

# Jerusalem Papers in Regulation & Governance

Working Paper No. 55  
August 2013

## THE WELFARE STATE: A REGULATORY PERSPECTIVE

**David Levi-Faur**

Department of Political Science & School of Public Policy  
The Hebrew University of Jerusalem,  
Mount Scopus, Jerusalem, Israel, 91905.  
Email: [levifaur@mscc.huji.ac.il](mailto:levifaur@mscc.huji.ac.il)

---

הפורום הירושלמי    Jerusalem Forum  
לרגולציה וממשליות    on Regulation & Governance  
האוניברסיטה העברית    The Hebrew University  
Mount Scopus  
הר הצופים    Jerusalem, 91905, Israel  
regulation@mscc.huji.ac.il :Email  
<http://regulation.huji.ac.il>

---

# The Welfare State: A Regulatory Perspective

**David Levi-Faur**

**Abstract:** The role of regulation and the regulatory state in social policy, redistribution and the reforms of the welfare state are increasingly important but often underestimated and misunderstood. These problems are evident in Majone's highly influential work where the regulatory state and the 'positive' state stand as two alternative monomorphic forms of state. This paper offers a polymorphic alternative where the regulatory state may come to the rescue of the welfare state, allowing independent extension, retrenchment and stagnation of welfare via social regulation. The paper extends a regulatory governance perspective into the core of the welfare state, clarifies the relations between fiscal and regulatory instruments, and demonstrates that the boundaries of the regulatory state are wider than are usually understood. It turns our understanding of the welfare state on its head, highlighting first the less visible regulatory layer, and then the more visible layer of fiscal transfers.

**Keywords:** welfare state, regulatory state, state theory, regulation, fiscal transfer, redistribution, regulatory welfare state, varieties of welfare state.

**Acknowledgements:** This paper was presented at the Fourth Biennial Conference of the Standing Group on Regulatory Governance at the University of Exeter, 27-29 June 2012. Reg&Gov Network (L) section during the 25th anniversary conference of the Society for the Advancement of Socio-Economics, 27 – 29 June 2013, Milan, Italy. I am grateful for comments and suggestions from Christoffer Green-Pedersen, Hanan Haber, Miriam Hartlapp, Deborah Mabbett, Daniel Winccott, Smadar Moshel and four reviewers of this journal for their comments on earlier versions of the paper. All usual disclaimers apply. Research was supported by the Israeli Science Foundation Grant, 280/03. This paper is forthcoming in Public Administration.

## **The Welfare State: A Regulatory Perspective**

Efforts to capture the various morphs of the state and their dynamics have so far produced a multitude of adjectives and labels such as welfare state, developmental state, positive state, rent-seeking state, predatory state, minimal state, crony state, administrative state, pluralist state, corporatist state, neoliberal state and social-democratic state.<sup>1</sup> Some of these adjectives convey positive images, while others convey contentious or bluntly derogatory images. Some are well defined and others are not. Some are constructed as monomorphic and essentialist concepts, while others adopt a polymorphic approach which rejects essentialism in favor of institutional pluralism (Dunleavy and O'Leary, 1987). The labels signify the pervasiveness of the state in our political imagination but they also allow us to construct and defend scholarly territories building visible and less visible walls around these concepts. In an effort to move beyond these divisions, this paper offers a theory of the state which builds upon, and brings together, two scholarly communities – that of the welfare state and that of the regulatory state.

These two scholarly communities rarely interact systemically and the two concepts are hardly ever studied together.<sup>2</sup> Instead, the regulatory state and the welfare state are routinely presented as trade-offs, that is, alternatives and competing forms of state organization, reinforcing the disciplinary walls between these communities. Each of these types of state is associated with its own logic (social justice vs. procedural fairness), with its own legitimacy (output vs. procedural) and with its own primary instrument of choice (fiscal transfers vs. rule making).<sup>3</sup> The most explicit and influential dichotomy of this sort derives from Majone's work on the rise of the regulatory state (Majone, 1994; 1997). Majone did wonders for the growth of the field and correctly identified the so-called rise of the regulatory state. Still, his framework fails to recognize that the regulatory state and the welfare state can coexist and that the regulatory state may strengthen the welfare state. Part of the problem stems from his monomorphic conceptions of the state where the state is either this or that – never both. Another problem stems from an often unarticulated perception of the regulatory state as essentially a liberal form of state and of the welfare state, and fiscal transfers as inherently egalitarian. Still, we should forget, the regulatory state can be very

political and authoritative and the welfare state can be paternalistic, dominating and biased towards the middle class rather than the poor. The application of regulatory instruments and fiscal transfer do suggest neither fairness nor egalitarianism. These are political options rather than a guarantee for a certain policy outcome. This paper proposes a polymorphic approach to the state (and state transformation and adaptation) which allows us to see more clearly the dialectic relations between the regulatory state and the welfare state as manifestations of the ever-expanding and diversifying dimensions of the administrative state.

Why study forms (Caporaso, 1996) or morphs (Mann, 1993) of the capitalist democratic state? I believe that theoretical and empirical study of forms of state is a *sine qua non* of understanding governance and politics more broadly. No political analysis and no mode of governance can be taken seriously without reference to the state and its various forms and images (Pierre and Peters, 2000; Dryzek and Dunleavy, 2009). Moreover, I point to a series of confusions about the meaning of the regulatory state, about the transformation of the state since the 1970s, and about the impact of welfare retrenchment and austerity on the form and direction of the welfare state. The conceptual framework offered here helps deal with these confusions by capturing the dynamics of fiscal transfers and social regulation as independent yet potentially intertwined policy instruments. This framework allows us to see theoretically, and in future research to examine empirically, the fact that the state is not in decline but, on the contrary, is expanding via regulation, as part of the expansion of governance more generally. This expansion, which was often measured in terms of the growth rate of fiscal expenditures and of the numbers of employees of the state, should now preferably be measured in terms of the growth of regulation (both its quantity and its impact). This does not mean the fiscal transfers are not important or that they are not growing, but they are neither the only nor the primary measure of the growth of the state. We need to examine the growth, decline and retreat of the state along two dimensions at least, the regulatory and the fiscal, and the expansion, stagnation and retrenchment of different morphs of the state at the same time; hence, a polymorphic approach. The increasing capacity to regulate in general and to regulate fiscal transfers in particular is one source of regulatory expansion.

Another is the pillarization of social services (for example, pension' pillars as discussed by Leisering and Mabbett 2011; Ebbinghus, 2011). Yet another is the growing and complexity of the mix of private and public provisions of welfare (Shalev, 1996) which serves also as a source of regulatory expansion. Demands for transparency and accountability lead in the same direction (Benish and Levi-Faur, 2012) and so is the tendency to increase reliance on third-parties (Grabosky, 2013). We find more regulation and these regulation may use strategically for retrenchment or expansion of institutions that serves equal distribution in both cases, they are representing the embeddedness of regulation within the welfare state. The two faces of the administrative state – the fiscal and the regulatory – are intertwined creating multiple forms of welfare state regimes.

## **I. A story of three scholarly odysseys**

Let us start with the dichotomy between the welfare state and the regulatory state as it unfolds in three different conceptual odysseys.

### ***1) The first odyssey: The regulatory state***

The earliest scholarly reference for the term “regulatory state” that I have been able to find is in a paper by Holmes (1890) where it appeared in passing.<sup>4</sup> It appeared prominently for the first time in James Anderson’s book *The Emergence of the Modern Regulatory State* (1962). Anderson analyzed government and bureaucratic expansion via specialized independent agencies such as those that originated in the US progressive period. He did not, however, define or conceptualize the term. For a long time it was used mainly by scholars of American administrative law; but even in their work the term appeared in the subtitles rather than the main titles (e.g. Sunstein, 1990; Rose-Ackerman, 1992). In these works and from the end of the 1970s the regulatory state was portrayed as a command-and-control state in need of reform. It was portrayed as a hierarchical and progressive state, which was born – at the federal level – sometime toward the end of the nineteenth century as a result of political struggles by popular movements against big business. This is how the term is still understood in the United States. Nonetheless, a radically different use of the term can

be found in the fourth edition of Seidman and Gilmour'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 the way he presents it. His regulatory state is not connected necessarily with the expansion of federal administration in the progressive period, nor is it the product of a social movement fighting big business, but it is closely connected with outsourcing and privatization. Seidman uses the term in order to make sense of US President Ronald Reagan's "revolution".

Seidman's transition from a positive state to a regulatory state had captured the imagination of Europeans since the 1990s first at the level of the European Union but thereafter with "normalization" of regulatory agencies as institutions of governance also at the domestic level (Jordana et al., 2011). While clearly originating as a concept in the United States, it is more popular nowadays in the scholarly world outside the US than in its country of origin. The origins of this displaced popularity can be found in a series of path-breaking papers by Giandomenico Majone (1991, 1993, 1994, 1997) and in the search for better terms to capture the shape of the European Union (EU) (Caporaso, 1996). Majone set the agenda for the study of regulation first in the EU and later well beyond it, making the concept of the regulatory state for the first time common currency in social science discourse (Loughlin and Scott, 1997; Lodge, 2008). In his 1997 paper "From the Positive to the Regulatory State", Majone explicitly adopted Seidman's subtitle of his book as the title of the paper (in hindsight, this move signifies the Europeanization of the regulatory state). Majone's regulatory state 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 and instead does an excellent job of characterizing the politics of regulation and of the regulatory space.

A refreshing perspective was offered by John Braithwaite's "new regulatory state" (Braithwaite, 2000). Braithwaite's new regulatory state is contrasted with the old one, that is, with the command-and-control regulatory state of the progressive era (see also Moran, 2000, p. 6). The new regulatory state uses more steering than rowing and is contrasted with the nightwatchman state on the one hand and the old direct-control

and hierarchical regulatory state on the other. The new regulatory state differs from the old one 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. It is therefore concerned with the decentralization of the state, “rule at a distance”, ranking and shaming and other forms of soft regulation (Braithwaite, 2000). More recently, Leisering and Mabbett (2011) have applied the term “new regulatory state” to the extension of state regulation from the economic to the social sphere. Still, when scholars use the notion nowadays they mean the regulatory state in the age of governance, or the “new regulatory state” in the same manner as has been suggested explicitly by Braithwaite (2000) and more implicitly by Moran (2000), Seidman and Gilmour (1986) and Majone (1997).<sup>5</sup> I expect that this “new” regulatory state will not be that new in the near future, and therefore we should better define the term in a way that transcend the post-war and the neoliberal eras.<sup>6</sup>

## ***2) The second odyssey: The welfare state***

The term “welfare state” serves in many ways in the literature. It serves as a term that reflects an ideal or at least acceptable political and social compromise by proponents of egalitarian social policies but also as an indication for the growth of the functions and capacities of the state in the sphere of social policy. It was first used in the Anglo-Saxon world to describe the class compromise, the expansion of the state in the social sphere and the rising aspiration of an egalitarian society in Britain after World War II. The origin of the term is often traced to a talk given by William Temple, the Archbishop of York, in 1941 (Schottland, 1967, p.9). It then spread slowly from Britain elsewhere (Briggs, 1961, p. 221). When compared to the term regulatory state however it moved faster, and made a much greater impact on the political imagination and scholarly literature. The term's diffusion is not necessarily an effect of its clarity or agreement on the role of the state - neither in practice nor in the realm of utopia - in social policy. It was probably ambiguous enough to serve different purposes and to reflect different political compromises regarding economic redistribution and the role of the state therein. Asa Briggs wrote that not only that the term was hardly defined but that it was used to cover different types of social aims and goals (Briggs, 1961, p.221). Titmuss lamented, “I must say that I am not more enamored of the indefinable

abstraction the ‘Welfare State’ than I was some twenty years ago” (1968, p. 124). More recently, but in the same spirit, Esping-Andersen wrote “social scientists have been too quick to accept nations’ self-proclaimed welfare-state status. They have also been too quick to conclude that if the standard social programs have been introduced, the welfare state has been born” (1990, p. 20). Moreover, “a remarkable attribute of the entire literature is its lack of much genuine interest in the welfare state as such ... when, indeed is a state a welfare state?” (1990, p. 18).<sup>7</sup> Laments about the lack of a clear definition of the welfare state from such doyens of social policy did not lead to a consensual definition and the debates and contributions for a clear definition and conceptualization continue with full vigor (Veit-Wilson 2000, 2002; Atherton, 2002; Wincott, 2003, 2012; Green-Pedersen, 2004).

In many accounts, the welfare state is fixed in time, involving a revolution in state organization. Yet the welfare state has roots that are much older than the rise of capitalism, democracy and class politics. Its origins include, for example, the social obligations (religious or otherwise) of rulers, and these obligations came to be framed as “state” obligations with the rise of the modern state in Continental Europe from the sixteenth century. The conceptual origins lie partly in the notion of the *Polizeistaat* which was referred to as both regulatory and welfare state (Dorwart, 1971). We need a concept of the welfare state that can travel in time before and after the post-war period. A narrower concept of the welfare state, one that equates it with the fiscal expansion and relatively strong egalitarian orientation of post-war social policy, results in a limited understanding not only of the modern state and its dynamics but also of the post-war welfare order itself. This also would help us to see more clearly why the regulatory expansion allows us to shape the welfare state in different directions – egalitarian and progressive as well as paternalistic and regressive – not only across countries but also and in the same time within the same country.

### **3) *The third odyssey: A dichotomy***

As argued, the regulatory state is said to be the opposing form of and substitute for, or if you will the future of, the welfare state. The origins of this conceptual frame can be traced to Chalmers Johnson’s classic *MITI and the Japanese Miracle: The Growth of*



*Industry Policy* (1982). At the center of his study was neither the regulatory state nor the welfare state. What he was interested in was what he called the “developmental state”, and in order to clearly present its logic he contrasted it with the regulatory state:

The United States is a good example of a state in which the regulatory orientation predominates, whereas Japan is a good example of a state in which the developmental orientation predominates. 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, p.19; emphasis added)

In Johnson’s formulation Japan is a developmental state (a form of Majone’s positive state) prioritizing development using the bureaucracy to “guide” business. The United States, by contrast, is a regulatory state that emphasizes rules and procedures, and limits the administrative capacities of the bureaucracy. Note that Johnson understands rules and regulations in a procedural rather than a substantive sense. The content of the rules is ignored, thereby limiting – by definition – any in-depth and extensive understanding of the regulatory state and its penetrative capacities.

What Johnson initially contrasted in a static, monomorphic manner as two opposite forms of state was later portrayed by Majone (1997) as a *shift* from one type to another. Globalization and, more immediately, economic and monetary integration within the European Union are, according to Majone, eroding the very foundation of the positive state, namely its power to tax (or borrow) and spend. Spending and taxing and redistribution more generally are on the decline, while the power of rule making, and hence the role of the regulatory state, are growing. The age of the rise of the regulatory state, so the argument continues, is therefore the age of the decline of the welfare state. The rise of the former and the decline of the latter are causally associated signifying the rise of neoliberalism and the belief in the superiority of markets as mechanisms for maximizing the public good.

Majone’s thesis made sense because it could draw, even if implicitly, on Lowi’s influential distinction between regulation and redistribution as two types of public

policy. Lowi's analysis of types of public policy (1964, 1972) distinguishes between regulation and redistribution as two of four types of policies, characterized by different policy processes, moving in different policy arenas and exhibiting different power constellations. The distinction between regulation and redistribution does not perfectly coincide with the distinction between the regulatory state and the welfare state, but it is nonetheless correlated enough to facilitate a widespread acceptance of Majone's thesis and an understanding of the regulatory state as a procedural non-interventionist and neoliberal institution.<sup>8</sup>

## **II. Social regulation and social expenditures: (often) it takes two to tango**

The dichotomy between the regulatory state and the welfare state and between regulation and redistribution tend to conceal the redistributive aspect of regulation and the regulatory aspects of the redistributive process. They also serve to legitimize a world where the study of regulation and the study of redistribution are organized in two different scholarly communities with little cross-border fertilization. Regulation is still largely considered a technocratic and secondary instrument, as if it has no redistributive effect and as if fiscal redistribution is not increasingly both an outcome and an object of regulation. Yet regulation is not merely an act with indirect or marginal redistributive effect but a central redistributive instrument, as is evident from the three examples discussed here (rent control, parental leave and tax expenditures). While few scholars would deny that regulation has always been used for distributive and redistributive purposes this insight has hardly been developed into a systematic evaluation of the macro redistributive impact of regulation. The expansion of regulation (Levi-Faur, 2005) makes this increasingly problematic, potentially resulting in an increasingly biased and misleading picture of the dynamics of the welfare state and of the critical importance of the regulatory state as one morph of the polymorphic democratic-capitalist state.

Table 1 presents the analytical space that opens when social regulation and social expenditures are recognized as enjoying independent dynamics but at the same time

are entwined in the same policy framework. Here housing policy, labor policy and taxation, for example, are functions (and therefore should be analyzed) of both fiscal and regulatory transfers. The table allows for institutional design, that is, the choice between two different instruments (namely, social regulation and social expenditures). Policymakers may choose either or both. The state can retrench, stagnate and expand with the retrenchment, stagnation and expansion of each of these instruments independently. Let us use the example of parental leave. This policy typically rests on two instruments. The fiscal instrument ensures fiscal or cash transfers to parents, while the regulatory instrument determines who pays, to whom and for how long. The instruments are not perfectly complementary. We can design parental leave without fiscal transfers to the parents (for example, rules that confer rights to unpaid leave), but it is hard to imagine fiscal transfers without rules that determine eligibility. Over time, the relations between the fiscal and the regulatory instruments in the institutional design of parental leave may change, and this policy dynamic is captured in Table 1. Retrenchment, stagnation and expansion are three “states of the world” that characterize the dynamics of social regulation and of social fiscal transfers independently of one another. Nine different combinations are analytically and theoretically possible and should frame the empirical research. In three (identified as e1–e3) of the nine options or cells it is possible to identify a political equilibrium where the policy communities or the policymakers determine policy. Politics here determines policy in the sense that the two policy instruments follow the same political rationale rather than separate ones:

- Double expansion (e3) signifies the extension of eligibility of parental rights (from mothers to fathers to grandparents) and with fiscal transfers (a larger part of the salary being provided by employers, social insurance or both).
- Double stagnation (e2) would occur when both the eligibility of parental rights is stagnating (e.g. no extension to fathers) and fiscal transfers are stagnating (e.g., no increase in cash benefits to parents)
- Double retrenchment (e1) would occur when both the eligibility of parental social rights and the amounts of cash benefits to parents are restricted or withdrawn.

In the other six cells it is clear that each of the policy instruments (regulation and fiscal transfers) is governed by a different logic of action and as Lowi (1964) suggested by different political and institutional constellations. In these six cases it is policy that determines politics:

- Mixed dynamics: where one policy instrument stagnates and the others retrench (e4, e6): for example, stagnation in parental social rights and retrenchment of fiscal transfers for parents.
- Regulation-led expansion: where regulation expands but fiscal transfers either are cut (e5) or stagnate (e7): for example, expansion of social rights but retrenchment or stagnation of direct cash transfers. Parental leave is protected by regulation ensuring the job security of parents on leave but is not actively supported and facilitated by cash transfers.
- Fiscal transfers-led expansion: where fiscal transfers expand but social regulations either are being cut (e8) or stagnate (e9): for example, expansion of fiscal transfers for parents but withdrawal of job security for parents on leave.

**Table 1: Social spending vs. social regulation.**

The analytical space in the application of different policy instruments

		Social regulation		
		Retrenchment	Stagnation	Expansion
Social spending (fiscal expenditures)	Retrenchment	<b>Double retrenchment (e1)</b>	Mixed dynamics (e4)	Regulation- led expansion (e5)
	Stagnation	Mixed dynamics (e6)	<b>Double stagnation (e2)</b>	Regulation-led expansion (e7)
	Expansion	Fiscal transfers-led expansion (e8)	Fiscal transfers-led expansion (e9)	<b>Double expansion (e3)</b>

Table 1 requires analysts to consider not only what is under the lamp (measurable and relatively salient fiscal expenditures) but also in the dark margins (regulatory expenditures), to capture a more complex reality and help improve the validity of observation by providing evidence of both fiscal and regulatory dynamics. This means that we cannot use only the proxy of social transfers to understand changes in the growth, retrenchment or stagnation of the welfare state. Unfortunately our thinking and analysis are still dominated by measures such the share of social expenditures in the gross national product. The varied dynamics that govern the use of the policy instruments in six out of the nine options allow the creation of varied welfare regimes (Esping-Andersen, 1990) and indeed demand thinking in these terms. The commonalities in the deployment of policy instruments suggest a more coherent development of the welfare state.

While there is nothing new in characterizing social regulation as an instrument of welfare policy, it is rarely treated as functionally equivalent to social spending. The implicit assumption is that a real welfare state uses fiscal transfers; and this is best exemplified by the focus on fiscal transfers in the operationalization of the commodification index which serves as the basis for the distinction between different types of welfare regime. Real power, real social reform (or, if you like, social

engineering) is the product of financial flows across social classes mediated by the state, not the product of the rule of law and especially not the rule of regulatory law. Yet, to take a second example, consider the issue of rent control. Rent control constrains the ability of homeowners and housing corporations to raise rents. It is applied in many countries and municipalities, and affects an unspecified number of rental contracts and, indirectly, the rental market more generally. Now, rent controls do not appear as an expense on the budgets of governments and municipalities. Homeowners bear the costs, which actually do not appear as expenses even on their private accounts; yet rent controls may have big redistributive effects, and in some countries and cities they are indeed the subject of fierce redistributive struggles. This is one example of how the welfare of some groups is being promoted at the expense of the welfare of others. Here, social regulation acts as a form of transfer with redistributive implications. Welcome to the world of regulatory welfare and the regulatory welfare state more generally. This is a world where redistribution and welfare for groups that are considered vulnerable, or simply enjoy preferable access to policy, comes in diverse forms and, most important, in less transparent and non-measurable ways. It is not unlikely that the total costs of so-called social regulation exceed those of social transfers in governments' budgets. Our knowledge of the scope and effect of regulation is limited; as we have limited data on the redistributive impact of social regulation we can't really ascertain trends in the development of the welfare state. Even more troubling is the absence of any comprehensive overview of what counts as social regulation and how it shapes our institutions. Nobody knows for sure, but it is a safe bet to suggest that the effects of social regulations are either as great as those of fiscal transfers or at least significant enough to change our view of the rise, consolidation and adaptation of the welfare state.

The examples of rent controls and parental leave demonstrate that fiscal transfers and regulation can be used in a creative manner for welfare purposes. In the case of rent control the policy costs (mainly fiscal transfers) are enforced on the landlords and are set via regulation. In the case of parental leave the policy costs are manifested in transfers implemented by the state (often via social insurance) and employers and are accompanied by regulation. The costs of the policy are relatively transparent and so

are the regulations that determine eligibility. We can say that the redistributive impact of rent control is purely the result of regulatory instruments, while the redistributive impact of parental leave is the result of a mixture of policy instruments. Our third example, tax expenditure – also known as tax benefits, tax incentives, tax subsidies, tax breaks, tax returns or, in a more derogatory vein, tax loopholes – are essentially transfers that are shaped by extensive use of regulations set out in the tax code. To the extent that they are designed with social policy aims in mind, they should be understood as a *sine qua non* of the welfare state. Like social regulations, tax expenditures are frequently ignored in discussions on the size and governance of the welfare state. In the case of the US, Christopher Howard found that tax expenditures aimed at social welfare objectives cost roughly \$400 billion in 1995 (Howard, 1997, p. 3). “Adding them to more direct forms of social spending increased the size of the social spending at the national level by almost 50 percent. Suddenly”, he wrote, “the American welfare state did not look so small anymore” (Howard, 2007, p.17). Tax expenditures might be smaller in other countries but we can’t be sure without a comprehensive study. The three examples shed lights on the different ways in which social regulation and social expenditures (fiscal transfers) can be used independently and interchangeably (as in the case of rent control and parental leave policies) but also sometimes knitted together like Siamese twins (as in the case of tax expenditures which involve both social regulation and fiscal transfers).

### **III. The polymorphic welfare state**

The trade-off approach to the welfare state, the regulatory state and their relations is grounded in four problematic if implicit assumptions: a monomorphic state, a minor role for regulation in the welfare state, trade-off relations between regulation and fiscal expenditures and minimal distributive effects of regulation. I discuss in this part of the paper an alternative which does not rest on a monomorphic view of the state, allows for the co-expansion of both social regulation and social expenditures, takes regulation seriously as a constitutive element of the state, and recognizes the cumulative redistributive effects of regulation.

As mentioned earlier, Majone does not provide a definition of the regulatory state and instead points to a series of contrasts where different functions or aims of the state are important. By contrast, I define the regulatory state and I do so on the basis of its instruments of control (rather than on the basis of its function, e.g. the correction of market failures); that is, the regulatory is a state that applies and extends rule making, rule monitoring and rule enforcement either directly or indirectly. This definition reflects an understanding that human behavior is rule-based, that law is an expansionary project and that liberal democracy is about the expansion of rules of conduct over the public but also is a guide to behavior within government (that is, the regulators). Rule making, rule monitoring and rule enforcement can be undertaken directly via the bureaucratic organs of the state or indirectly via the supervision of another organizational regulatory system (meta-regulation or privatization of regulation). The purposes of regulation, the procedures of rule making, the types of monitoring, the agents of enforcement, the moral judgments, and the day-to-day relations with regulatees vary from one regulatory state to another and from one period to another. This definition permits the regulatory state to promote equality or economic growth; to emphasize either efficiency or efficacy; to enslave or to empower; or all of these at the same time. It does not require a preference for or an inclination toward either judicial or quasi-judicial mechanisms of conflict resolution. The definition is agnostic about the substantial centralization and decentralization of the state; it is also agnostic about the extent of delegation employed. It does not suggest that regulatory agencies are unique to, or the *sine qua non* of, the regulatory state. The defining feature is the capacity and preference for governing via regulation, that is, with rules rather than violence, rules rather than direct taxation, and a delegation of functions via rules instead of direct service provision. Nonetheless, the definition does not suggest that the regulatory state necessarily involves regulatory agencies, or that it is either liberal and progressive or illiberal and repressive. There are different types of regulatory state, not least because all states are regulatory to some degree. Unlike Majone and Johnson and many others, I do not confine regulation to procedural rules. I assert that regulations also carry substantive values and outcomes. Unlike Majone's, this definition does not suggest that the rise of regulation requires, or is the result of, the decline or stagnation of fiscal transfers.



In monomorphic interpretations, the state is either this or that, never both; and so is Majone's state: either a regulatory or a positive state. This paper suggests an alternative which following Mann (1993) might best be called "polymorphic". Mann rejects the suggestion that states can or should be defined by one essential characteristic or label, in other words that states are *monomorphic* (e.g. Johnson, 1982). Far from being singular and centralized, Mann wrote, modern states are polymorphous power networks extending between centers and peripheries.<sup>9</sup> While some of the morphs of the state represent higher and lower levels of crystallization; some are more important or infrastructural than others. Their relations are not necessarily symmetrical. Not all morphs of the state vary on the same dimension or are diametrically opposed, nor are the relations necessarily hierarchical. This makes sense only if we consider the many adjectives of the state that we use and were briefly mentioned in the introduction of this paper. The plurality of labels may be understood as a confusion and theoretical debate, but also perhaps more fruitfully the polymorphic nature of the state.

The polymorphic approach to the state allows us to think in a comparative manner and to reflect more complex institutional designs and architectures than monomorphic approaches. First, it allows us to think about the regulatory state as a polymorphic state, a state that promotes procedural regulations alongside redistributive and moral regulation. The aggregative effects of these different types of regulation can result in a highly interventionist, positive and modernist state. Second, the polymorphic approach proposes a polymorphic conceptualization of the welfare state itself. The welfare state is the amalgamation of both fiscal and regulatory transfers, and it is a state that both commodifies and decommodifies. It is both residual and universalistic within welfare regimes and across them. Third, the polymorphic approach allows us to identify two ideal types of welfare state: the fiscal-welfare state and the regulatory-welfare state, according to their instrument of choice. If the regulatory state is a state that applies and extends rule making, rule monitoring and rule enforcement either directly or indirectly, the regulatory-welfare state does the same thing but with regard to welfare goals. These goals can be egalitarian or otherwise, but whatever they are they are promoted primarily via rule making, rule monitoring and rule enforcement

either directly or indirectly. There is no reason to suggest that in any polity welfare will be provided solely on the basis of regulation. But we can expect, on the basis of observations of the growth and expansion of the rule of law in general and regulation in particular, that welfare goals and institutions will rely increasingly on regulation. Hence, it is useful to suggest an ideal type of state where welfare is the result of regulatory transfers.

The concept of the regulatory welfare state has never been discussed systematically. It was however mentioned in passing for example in an essay on liberty and the welfare state, Kliemt (1993, p.164) maintains that the basic elements of the regulatory welfare state include both a process of public provision and a set of regulations. A study of Germany's pension reform argues that the reform gave birth to “a new double role for the state in pension policy: a combination of both a redistributive welfare state and a regulatory welfare state that constitutes and regulates ‘welfare’” (Lamping and Rubb, 2004, p.174). Lamping conflates redistribution and fiscal expenditure, but he identifies the basic trend. Tanzi suggests that “one could almost speak of a *regulatory welfare state*, since many countries have pursued their social objectives not through public spending or tax expenditures but through regulation” (Tanzi, 2002, p.121). Defining a form of state on the basis of regulation, that is, on a policy instrument as we do here suggests that other forms of welfare state, applying different instruments exist. If there is a regulatory welfare state, then there is also a fiscal welfare state, defined by the use not of regulation but of fiscal transfers and the cash nexus. These are of course ideal types. We are unlikely to find welfare regimes that are based solely on regulatory transfers or solely on fiscal transfers. The task of the analyst, however, is to identify the various ways in which fiscal and regulatory instruments are used and mixed in the design of a welfare regime.

It is useful to distinguish between varieties of regulatory welfare states. Some scholars suggest that the liberal welfare state uses regulation as a secondary safety net consisting of perhaps degraded and populist forms of welfare (Haber, 2011; Mabbett, 2011, 2013). The jury is, however, still out. I therefore frame the role of regulation (as well as fiscal expenditures) in an open manner, that is, to commodify, *de*-commodify and *re*-commodify; they may have progressive or regressive results as well as both at

the same time. To measure the growth of the welfare state by reference to social expenditures and to assume that these expenditures have a mainly or largely egalitarian or welfare-maximization function is to ignore the disciplinary and repressive aspects of some policies. This, of course, again has an effect on how we measure and assess the growth and impact of the welfare state and, in turn, on our judgments about the desirability of various types of reforms. If regulations and fiscal expenditures are not normative instruments (e.g., by definition more or less egalitarian), then the regulatory state and the welfare state are not by definition normatively bad or good. It depends on how, to what purpose, and when they are put to use.

**Table 2: The Polymorphic Welfare State**

		Effects of the state's social regulation	
		Commodification	Decommodification
Effects of the state's social spending (fiscal expenditures)	Commodification	Neoliberal welfare state	Liberal welfare state
	Decommodification	Paternalistic welfare state	Social Democratic welfare state

Given the different and contradictory effects of social regulation and social fiscal transfers, one can expect the emergence not of one type of welfare state but four, depending on the particular mode of intersection of the fiscal and the regulatory welfare states. Let us discuss them each in term. First is the neoliberal welfare state, a state which uses both regulation and social expenditures for welfare with the aim of commodification. The provision of welfare in this type of state is conditioned on participation in the labor market, and thus social rights are offered via instruments such as tax expenditures, corporate pensions, corporate health insurance, and corporate programs for parental leave. This form of state is closely related to Jessop's "workfare State" (Jessop, 1993). In the case of housing issues both social spending and social regulation will be designed with the aim of commodifying the provision of housing. States will withdraw both subsidies and rent controls in order to advance

commodification of housing or use subsidies and social regulation to make a socially-oriented housing system a source of commodification and financialization.

Unlike the neoliberal welfare state, the liberal welfare state uses regulation to decommodify while keeping fiscal transfers for commodification purposes by encouraging, for example, home ownership. In this type of state fiscal transfers will be mainly directed to the nurturing of the labor and investment markets, while regulation can be used in order to moderate and balance the effects of commodification. In the social democratic welfare state both fiscal transfers and social regulation will be used mainly in order to decommodify labor and social relations. Here both regulation (e.g. rent control) and housing subsidies (e.g., for social housing) will be used to promote decommodified housing services. In the paternalistic welfare state, fiscal transfers will be the main instrument for decommodification whereas social regulation will be used for commodification. The inherent logic of the arrangement is to provide popular goods (subsidies) directly and visibly while using less visible tools such as regulation to commodify. Money is visible and regulations are not, and thus subsidies will be used to shape social life, to create (or reflect) a clientelistic network. Thus we can expect housing benefits and subsidies in the form of transfers but not, for example, rent control.

## **IV. Conclusions**

On one level this is a paper about the regulatory rescue of the welfare state or the embeddedness of the welfare state within regulatory institutions, instruments, actors and networks. On this level it extends the regulatory expansion perspective of regulatory capitalism to the welfare and social policy arena. This was done not by identifying more rules or agencies, or by discourse analysis, but rather by placing regulation at the center of social policy and welfare state research. Three examples, with different connotations and associations – rent control, tax expenditures and parental leave – were used in order to demonstrate the regulatory perspective on the welfare state. At the same time the paper's framework of analysis rescues the regulatory state and also the welfare state from the narrow confines of historical, national and regional specificities. It offers a more deductive approach to the

definition of forms of the state in order to gain a better theoretical leverage and a broader historical perspective.

If regulation is an instrument of control, and if the regulatory state is a state that specializes in control via rules (rather than only via taxation and service provision), then regulation is central to the redistributive arena. In this sense regulation can come to the rescue of the welfare state (liberal, conservative or social democratic) in times of neoliberalism and then austerity, when economic growth and therefore also the growth of social expenditures is limited. Since regulation is distributive, redistributive and constituent, a new understanding of the politics of regulation is emerging whereby regulation is the domain not only of interest groups but also of majoritarian and party politics. The role of regulation can in this way be appreciated beyond the narrow confines of separate fields, eras and arenas. Moreover, we can start thinking of the state as a polymorphic institution where the role of regulation is more critical and central than originally conceived by Theodore Lowi (1964, 1972), Chalmers Johnson (1982) and Giandomenico Majone (1994, 1997). We can also develop a new analysis of why regulation is expanding and why the welfare state and other forms of administrative state are still with us and indeed may even expand with regulation.

The regulatory state is neither British nor American, and the welfare state is neither Scandinavian nor Continental. The regulatory states are not measured or assessed solely by the existence or the prevalence of independent regulatory agencies; and the welfare states similarly can't be assessed solely on the basis of the dynamics of large-scale fiscal transfers. The number of regulatory agencies in the case of regulatory states, and the amount of transfers in the case of welfare states, reflect the particularities of the architecture, time and place of the regulatory state and the welfare state. They provide only a partial picture of the dynamics of change, historical origins, essential characteristics and political outcomes of those morphs of the capitalist state. To complement this picture we need to go beyond fiscal transfers to understand the welfare state as a regulatory state working for some groups but against others, for some forms of moral order rather than others, and with many more links to the transnational arena than we usually recognize. The regulatory state, the welfare state and the regulatory welfare state are not necessarily progressive institutions. The

growth, the stagnation and the decline of fiscal social expenditures do not necessarily suggest that the welfare state is less or more egalitarian or progressive. It all depends on who wins and who loses from these fiscal transfers; and we know that fiscal transfers tend to be appropriated by the strongest groups, classes, ethnicities and genders in our society.

All this suggests, in turn, that it is possible and for certain purposes desirable to conceptualize the notion of the regulatory welfare state. The paper therefore rejects the conventional separation between regulation and redistribution and the accompanying dichotomy between the regulatory state and the welfare state. The welfare state may or may not coexist with the regulatory state, but they are not necessarily or inherently mutually antagonistic. States can provide services, nurture a managerial ethos, dispense loans and loan guarantees, and, of course, levy taxes 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 about a shift from the Tax & Spend State to the Regulatory State in the sense that the former uses fiscal tools and the latter regulatory tools. Talk 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 identifies the role assumed or to be assumed by the state, while the notion of the regulatory state identifies the instrument that the state employs. We need to bring them together, not as a trade-off but as mutually constitutive. The concepts of the polymorphic welfare state, the regulatory welfare state and their varieties allow us, so I hope, to bring regulation and redistribution together in ways that are productive for future empirical research.

## Bibliography

- Anderson, J. E. 1962. *The Emergence of the Regulatory State*. Washington, DC: Public Affairs Press.
- Atherton, C. 2002. Welfare States: A Response to John Veit-Wilson. *Social Policy and Administration* 36(3), 306–311.
- Benish, A. and D. LEVI-FAUR. "New Forms of Administrative Law in the Age of Third-Party Government", *Public Administration* 90.4 (2012): 886-900.
- Braithwaite, J. 2000. The New Regulatory State and the Transformation of Criminology. *British Journal of Criminology* 40, 222–38.
- Briggs, Asa. 1961. The Welfare State in Historical Perspective. *European Journal of Sociology* 2, 221–258.
- Caporaso, J. A. 1996. The European Union and Forms of State: Westphalian, Regulatory or Post-Modern? *Journal of Common Market Studies* 34, 29–52.
- Dorwart, RA. 1971. *The Prussian Welfare State before 1740*. Cambridge, MA: Harvard University Press.
- Dryzek, J., & Dunleavy, P. 2009. *Theories of the Democratic State*. Palgrave Macmillan.
- Dunleavy, P. and O’Leary, B. 1987. *Theories of the State: The Politics of Liberal Democracy*. Basingstoke: Macmillan.
- Ebbinghaus, Bernhard. *The varieties of pension governance: Pension privatization in Europe*. Oxford University Press, Oxford, 2011.
- Esping-Andersen, G. 1990. *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press.
- Grabosky, P. (2013), Beyond *Responsive Regulation*: The expanding role of non-state actors in the regulatory process. *Regulation & Governance*, 7: 114–123.
- Green-Pedersen, C. (2004). The dependent variable problem within the study of welfare state retrenchment: Defining the problem and looking for solutions. *Journal of Comparative Policy Analysis: Research and Practice*, 6(1), 3-14.
- Haber, H. 2011. Regulating-for-Welfare: A Comparative Study of “Regulatory Welfare Regimes” in the Israeli, British, and Swedish Electricity Sectors. *Law & Policy* 33(1), 116–148.
- Holmes, K.G. 1890. *State Control of Corporations and Industry in Massachusetts*.

- Political Science Quarterly* 5(3), 411–437.
- 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.
- Jayasuriya, K., 2005. Beyond Institutional Fetishism: From the Developmental to the Regulatory State. *New Political Economy* 10 (3): 381-388.
- Jessop, B. 1993, Towards a Schumpeterian workfare state? Preliminary remarks on post-Fordist political economy." *Studies in political economy* 40, pp. 7-39.
- Johnson, C. 1982. *MITI and the Japanese Miracle: The Growth of Industry Policy*. Stanford, CA: Stanford University Press.
- Jordana J., Levi-Faur, D. and Fernandez, X. 2011. The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion. *Comparative Political Studies* 44(10), 1343–1369.
- Kliemt, Hartmut. 1993. "On justifying a minimum welfare state." *Constitutional Political Economy* 4.: 159-172.
- Krieger, K. (2013), The limits and variety of risk-based governance: The case of flood management in Germany and England. *Regulation & Governance*, 7: 236–257. doi: 10.1111/rego.12009
- Lamping, Wolfram, and Friedbert W. Rub. 2004. "From the Conservative Welfare State to an 'uncertain something else': German pension politics in comparative perspective." *Policy & Politics* 32.2, 169-191.
- Leisering, L. and Mabbett, D. 2011. Introduction: Towards a New Regulatory State in Old-Age Security? Exploring the Issues. In L. Leisering (ed.), *The New Regulatory State: Regulating Private Pensions in Germany and the UK*. Basingstoke: Palgrave-Macmillan, pp. 1–30.
- Levi-Faur D 1998. The Competition State as a Neomercantilist State: Restructuring Global Telecommunications. *Journal of Socio-Economics* 27, 665–685.
- 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. 2013. The Odyssey of the Regulatory State: From a "Thin" Monomorphic Concept to a "Thick" and Polymorphic Concept. *Law & Policy*, 35(1-2), 29-50.
- Lodge, M. 2008. Regulation, the Regulatory State and European Politics. *West*



*European Politics* 31 (1–2), 280–301.

Loughlin, Martin and Scott, Colin. 1997. The Regulatory State, in Patrick Dunleavy, Ian Holliday, Andrew Gamble, and Gillian Peele (eds.), *Developments in British Politics 5*. Basingstoke: Macmillan, pp. 205–219.

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

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

Mabbett, D. 2011. The Regulatory State and the Welfare State. In D. Levi-Faur (ed.), *Handbook on the Politics of Regulation*. Cheltenham: Edward Elgar, pp. 215–226.

Mabbett, D. 2013. Polanyi in Brussels or Luxembourg? Social rights and market regulation in European insurance. *Regulation & Governance*. Earlyview

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

Majone, G. 1993. The European Community between Social Policy and Social Regulation. *Journal of Common Market Studies* 31(2), 153–170.

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.

Mann, M. 1993. *The Sources of Social Power, Vol. II: The Rise of Classes and Nation-States, 1760–1914*. Cambridge: Cambridge University Press.

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.

Pierre, J. and Peters, B. G. 2000. *Governance, Politics and the State*. Basingstoke: Macmillan

Piven, Frances Fox and Cloward, Richard A. 1971. *Regulating the Poor: The Functions of Public Welfare*. New York: Pantheon.

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

- Rothstein, H., Borraz, O. and Huber, M. (2013), Risk and the limits of governance: Exploring varied patterns of risk-based governance across Europe. *Regulation & Governance*, 7: 215–235.
- Schottland, C.I. 1967. *The Welfare State: Selected Essays*. New York: Harper.
- Scott, C. 2004. Regulation in the Age of Governance: The Rise of the Post-Regulatory State. In Jacint Jordana and David Levi-Faur (eds.), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Cheltenham, Edward Elgar, pp. 145–174.
- Seidman, H. and Gilmour, R.S. 1986. *Politics, Position, and Power: From the Positive to the Regulatory State*. Oxford: Oxford University Press.
- Shalev M. 1996. *The Privatization of Social Policy? Occupational Welfare and the Welfare State in America, Scandinavia, and Japan*, Macmillan, London.
- Sunstein, C. 1990. *After the Right Revolution: Reconceiving the Regulatory State*. Cambridge, MA: Harvard University Press.
- Tanzi, Vito. 2002. "Globalization and the future of social protection." *Scottish Journal of Political Economy* 49(1), 116-127.
- 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.
- Veit-Wilson, J. 2002. States of Welfare: A Response to Atherton. *Social Policy and Administration* 36(3), 312–317.
- Wallaby, S. 1999. The New Regulatory State: The Social Powers of the European Union. *British Journal of Sociology* 30 (1), 118–140.
- Wincott, D. 2003. Slippery Concepts, Shifting Context: (National) States and Welfare in the Veit-Wilson/Atherton Debate. *Social Policy & Administration* 37(3), 205–315.
- Wincott, D. 2012. The (Golden) Age of the Welfare State: Interrogating a Conventional Wisdom. *Public Administration*. DOI: 10.1111/j.1467-9299.2012.02067.x

## Notes

<sup>1</sup> And the list goes on: democratic, weak, city, activist, predatory, and contract. And from German: *Bildungsstaat* (the state with an educative and spiritual ideal), *Machtstaat* (power state), *Hausstaat* (dynastic state), *Kulturstaat* (state as the embodiment of the cultural life of the nation) and *Volkstaat* (the people's state).

<sup>2</sup> For example, the search for the intersection of the two terms “welfare state” and the “regulatory state” in various databases such as Scopus, Google Scholar and Web of Science produces meager results

<sup>3</sup> The main focus of study in the welfare state literature is fiscal transfers which, unlike regulation, are measurable and have direct, immediate and relatively visible effects on the target population. For most of the twentieth century, they grew fast. We shouldn't be surprised, therefore, that the welfare state literature became susceptible to fiscal bias. But biases are contagious. They affect also the regulatory literature where regulations are hard to measure, and their effects (especially redistributive effects) are indirect, less visible and, most important, extremely hard to measure. While it is generally accepted that regulation has distributive effects and involves invisible transfers. Nonetheless, and given the characteristics of regulation, it is not surprising that their aggregative effects are rarely quantified and that the common procedures of investigation rarely combine an analysis of the dynamics and effects of both fiscal and regulatory transfers. Recognition of the redistributive effects of regulation is one thing. Active co-optation into theory and measurable empirical analysis is another.

<sup>4</sup> This section draws on Levi-Faur (2013)

<sup>5</sup> See also Colin Scott's (2004) “post-regulatory” state which is both “new” and Foucauldian.

<sup>6</sup> Additional important dimensions are the relations between the regulatory state on the one hand and the developmental state (see, Levi-Faur, 2013) and risk governance on the other (Rothstein et al., 2013; Krieger, 2013).

<sup>7</sup> Esping-Andersen was also critical: “A common textbook definition is that it involves state responsibility for securing some basic modicum of welfare for its citizens. Such a definition skirts the issue of whether social policies are emancipatory or not; whether they help system legitimation or not; whether they contradict or aid the market process; and what, indeed, is meant by ‘basic’? Would it not be more appropriate to require of a welfare state that it satisfies more than our basic or minimal welfare needs?” (Esping-Andersen, 1990, pp. 18–19).

<sup>8</sup> For example, this new model “shifts the function of the state from the direct allocation of social and material goods and resources to the provision of regulatory frameworks within the economy order” (Jayasuriya, 2005, 384)

<sup>9</sup> In chemistry a polymorph is a substance that crystallizes in two or more different forms. The term conveys the way states crystallize at the center – in each case at a different center – of a number of power networks (Mann, 1993, p. 75).