

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/256050456>

# The Odyssey of the Regulatory State: From a 'Thin' Monomorphic Concept to a 'Thick' and Polymorphic Concept

Article in *Law & Policy* · April 2013

DOI: 10.1111/lapo.12000

CITATIONS

43

READS

469

1 author:



David Levi-Faur

Hebrew University of Jerusalem

101 PUBLICATIONS 3,901 CITATIONS

[SEE PROFILE](#)

Some of the authors of this publication are also working on these related projects:

Project

Regulatory intermediaries [View project](#)

Project

The Origins and Various Manifestation of Regulatory Expansion [View project](#)

## The Odyssey of the Regulatory State: From a “Thin” Monomorphic Concept to a “Thick” and Polymorphic Concept

DAVID LEVI-FAUR

*This article assesses the “odyssey” of the regulatory state from a mere American thin and monomorphic concept to a global, thick and polymorphic concept that captures some of the more important features of the capitalist–democratic state. The burgeoning literature on the regulatory state presents a confusing number of images and characterizations that are increasingly conflicting, and it too often presents a monomorphic conception of the regulatory state. The article suggests that we need to define the regulatory state rather than merely characterizing it. And we need to do so in a manner that will allow us to move beyond the specific institutional features of a certain era, nation, region, or sector. Rather than contrasting regulation with distribution and redistribution, and contrasting the regulatory state with other forms of state, I treat the regulatory state as one morph of the polymorphic capitalist state, a morph that may help constitute other morphs (such as the welfare state and the developmental state) instead of replacing them. This in turn may help remove the artificial walls between the regulatory scholarly community and other social scientists, and promote more fruitful social science.*

This article discusses the origin and changing meanings of one of the most intriguing labels of the state—the regulatory state. The term “regulatory state” emerged slowly in the United States, but since the early 1990s it has spread fast and wide. It was used originally to capture the rise of the administrative form of decentralized commissions and agencies in the American administrative state.<sup>1</sup> More recently, it has denoted the system of controls and administrative design of the governance of markets at the regional, European level (Majone 1997). In the United States, the term often stands for a commanding, uncontrollable, and expanding state, while elsewhere, and

---

I am grateful for comments and suggestions on previous versions of this article from Hila Bar-Ner, Sharon Gilad, Hanan Haber, Arie Krampf, Deborah Mabbett, Motti Talias, Clifford Shearing, as well as from three anonymous referees and Nancy Reichman. The article was written during a research leave at the The Kolleg-Forschergruppe (KFG) “The Transformative Power of Europe.” I am grateful for the hospitality of its directors, Tanja A. Börzel and Thomas Risse. All usual disclaimers apply.

Address correspondence to David Levi-Faur, Hebrew University of Jerusalem, Department of Political Science, Mount Scopus, Jerusalem, Israel, 91905. Telephone: 972-2-5880498; E-mail: levifaur@mscc.huji.ac.il.

more recently, it has become associated with a lighter, neoliberal approach to the governance of markets. Most recently, it has been used to explain change, transformation, and expansion in the “Global South” (Dubash and Morgan 2012; Kayaalp 2012; Ozel 2012; Martinez-Gallardo and Murillo 2011). The literature offers a remarkably different conceptualization of the state and often a reductionist view that identifies it with a particular and peculiar form of governance—the regulatory agency. To deal with this somewhat confusing situation, I offer a definition of the regulatory state and ground this definition not only on the adjective “regulatory,” but also on a conception of the noun “state” that emphasizes its claim to a legitimate monopoly on regulation rather than a monopoly on the means of violence.

If we are serious about the regulatory state as a core concept in political, social, and economic analysis, we need to develop an understanding of it and provide a definition that goes beyond specific historical periods, specific regions, particular institutional designs, or any specific political regime. The concept should be liberated from the confines of Americanization or, more recently, Europeanization, and neoliberalism, and it should be recognized within a polymorphic understanding of the state and institutions more generally. It might be sensible to add more adjectives to the term (e.g., neoliberal, regulatory state), but it does not make sense in defining the core concept. We need a concept that can travel, a social science concept. I, therefore, explore the various characterizations and images of the regulatory state in order to show their temporal and spatial limits. A more abstract definition allows us to see previous conceptions as varieties of the regulatory state rather than constant features of either the state or regulation itself. Only then should we consider the geographical, historical, and other connotations that clarify its relevance. The article offers a theoretical definition that identifies the regulatory state with the application of informal and formal bureaucratic rule making, rule monitoring, and rule enforcement. The rise of regulation and the regulatory state represents the tendency to deploy and privilege regulation. This tendency expresses a normative and political bias towards regulation rather than discretion, regulation rather than direct service provision, and regulation rather than taxing and spending.

The definition of the regulatory state offered here allows us to do three additional things beyond the mere recognition and clarification of the literature. First, it allows us to contribute directly to the theory of the state as a polymorphic institution where the source of its authority is not simply its legitimate monopoly on the means of violence, but its claim to a legitimate monopoly over rule making, rule monitoring, and rule enforcement. The rise of the regulatory state, I claim, does not necessarily entail the decline of the welfare state, nor of other forms of activist or positive state. This goes against monomorphic views of the state and casts doubt on images of the regulatory state as synonym of a neoliberal state. Second, it reconnects the issues of the

autonomy of agencies, the responsiveness of regulators, and the rise of the regulocracy to the theory of the democratic capitalist state. In this way, it contributes to a more coherent regulatory theory and potentially realigns law and policy, compliance and institutional design, and the political and sociological. Third, it demonstrates how a polymorphic view of the state allows us to open a new venue for a comparative analysis of capitalism that does not draw on monomorphic, methodological nationalism. The rise of the regulatory state is understood as yet another stage in the expansion of the administrative state. This goes against dominant monomorphic portrayals of the regulatory state in the literatures on regulation (Majone 1997, 1994) and on the developmental state (Johnson 1982). It also allows us to see more clearly the importance of the regulatory state and social regulation in welfare arenas (Levi-Faur 2012; Haber 2011; Leisering 2011; Mabbett 2011).

The first part of the article explores the origins of the concept of the regulatory state. The second covers the enthusiastic adoption of the concept in Europe in the 1990s in what can be only considered as the first of the epic episodes in the odyssey of the concept. The third part deals with the coupling of the regulation and governance literatures in law and society scholarship, in the literature on public administration and public policy, and, more recently, in the literature on international relations and international law. The fourth part offers a definition of the regulatory state. The fifth discusses the implications of this definition for our understanding of the democratic, capitalist state and the relations between regulation, development, social regulation, and redistribution. The sixth part concludes.

#### I. THE ORIGINS OF THE ODYSSEY: A THIN LABEL

For a long time, the regulatory state was a mere label—an empty signifier of the growth of the U.S. administrative state. The earliest use to the term is in a paper by Holmes (1890) titled “State Control of Corporations and Industry in Massachusetts.” It was first associated with the progressive views of the state as formulated by John Dewey. The notion of the regulatory state had appeared here and there in the literature but with only marginal relevance for the analysis and with little systematic conceptualization. For example, Dahl and Lindblom’s *Politics, Economics, and Welfare* mentions the term in passing as a form of control where the state rules out relations that violate subjective equality (1953). The term became notably visible for the first time in the title of James Anderson’s book *The Emergence of the Regulatory State* (1962).<sup>2</sup> Anderson’s book analyzed government and bureaucratic expansion via specialized independent agencies such as those that originated in the U.S. progressive period. He did not, however, define or conceptualize the term. Nor did he employ it in a comparative or theoretical manner; instead, his main effort directed towards understanding the organization and expansion

of administrative departments, agencies, and commissions at the federal level in the context of the popular revolt against the power of big business. The term caught on only slowly in the United States, and its use was confined to scholars who studied American administrative law and American public administration. Its diffusion was slow and its position marginal probably because American political science—and American social sciences more generally—did not have an elaborate theory of the state. The pluralists, the elitists, and the Marxists did not see state theory as a central element of their analyses (King and Lieberman 2009; Dunleavy and O’Leary 1987; Skocpol 1985; Nettl 1968). The enormous power of the American administrative state was, and still is, largely hidden not only because it reflects an inconvenient truth, but also because it distributes widely among an exceedingly complex web of institutions, jurisdictions, branches, offices, programs, rules, customs, laws, and regulations (Novak 2008).

Whatever the reason, the loose use of the term “regulatory state” as a mere label is still prevalent in the United States where it is most often applied to the administrative state and captures its development in the second half of the nineteenth century (e.g., Eisner 2000). In this academic discourse, it used to reflect the exceptionalism of the American administrative system—decentralized agencies that are answerable to the Congress and that operate via specific legislative mandates and with comparatively clear limitations of power and scope. The term conveys enough descriptive power for American authors not to make any effort to characterize, define, or theorize it in a more thorough and systematic manner. Indeed, the notion of the regulatory state has never captured the imagination of American scholars. Most of their research efforts focus on the benefits and costs of administrative forms of regulation, the characteristics and the pitfalls of agencies, the relations between agencies and other branches of the government, and the particular American adversarial style (Bardach and Kagan 1982; Mitnick 1980; Wilson 1980). Despite efforts to bring the state back in (see Evans, Rueschemeyer, and Skocpol 1985), the notion of the regulatory state has gained little visibility, not least because of the dominance first of behavioralism and later of the new institutionalism.

Some insights into the genealogy of the notion can be gained from books that adopted a comparative perspective. Thus, one of the first uses of the term outside the United States is found in a chapter on the economic policy of Egypt under Gamal Abdel Nasser (Dekmejian 1971). The term “regulatory state” is used in an account of the restrictive application of regulation by the Egyptian regime, rather than the progressive project of the building of the democratic administrative state. A more influential study, however, is Chalmers Johnson’s classic *MITI and the Japanese Miracle* (1982), where the notion of the regulatory state is used in order to contrast state–business relations in Japan with those in America. In Johnson’s formulation, “A regulatory, or market-rational, state concerns itself with the forms and procedures—the rules, if you will—of economic competition, but it does not

concern itself with substantive matters” (Johnson 1982, 19). I’ll come back to this important but problematic characterization of the notion of the regulatory state later. Yergin and Stanislaw’s *The Commanding Heights* (first published in 1998) used the term again in order to capture the efforts of post-Communist Russia to create order after the crisis of the collapse of the Soviet system and the resultant chaos in its economy. Citing Thane Gustafson, an expert on Russia’s new capitalism, the authors pointed to the efforts of Boris Yeltsin’s government to create “a regulatory state that is the referee over the playing field” (1999, 296).

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

In the mid-1980s, Harold Seidman made a radical change in the image and characterization of the regulatory state. This, in turn, allowed Giandomenico Majone a decade later to turn the regulatory state on its head. But let us start with Seidman. The term “regulatory state” appeared in the subtitle of the fourth edition of a book coauthored by Harold Seidman, the late public administration scholar, *Politics, Position, and Power: From the Positive to the Regulatory State* (Seidman and Gilmour 1986). Like his predecessors, Seidman does not define the regulatory state. Still there is something new, and indeed very different, in his understanding of the concept. He sees it not as necessarily connected with the rise of public administration in the progressive period or as the product of a social movement fighting big business, but as closely related to outsourcing and privatization. For Anderson, who first used the term in the title of his 1962 book, the regulatory state was a command-and-control or hierarchical and progressive state born—at least at the federal level—at the end of the nineteenth century as a result of political struggles by popular movements against big business. For Seidman, however, the notion of the regulatory state is used to make sense of Ronald Reagan’s “revolution”:

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

The context is no longer that of popular protest and “trust-busting” but instead of a general dissatisfaction with the administrative state followed by the outsourcing of administrative functions by the federal government. Unlike Anderson, who equated the regulatory state with the independent regulatory agencies and commissions at the federal level, established in three waves from the end of the nineteenth century onwards, Seidman traces its birth to the mid-1970s. In other words, Seidman and Anderson understand the regulatory state in different ways, with different characteristics and grounded in different periods. Still, the regulatory state was not central to Seidman’s work, which had little effect on American scholars’ use of the notion. Nor did Seidman further develop the term; rather, he shifted his attention elsewhere. In the fifth edition of the book that came out ten years later, he dropped “regulatory state” from the subtitle. Nonetheless, it seems that the transformation from the positive state to the regulatory state had captured the interest of Giandomenico Majone. Adopting the new image of the regulatory state as a neoliberal state, Majone opened a new chapter in the odyssey of the term.

## II. EUROPEAN HOMECOMING

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

Another strategy for thickening the concept of the regulatory state was adopted in Moran’s *The British Regulatory State* (2003). Moran offered four “images” of the regulatory state and, in this way, turned away from the monomorphic characterization of Majone and laid the foundations of the

polymorphic approach that this paper develops. The first image is of the regulatory state as something American. This image of “origins,” as discussed in the preceding section, rests on four foundations: (1) the extensive use in agency-type decentralized forms of governance; (2) the way its range has widened over time from economic to social regulation; (3) the evidence of the problems that have afflicted it, including adversarialism, inflexibility, and arbitrary rule making and rule enforcement, and (4) the evidence of its global spread and influence. A second image is of the regulatory state as a European Madisonian state. This image builds largely on the work of Majone. It signifies the shift in interest in regulation and the regulatory state from the United States to Europe. If the challenges to the regulatory state in the United States as identified by Bardach and Kagan (1982), Sunstein (1990) and Rose-Ackerman (1992) were those of adversarialism, inflexibility, and arbitrary rule making and rule enforcement, the major challenge identified by Majone is that of legitimacy. New modes of policymaking, including its transnationalization and the importance of experts, suggest that the majoritarian aspirations of tight political control via elected officials are becoming less and less relevant. The solution is a Madisonian form of legitimacy, that of limited government and protection of the minority against the tyranny of the majority: in other words, nonmajoritarian institutions regulated by other nonmajoritarian institutions such as the courts. The third image of the regulatory state discussed by Moran is that of “a smart state” (Gunningham and Grabosky 1998), a template of good governance and innovative forms of control against which to measure the new institutions and the ongoing performance of the state. The fourth image is of a risk state, which focuses on the role of the state as an institution that struggles with deep-seated social and cultural crises (Moran 2003). To these four images Moran adds another label “the Victorian Regulatory State,” referring to the growth of nineteenth-century British administrative state.

Beyond his four images, Moran’s notion of the regulatory state emphasizes the destruction of an anachronistic governance system that was based on trust and tacit agreements between business and governmental elites and its replacement by a modern system of arm’s-length regulation. For the first two-thirds of the twentieth century, Britain, according to Moran, was the most stable and least innovative country in the capitalist world. Once a byword for stagnation, since the 1980s Britain has been a pioneer of institutional and policy change resulting in a system of governance of “increasing institutional formality and hierarchy, where the authority of public institutions has been reinforced . . . by substantial fresh investment in bureaucratic resources to ensure compliance” (2003, 20–22). This new hierarchical system is at the same time made more transparent and open “by the provision of systematic information accessible both to insiders and outsiders, and by reporting and control mechanisms that offer the chance of public control” (albeit a few islands of closed communities immune to external control remain) (*ibid.*, 7). This allows and encourages higher levels of politicization.

Thus, in contrast to images of withdrawal and hollowing out of the state, with a transfer of power to international agencies and domestic actors that are emphasized by other concepts (or, shall we say, images or characterizations) of the regulatory state, the change described by Moran is one of a vigorous regulatory state whose central ambitions of modernization, from above, have not diminished. On the contrary, it uses command-and-control regulation to colonize new areas, develop new agencies, and reform old ones (2003). The tools it applies are entirely congruent with “high modernism:” that is, standardization, central control, and synoptic legibility to the centre (*ibid.*, 6, 8). If Majone’s regulatory state is mainly about market failures via liberalization and some correcting instruments in the form of social regulation, Moran’s regulatory state is about popular sovereignty, state late modernization, and underground statism in a neoliberal disguise. The differences in interpretation are striking.<sup>3</sup> Majone and Moran each offer a new reading of regulation and the state which does not directly affirm the American Progressive or any definitive image. Yet, unlike Majone, Moran not only finds the regulatory state to be “modernist” and “missionary,” but also, and without drawing directly on polymorphic conceptions of the state, opens for us the black box of the state to demonstrate its various dimensions. I’ll return to this rather open conception of the state when I define it, but let me first discuss one more aspect in the odyssey of the regulatory state. The regulatory state is delegating regulation upward and downward while increasingly separating—both organizationally and conceptually—the regulatory functions from the policymaking and the service-provisions functions.

### III. REGULATION AS GOVERNANCE, GOVERNANCE AS REGULATION

The first decade of the third millennium saw yet another interesting development in the odyssey of the regulatory state. For the first time, there was an interest in connecting regulation with the literature of governance in general and the literature of global, regional, and transnational governance in particular.

To some extent, the shift from “government to governance” and the metaphor of steering as a regulatory procedure are echoes of earlier works (Scott 2004; Majone 1997; Grabosky 1995; Seidman and Gilmore 1986), yet the regulatory state achieves a full and intriguing conceptualization with the notion of the “new regulatory state” (Braithwaite 2000). For Braithwaite, the new regulatory state does more steering than rowing and contrasts, on the one hand, with the night-watchman state, and, on the other hand, with the old regulatory state characterized by Keynesianism and direct control by the state. The new regulatory state differs from the old in its reliance on self-regulatory organization, enforced self-regulation, compliance systems, codes of practice, and other responsive techniques that substitute for direct command and control. The new regulatory state is, therefore, about

the decentering of the state, “rule at a distance,” ranking and shaming and other forms of soft regulation (Braithwaite 2000). Braithwaite’s conceptualization implied that there was an “old regulatory state” that identifies with the centralization of government, command, and control. Michael Moran made this observation at the same time (without using the adjective “new”):

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

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

The notion of the new regulatory state and the coupling of the regulation and governance literatures sometimes generate slightly different formulations. Two important works by Colin Scott (2004) and Orly Lobel (2004) contribute significantly to our understanding of the new regulatory state but still use somewhat confusing labels: “post-regulatory state” in the case of Scott and the “fall of regulation and the rise of governance” in the case of Lobel. Both Scott’s and Lobel’s notions of the new order largely fit the convergence of governance and regulation as suggested by Braithwaite and the postmodern form of state as portrayed by Caporaso (1996), and shed light on the EU system of governance. Thus, Scott writes in the spirit of the governance school that “the post-regulatory state is a state of mind which seeks to test the assumptions that states are the main loci of control over social and economic life or that they ought to have such a position and role. In the age of governance, regulatory control is perceived as diffused through society with less emphasis on the sovereign state” (2004, 166). Similarly, Orly Lobel’s “fall of regulation” is really the fall of command-and-control regulation, and her “rise of governance” is really the rise of new regulatory governance (2004).

Interest in governance and regulation is increasingly evident also in the study of transnational, global, and regional governance. The governance perspective was introduced most notably to the field of international relations at the beginning of the 1990s (Rosenau and Czempiel 1992). In the 2000s, a growing interest in private forms of power (civic and as well as business) gave a new impetus to the growth of interest in governance beyond the state. The works of Braithwaite and Drahos (2000), Abbott and Snidal (2009a, 2009b), Djelic and Quack (2010), Overdevest and Zeitlin (2012), Mattli and Woods (2009) and Scott Cafaggi, and Senden (2011) brought transnational governance and transnational regulation together in a compelling and productive way.

All in all, it can be argued that the distinction between governance and regulation is narrowing. There is a happy marriage here as governments shed their responsibilities for service provision and shift more of their energies to regulating the service provision of diverse types of actors, including other state actors (Braithwaite, Coglianese, and Levi-Faur 2007; Jordana and Levi-Faur 2004; Parker and Braithwaite 2003). This recognition was also quick to emerge when the rise of the governance agenda in EU studies (Hooghe and Marks 2001; Jachtenfuchs 2001) met the regulation perspective on the European Union (Walby 1999; Majone 1997, 1994). Bringing governance and regulation together allowed a broader view of the ways capitalism is regulated and created a more diverse group of scholars with a broader outlook on the political economy of capitalism (Levi-Faur 2007, 2005). The attractiveness of this formulation became evident with the successful launch of the Law and Society Association’s Collaborative Research Network on Regulatory Governance in 2002, the launch of the European Consortium for Political Research Standing Group on Regulatory Governance (2005), and the

establishment of the journal *Regulation and Governance* in 2006 (the first issue came out a year later in 2007).

#### IV. DEFINING THE REGULATORY STATE

We have given a broad overview of the origins, characteristics, images, and historical context of the odyssey of the regulatory state from a thin label to a central social science concept. To make the journey safe and successful, I suggest we need to define the regulatory state. We should look for a definition that will help us to distinguish core features from characteristics, essence from image, historical context from core features, and an area-specific, inductive approach from deductive ones. The strategy adopted here defines the term “regulatory state” broadly enough to allow it to be useful beyond specific historical contexts or institutional dimensions but narrowly enough to allow us to distinguish it from competing conceptualizations of the capitalist, democratic state such as the welfare state, the developmental state, and the risk state. My definition does not attach to the regulatory state any positive or negative goals or aims per se. It allows us to distinguish between the content of rules and the use of rules as an instrument of governance. Thus, I define the regulatory state on the basis of its instruments of governance, that is, the regulatory state is a state that applies and extends rule making, rule monitoring, and rule enforcement either directly or indirectly. The source of its authority is not simply its legitimate monopoly on the means of violence, but also the claim to a legitimate monopoly on rule making, rule monitoring, and rule enforcement. Rules can be made, monitored, and enforced directly via bureaucratic organs of the state or indirectly via the supervision of other organizational, regulatory systems.<sup>4</sup> The regulatory state claims a legitimate monopoly on the deployment and distribution of power through rule making, rule monitoring, and rule enforcement.<sup>5</sup> It is this *claim* to monopoly that may be delegated or shared, practiced or not, at will or under constraint, that matters. In this way, the regulatory state distinguishes from Weberian emphases on the state’s claim to a legitimate monopoly on the means of violence. Of course, the claim to a monopoly does not imply *actual* monopoly, either now or in the past. A claim is just a claim, no more and no less, and there are gaps with regard to the *actual* monopoly on the distribution of regulatory authority just as there are gaps with regard to the actual monopoly on the means of violence.

What are the implications of this definition? *First*, the definition embraces both “old” and “new” regulatory states. What makes the difference between what we call nowadays “old” and “new” is the extent of decentralization of regulatory power, that is, the formal separation of the political and the legislative from the regulatory, and at the same time the degree of decentralization of the regulatory between different specialized agencies. In brief, we can say that while the old regulatory state is centered and hierarchical, the

new one is decentered or, more accurately, polycentered. Decenteredness is often expressed via a growth in delegation and the increased specialization and diversification of regulatory institutions. Thus, regulatory agencies are not the regulatory state; they are manifestations of one form or variety of the regulatory state.

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

*Third*, the definition suggests that the regulatory state is not essentially neoliberal or socialist or social democratic. It allows it to be any of these, depending on the content of the rules, and therefore to avoid the monomorphic approach of other authors. This goes against the widely held perception that the regulatory state represents a neoliberal alternative to the positive state (e.g., Majone’s interpretation). Thus, for example, McGowan and Wallace argue that the regulatory state is “likely to intervene to underpin the market rather than replace markets; it is concerned to make markets work better and thus to compensate or substitute where markets fail” (1996, 563). Similarly, but from a critical perspective, Kanishka Jayasuriya (2001) suggests that the emerging regulatory state is best understood in terms of the notion of negative coordination as opposed to the positive coordination of economic management within corporatist and developmental state structures. For him, the regulatory state is a product of globalization, an example of negative coordination. If the regulatory state is about negative coordination, then the developmental state and the welfare state are about positive coordination. Holding to my own definition, and with reference to regulation as an instrument of control, it does not make sense to me to equate socialist or neoliberal policies with instruments of control. Public ownership, for example, can serve any purpose, including the reassertion of markets. It is not more socialist than the regulatory duty to allow labor organizations a privileged position in collective bargaining. Similarly, private ownership in itself does not define the nature of the regime. What counts in deciding whether a policy regime is neoliberal are the goals of the regime and the social results, not necessarily the instruments. This does not suggest that policy instruments, regulation included, do not have strategic implications. The choice of instrument itself is political, and the decision to draw on regulation rather than on fiscal transfers is often strategic. Nonetheless, the strategic

choice in favor of one instrument over the other does not suggest that one instrument is inherently or systematically more just, fair, liberal, or efficient.

*Fourth*, the definition of the regulatory state that I offer here does not tell us either to what extent the state is autonomous or dependent or the degree in which it is prone to or immune from capture (Stigler 1971). Its degree of autonomy is made up of the autonomy of its regulatory institutions, agencies, and procedures, norms, and actors. In addition, in public discourse, as in the scholarly discourse on regulation, the issue of the autonomy of the state is often translated or transformed and reduced to the question of the autonomy of its agencies. Thus, economists like Cukierman (1992) and political scientists such as Gilardi and Maggetti (2011) have made a concrete and impressive effort to measure the formal and informal independence of agencies across sectors and countries. The implicit question raised by the political scientists is whether state autonomy or regulatory autonomy is possible. Nordlinger's concept of autonomy (1987) centers on whether regulators can adopt and promote their own regulatory preferences. They have both preferences and policy capacities. The possibility of autonomy might seem uncontroversial to my readers, but it stands in contrast to Stigler's dictum "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit" (1971, 3). Given the dominance of the capture approach in theoretical discussions about regulation, the very idea of the regulatory state as an autonomous institution that may govern with the public interest in mind seems brave. Still, this is the modernizing project upon which much of the reform of the state worldwide is based—both before and after the great financial crisis.

While I have identified four implications of the definition provided, I think that a fifth is probably the most important. The definition I provide allows us to think about the relations between the regulatory state and other forms of state as constitutive relations instead of as tradeoffs.

## V. THE REGULATORY STATE: A POLYMORPHIC APPROACH

The concept of the regulatory state is usually discussed with a focus on the term "regulatory." Yet the concept also includes the term "state." This demands a certain understanding and conceptualization of the noun "state" and not only of the adjective "regulatory." One way forward is to discuss the relations between the "classical" and still widely held definition of the state as the body exercising a legitimate monopoly on the means of violence with the definition, offered here, which focuses on the claim of the state to a legitimate monopoly on regulation. This road requires a different article,<sup>6</sup> but what I would like to do here is to discuss the relations between the "positivist state" and the "regulatory state" adopting a polymorphic approach.

The rise of the regulatory state is often understood in terms of a decline of other forms of state. A certain "trade-off" is implicitly or explicitly built into

the conceptualization of the regulatory state in general and of regulatory change in particular. The origins of the trade-off approach to the regulatory state can be found in the work of the late Chalmers Johnson (1982), who first coined the notion of the developmental state in order to capture inductively the characteristics of the Japanese state in the era of high growth. Johnson contrasted the developmental state with what he called the “regulatory state” associated with the United States:

These two differing orientations toward private economic activities, the regulatory orientation and the developmental orientation, produced two different kinds of government–business relationships. 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* . . . (1982, 19; emphasis added)

In Johnson’s formulation, Japan is a developmental state that prioritizes development and where the bureaucracy can use its discretion administratively 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’s understanding of rules and regulation equates them with procedural rather than substantive rules. The content of the rules is ignored, and so are their mandatory and value-laden capacities. This therefore limits—by definition—an in-depth and extensive understanding of the regulatory state and its transformative capacities.<sup>7</sup>

While it was Johnson (1982) who was the first to contrast the regulatory state with the positive–interventionist state, it was Majone who drew the contrast between these two forms of state that is most influential in contemporary scholarly discourse. What Johnson initially contrasted in a static monomorphic manner as two opposing types of state was later portrayed by Majone as a *shift* from one type to the other. Together the two authors project a neoliberal image of the regulatory state that does not fit well with the idea of the regulatory state as a progressive project. The age of the rise of the regulatory state, so the argument goes, is therefore the age of the decline of the positive state. This means, *inter alia*, a decline in activism and shifts from industrial policies to structural policies, from social transfers to social regulation, and from direct intervention to indirect intervention. The association between the rise of the regulatory state and decline of the welfare–developmental–positive state is now widely accepted and, in turn, causally associated with the rise of neoliberalism and the belief in the superiority of markets as mechanisms for maximizing the public good.

There are three problems with the Johnson–Majone approach to the regulatory state. First, to imply that the rules in rule-governed states do not have a purpose or do not reflect politics, interests, ideas, and power is problematic because procedural rules, or the rules of the game, are purposive in shaping

results and determining the winners even if they do not name the winners. Regulation includes procedural rules, but these rules are neither the most numerous nor the most important. While there are systematic attempts to depoliticize regulation in general and the rule of procedures in particular, these attempts are at best unconvincing. One can regulate *for* development, and such regulations can be highly transformative and highly intrusive. Intellectual property regulations base their contested legitimacy on their developmental effects (Drahos 2010). They are excellent examples of highly intrusive and highly transformative regulations that create winners and losers at the level of the corporation as well as at the level of the global division of wealth. Changing the procedure changes the results, and to the extent that this is the case, procedures are not neutral. In addition, only a small proportion of the rules in the regulatory state are procedural (no one knows how small because no attempt is made to classify these rules across the board). Most are purposive. In an era of regulation, the meaning, scope, intensity, and purpose of rule-making processes and institutions deserve more attention than is generated by the practice of contrasting the regulatory state and the developmental state.

Second, the dichotomy of the rule-governed state *versus* the purpose-governed state implies that purpose-governed states do not or cannot use rules in order to advance their purposes. For this reason, it does not make sense to use this dichotomy. The point was ignored, first by Johnson and later by Majone and their followers. The dichotomy was useful as a metaphor to convey the differences between the United States and Japan and, by extension, the differences between Anglo-Saxon and East Asian capitalism. The differences between countries are real, but the differences between forms of developmentalism cannot be captured in terms of the intensity of rules in the United States or the centralization and flexibility of policy-making capacities in East Asia or Continental Europe. The reason is simple: there is nothing in the rule orientation of the United States that prohibits welfare redistribution, and there is nothing in East Asian developmentalism that prohibits more rule-based governance.

Third, the suggestion that one can capture the “essence” of the state by capturing its highest priority assumes that the state has a highest priority and that this priority marginalizes other priorities. But what if the state’s priorities are multiple? What if there is no “highest” priority and that instead there are multiple priorities that mutually support each other rather than contradict and compete with each other? What if the secret of success for states is not a focus on one goal but the ability to achieve a few goals at the same time, for example, simultaneously achieving development and social welfare? Indeed, many would agree that the rise of Japan, at least until the Second World War, was motivated by the strong link between the pursuits of national power and national plenty.

Instead of the trade-off and monomorphic approach developed by Johnson and Majone, I offer a polymorphic approach to the state and

institutions more generally. I start by rejecting the implicit and sometime explicit suggestion that states can or should be defined by one essential characteristic or, in other words, that they are monomorphic. Instead I assert, following Mann (1993), that states are polymorphic. Far from being singular and centralized, Mann writes, modern states are polymorphic power networks stretching between center and territories. In chemistry, a polymorph is a substance that crystallizes in two or more different forms, usually belonging to different systems. The term conveys the way states crystallize at the center—but in each case at a different center—of a number of power networks (Mann 1993, 75). While some of the morphs of the state represent “higher-level crystallization,” others represent “lower-level crystallization.” The relations between the different morphs, Mann tells us, are not necessarily opposed, nor are the relations necessarily hierarchical. This makes sense only if we consider the many adjectives of the state that we use: democratic, weak, corporatist, city, activist, predatory, crony, administrative, pluralist, corporatist, contract, neoliberal, and social-democratic. This plurality can signify confusion, but it can also signify the polymorphic nature of the state. I hold that the latter interpretation makes better sense as most of these adjectives represent useful conceptual progress and do not stand in competition with each other.

Polymorphic analysis allows for diversity of state forms within a single polity. It also allows us, drawing on Mann, to conceive of the capitalist state as a higher form of crystallization than other morphs such as the regulatory and the developmental states. This is compatible both with Knudsen and Rothstein (1994), who envisaged the state as a coral reef, an institutional complex shaped by deposits over a long period, and with Caporaso (1996), who analyzed the EU polity in the light of three stylized state forms: the Westphalian, the regulatory, and the postmodern. Thinking of both the developmental state and the regulatory state as forms of capitalist state also allows us to examine the effects, limits, and paradoxical outcomes of neoliberalism, not as a transition from a Keynesian to a neoliberal form of state, but instead as the neoliberal impact on the regulatory state and the neoliberal impact on the developmental state. At the same time, it allows us to think differently about the field of comparative capitalism. This field was, and still is, methodologically national in the sense that it captures the essence of the polity by reference to one single national morph. Yet, if the state is polymorphic, and especially if it is increasingly polymorphic, then unidimensional, nation-focused, comparative strategies become increasingly problematic.

## VI. CONCLUSIONS

Let me conclude with a summary of the main claim of this article and a discussion of the implications and future direction of research that follow from them. First, the discussion and the definition allow me to rescue the

regulatory state from the narrow confines of historical, national, and regional specificities. The regulatory state is neither British nor American; it is not the unique creation of the European Union, nor can it be defined only with reference to agencies, commissions, and the administrative architecture of the United States. It is all these things and more, but it should not be defined as the amalgamation of any set of characteristics. The further we look backward and sideways into the rise of regulation, the clearer it is that the regulatory state is a useful concept for understanding the state and the capitalist system beyond our period and beyond the United States, the neoliberal era, and the “Global North.” The regulatory state is not exhausted by the existence or the prevalence of independent agencies or commissions. These all reflect only the particularities of architecture, time, and place. The notion of the regulatory state, it is maintained, can apply to any state that relies on rule making, rule monitoring, and rule enforcement. This definition can travel in time because it is thinner than its more ambiguous competitors. It does not require agencies or democratic or economic liberalism, nor does it have any particular affinity to Anglo-Saxon or Western cultures. The lighter weight allows the concept not only to travel further (both to the past and to the future) but to better illuminate the regulatory aspects of the present social, political, and economic order.

Second, the boundaries of regulation, and hence the boundaries of the regulatory state, are wider than usually understood. It goes beyond procedural rules to the substantive, and beyond the technical, to the distributive and redistributive. Regulation is not only about procedural rules, and it is neither a light nor a heavy instrument per se. It all depends on the ways regulation is applied and on its content. At the same time, regulation is becoming the instrument of choice in all arenas of state activity and governance more generally. This implies that Theodore Lowi’s (1972, 1964) influential distinction between regulatory, distributive, redistributive, and constituent policies is increasingly problematic. If regulation is an instrument of control and the regulatory state is a state that specializes in control via rules (rather than only in taxing and service provision), then a new understanding of the politics of regulation is emerging wherein 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 fields, era, and arenas. It becomes a major signifier of the social, political, and economic order that rests on regulation. Moreover, we can start thinking of the state as a polymorphic institution where the role of regulation is more critical and central than Lowi, Johnson, and Majone originally conceived. We can also understand why regulation is expanding and why the welfare state, the developmental state, and other forms of administrative state are still with us. Regulation, rather than fiscal transfers, is the new frontier of state expansion. This does not mean that fiscal transfers are on the decline, but it does suggest that transfers are becoming more indirect and more complex via systems of rule making. This observation has

two implications. One is that regulation is not only a field of research, but potentially a window of opportunity for capturing the dynamics of change of the social, political, and economic order at the micro-, meso- and macrolevels (Buch-Hansen 2012). The other implication is that the regulation literature is relevant in fields that are well beyond its current reach. The recent growth of the regulation literature may signify much more interest in regulation in future decades. The challenge for scholars of regulation, and governance alike, is to engage with the rest of the social sciences and demonstrate how their theories, instruments, and perspectives can make contributions beyond their immediate interests.

Third, the article advances a polymorphic approach to the state and, by implication, to institutions more generally. Some, though not all, of the problems that arise in the characterization of the regulatory state derive from the monomorphic approach to the state. True, the regulatory state may or may not exist in parallel with the positive state, but the two are not the flip sides of each other. They do not and cannot substitute for each other. There is no positive state without the regulatory state, and there is no regulatory state without some “positive” goals, even if these goals reduce to mere protection of the current order. My understanding of the process of the expansion of the regulatory state suggests that regulation is used more intensively, more smartly, and more widely than ever before, especially by the powerful, enhancing their world views and interests in the service of welfare (to all or some groups), of development (in some directions but not others), and risk governance (preferring some types of risk and risk-stakeholders over others). The regulatory state, therefore, helps us to understand not only regulation, but also the direction, means, and consequences of the expansion of the democratic capitalist state in the age of governance. To this end, more research is needed into the relations between the regulatory state, on the one hand, and the developmental state, the welfare state, and the risk state, on the other. Most important, we need a vision of the state where the regulatory state helps deliver better welfare states and better developmental states than we have nowadays.

#### NOTES

1. While the “commission” or “agency” form of state is commonly associated with the United States, its origins are much older and more diverse. These origins should be associated not only with the state as such, but also with the central banking sector (Jordana and Levi-Faur 2011)
2. It probably originated in an earlier (1960) dissertation with the same main title. The notion was used occasionally in the literature even before that but, as far as I can find, never as centrally as in the title of Anderson’s work.
3. King (2007) continues the tradition of characterization rather than definition, and distinguishes between (1) the ambiguous regulatory state (most visible in higher education), (2) the insuring regulatory state (health care), (3) the globalized regulatory state (accountancy), and (4) the meso-regulatory state (legal services).

4. This indirect form of regulation is often called “meta-regulation” (“regulation of regulation”; see Parker 2002) or “meta-governance” (“governance of governance”; see Jessop 2003).
5. The claim to monopoly can be limited in liberal regulatory states. It is a claim to a monopoly on the possibility of making rules of general application; and in a liberal setting we can expect a plurality of legalities/regulatory orderings and, in practice, claims to exercise final authority. I owe this insight to Christine Parker.
6. While I focus here on the functional–instrumental dimensions of the state, the polymorphic approach should be useful in discussion also of the tensions between a violence-centered definition and regulation-centered definition of the state.
7. To understand the origins of this distinction and to gauge Johnson’s very narrow view of regulation and the rule-making process, I reread his book. I found that his interpretation rests on Bertrand de Jouvenel’s distinction between a “rule-governed state” (*nomocratic*) and a “purpose-governed state” (*teleocratic*). De Jouvenel, who was one of the founders of the economically liberal and international Mont Pèlerin Society (Mirowski and Plehwe 2009). Johnson was drawing on de Jouvenel indirectly, referring to Kelly’s (1979) paper in a special issue of *Daedalus* on “The State.” See also Plant (2009), who discusses these distinctions in Michael Oakshott’s work.

DAVID LEVI-FAUR is at the School of Public Policy and the Department of Political Science, at the Hebrew University of Jerusalem. He is also a founding editor of *Regulation & Governance*, a Wiley-Blackwell journal, which aims to serve as a leading platform for the study of regulation and governance in the social sciences. His recent work includes the Oxford Handbook of Governance (2012) and the Handbook on the Politics of Regulation (Edward Elgar, 2011).

#### REFERENCES

- Abbott, Kenneth W., and Duncan Snidal. 2009a. “The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State.” In *The Politics of Global Regulation*, edited by Walter Mattli and Ngaire Woods, 44–88. Princeton, NJ: Princeton University Press.
- . 2009b. “Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit,” *Vanderbilt Journal of Transnational Law* 42: 501–78.
- Anderson, James E. 1962. *The Emergence of the Regulatory State*. Washington, DC: Public Affairs Press.
- Bardach, Eugene, and Robert A. Kagan. 1982. *Going by the Book: The Problem of Regulatory Unreasonableness*. Philadelphia, PA: Temple University Press.
- Braithwaite, John. 2000. “The New Regulatory State and the Transformation of Criminology,” *British Journal of Criminology* 40: 222–38.
- Braithwaite, John, and Peter Drahos. 2000. *Global Business Regulation*. Cambridge: Cambridge University Press.
- Braithwaite, John, Cary Coglianese, and David Levi-Faur. 2007. “Can Regulation and Governance make a Difference?” *Regulation & Governance* 1: 1–7.
- Buch-Hansen, Hubert. 2012. The Political Economy of Regulatory Change: The Case of British Merger Control. *Regulation & Governance*, 6: 101–18.
- Caporaso, James. 1996. “The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?” *Journal of Common Market Studies* 34: 29–52.

- Cukierman, Alex. 1992. *Central Bank Strategy, Credibility, and Independence: Theory and Evidence*. Boston: MIT Press.
- Dahl, Robert A., and Charles E. Lindblom. 1953. *Politics, Economics, and Welfare*. New York: Harper.
- Dekmejian, Hrair R. 1971. *Egypt under Nasir: A Study in Political Dynamics*. Albany, NY: State University of New York Press.
- Djelic, Marie-Laure, Sigrid Quack (eds.). 2010. *Transnational Communities: Shaping Global Economic Governance*. Cambridge: Cambridge University Press.
- Drahos, Peter. 2010. *The Global Governance of Knowledge: Patent Offices and Their Clients*. New York: Cambridge University Press.
- Dubash, Navroz, and Bronwen Morgan. 2012. "Understanding the Rise of the Regulatory State of the South," *Regulation & Governance*, 6: 261–81.
- Dunleavy, Patrick, and Brendan O'Leary. 1987. *Theories of the State: The Politics of Liberal Democracy*. Basingstoke, UK: Macmillan.
- Eisner, Marc A. 2000. *Regulatory Politics in Transition*, 2nd ed. Baltimore, MD: Johns Hopkins University Press.
- Evans, Peter B., Dietrich Rueschemeyer, and Theda Skocpol (eds.). 1985. *Bringing the State Back In*. Cambridge: Cambridge University Press.
- Gilardi, Fabrizio, and Martino Maggetti. 2011. "The Independence of Regulatory Authorities." In *Handbook on the Politics of Regulation*, edited by David Levi-Faur. Cheltenham, UK: Edward Elgar.
- Grabosky, Peter. 1995. "Using Non-Governmental Resources to Foster Regulatory Compliance," *Governance* 8: 527–50.
- Gunningham, Neil, and Peter N. Grabosky. 1998. *Smart Regulation: Designing Environmental Policy*. Oxford: Clarendon.
- Haber, Hanan. 2011. "Regulating-for-Welfare: A Comparative Study of 'Regulatory Welfare Regimes' in the Israeli, British, and Swedish Electricity Sectors," *Law & Policy* 33: 116–48.
- Holmes, George K. 1890. "State Control of Corporations and Industry in Massachusetts," *Political Science Quarterly* 5: 411–37.
- Hood, Christopher, Oliver James, George Jones, Colin Scott, and Tony Travers. 1999. *Regulation inside Government*. Oxford: Oxford University Press.
- Hooghe, Lisbet, and Gary Marks. 2001. *Multi-level Governance and European Integration*. London: Rowman & Littlefield.
- Jachtenfuchs, Markus. 2001. "The Governance Approach to European Integration," *Journal of Common Market Studies* 39: 245–64.
- Jayasuriya, Kanishka. 2001. "Globalization and the Changing Architecture of the State: The Politics of the Regulatory State and the Politics of Negative Co-ordination," *Journal of European Public Policy* 8: 101–23.
- Jessop, Bob. 2003. "Governance and Metagovernance: On Reflexivity, Requisite Variety, and Requisite Irony." In *Governance as Social and Political Communication*, edited by H. P. Bang, 142–72. Manchester, UK: Manchester University Press.
- Johnson, Chalmers. 1982. *MITI and the Japanese Miracle: The Growth of Industry Policy*. Stanford, CA: Stanford University Press.
- Jordana, Jacint, and David Levi-Faur (eds.). 2004. *The Politics of Regulation*. Cheltenham, UK: Edward Elgar.
- Jordana, Jacint, and David Levi-Faur. 2011. "The Global Diffusion of Regulatory Agencies Channels of Transfer and Stages of Diffusion," *Comparative Political Studies* 44: 1343–69.
- Kayaalp, Ebru. 2012. "Torn in Translation: An Ethnographic Study of Regulatory Decision-making in Turkey," *Regulation & Governance* 6: 225–41.
- Kelly, George A. 1979. "Who Needs a Theory of Citizenship?" *Daedalus* 108 (4): 21–36.

- King, Desmond, and Robert C. Lieberman. 2009. "Ironies of State Building: A Comparative Perspective on the American State," *World Politics* 61: 547–88.
- King, Roger. 2007. *The Regulatory State in the Age of Governance*. Basingstoke, UK: Palgrave.
- Knudsen, Tim, and Bo Rothstein. 1994. "State Building in Scandinavia," *Comparative Politics* 26: 203–20.
- Leisering, Lutz (ed.). 2011. *The New Regulatory State: Regulating Private Pensions in Germany and the UK*. Basingstoke, UK: Palgrave-Macmillan.
- Levi-Faur, David. 2005. "The Global Diffusion of Regulatory Capitalism," *Annals of the American Academy of Political and Social Sciences* 598: 12–32.
- . 2007. "Regulatory Governance." In *Europeanization: New Research Agendas*, edited by P. Graziano and M. Vink, 102–14. Basingstoke: Palgrave Macmillan.
- . 2012. "A Regulatory State for the Welfare State," an unpublished manuscript with the author.
- Levi-Faur, David, and Sharon Gilad. 2004. "The Rise of the British Regulatory State: Transcending the Privatization Debate," *Comparative Politics* 37: 105–24.
- Lobel, Orly. 2004. "The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought," *Minnesota Law Review* 89: 342–70.
- Loewi, Theodore J. 1964. "American Business, Public Policy, Case Studies, and Political Theory," *World Politics* 16: 677–715.
- . 1972. "Four Systems of Politics, Policy and Choice," *Public Administration Review* 32: 298–310.
- Mabbett, Deborah. 2011. "The Regulatory State and the Welfare State." In *Handbook on the Politics of Regulation*, edited by David Levi-Faur. Cheltenham, UK: Edward Elgar.
- Majone, Giandomnico. 1991. "Cross-National Sources of Regulatory Policymaking in Europe and the United States," *Journal of Public Policy* 11: 79–106.
- . 1994. "The Rise of the Regulatory State in Europe," *West European Politics* 17: 77–101.
- . 1997. "From the Positive to the Regulatory State," *Journal of Public Policy* 17: 139–67.
- Mann, Michael. 1993. *The Sources of Social Power, Vol. II: The Rise of Classes and Nation-States, 1760–1914*. Cambridge: Cambridge University Press.
- Martinez-Gallardo, Cecilia, and Maria Victoria Murillo. 2011. "Agency Under Constraint: Ideological Preferences and the Politics of Electricity Regulation in Latin America," *Regulation & Governance* 5 (3): 350–67.
- Mattli, Walter, and Ngaire Woods (eds.). 2009. *The Politics of Global Regulation*. Princeton, NJ: Princeton University Press
- McGowan, Francis, and Helen Wallace. 1996. "Towards a European Regulatory State," *Journal of European Public Policy* 3: 560–76.
- Mitnick, Barry M. 1980. *The Political Economy of Regulation*. New York: Columbia University Press.
- Moran, Michael. 2000. "From Command State to Regulatory State?," *Public Policy and Administration* 15 (4): 1–13.
- . 2003. *The British Regulatory State: High Modernism and Hyper Innovation*. Oxford: Oxford University Press.
- Mirowski, Philip, and Dieter Plehwe. 2009. *The Road from Mont Pelérin: The Making of the Neoliberal Thought Collective*. Cambridge, MA: Harvard University Press.
- Nettl, J. P. 1968. "The State as a Conceptual Variable," *World Politics* 20: 559–92.
- Nordlinger, Eric. 1987. "Taking the State Seriously." In *Understanding Political Development*, edited by M. Weiner and P. S. Huntington, 353–90. Boston: Little, Brown.

- Novak, William J. 2008. "The Myth of the 'Weak' American State," *American Historical Review* 113: 752–72.
- Orren, Karen, and Stephen Skowronek. 2006. *The Search for American Political Development*. Cambridge: Cambridge University Press.
- Overdevest, Christine, and Jonathan Zeitlin. 2012. "Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector," *Regulation & Governance* published online March 29.
- Ozel, Izik. 2012. "The Politics of De-delegation: Regulatory (In)dependence in Turkey," *Regulation & Governance* 6: 119–29.
- Parker, Christine. 2002. *The Open Corporation, Effective Self-Regulation and Democracy*. Cambridge: Cambridge University Press.
- Parker, Christine, and John Braithwaite. 2003. "Regulation." In *The Oxford Handbook of Legal Studies*, edited by Peter Cane and Mark V. Tushnet, 119–45. Oxford: Oxford University Press, 119–45.
- Plant, Raymond. 2009. *The Neo-Liberal State*. New York: Oxford University Press.
- Power, Michael. 1997. *The Audit Society: Rituals of Verification*. Oxford: Oxford University Press.
- Rose-Ackerman, Susan. 1992. *Rethinking the Progressive Agenda: The Reform of the American Regulatory State*. New York: The Free Press.
- Rosenau, James N., and Ernst-Otto Czempiel (eds.). 1992. *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press.
- Scott, Colin. 2004. "Regulation in the Age of Governance: The Rise of the Post-Regulatory State." In *The Politics of Regulation*, edited by Jacint Jordana and David Levi-Faur, 145–74. Cheltenham, UK: Edward Elgar.
- Scott, Colin, Fabrizio Cafaggi, and Linda Senden. 2011. *Transnational Private Regulation: Conceptual and Constitutional Debates*. Oxford: Wiley-Blackwell.
- Seidman, Harold, and Robert S. Gilmour. 1986. *Politics, Position, and Power: From the Positive to the Regulatory State*. Oxford: Oxford University Press.
- Skocpol, Theda. 1985. "Bringing the State Back In: Strategies of Analysis in Current Research". In *Bringing the State Back In*, edited by P. Evans, D. Rueschemeyer, and T. Skocpol, 3–43. Cambridge: Cambridge University Press.
- Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920*. Cambridge: Cambridge University Press.
- Stigler, George J. 1971. "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2: 3–21.
- Sunstein, Cass. 1990. *After the Rights Revolution: Reconceiving the Regulatory State*. Cambridge, MA: Harvard University Press.
- Walby, Sylvia. 1999. "The New Regulatory State: The Social Powers of the European Union," *British Journal of Sociology* 30: 118–40.
- Wilson, James Q. 1980. *The Politics of Regulation*. New York: Basic Books.
- Yergin, Daniel, and Joseph Stanislaw. 1999. *The Commanding Heights: The Battle for the World Economy*. New York: Simon & Schuster.