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## THE REGULATORY RESCUE OF THE WELFARE STATE

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# The Regulatory Rescue of the Welfare State

Deborah Mabbett

**Abstract:** The regulatory state and the welfare state can be described in terms of contrasting pairs of ‘types of policies’ and ‘types of politics’ following Lowi (1972). The paradigmatic regulatory type of policy is market coordination, and its type of politics is nonmajoritarian, technical and supranational. The welfare state has redistribution as its paradigmatic type of policy, and the dominant type of politics is majoritarian, party-political and national. This paper dissects these distinctions. Public sector reforms mean that regulatory types of policy can increasingly be found within welfare service provision. Different arrangements for labour market coordination are integral to different welfare state regimes, and at the same time these regulatory arrangements are concerned with combating market failure and promoting efficiency. There are abundant examples of technical, expertocratic policy-making within the welfare state and a high level of supranational policy exchange. Delegation is important to the institutionalisation of the welfare state, as are nonmajoritarian commitments to social rights, secured for example for migrants. These findings cast doubt on the characterisation of welfare state policy-making as political and partisan. It is suggested that the interpenetration of regulatory politics enhances the robustness of the welfare state in the face of international market integration, while at the same time biasing policy towards the promotion of efficiency and suppressing the importance of solidaristic political values.

## Key words:

Regulation, Regulatory State, Welfare State, Regulatory Governance.

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## **The Regulatory Rescue of the Welfare State**

For many researchers immersed in the world of regulatory governance, the very title of this paper poses a challenge. Surely the regulatory state is concerned with the operation of markets, whereas the welfare state is concerned with the redistribution of market output through taxing and spending? The former adopts economic efficiency and procedural fairness as its central norms; the latter some sort of social equality. For the regulatory state, rules are the central instruments of policy; for the welfare state, the government budget serves as the focus of policy-making and the measure of activity.

This perspective on the regulatory state, defined almost in opposition to the welfare state, has been developed most strongly by Majone (1993) in the context of the development of social regulation in the EU. But it can be found in other accounts of the role of the regulatory state in ‘building’ markets, a role which is contrasted with the welfare state roles of redistribution through transfer payments and service provision by public bureaucracies (Sbragia 2000). Characteristic of the regulatory state are nonmajoritarian institutions in which technical experts search for socially-optimal solutions; the redistributive welfare state, by contrast, is seen as the central policy domain of majoritarian political contestation, in which conflicting interests are represented and policy outcomes depend on negotiation and coalition-formation.

The difference between the regulatory state and the welfare state can therefore be framed in terms of two contrasting pairs of policy area and policy process, or ‘types of policy’ and ‘types of politics’ (Lowi 1972: 300). The paradigmatic regulatory type of policy is market coordination (setting standards, combatting information asymmetries, ensuring access), and its type of politics is nonmajoritarian, technical and supranational. The welfare state pairing has tax-benefit redistribution as its paradigmatic type of policy, and the dominant type of politics is majoritarian, party-political and national.

The first two sections of this paper challenge both parts of this characterisation of the welfare state. Section 1 shows that the welfare state encompasses many more types of

policy than redistribution. In particular, welfare states are constituted as much by their structures of labour market regulation as by their patterns of government expenditure and taxation (Esping-Andersen 1990, Part 2). Of course labour market regulation is different to utilities or competition regulation, because it is explicitly organised around conflicting interests; indeed around the most politically salient class conflict: that between capital and labour. It is often governed by a corporatist structure of interest representation which stands in stark contrast to the dominance of impartial experts in other market-regulatory bodies. But the difference should not be overstated. In the late nineteenth century heyday of innovation in employment regulation, the ‘labour question’ engaged experts and brought forth proposals for achieving socially optimal arrangements. These ideas find counterparts in current regulations to enhance efficiency in employment relationships.

Section 2 demonstrates that characteristic features of policy-making in the regulatory state may also be found in the welfare state. The type of politics found in welfare policy-making is often technical and consensual. Once we go looking for regulatory policy-making, we can find numerous applications to welfare sectors. This is not just a matter of having a hammer and seeing nails everywhere. Regulatory techniques shape the way in which social policy problems are defined, in particular by highlighting efficiency goals but also through the international dissemination of norms, including rights.. The use of regulatory venues also means that social policies are not necessarily shaped around majoritarian political support, which may restrain their redistributive impact but may also mean that disadvantaged minorities are provided for.

The third section turns to the supranational dimension of welfare state policy-making. In the era of ‘embedded liberalism’ (Ruggie 1982), organisations such as the ILO promoted a standard set of social policy institutions as part of a vision of how a modern nation state should be constituted (Meyer et al 1997). In the era of neoliberalism, we might expect to see the transnational dissemination of social policy in decline, but this is not the case. Instead, social policy is reconstituted and reappears in supranational domains via regulatory regimes. We find familiar social policies re-framed as correctives to market failures in the work of organisations like the European Commission, the OECD and the World Bank. Also evident is an expansion in the

international dissemination of expressions of social rights, solidifying expectations that social provisions will be maintained and providing the focus for monitoring and analysis by ‘integrity agencies’ (Levi-Faur 2011).

When the regulatory state and the welfare state are characterised as opposing pairs of policy and politics, the inference is readily drawn that the international integration of markets in goods and services, and the accompanying development of supranational regulatory institutions, is a threat to welfare states. By tracing the efficiency-promoting content of welfare policies and the role of regulatory techniques in their dissemination, we gain a different understanding of the impact of supranational integration and can better appreciate the resilience of welfare states in the face of economic pressures.

### ***1. The regulatory state inside the welfare state***

In understanding the evolution of the regulatory state, the central process has been the wave of privatisation of state-owned enterprises that started in the 1980s and was rapidly diffused around the world (Levi-Faur 2005). Privatisation was accompanied by the establishment of a new type of regulatory body: an independent agency, staffed by experts and charged with creating conditions that would emulate the efficient outcomes of a competitive market. State-owned trading enterprises (public utilities, airlines, etc) were not part of the welfare state as it is conventionally understood (measured as government spending on welfare services and social transfer payments), although they pursued social mandates, particularly to do with maintaining employment. Their privatisation had little direct effect on the welfare state, although it helped to weaken the corporatist regulation of the labour market.

Privatisation came to have a direct impact on the welfare state when governments moved to reform the provision of public services by involving private providers through ‘contracting-out’ and ‘quasi-market’ arrangements. This mode of privatisation differed from the privatisation of trading enterprises in that governments remained the major purchasers of services. Thus the size of government measured in financial terms (the size of the government budget) was not reduced by this type of

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reform, although the role of government as a provider *was* reduced, as is reflected in data on public sector employment (Grout and Stevens 2003, Table 1).

The splitting of purchasers from providers has contributed to the entry of the regulatory state into the welfare state, as reflected in the proliferation of regulatory bodies within government (Hood et al 1999). Regulatory techniques include contracts that specify performance requirements and link payments to outputs, in contrast to previous 'demand-driven' financial arrangements. Competition among providers is promoted, and even required as a consequence of commitments to market integration within the EU and more widely under the GATS. New regulatory approaches have brought more formal systems of monitoring, benchmarking and auditing in place of previous reliance on professional self-government in welfare services.

These developments have affected the 'budgetary' welfare state, where governments make transfer payments and purchase services. Welfare states are also constituted by characteristic patterns of labour market regulation. Esping-Andersen (1990) distinguished the minimal regulation (low minimum wage, limited employment protection) found in liberal market economies from the status-protecting regulations governing employment relationships in much of continental Europe and from the Scandinavian model of promoting equality by achieving high employment rates and a relatively compressed wage structure. Others have identified other regulatory strategies. For example Castles (1985) showed how immigration control and trade protection could provide the foundations of a 'wage-earners welfare state'.

Labour market regulation has visible and salient distributional effects, and engages parties (employers and unions) with clearly conflicting interests. Labour market regulatory bodies have generally been constituted with corporate representation of those interests, through the participation of organised labour and employer groups. Furthermore, while governments have often tried to engineer regulatory arrangements to secure industrial peace and to counter inflation, they have rarely been able to enter the fray without a high degree of politicisation attaching to their interventions. This is because the central cleavage in the labour market has also been the central political cleavage for most developed countries. Trade unions have been affiliated to the political left and often have close ties to left-wing governments, while employers' organisations have supported right-wing governments.

However, there has also been a persistent efficiency-promoting dimension to labour market regulation. For the fledgling field of social research in the nineteenth century, the ‘labour question’ was the central issue. Social scientists looked for ways to organise and regulate the labour market, not only to restrain the growth of class consciousness and the rise of socialism, but also to remedy consequences of industrialisation that were seen as perverse and counterproductive. They did not use the language of ‘market failure’, but some of the phenomena that concerned them can be framed as such. For example, ‘sweating’ (the employment of workers for long hours at very low rates of pay) was driven by a disequilibrating market dynamic, whereby, as wages fell, desperate families supplied more and more labour (specifically, women and children) in order to meet their income needs. The implication drawn by contemporary commentators was that regulating for a ‘family wage’ would stabilise and equilibrate the market.

Another recognised ‘market failure’ was that employers of wage labour had little incentive to ensure the long-term reproduction and maintenance of the labour force, once workers became mobile and were not bound to one master. Regulations prohibiting child labour and limiting factory work by women drew on this type of argument. Modern successors to this thinking are reflected in regulations to promote ‘family-friendly’ employment. While much of the policy discourse of the time seems highly moralising to modern eyes, it was recognisably based on a search for policies that will produce ‘positive sum’ outcomes, maximising the size of national income.

The erosion of corporatist approaches to labour market regulation - in particular, the decline of trade union membership and national collective bargaining – has been well-documented (Iversen 1999). However, there remains an abundance of non-partisan regulation in employment, for instance through provisions on health and safety and gender equality (Majone 1993). A striking example arose when the 1997 Labour government in the UK ventured to introduce a national minimum wage. It adopted a technical, depoliticised solution to the question of how to set and uprate the wage, establishing a Low Pay Commission to make recommendations which the government has, since its inception in 1999, always accepted. The Commission has employer and union representatives but also academic members. It has actively promoted analyses



of the effects of the minimum wage which argue that its distributional impact on household income and poverty is limited, but that there are good market-regulatory reasons for having a minimum wage: to prevent abusive employment and to promote more stable and productive employment relationships (Metcalf 2008).

These examples serve to illustrate that regulation in the labour market, while differently constituted in different welfare regimes, is not necessarily structured around politically-salient, class-conscious divides. More generally, there is no clear distinction between the policy areas to which regulation is applied and the policy areas that are salient for the classification and operation of welfare states.

## ***2. The regulatory lens on welfare state policy-making***

The previous section has shown that ‘regulation’ as a description of a type of policy, in which rule-making for market transactions occurs, does not delineate a policy sphere which is separate from the welfare state. On the contrary, welfare states are partly constituted by market-regulatory arrangements, and welfare state reform processes are closely linked to the rise of the regulatory state. This section discusses the regulatory techniques used in welfare policy-making. The basic point is that welfare state policy-making is not always (or even mostly) a domain of politicised debate with high levels of public engagement. On the contrary, many areas are as esoteric as the finer points of the regulation of privatised utilities. Furthermore, it is not even obvious that redistribution is correlated with high politicisation. Groups with strong interests in maintaining the welfare state sometimes advocate depoliticising strategies, for example by pressing for automatic indexation of benefits or seeking the creation of an independent agency to administer provisions.

As noted above, central to the evolution of the regulatory state has been the creation of independent agencies in which specialised knowledge and competence is brought to bear on the task of combating market failure and promoting allocative efficiency. Thus there are three characteristic aspects to regulatory policy-making: an institutional aspect (delegation out of the political arena), the use of technical

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expertise, and the formulation of the policy problem (promoting efficiency) (Mabbett and Schelkle 2009). This section examines the extent to which these features are found in welfare state policy-making.

The development of the social sciences saw the introduction of the analytical techniques that we now regard as characteristic of regulatory policy-making, notably the use of social statistics. Systematic counting of the population and measurement of its living conditions structured the analysis of social conditions and shaped the proposed solutions. Sociologists such as Nikolas Rose (1991) have examined how quantification shaped social understandings and political discourses. Rose notes the paradox that, while social researchers drew political attention to poverty and contributed to the mobilisation of public opinion, their use of statistical methods also ‘promise[d] a “de-politicization” of politics, redrawing the boundaries between politics and objectivity by purporting to act as automatic technical mechanisms for making judgements, prioritizing problems and allocating scarce resources.’ (Rose 1991: 674).

Statistical analysis yielded, *inter alia*, the idea of social insurance, a mechanism whereby a class of people could raise its own security and well-being by contributing to a common pool, from which those affected by misfortune could draw. *Ex post*, social insurance was redistributive, but *ex ante*, statistical analysis demonstrated how such schemes could be actuarially fair. Through such processes, the political could be made technical. ‘Arguments about numerical quotas, availability pools and demographic imbalance become a substitute for democratic discussion of the principles of equity and justice’ (Prewitt, quoted in Rose 1991: 680).

Whereas theories of working class mobilisation emphasise the electoral success of social democratic parties in explaining the origins of the welfare state (Korpi 2006), accounts which pay more attention to the production of social knowledge remark on the absence of a party-political aspect to many early welfare state-building initiatives. For example, Kuhnle’s (1996: 244) account of early Norwegian social policy highlights that ‘a common view [among participants at the time] was that social policymaking was or ought to be lifted above the party political struggle in Norway..[.]. Irrespective of party adherence, politicians met to work jointly for the implementation of social legislation, according to a contemporary analysis.’

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One implication is that social programmes, far from being populist in appealing to the majority of the population, are often depoliticised, in the sense of being removed from salient class conflicts. The creation of autonomous bodies, both for policy formulation and for administration, can also play a part in this. Expert commissions have played a large role in the formulation of social policy in Scandinavia throughout recent history (Kuhnle 1996: 241-44). Working groups have been established to achieve cross-party consensus: a notable recent example is the Swedish pension reform of 1994 (Brooks and Weaver 2005). Other instances where independent bodies have been created to bring expertise to policy-making and increase the perceived security and reliability of social commitments include the US Social Security Administration, which manages earmarked social security contributions, taking it out of the domain of budgetary contestation (Patashnik 1997). With the spread of quasi-markets and privatisation in health care, the last two decades have seen the establishment of numerous regulatory authorities. For example, the UK's National Institute for Health and Clinical Excellence (NICE, established in 1999) describes itself on its website as 'an independent organisation responsible for providing national guidance on promoting good health and preventing and treating ill health'. It develops clinical guidelines on the most cost-effective treatments for conditions, and assesses the cost effectiveness of new drugs and other health technology innovations. Its German counterpart, AQUAMED, hosts an international regulatory network called Guidelines International Network (GIN), established in 2002, which brings together similar agencies from other countries. Another network, Health Technology Assessment (HTA) International, includes the major pharmaceutical companies among its members as well as HTA regulatory bodies from sixteen countries.

It is arguable that the whole structure of social provision in the welfare states of advanced countries rests on processes of rule-based delegation. Parliaments do not review the entitlements of individuals: they set rules instead. Direct intervention by politicians in determining individual benefits is generally impugned as 'clientelism'; in other words, as an inappropriately high level of political engagement in the redistribution of resources. Delegation through rules is taken a step further in instances of 'automatic government' (Weaver 1988), for example where the legislature agrees on a technical scheme for uprating benefits in line with inflation. The use of these devices suggests that, while the welfare state can be seen as a

political resource for assembling constituencies and ‘buying votes’, politicians see limits to the potential for gaining credit by distributing benefits.

In the best regulatory tradition, social policy agencies promulgate technical analyses and attempt to eliminate distributional contestation from their domain of decision-making. One technique for the agency is to narrow and ‘partition’ the policy area, so that the participants in the regulatory part of the process see their task as one of finding efficient solutions, while the resolution of distributional issues is assigned to another policy process with different participants (Mabbett 2009). The idea that pension provision should be understood as comprised of distinct ‘pillars’ provides a good example of partitioning. In an influential report, the World Bank (1994: 234) argued that ‘a different government role is appropriate for each [pillar]’. The Bank advocated that the first, budgetary, pillar should be focused on redistribution, instead of also addressing the savings function. This meant that the functional logic of the budgetary pillar would conform to the institutional setting of parliamentary politics, which is able to make majoritarian decisions over redistribution. In the second and third pillars, provision would be ‘actuarially fair’ rather than redistributive, so governments would have a regulatory role which could be delegated to an independent agency.

### ***3. The international dimension***

One noticeable feature of looking at welfare state policy-making through a regulatory lens is that cross-national and supranational aspects are highlighted. It is characteristic of regulatory policy domains both that supranational networks are created and that policies are transferred from country to country. Privatisation and the creation of independent regulatory agencies exhibit striking patterns of diffusion across countries (Levi-Faur 2005). Welfare states also exhibit diffusion patterns in measures ranging from the introduction of social insurance to the adoption of welfare-to-work programmes. Freeman and Moran (2000) remark on the internationalisation of policy-making in health care, for example through the international networks developed by pharmaceutical regulators. In pensions, the construction of a regulatory domain, particularly around the third pension pillar, has been accompanied by the worldwide

promulgation of a pension reform programme based on the World Bank's 1994 report (Orenstein 2005).

Yet it seems almost paradoxical to emphasise the cross-national and supranational aspect to welfare state policy-making when there is abundant evidence of the idiosyncrasy of national welfare states. Furthermore, by contrast with market-regulatory policy domains, where strong interests in market integration drive supranationalism forward, there is no obvious interest-based driver for international networking in social policy. Supranational communication does not come easily: among welfare administrators, one often finds blank-faced incomprehension of other countries' procedures and a general conviction that one's own national system is 'better'. This reflects the primacy of communication with clients in social policy: everyday 'street level' practice is highly localised.

Nonetheless, there are persistent and pronounced elements of supranationalism in welfare state policy-making. Meyer et al (1997) give a compelling account of the incorporation of the welfare state into prevailing norms of what constitutes a nation state. Their argument is that the policies and structures that are seen as the normal apparatus of the nation state are constructed and propagated through global processes. Instead of seeing the welfare state as the organic expression of the solidarity of a community, they show how its characteristic features are introduced into unlikely social settings through the creation of distinctive state institutions, starting with the construction of members of the polity as 'citizens' with 'rights' and going on to the identification of certain categories of citizen as needy, vulnerable or deserving (Meyer et al 1997: 145-6). Actors engaged in building nations and achieving their recognition in the international system are receptive to internationally-transmitted norms about how a state is constituted, resulting in copying or 'isomorphism' of institutions across polities.

International organisations play a role in this transmission mechanism, presenting models of government structures and policies and collecting data, which both has an organisational effect itself and facilitates comparison across countries. For example, the ILO has many of the characteristics of a supranational regulatory body. It formulates standards in the form of conventions, collects cross-national statistics and provides technical assistance. Strang and Chang (1993: 242) argue that ILO

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conventions ‘offer a script or model that actors can draw upon to design policy’. Evidence for this comes from direct references to conventions in national legislation, along with case studies of reform processes where ILO conventions have been invoked. Conventions may also provide a ready-made policy rationale, to the extent that conformity with international standards is a reason for policy in itself.

However, unlike the regulatory networks that have developed out of market-oriented reforms in recent years, the ILO has a corporatist structure, with each state sending trade union and employer representatives along with government officials, and it has, for much of its history, been affected by dissension over convention standards. Seekings (2008) documents how the ILO promoted the German model of social insurance despite Danish and British attempts to make the case for tax-financed systems. He also finds the ILO to have been resolutely ‘workerist’, limiting the relevance of its prescriptions in countries where formal employment is low. From a regulatory perspective it is easy to understand why the ILO was both workerist and social insurance-oriented. It sought to formulate prescriptions which could attract the support of employers as well as unions (and governments). Employers have often supported social insurance when benefits are confined to the contributing workforce and can be negotiated over as part of the remuneration package (Swenson 1991). As the ILO has moved away from workerism and insurance, to address problems of poverty more directly, it has been less and less able to achieve unanimous support for conventions, and its influence has waned.

Consensual supranational policy exchanges on social policy rely on the adoption of a highly functionalist language, portraying the favoured policies of the day as promoting economic growth and development. Intergovernmental venues provide occasions on which states present themselves as unitary, rational and responsible. In these venues, states declare ‘standardized purposes like collective development, social justice and individual rights’, and they present themselves as having ‘policy technologies for the rational means-ends accomplishment of goals’ (Meyer et al 1997: 153). Activities in these venues often appear de-coupled from the political realities of national policy-making, raising a basic question about how important supranational policy-making is. Guiraudon (1998) has addressed this question in a study of the influence of supranationalism on the granting of social rights to migrants. The puzzle

is that migrants generally do have social rights, yet political pressures in national venues would often point to the denial of access to welfare for migrants. One explanation for this is that governments comply with supranational agreements, suggesting that participation in supranational venues shapes the way that rights are structured in the welfare state.

It is well-known that the EU requires its members not to discriminate against other countries' nationals in their social provisions, but this is often seen as an alien imposition of the EU regulatory state that undermines national welfare states (Leibfried 2005, Ferrera 2005). Guiraudon suggests that EU regulation is part of a wider process whereby 'international institutions and transnational actors were able to diffuse shared understandings about the treatment of foreigners so as to change and shape the views of domestic state and societal actors' (1998: 280). Forensically tracing through how these norms are transmitted, Guiraudon draws a distinction between open and closed policy domains. 'The impact of international-level variables should be strongest when domestic pressure is low and debate is contained within the gilded doors of official buildings.' (1998: 286). Foreigners' rights have been protected when the policy debate has been kept closed; opening the debate and widening publicity on the issue tends to be detrimental to the status of foreigners (1998: 290). Guiraudon argues that immigrants' rights are subject to a political cycle, threatened near to elections as politicians make populist appeals, but secured after elections when political time horizons are longer. Just as regulatory institutions for monetary policy can be seen as dampening the political business cycle in the interests of economic stability and growth, so one can see the embedding of rights as a counterweight to political opportunism that will tend to produce more social stability and cohesion in the long term.

It is striking that Guiraudon's account portrays 'rights language' as a depoliticising strategy, given that rights claims are also used to mobilise identity groups, as reflected in women's rights and disability rights campaigns. The relationship between rights and the characteristic patterns of regulatory policy-making remains an open question. There are obvious differences between rights claims and regulatory proposals: for example, the former tend to be made and mediated by lawyers, whereas the latter are dominated by economists. However rights claims, particularly when promulgated at

the international level, have a striking capacity to reframe policy issues in a way that shifts them away from domestic political contestation. While social rights are claims on resources which will be exercised in competition with other claims, their formulation avoids the frame of redistribution. For example, Strang and Chang suggest that ILO conventions on workers' rights shift policies symbolically 'out of the realm of zero-sum, partisan politics and into the realm of fundamental, universally-recognised rights' (1993: 242-3). This suggests that supranational communication has a depoliticising function: if a claim can be formulated in a way that can be understood in international fora, it is by that very process transformed from being a redistributive claim into a proposition about the legitimacy of the state itself.

The wider implication is that the 'redistributiveness' of a policy is not an inherent structural feature, as it might be understood by an economist calculating winners and losers, but a construction which depends on the policy domain in which resources are being claimed. A claim exercised in the tax or benefit system is therefore instantly classifiable as redistributive, even if it might have positive-sum aspects (such as facilitating a person's return to work, or maintaining macroeconomic stability by preventing home owners defaulting on their mortgages). Conversely, a claim made in the international arena is not made in the realm of partisan politics, and thereby escapes partisan political scrutiny.

## ***Conclusion***

One conclusion from this discussion is, by now, a familiar one. Market-regulatory policies reach deep into the heart of the welfare state, and the supranational regulation of market integration has pronounced implications for social policy, even while its proponents seek to preserve national welfare state competences. Majone's account of regulatory legitimacy as derived from solving 'positive sum' problems and staying away from redistributive issues does not describe the current state of affairs in the EU (as Majone 2005 indeed acknowledges). The supranational regulatory state is directly implicated in policy-making in the welfare state, exerting a strong impact on welfare state ideas and institutions. For many commentators, this development is (a) undemocratic and (b) likely to have a detrimental effect on levels of redistribution,



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since these depend on national processes which produce solidarity. This conclusion considers these two concerns in turn.

One response to the first concern is to question the value attached to majoritarian democracy. This is the position taken by many advocates of social rights, who see them as countering the flaws of national political systems, and providing the basis for a more robust deliberative democracy (Fredman 2008). It is argued that nonmajoritarian strategies such as the promulgation of rights are not necessarily undemocratic, if one has a more ambitious definition of democracy than the current mode of government in developed western states. Rose, having documented the role of statistical measurement and technique in the foundation of the welfare state, also implicitly criticises the reification of existing democracies, arguing that they are already too reliant on regulatory techniques for the exercise and justification of power, specifically on technologies for measuring, monitoring and controlling social entities (1991: 691). Students of social policy might draw a different implication: that the development of the welfare state does not have to be reliant on majoritarian rule; that socially-excluded minorities who lack political as well as economic power might nonetheless receive fair(ish) allocations of public goods and social services in existing democracies because of the responsiveness of public policy to social research. This would help to explain the ongoing engagement of researchers and policy activists with surveying, measuring and publicising poverty and exclusion.

A different defence of the regulatory state against the claim that it is undemocratic can be formulated as follows. Presently-existing democracies are organised around states, but choices made by citizens in these states are constrained by the policies of other states. Thus many of the policies that citizens might support cannot be adopted without resolving collective action problems between states. If supranational regulation can overcome these problems and organise international collective action, the result is more empowering of national democracy, not less. This type of argument would be most convincing if supranational regulation could be shown to prevent 'race to the bottom' dynamics in welfare provision. Critics argue that it does not do so because it has a market-integrative bias (Scharpf 1999). The era of embedded liberalism is over: market integration is no longer constrained by the quest to

safeguard domestic stability (cf. Ruggie 1982: 393). In the era of neoliberalism, the welfare state is trampled under the forward march of global capitalism.

The analysis of regulatory capitalism challenges the claim that we have entered a neoliberal era marked by the decline of public authority, replaced by the rule (or misrule) of anonymous markets. Instead, it is argued that states and other collective actors reconstitute market relationships in the course of formulating regulations to promote efficiency and manage risk. One implication is that the loss of redistributive capacity that comes with market integration can be at least partially countered by the reconstitution of social policy as efficiency-enhancing policy, through the use of regulatory techniques. Efficiency explanations can be ‘discovered’ for large parts of the welfare state: for example, companies incur lower health care costs in the social insurance systems of Europe than in the private insurance system of the US, and thus reconcile competitiveness and distributional fairness. Welfare-to-work programmes aim to reform social assistance provision into ‘productive’ policies, and so on.

Jonah Levy (1999) has pointed out that west European welfare states, in particular, seem to have a large potential for ‘vice into virtue’ reforms, whereby efficiency and distributional fairness can both be enhanced by suitably-designed measures. However, he also notes that these reforms are accompanied by an erosion of the political salience of the welfare state. ‘With welfare expansion giving way to restructuring and retrenchment, leftist governments have lost their most prized policy instrument’ (1999: 239-40). Rather than wishing to retain control of instruments of social policy, seeing them as valuable political resources for satisfying domestic constituencies, the politics of vice-into-virtue may call for downplaying distributional conflicts, for consensus-formation and blame avoidance.

The argument is a familiar one from the literature on the politics of retrenchment, which postulates that the welfare state has gone from being a resource for national politics, allowing parties to mobilise their supporters behind proposals and ‘buy in’ key groups, to a burden on governments which they manage at least in part through delegation strategies (Pierson 1996). One implication is that governments have little reason to resist the regulatory takeover of the welfare state, and may even facilitate it as a mechanism for reforming and reducing fiscal burdens and allowing them to shift political contestation to more tractable domains. Furthermore, the domestic popularity

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of market-oriented social policy reforms suggests that welfare states are not simply victims of wider processes; on the contrary, domestic sources of pressure for welfare state reform contribute to the active engagement of governments in regulatory state-building and its extension into welfare policy areas (Iversen and Wren 1998).

This paper has argued that social policy is reconstituted in the regulatory state as a technical domain of efficiency-enhancing policy. This reconstituted policy domain is certainly less open to political contestation and less inviting as a flagship of left-wing politics than its predecessor. Some readers may feel that the processes described here are not so much rescue as capture, imprisoning the welfare state in a narrow normative frame that consolidates its role as handmaiden of capital and undermines other value bases. It remains that social programmes and expenditures have largely survived the intensified processes of market integration that have occurred in the last few decades, and identifying the affinities between the regulatory state and the welfare state helps to explain how.

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