and observed that "At 7.82% of GDP, American's 1993 'voluntary private social expenditures' far exceed those of other advanced nations: 3.19 percent in UK, 0.97 percent in Sweden and 1.47% in Germany ... in 1982, $824 billion" (Katz, 2003, 13-4). The welfare economy was for a long time part and parcel of private and collective bargaining systems at the work place where leisure programs, breaks, paid leave, company-stores, company nurseries and schools were institutionalized forms of support for employees. These benefits were confined of course to the employees and sometimes only for some of them; they were sometimes troubling because they were tied into the corporation. They are not new. Companies established private pension plans even in the nineteenth century and possibly before. For example, the American Express Company's private employer pension plan was established in 1875. These programs grew in tandem, or sometimes as alternatives, to the growth of coercive arrangements promoted by the welfare state.[3]

Sixthly, the expansion of the 'welfare society' both as a workplace and as a supplier of services also creates new regulatory challenges. This building block, or pillar of provision, is also crucially important and like the welfare economy tends to grow. The tasks, the organizational structures, the size of the organizations, their scope, their finance, and the motives for the supply of welfare are diverse (Rein and Rainwater, 1986). The more diverse they are the more complex is the regulatory challenge that they represent. This is not only because they tend to 'marketize' themselves but

---

[3] http://ebri.org/publications/benfaq/

because abuse of power, cases of corruption, issues of fairness and paternalism are also prevalent in the welfare society. These problems are not confined only or even mainly to the pillars of the welfare state and the welfare economy.

Seventhly, welfare regimes of the global south and more generally outside Scandinavia and West Europe are likely to expand in the American manner, with large hidden welfare state and large pillars of economic and social welfare (Gough and Wood, 2004; Haggard and Kaufmann, 2008; Kim, 2010). While the Global South is as, or even more, diverse then the North, it shares one commonality. The generosity of its welfare state provisions is narrower and leaner compared with Europe. The future of welfare in the Global South is most likely to be with the welfare economy or the welfare society rather than with the state itself. Whether we like it or not, it is the most likely outcome of the balance of power between social-democrats and business and with it also the expansion in the regulatory role of the state rather than in its role as provider and financier of welfare services.

Eighthly, there is a new set of problems and challenges that call for change in social attitudes and behavior and thus require social regulation rather than financial support from the state. Issues of maternity and paternity leave, sexual and other types of abuse in the work place, ethics in research, working hours, severance pay, equal opportunities are all matters which are promoted and enforced via regulation. Consider for example the role of rules in pensions - entry rules, retirement ages, transferability, options for chasing, minimum time for eligibility, insurance aspects. They are all combined into a Pension Code which is as important and as obscure as the Tax Code (see, Graetz, 2007). Their financial implications can be enormous. They have redistributive effects but they are not as visible and measurable as 'classical' transfer programs.

Ninthly, the emergence and expansion of regional and global organizations - both intergovernmental and non-governmental - that have more regulatory and normative power than financial resources opened a new venue for regulatory action and regulatory expansion. Experimentalism via open modes of governance or regulatory governance is thriving in the European Union and well beyond it (Borrás and

Radaelli, 2011; Sable and Zeitlin, 2012). Severe limits on the taxing and spending capacities of international organizations and players suggest a turn to regulation.

Tenthly, another source for regulatory growth in the welfare arena derives from the rather most growth achievements of most of the developed economies last three decades when compared to the Postwar era and even more so in the current era of austerity. The growth of the welfare state in the post-war period was set around fiscal transfers at the time when the economy was growing rapidly. The larger the cake the easier it is to shift priorities and serve bigger slices. In this sense the 'class-compromise' that served as the political backbone of the creation of the European welfare-state was an easy compromise. This however has not been the case since the mid-1970s and with the slowing of the world economy the growth of the welfare state has become even more contested and with it also the maintenance of the class compromise. A relatively easy expansion of the welfare state via fiscal transfer in the near future is unlikely to happen in the wake of the financial crisis and the era of fiscal austerity. Public ownership as a form of control, development and social engineering is not on the agenda and neither is direct public services provision. This leaves us with regulation as an instrument that transfers compliance costs to the regulatees. In other words, the coalitions that favor the expansion of the welfare state are more likely to be successful in the deployment of social regulation than in fiscal transfers.

Regulation as an instrument of welfare governance is more important than I originally expected. This leads me to suggest that regulation and the regulatory state are more crucial to the welfare state than is usually assumed. It might also be the case that the welfare state of the future may look like a regulatory state: a regulatory rescue of the welfare state in places and eras and regions where the state is unwilling to draw on its power to tax and spend or direct and visible programs of transfer. We end the Odyssey with a dramatic turn of events where welfare capitalism is turned on its head: the latent regulatory layer first, the fiscal and visible financial transfers second: Odysseus saving Penelope from her unwelcome suitors and then claiming her as his own.

VII. Conclusions

This paper achieved, so I hope, three main things. First, it rescued the regulatory state from the narrow confines of historical, national and regional specificities. The regulatory state is not British nor American; it is also not the one at the EU level, nor does it exhibit solely the administrative architecture of the United States or any federal polity. It is all these and more. Similarly, it is not summarized by the existence or the prevalence of independent agencies, or commissions. These all reflect only the particularities of architecture, time and place. The notion of the regulatory state, it was asserted, can apply to any state which relies on rule-making, rule-monitoring and rule-enforcement. This definition can travel in time because it is thinner than its competitors. It does not require agencies, democratic or economic liberalism, nor does it have any particular affinity to Anglo-Saxon or Western cultures. The lighter weight allows us, I believe, not only to travel further (both to the past and to the future) but to understand the regulatory aspects of the present social, political and economic order better.

Secondly, this paper shows that the boundaries of the regulatory state are wider than are usually understood. They are not confined to economic integrity and social regulation but are constitutive elements of the welfare state and more generally of welfare capitalism. Looking at the welfare state from a regulatory perspective, rather than a fiscal transfer perspective, allows us to understand and conceptualize the future growth of the role of the state via regulation rather than solely or even mainly on fiscal transfers.

Thirdly, the paper rejects the popular contrast of the regulatory state *vs*. the welfare state. The welfare state may exist in parallel, or not, with the regulatory state but they are not the flip-sides of each other. States can provides services, nurture managerial ethos, provide services, dispose loans and loan guarantees, and, of course, extract tax and spend at will. All these are instruments of government that are functionally equivalent to regulation. Thus it makes sense to talk about a shift from the Service-provision State to the Regulatory State because the move is for example from one style of governance (managerial) to another (steering). It may also make sense to talk on a shift from the Tax & Spend State to the Regulatory State in the sense that the first uses fiscal tools while the others regulatory tools. The argument of a shift from the Welfare State to the Regulatory State however makes less sense. Welfare is a desired aim, regulation is an instrument. The notion of the Welfare State tells us about the role assumed or to be assumed by the state but the notion of the regulatory state tells us about the instrument that the state employs. We need to bring them together but in different ways. I can see two reasonable ways but have a clear preference for the second. The first of these ways is to suggest that the regulatory state and the welfare state are merging into a hybrid 'regulatory-welfare state'. This would allow us to capture the importance and growth of regulation in the provision of welfare, to reject the thesis of the transformation of the welfare state into a regulatory state and to increase awareness of the particularities of regulatory politics in the analysis of social and welfare policies. Yet, this new label comes with a price. It brings together a form of state that relies on an instrument (regulation) and a state which is defined by its aims (welfare). Moreover, if similar processes of regulatory expansion are evident in the developmental and risk arenas we will have to talk about the regulatory-developmental and regulatory-risk states or even merge them all into a regulatory-welfare-developmental-risk state. Instead, I suggest keeping the notion of the regulatory state and the welfare state *separate* in order to point to their *constitutive* relations. The relations are constitutive in the sense that the welfare state relies on an extensive system of regulation both in order to regulate its own processes and to govern the economic and social pillars of welfare-provision. Regulation, rule-making, rule-monitoring and rule-enforcement, is the administrative infrastructure of welfare governance.

Taking all of these together suggests that the regulatory state and the use of regulation are here to stay. The future of the European regulatory state seems even brighter in the wake of the financial crisis and era of fiscal austerity. Public ownership as a form of control, development and social engineering is again not on the agenda. Neither is direct public services provision. The basic premises of good administrative governance, as formulated in the Anglo-Saxon administrative reforms literature of the 1990s, are here to stay. Processes of rule-making, rule-monitoring and rule-enforcement will continue to stand at the center of government attention. The politics of austerity will only reinforce this trend since austerity implies that the costs of governance will continue to fall on the regulatees rather than on public budget. The intersection of the politics of austerity with the politics of distrust, where everyone is a potential suspect, everyone is accountable and the discretion which office holders can exercise is increasingly restricted, promise to thicken even further the current layer of regulation. Public demands for accountability and transparency are forms of regulation. To the extent that the regulatory state is a response to globalization, privatization and outsourcing on the one hand and cultural, political and social developments such as liberalism, distrust and democratization on the other, there is no clear reason at the moment to expect its stagnation or transformation.

The regulatory state is not always a progressive instrument; it is often a regressive one. The welfare state is not always a progressive institution; it is sometimes an instrument of social control and a punitive one. Neither their hybridization (regulatory-welfare state) nor their 'constitutive relations ' (my own preference) should disguise the fact that they are both bureaucracies. We need to take these public bureaucracies more seriously (Olsen, 2006) and be aware of their dual character: The decommodification role, as well as the commodification and recommodification role, can be empowering and liberating as well as enslaving and re-enslaving. But, of course, this has already been said. According to Weber, bureaucracy is not only a manifestation of rationality but also, and at the same time, an instrument of human enslavement and impersonalization. The momentum towards ever-increasing efficiency leads humanity towards an ‘iron cage’ rather than emancipation. It is within this framework that I suggest we will find the regulatory and the welfare states as both regressive and progressive.

Bibliography

Anderson, J.E. 1962. *The Emergence of the Regulatory State*, Public Affairs Press, Washington.

Bardach E, Kagan RA 1982. *Going by the Book: The Problem of Regulatory Unreasonableness*. Temple University Press, Philadelphia.

Begg I. et al. 2001. *Social Exclusion and Social Protection. The Future Role of the EU*, EXSPRO Policy report, Southbank University, European Institute, London.

Benish A. and Levi-Faur, D. 2011. *New Forms of Administrative Law in the Age of Third Party Government* unpublished manuscript

Borrás, S. and Radaelli C.M. 2011. The politics of governance architectures: creation, change and effects of the EU Lisbon Strategy, *Journal of European Public Policy*, 18(4), pp. 463-484.

Braithwaite, J. 2000. The New Regulatory State and the Transformation of Criminology. *British Journal of Criminology* 40, 222–38.

Braithwaite, J. Coglianese C. and Levi-Faur, D. Can Regulation and Governance make a Difference, *Regulation and Governance*, 1(1), 2007, 1-7

Briggs Asa, 1961. The Welfare State in Historical Perspective, *European Journal of Sociology*, 2, pp. 221-258.

Christensen T. and Laegreid P., (Eds), 2006., *Autonomy and Regulation. Coping with Agencies in the Modern State*. Cheltenham: Edward Elgar.

Cukierman A. 1992. *Central bank strategy, credibility, and independence: Theory and Evidence*, MIT Press, Boston.

Dekmejian H.R. 1971. *Egypt under Nasir: a Study in Political Dynamics*, State University of New York Press, Albany.

Dubash K.N and Morgan B. 2011, *Understanding the Rise of the Regulatory State in the South*, Unpublished ms.

Dunleavy, P. and O'Leary B. 1987. *Theories of the State: The Politics of Liberal Democracy*, Basingstoke Macmillan.

Eisenstadt, SN. 1958. Bureaucracy and Bureaucratization, *Current Sociology*, 1958, vol. 7(2), pp. 99-124

Eisner, M.A. 2000. *Regulatory Politics in Transition*. Baltimore, Johns Hopkins University Press, 2nd ed.

Esping-Andersen, G. 1990. *The Three Worlds of Welfare Capitalism*, Princeton, Princeton University Press.

Esping-Andersen, G. 1999. *Social Foundations of Postindustrial Economies*, New York, Oxford University Press.

Graetz J.M. 2007. 100 Million Unnecessary Returns, Yale University Press, New Heaven.

Garfinkel, I., Smeeding, T., & Rainwater, L. 2010. *Wealth and Welfare States: Is America a Laggard or Leader*? Oxford, U.K.: Oxford University Press.

Gilardi F. and Maggetti M 2011. The Independence of Regulatory Authorities, In Levi-Faur, D. (Ed.) *Handbook on the Politics of Regulation*, Edward Elgar, Cheltenham.

Gough, I. and Wood, G. (Eds.) 2004. Insecurity and Welfare Regimes in Asia, Africa and Latin America, Cambridge, Cambridge University Press.

Grabosky, P. 1995., 'Using Non-Governmental Resources to Foster Regulatory Compliance' *Governance*, 8, 527-50.

Gunningham, Neil and Grabosky, Peter N. 1998. *Smart Regulation: Designing Environmental Policy*. Oxford: Clarendon.

Haber, H. 2010. "Regulating-for-Welfare: A Comparative Study of 'Regulatory Welfare Regimes' in the Israeli, British, and Swedish Electricity Sectors." *Law & Policy*, 33(1): 116–148

Haggard, S. and Kaufmann, R. 2008 *Development, Democracy, and Welfare States: Latin America, East Asia, and Eastern Europe*, Princeton, Princeton University Press.

Henman P. and Fenger M. (Eds.) 2006. *Administrating Welfare Reform: International Transformation in Welfare Governance*, Bristol, Policy Press.

Hood C, Scott C, Oliver, Jones G, Travers T 1999. *Regulation inside Government*. Oxford University Press, Oxford.

Hood C, Rothstein H, Baldwin R 2001. *The Government of Risk: Understanding Risk Regulation Regime*. Oxford University Press, Oxford.

Hooghe, L and Marks, G. 2001. *Multi-level Governance and European Integration.* London: Rowman & Littlefield.

Howard, Christopher. 1997. *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States*. Princeton, NJ: Princeton University Press.

Howard, Christopher. 2007. *The Welfare State Nobody Knows: Debunking Myths About US Social Policy*, Princeton, NJ: Princeton University Press.

Jachtenfuchs, M. 2001. The Governance Approach to European Integration, *Journal of Common Market Studies*, Vol. 39, No, 2 (2001), pp. 245-264.

Jayasuriya, K. 2001, "Globalization and the Changing Architecture of the State: The Politics of the Regulatory State and the Politics of Negative Co-ordination", *Journal of European Public Policy*, Vol. 8(1), pp. 101-123.

Johnson, C. 1982. *MITI and the Japanese Miracle: The Growth of Industry Policy*. Stanford: Stanford University Press.

Jordana J. and Levi-Faur, D. (Eds.). 2004. *The Politics of Regulation*. Cheltenham, Edward Elgar.

Kasza, J.G. 2002. The Illusion of Welfare 'Regimes', *International Journal of Social Policy*, 31(2), pp. 271-287.

Katz B.M. 2008. *The Price of Citizenship: Redefining the American Welfare State,* Updated Edition, University of Pennsylvania Press, Philadelphia.

Kim P.H. 2010. The East Asian Welfare State Debate and Surrogate Social Policy: An Exploratory Study on Japan and South Korea, *Socio-Economic Review*, 8, pp. 411-435.

King D. and Lieberman, R.C 2009. Ironies of State Building: A Comparative Perspective on the American State. *World Politics*, 61, pp 547-588.

King R. 2007. *The Regulatory State in the Age of Governance*, Palgrave, Basingstoke.

Klein, J. 2003. *For All These Rights: Business, Labor and the Shaping of America's Public-Private Welfare State*, Princeton University Press, Princeton.

Lascoumes P. and Le Gales, P. 2007. , Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. Governance, 20: 1–21.

Leisering, L. (Ed.) 2011. *The New Regulatory State. Regulating Private Pensions in Germany and the UK*, Palgrave-McMillan, Basingstoke.

Levy, B. and Spiller P. (eds) 1996. *Regulation, Institutions and Commitment*, Cambridge, Cambridge University Press

Levi-Faur D 1998. The Competition State as a Neomercantilist State: Restructuring Global Telecommunications. *Journal of Socio-Economics* 27, 665–85.

Levi-Faur, D. 2005. The Global Diffusion of Regulatory Capitalism. *The Annals of the American Academy of Political and Social Sciences* 598, 12–32.

Levi-Faur, D. 2007. Regulatory Governance. In: P. Graziano & M. Vink (Eds.), *Europeanization: New Research Agendas*, Palgrave Macmillan, pp. 102-114.

Levi-Faur, D, Gilad S 2004 The Rise of the British Regulatory State: Transcending the Privatization Debate. *Comparative Politics*, 37 (1). pp. 105-124

Lobel, O. 2004. The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought. *Minnesota Law Review* 89, 342-370.

Lodge, M. 2004. Accountability and Transparency in Regulation: critiques, doctrines and instruments, In Jordana Jacint and Levi-Faur David (Eds.), *The Politics of Regulation in the Age of Governance*, pp. 124-144.

Lodge M 2008. Regulation, the Regulatory State and European Politics. *West European Politics* 31 (1/2*)*, 280-301.

Lowi, J.T. 1964. American Business, Public Policy, Case Studies, and Political Theory *World Politics*, Vol. 16, pp. 677-715.

Lowi, J.T. 1972. Four Systems of Politics, Policy and Choice. *Public Administration Review*, Vol. 32, pp. 298-310.

Mabbett, D. 2011. The regulatory state and the welfare state. In Levi-Faur, D. (Ed.) *Handbook on the Politics of Regulation*, ed. David Levi-Faur. Edward Elgar, Cheltenham.

Majone, G. 1991. Cross-National Sources of Regulatory Policymaking in Europe and the United States. *Journal of Public Policy*, 11, pp 79-106

Majone G 1994. The Rise of the Regulatory State in Europe. *West European Politics* 17, 77–101.

Majone G 1997. From the Positive to the Regulatory State. *Journal of Public Policy* 17, 139–67.

McGowan, F. and Wallace, H. 1996. Towards a European Regulatory State, *Journal of European Public Policy*, Vol. 3(4), pp. 560-576.

Mitnick B 1980. *The Political Economy of Regulation*. Columbia University Press, New York.

Moran, M. 2000. From Command State to Regulatory State? *Public Policy and Administration*, 15(4): 1–13.

Moran, M. 2003., *The British Regulatory State: High Modernism and Hyper Innovation*, Oxford, Oxford University Press.

Nettl, J.P. 1968. The State as a Conceptual Variable", *World Politics*, 20(4): 559-92

Nordlinger, E. 1987. Taking the State Seriously. In: Weiner, M. & Huntington, P. S. (Eds.), *Understanding Political Development*, Little, Brown, Boston, pp. 353-390.

Novak W.J. 2008. The Myth of the "Weak" American State, *The American Historical Review,* Vol. 113 (3), pp. 752-772.

Olsen, J.P. 2006. Maybe It Is Time to Rediscover Bureaucracy, *Journal of Public Administration Research and Theory*, 16(1): 1-24

Orren K. and Skowronek S. 2006. *The Search for American Political Development*, Cambridge University Press, Cambridge.

Parker C, Braithwaite J 2003. Regulation. In Cane P, Tushnet M (eds). *The Oxford Handbook of Legal Studies*, Oxford University Press, Oxford, pp. 119–45..

Piore, M. J. 2011. Beyond Markets: Sociology, Street-level Bureaucracy, and the Management of the Public Sector. *Regulation & Governance*, 5: 145–164

Piven, Frances Fox, & Cloward, Richard A. 1971. *Regulating the poor: The functions of public welfare*, New York: Pantheon.

Power, M. 1997. *The Audit Society: Rituals of Verification*. Oxford University Press, Oxford.

Radaelli, C.M. 2010. 'Regulating Rule-Making via Impact Assessment', *Governance*, 23 (1), 89-108

Rein M. and Rainwater L. (Eds). 1986. *Public/private Interplay in Social Protection: a Comparative Study*, M. Sharpe, New York.

Rose-Ackerman, S. 1992. *Rethinking the Progressive Agenda: The Reform of the American Regulatory State*, The Free Press, New York.

Sable Charles F. and Zeitlin Jonathan. 2012. Experimentalist Governance, In Levi-Faur, D (Ed), *The Oxford Handbook of Governance*. Oxford: Oxford University Press.

Scott C. 2000. Accountability in the Regulatory State, *Journal of Law and Society*, 37 :38-60.

Scott. C. 2004. 'Regulation in the Age of Governance: The Rise of the Post-Regulatory State', in Jordana Jacint and Levi-Faur David (Eds.), *The Politics of Regulation in the Age of Governance*, pp. 145-174.

Seidman H, Gilmour R.S. 1986. *Politics, Position, and Power: From the Positive to the Regulatory State*, Oxford: Oxford University Press, 1986.

Shalev M. 1996. *The Privatization of Social Policy? Occupational* Welfare and the Welfare State in America, Scandinavia, and Japan, Macmillan, London.

Shapiro S. 2011. The Evolution of Cost-Benefit Analysis in U.S. Regulatory Decisionmaking, In: Levi-Faur, D. (Ed), *Handbook on the Politics of Regulation*, Edward Elgar, Cheltenham.

Skocpol, T. 1985. Bringing the State Back In: Strategies of Analysis in Current Research. In P. Evans, D. Rueschemeyer and T. Skocpol (eds), *Bringing the State Back In* Cambridge: Cambridge University Press, pp. 3–43.

Skowronek, S. 1982. *Building a new American State: The Expansion of National Administrative Capacities, 1877-1920*, Cambridge University Press, Cambridge.

Sol E. and Westerveld M. (Eds.) 2005. *Contractualism in Employment Services: A new Form of Welfare State Governance,* Kluwer, The Hague.

Stigler G J 1971 The Theory of Economic Regulation. *Bell Journal of Economics and Management Science*, 2, 3–21.

Sunstein, C. 1990. *After the Right Revolution: Reconceiving the Regulatory State,* Harvard University Press, Cambridge. Mass.

Taylor-Gooby, P. 2004. New risks, new welfare: the transformation of the European welfare state. Oxford University Press, USA

Titmuss R. 1968. *Commitment to Welfare*, London, George Allen & Unwin.

Veit-Wilson, J. 2000. States of Welfare: A Conceptual Challenge. *Social Policy & Administration*, 34: 1–25.

Wallaby, S. 1999. The New Regulatory State; The Social Powers of the European Union, *British Journal of Sociology*, Vol. 30 (1), pp. 118-140.

Wegrich, K. 2011. Regulatory Impact Assessment: Ambition, Design and Politics In: Levi-Faur, D. (Ed), *Handbook on the Politics of Regulation*, Edward Elgar, Cheltenham.

Wilson J.Q. 1980. *The Politics of Regulation*. Basic Books, New York.

Wincott, D. 2001. Reassessing the Social Foundations of Welfare (State) Regimes, *New Political Economy*, 6(3), pp. 409-426.

Yergin, Daniel and Stanislaw, Joseph, 1999. *The Commanding Heights: The Battle for the World Economy*. New York: Simon & Schuster.

