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AQ: 4

Regulatory reform and the regulatory state in the post-COVID-19 world

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Abstract

Purpose – Reflecting on recent empirical developments and insights from regulatory state theory, this paper considers directions in which the regulatory state could develop in the post-COVID-19 era.

Design/methodology/approach – A de-contextualised analysis of regulatory developments based on prior regulatory state literature and literature on post-crisis responses, as well as current empirical developments. These are coupled with considerations of comparative scenarios for the development of the regulatory state.

Findings – Predicting the direction in which the regulatory state will develop is inherently challenging, particularly at this early stage. Yet, the conceptual framework we have laid out points to possible futures of the regulatory state and the domestic and international factors that might mediate these futures.

Originality/value – Providing a structured approach to the analysis of the regulatory state based on a synthesis of the literature on the regulatory state, public management reform and global regulatory shifts.

Keywords Regulatory reform, Regulatory state, Deregulation, Global regulatory landscape, Regulatory capitalism, Post-COVID

Paper type Research paper

1. Introduction

Following the COVID-19 pandemic, social, political and economic realities will significantly change, transforming the regulatory landscape around the world. How might the shape of regulatory capitalism (Braithwaite, 2000; Levi-Faur, 2005) and the outlook of the regulatory state (Majone, 1994, 1997; Loughlin & Scott, 1997; Scott, 2000; Lodge, 2008), as its key embodiment, be transformed as a result of this changing post-COVID-19 regulatory landscape?

Given the pandemic's prominence and scale, a conversation about its potential impact on the regulatory state would aptly fit into the broader conversation about the pandemic's implications for governance systems (Dunlop, Ongaro & Baker, 2020). Of course, analysing, from this vantage point, the future of regulatory capitalism is a challenging endeavour. The crisis is not over, and its full scale and cost are yet to be realised. This is why, instead of offering firm predictions, we will discuss possible directions and scenarios of regulatory change. Our analysis will point to various pandemic legacies and discuss how they might transform the regulatory landscape. We will highlight a variety of possible regulatory implications of these legacies and outline regulatory complementarities and tensions between these implications. We will also indicate factors, domestic and international, that might play a

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key role in mediating these implications, discussing how they could determine the eventual shape of the regulatory state.

It is a common occurrence that major international crises trigger regulatory reform. Even so, the COVID-19 pandemic is expected to have a greater and more wide-ranging impact on regulatory reform than other crises. Its economic consequences will be stronger than in any previous crisis in modern history, and its geographical span, too, will be unprecedented, as the "pinch" of the crisis will be felt all over the world, with no country left unaffected. Even though it started as a health pandemic, not as a consequence of a regulatory failure or regulatory crisis (Hutter & Lloyd-Bostock, 2017), managing post-COVID-19 recovery will nonetheless require extensive regulatory changes.

This paper is situated in a broader scholarly conversation concerning the development of regulatory capitalism (Braithwaite & Drahos, 2000; Levi-Faur, 2005), contributing to debates around the shape and operation of the regulatory state (Majone, 1994, 1997; Loughlin & Scott, 1997; Moran, 2002, 2003; Lodge, 2008), particularly in the context of changing socio-political settings (Koop & Lodge, 2020). The paper draws on and feeds into the argument that the regulatory state is one morph of the polymorphic state's political economy model. Developments in the welfare state impact the nature of the regulatory state, just as the organisation of the regulatory state has welfare implications (Levi-Faur, 2014). Welfare decisions made during the post-pandemic economic legacy will impact regulatory reform, amongst others. The paper also argues that the analysis of the future of the regulatory state needs to take into account the impact of the global regulatory environment on domestic regulatory developments, particularly in the context of ongoing global regulatory shifts (Lavenex, Serrano & Büthe, 2021).

2. The evolution of the regulatory state and crises

In the contemporary era of regulatory capitalism (Braithwaite & Drahos, 2000; Levi-Faur, 2005), regulation represents a key instrument of governance (Koop & Lodge, 2017). Regulation is steering the behaviour of businesses as well as social and political actors through rules (Higgins, 1997; Moran, 2003, p. 13). Two key areas of regulation are economic and social regulation. The former relates to the rights and obligations of market participants in shaping market conditions and competition (Stigler, 1971; Peltzman, Levine & Noll, 1989); the latter is related to the introduction of social and environmental standards. The directions AQ: 5 of economic and social regulation in one society will not necessarily correspond to each other; one area might be highly regulated and the other deregulated, just as both areas could be highly (de)regulated at the same time.

Central to the analysis of regulation is the concept of the regulatory state, a term that implies two notions across two different geographical contexts. In the American tradition, the concept of the regulatory state is equated with the volume of rules and standards that are imposed on businesses and other social actors (see, e.g. Sunstein, 1990). The regulatory state is thus synonymous with a highly regulated society, as opposed to a "deregulated state", where actors operate unconstrained by rules. In the European tradition, the concept of the regulatory state is synonymised with the institutional model of Independent Regulatory Agencies (IRAs), which are structurally separated from the central government, thus enjoying greater potential to produce credible, time-consistent and expertise-driven regulatory decisions (Majone, 1994, 1997; Gilardi, 2002). The European notion of the regulatory state revolves around the question "who makes the regulation and how", whereas the American tradition asks "how prescriptive the regulations are and how much the markets and social life are regulated as a result". Rather than choosing one notion over another for our analysis, it was suitable to unify both notions; when integrated, they encompass two key questions – the "who" and the "what" of regulatory governance – that are at the heart of our analysis of regulatory reform and regulatory developments.

Regulatory systems differ according to the "who", "what" and "how" of regulatory governance. On the "who" component, we can distinguish between (1) regulatory governance performed by the government or other political actors under the government's control or within the political locus of power; (2) an independent regulator – the institutional form that is, in the European tradition, the pillar of the regulatory state (Majone, 1997; Gilardi, Jordana & Levi-Faur, 2006), which, while insulated from the government, still commands public authority; and (3) a non-state actor (or group of actors); in systems characterised as the "new regulatory state" (Braithwaite, 2000), such actors play prominent roles.

Even when, in one state, one type of the above actors holds predominant regulatory powers, in reality, regulatory systems and practices will involve all of them, at least in some stages of the regulatory process, be it the standard-setting, monitoring or enforcement stage (Braithwaite & Drahos, 2000, p. 3). With regulatory evolution, such constellations of their roles and powers can change. Sometimes, powers shift from one actor to another; and at other times, powers become shared or joined (e.g. in collaborative regulatory arrangements; see, e.g. Gunningham, 2009).

The "what" of regulatory governance refers to whether a sector is regulated or deregulated. Highly regulated sectors feature extensive and/or comprehensive regulations; deregulated sectors are characterised by few, if any, regulatory rules for the involved actors.

Further, the "how" of regulatory governance refers to enforcement strategies and styles – the ways in which various regulatory techniques and instruments are applied. Regulatory strategies can range from command and control, characterised by direct oversight and sanctioning; to other forms of standard-based regulation; to responsive regulation, characterised by the enforcement pyramid, where sanctions are escalated as non-compliance recurs; to risk-based regulation, where resources are directed towards the riskiest elements of the sector; to other strategies (Baldwin, Cave & Lodge, 2012, pp. 105–311). Overall, to analyse variations in regulatory systems, including their evolution over time, changes across these three elements need to be scrutinised. Thus, to assess the impact of the COVID-19 pandemic on regulatory developments, one needs to examine whether and how its legacy will shape the "who", "what" and "how" of regulatory governance in specific states.

2.1 The evolution of the regulatory state

Regulatory systems are not static; they evolve and change over time. In "regular" times, regulatory systems change as a result of everyday social, technological and political developments. As socio-technological development imposes new challenges and priorities, the need to regulate them comes to the fore; then, socio-political mobilisation and contestation ensue during which stakeholders and political actors articulate and assert their views and proposals, affecting the extent of regulatory change. In "regular", non-crisis times, developments typically lead to less-abrupt and less-comprehensive regulatory changes than those following major crises, although, even if incremental and gradual, such changes can lead to radical transformations (Streeck & Thelen, 2005) of a regulatory state.

Struggles for regulatory change usually take place in domestic arenas but are part of the wider context of increasing internationalisation. Following the "neo-liberal" revolution, internationalisation has been seen as the key force behind policy and regulatory developments alike. Internationalisation refers to increased market integration worldwide, with rising interdependence among states and markets and greater mobility of capital, goods and humans (Simmons, Dobbin & Garrett, 2008). While domestic factors play a role in mediating how regulatory changes will play out, internationalisation can often impose constraints regarding the direction and extent of such changes. For instance, internationalisation has recently often been portrayed as producing ever-increasing economic deregulation (but, for a different, "deregulation that didn't happen" argument, see Vogel, 2018).

Major regulatory changes can be particularly catalysed by crises because the latter are moments of reflection and necessity. Reflection entails a reconsideration of extant regulatory weaknesses and failings, and necessity, usually economic, forces political actors to rethink the governance model in order to minimise economic harm and achieve recovery. As such, crises represent apt times, i.e. windows of opportunity (Kingdon, 1984), during which policy and political entrepreneurs can mobilise around regulatory reform.

Regulatory reforms that usually follow major crises can differ in scope and depth. Sometimes, they will be based on regulatory "fixes" in the "hit" sector. This is especially the case in situations in which a regulatory failure has caused the crisis. The reform would therefore be aimed at dispelling the root cause of the failure to prevent the occurrence of similar future crises. Following the latest Global Financial Crisis (2007–2008), for instance, a number of regulatory "fixes" were made to the system of financial regulation, from the introduction of tighter reporting procedures for financial transactions, to the enactment of increased transparency measures, to the establishment of new oversight institutions (Black, 2010; Cioffi, 2011).

Sometimes, a crisis will lead to a paradigm change (Hood, 1994), which could be accompanied by an overarching change in public management and/or the state's political economy model. Take the 1970s economic crisis, for instance, after which, first in the UK and later across an increasing number of countries across the world, the state-ownership model was replaced by a liberalised model centred around market competition in newly privatised industries. While New Public Management was introduced in the public sector (Hood, 1991), a host of regulatory institutions and rules were introduced for privatised industries in order to ensure that social objectives were not compromised and that market distortions and abuses did not cause destabilising negative externalities (Heald, 1988; Scott, 2006). The Great Depression from the late 1920s to the early 1930s is an example of the rise of the welfare state, which was intended to mitigate the adverse effects of the economic recession (Amenta & Carruthers, 1988).

Whether there will be a paradigm shift or only a regulatory fix depends on how systemic the crisis is and whether its consequences entail a radical transformation. "Policy entrepreneurs" also have some scope in imposing their interpretation of the crisis and how far-reaching the regulatory changes need to be in order to address the crisis. Of course, one of the constraints in shaping how far-reaching a regulatory reform will be is related to resources; it is often the case that in a (post)crisis period, a state's resources are depleted, which limits the choice of regulations and institutions for dealing with the crisis legacy (e.g. in times of austerity, governments can "hollow out" some regulators, giving space to non-state, "communitarian" actors to undertake some regulatory tasks and/or replacing state regulation with self-regulatory or meta-regulatory schemes, shifting the burden of the regulatory scheme to regulated parties).

2.2 Towards (de)regulation?

The regulatory literature offers no explicit predictions regarding the direction in which regulatory reform could be implemented following a major crisis. Yet, a tentative hypothesis might be that the regulation vs deregulation direction will depend on whether the crisis in question is regulatory or economic in nature. Regulatory crises are caused by a weak or flawed regulation or a regulatory institution that enables negative externalities to destabilise the system. In economic and public management crises, it is a dysfunctional public management or political economy model that has triggered the crisis.

If the root cause of a crisis is regulatory, a pro-regulation reform will likely be initiated to create new, stricter rules and to set up new institutions to oversee the system and the new rules' implementation, as seen in the aftermath of the 2008 financial crisis (Black, 2010).

For non-regulatory crises, the direction of regulatory reform will depend on whether the crisis was triggered by "excessive government involvement" as well as whether, in the recovery process, a stronger government role is needed. This stronger role can involve, for instance, the government acting as an investor or a market coordinator or consolidator. After the 1970s crisis, where excessive government control and ownership were seen as the key contributors to the crisis, economies were deregulated (in the sense of ownership), and the government's role in economic life was reduced. After the Great Depression, on the other hand, the government's role was expanded through a new investment role and the rise of the welfare state.

3. Prior crises and the post-COVID-19 legacy

The current pandemic-related crisis is different from previous global crises in several major respects. Most notably, it fits neither of the two cause-narratives described above. As a health pandemic, it is unique in that its cause was neither regulatory nor economic-managerial. The pandemic initially emerged as a health crisis, thereafter evolving into an economic crisis as well, whose size and comprehensiveness have turned out to be unprecedented in modern history; its economic damage will be more extensive than in previous global crises (Roubini, 2021).

While in every crisis, a rethinking of the role of the state and/or the regulatory state is required to support the recovery process, post-pandemic management, in this case, will require dealing with other legacies as well, namely perceptual and institutional legacies, which, unlike previous crises, will enable multiple interpretations and will give ground to more severe and wide-ranging contestation than before.

The post-pandemic response will not aim to dispel underlying failings of the state-economy model but will primarily be oriented towards achieving economic recovery. At the same time, one of the priorities in the recovery period will be sustainable growth, given the perceptual legacy discussed below, whether in relation to "green growth" or health policies. Most importantly, the ongoing crisis is enabling various interpretations of how best to overcome it. Unlike prior crises, there is no single direction regarding the future course of the pandemic. Different narratives could be proffered, each highlighting different "key lessons" from the crisis and the priorities that the crisis response should address, whether these are related to health and/or environmental considerations, the underlying political economy model, or the public management model, i.e. the way the state is run and organised. The crisis is presenting options for mobilisation on various issues, from sustainability to recovery to human rights issues. One thing, however, is certain: the post-COVID-19 legacy will be complex and multi-dimensional, changing the socio-political habitat in a way that will lead not to unidirectional but to potentially varying implications.

The post-COVID-19 recovery will take place in a specific international, technological and political environment in a context of unprecedented internationalisation and technological progress as well as hyper-politicisation. The following section reviews three types of legacy that the COVID-19 crisis will leave and with which policymakers' public management and regulatory responses will need to grapple.

3.1 The economic legacy

The scale of the economic damage of the COVID-19 pandemic is unprecedented in modern history. Economic growth has been stifled, with double-digit annual decreases in GDP being observed across the world. For instance, in the UK, in 2020, the GDP fell by around 10% (Milliken & Schomberg, 2021), and projections are that, for social and economic mitigation measures alone, the UK has had to borrow almost £600 billion (King, 2021). Until October

2021, the economic contraction in the EU was 6.1% greater than during the 2007–2008 Global Financial Crisis (Verwey & Monks, 2021).

With soaring public debt and stifled growth, states might need to rethink their public management models. What role should the state play in socio-economic development to achieve sustainable recovery? Should the state be a market maker/producer, a market facilitator or a market "bystander" of the sort observed in the contemporary Liberal Market Economy (LME) model of capitalism (Hall & Soskice, 2003)? Recently, public opinion in many states has shifted towards the view that the state should take a leading role in consolidating the markets (YouGov, 2021). This might lead some countries to move, for instance, from their LME model towards a model whereby states play a greater role in welfare and social policy or in boosting economic recovery through coordinating roles.

Some countries, therefore, might develop more coordinated market economies with a stronger developmental role of the state (Leftwich, 1995). Hypothetically, of course, it is possible that the pandemic-related crisis has prompted some states to go in the opposite direction – that is, to retreat from market regulation. For instance, one strategy could be to try spurring economic growth through boosted innovation – and in some sectors, such as digital technologies, financial services (see, e.g. Lauren, 2021) and others, deregulation could be seen as necessary for innovation, just as austerity measures might be considered necessary for fiscal consolidation and loan repayment.

3.2 Perceptual legacy

The crisis has, expectedly, led to major perceptual shifts on multiple fronts. New perceptions have been emerging about individuals' vulnerability, the nature of risks to which they are exposed, individuals' and states' capacities to cope with and handle these risks, and interdependence at the global level as well as across national spaces. This trend is shaping views concerning what responsibilities the public sector needs to take in regulating social and economic life. As the awareness of vulnerability and risks in various areas grows, from health care to environmental protection to other areas, calls for regulation, whether by the state or other entities, are likely to increase. Also, pressures might increase to ensure stronger regulatory capacity in order to cope with the "21st-century challenges".

Changing perceptions and calls for further social and environmental regulation will inevitably have implications for the "what" of regulation. The number of social and environmental regulations will likely increase. More resources will also be dedicated to such causes, sometimes at the expense of other policy sectors. Alongside changes to the "what" element of regulation, the "who" element will be affected as well, as new perceptions of environmental endangerment might motivate a larger number of non-state actors to take part in regulatory processes. Grassroots actors, acting "bottom-up", could assume an increasingly prominent role, whether in the monitoring and enforcement stage or in the consultative stage. In terms of the shape of the regulatory state, this means that a further hybridisation is likely to occur. Finally, the "how" element of regulation might be affected too. This growing perceptual shift calls for reflection on the extant failings and weaknesses in the regulatory system of environmental regulation. In place of the current regulatory strategies and techniques, other strategies might appear more optimal. For instance, companies might be encouraged or pressured to more actively participate in self-regulation or meta-regulation schemes, just as existing systems – such as, for instance, those based on risk-based regulation – could be rethought and redesigned.

Further, perceptions have shifted about the state's involvement in economic life. The realisation has grown that at least a coordinating, if not a more active, managing role of the state is needed for a successful recovery. In some contexts, including the UK and US – the paragons of a free-market economy and "hollowed" states – opinion polls have indicated rising support for pro-state interventions (YouGov, 2021). It is difficult to say at this point whether such public perceptions might "revert back" over time towards a "pro-liberal role of the state" in the economy, as the scale of the costs of state involvement becomes obvious and as trade-offs between economic and social objectives come to the forefront.

3.3 Institutional legacy

3.3.1 Coordinative structures. States are emerging from the pandemic with a range of institutional legacies, most of which could be characterised as nascent rather than well-established legacies. First, there are various *ad-hoc* structures of inter-organisational coordination, whether at the central level, where various ministries are brought together with other institutions such as health regulators, business representatives, associations of local authorities and others, or at the international level, where states, through existing international organisations and "clubs", including the OECD, G7, G20 and regional associations, have established groups to share data and resources in efforts to deal with the pandemic.

It is difficult to assess whether such coordinating structures might have major regulatory implications in the future. It is possible that, once the crisis has subsided, many of them will be disbanded, although some could see further institutionalisation with the award of novel powers and mechanisms to their members.

If these coordinative structures, formed at the domestic level, remain in place and become further institutionalised, one can imagine two possible directions in which they might head that would have implications for further regulatory developments. One is a "stakeholderisation" of regulatory governance. Ongoing collaboration through these structures might be fostered among their members, some of whom are regulators and other relevant stakeholders in regulatory processes, generating a climate and practice of inclusiveness. This could lead them to embrace a "consultative" culture. Parties might "listen" to each other and develop stronger understandings of each other's priorities as well as the importance of mutual collaboration. As a result, they might develop practices and protocols of opinion and information exchange and habits of mutual consultation.

Each of these agencies, within their own domain, might, in the future, therefore, be more open to others and inclusive of a range of stakeholders. Where these changes apply to regulatory actors, they would affect the "who" component of regulation by way of shifting it towards hybridisation marked by a wider range of actors participating in the regulatory cycle, whether it is at the creation, monitoring or enforcement stage (Braithwaite & Drahos, 2000, p. 13).

Regarding the "what" of regulation, such practices might foster both regulation and deregulation, just as they could not have major effects on the volume of rules and standards in the given policy sector. Much could depend on which response the actors will perceive to be the most functional. There could be deregulation in terms of the removal of excess paperwork for joint initiatives. But also, joint work might lead actors to realise that new rules, such as enhanced reporting procedures, for instance, might enhance their collaboration. This could lead to pledges for and/or the implementation of new regulations.

Regarding the international domain, if the emerging collaborative structures remain within or outside existing organisations, they could culminate in the imposition of new, or the formalisation of previously practised, standards. Such standards would likely concern health emergencies in relation to, for instance, the production of medicines, the operation of supply chains and the sharing of data, including early warning signs. Such standards might limit and at the same time harmonise states' regulatory policies in the future. Also, new competencies could be granted to organisations such as the WTO, just as other such competencies could be delegated to other institutions. Similarly, one can imagine that various global or regional organisations and clubs, from the United Nations to the OECD to regional systems in Asia, Europe and elsewhere, will start embracing such coordinative mechanisms. Such changes, however, would probably be limited to health-related areas and would concern emergency-related situations, without major implications for wider regulatory reform.

In any case, in terms of the "who" of regulation, we would therefore see a shift from the state level towards the international level, at least when it comes to standard-setting and, to an extent, monitoring.

3.3.2 Executivisation (centralisation). The second institutional legacy is the "executivisation" legacy. As the pandemic unfolded, a number of governments worldwide centralised power through emergency measures, *ad-hoc* abandonment of government oversight regulation, or the assumption of other institutions' powers (OECD, 2020). Emerging digital infrastructures, such as databases and apps, some of which could have strengthened surveillance infrastructures (Amnesty International, 2020), have also contributed to the centralisation of powers by governments.

It remains to be seen how lasting these legacies will be – that is, whether they will be abandoned soon, as, for instance, international observers such as the OECD (2020) and other oversight actors and critical voices have urged. In any case, one can imagine two directions in which the extant executivisation could affect future regulatory developments. First, if the trend persists, it will certainly tip the power balance further towards the executive. This means shifting powers away from independent regulators and other non-executive actors in regulatory governance.

There are two mechanisms at work in this potential power shift. First, the newly acquired powers have strengthened the role of the executive in the regulatory cycle. For instance, through *ad-hoc* action and emergency measures during the pandemic, some governments have increased their regulatory powers through secondary legislation (see, e.g. House of Lords, 2021). This has enabled them to avoid, in the future, independent regulators, as well as due procedures such as consultations. Also, the stronger surveillance powers that many governments have acquired during the pandemic could be used later on in regulatory monitoring and enforcement.

Second, on a broader point, the ongoing "executivisation" has fed into the perception of an "almighty state", which could spur regulators to align their activities to the government's preferences rather than acting independently of it, in contrast to the main regulatory state postulate. This would further consolidate the otherwise emerging trend of regulators' de-facto alignment with political demands (see, e.g. Koop & Lodge, 2020, for findings of increasing de-facto political responsiveness among UK economic regulators).

In any case, in terms of the "who" of regulation, the observed executivisation/power centralisation can feed into the shift away from the model of the regulatory state (defined through the "European" notion). The "how" component of regulation could be impacted too, as the stronger powers at the central executive level might lead to a stronger emphasis on oversight and potentially command and control as regulatory instruments and techniques, although this will likely be balanced by resource constraints, which the crisis can only exacerbate.

Equally, however, the "executivisation" trend might reinvigorate oversight communities, which could mobilise resistance and impose views of the need for further "stakeholderisation". This might culminate in de facto shifting of powers to non-state actors. If there is sufficient mobilisation against the empowerment of government, this might give some impetus to demanding stronger "stakeholderisation" of the regulatory process (see, e.g. Heims & Lodge, 2018; Lauren, 2021).

To the extent that such counter-mobilisation succeeds, one might observe, in the future, that the reverse-trend of "stakeholderisation" leads to the shift of powers away from not only the state but potentially also from regulators. This could give rise to co-production as well as communitarian forms of regulation (Innes, Davies & McDermont, 2019), such as those in which professional or local communities take responsibility for monitoring. Such forms of collaboration could be stricken with public authorities, at the local to the regional to the central national level, or in relation to the self-organisation of particular groups in, for instance, the form of charities or alternative service providers, who, in a "bottom-up" manner, can take action to offer their contributions to addressing the pandemic, which would be further incorporated into the existing regulatory arrangements. This implication would fit with the need for resource savings, particularly in crisis periods during which public resources are depleted.

The beginnings of the communitarian regulatory state can have some "spillover" effects on other regulatory actors. One direction would be the weakening of the power of local authorities, but equally, such communitarian legacies can grow into a more durable structure that would provide elements of the communitarian state (Ostrom, 1993), through which "compensation" could be offered for the state's scarcity of resources. This could lead to a further "hollowing out" of the state (Rhodes, 1994) whilst, at the same time, helping to alleviate part of the burden that is placed upon it. Yet, even if early "stakeholderisation" is achieved, the temporal dimension should not be forgotten, as enthusiasm for communitarian
AQ: 6 activism could wane over time, and as the overtaken functions are resumed by the regulator
T1 (see Table 1).

3.4 A summary of the COVID-19 legacies and their effects: how does it all add up?

T2 Table 2 below summarises the range of legacies discussed above. It is, of course, assumed that not every country will share all of the legacies discussed above. The fewer of these legacies a country is facing, the less complex it will be to understand what model of change its regulatory state can undergo in the post-pandemic world.

As the above legacy review demonstrates, following the COVID-19 pandemic, states will find themselves in a substantively changed habitat. There will be multiple legacies, each producing certain forces for regulatory change. How will all of these forces add up, and what will their resultant effect be?

Similar to the proverbial "million-dollar question", any definitive answer is difficult, if not impossible, to currently provide. The extent to which the respective forces for change that the various legacies produce will generate lasting reforms will depend on other intervening factors. Alongside complimentaries which will pull in one direction of regulatory change, there will also be mutually conflicting or offsetting forces pulling in different directions for regulatory change. Some forces, for instance, will mitigate in favour of increasing regulation, particularly in the domains of social regulation; others are likely to foster deregulation processes. Similarly, as we have seen, some of the expected trends might contribute to a strengthening of the regulatory state – that is, the role of independent regulators – while others might lead to a stronger role of the state (government), with a third trend being the greater inclusion of non-state actors. Alongside these countervailing influences on the "who" and "what" dimensions of regulatory governance, clear predictions concerning the "how" dimension cannot be made either.

How these forces will all play out will depend on a range of factors, including the local mobilisation dynamics as well as the international position of the state and its global geopolitical position. No single legacy, nor a single aspect of one legacy, will be determinative of later regulatory change.

Unlike prior crises, the current crisis of the COVID-19 pandemic has permitted the generation of multiple narratives, each of which could be used to promote different political agendas. The aftermath of the pandemic will, therefore, as our argument goes, be an era of struggle for sense-making, one probably unlike that in the aftermath of any crisis before. On the one hand, we will likely witness increasing demand for social regulation and the tackling of social cost; on the other hand, the economic realities will impose significant constraints on

Crisis	Causes	Key legacy and priorities to address	Circumstances	Observed changes to regulation
Great Depression (1930s)	Crash of financial markets Crisis of liquidity	Economic recovery Enormous unemployment; financing sector collapse; the collapse of international trade; rapid impoverishment and massive deterioration of welfare	Book of financial markets *Economic*: Rapid economic growth in the 1920s; the availability of cheap credit; booming stock market. *International*: International tensions; labour strife *Technological*: Massification of products (booming of the automobile, steel, petroleum and chemical industries) *Political*: Pro-labour vs pro-business parties; rural vs urban divide	Regulation of the banking sector and financial markets Establishment of the welfare state; introduction of minimum wage, working hours established, child labour prohibited; unemployment compensation introduced; pension age introduced
The 1970s fiscal crisis	Flawed public management model; the inability of the state to govern national industries and as a "market marker"	Soaring inflation rates Economic recession Slow recovery	*Economic*: Fiscal crisis and imprudent fiscal expenditure *International*: Early days of modern globalisation *Technological*: Onset of the digital revolution *Political*: Traditional divisions of labour and "capital" parties	Establishment of the "regulatory state"; the state (government) no longer owner and manager of monopolised utility industries
The 2008 financial crisis	Weakly regulated financial markets; international spillovers	Economic recovery Laying foundations for the prevention of future toxic interdependencies Managing "too big to fail" industries and banks, without entirely compromising and abandoning the free market paradigm	*Economic*: High optimism and massive investment expansion across the world *International*: Highly accelerated globalisation *Technological*: The mature days of the Web 2.0 revolution *Political*: Party realignment; traditional partisan boundaries eroded; the rise of catch-all parties; "media-sation" of politics and spinocracy	Welfare state entrenchment Public expenditure containment The state as an investor seeking to achieve a fiscal multiplier Temporary nationalisation of bankrupted and debt-ridden banks and industries Austerity packages – changed expectations of the state in public services provision; a shift towards a "communitarian" and a further "hollowing out" of the state Contestation of the self-regulating market orthodoxy; scepticism towards an unregulated state spreading across the whole of the sector

(*continued*)

Table 1.
Is this time different? A review of the major crises in the last century

Crisis	Causes	Key legacy and priorities to address	Circumstances	Observed changes to regulation
COVID-19 pandemic	Economic disruption due to a health pandemic	Kick-start the economy Provide safety nets for those affected Lay foundations for tackling future crises Strengthen public service resilience and state capacity to govern in times of crisis Address health, environment and issues of global interdependence	*Economic*: Following austerity packages, reduction of the state and stronger control of markets *International*: The end of a unipolar world and the rise of competing global powers Highly accelerated globalisation, with increased contestation of Western predominance, including some of the emblematic features of the liberal-democratic state *Technological*: The fourth digital revolution was underway, with increasing surveillance technologies, the rise of social media and attention-capitalism remote production and collaboration *Political*: Crisis of global and regional integration (e.g. in the EU; the "dark side" of globalisation – increasingly contested; political backlash embodied by the rise of protest movements)	To be seen

Source(s): Author's work

Table 1.

how many resources can be devoted to the regulatory state and to what extent one such state is compatible with recovery efforts and growth priorities. All of this will transpire in a context of hyper-politicisation characterised by high volatility and low levels of trust in political institutions, in which dominant narratives could be challenged and reversed, affecting the prospects for planned reform, as well as hyper-internationalisation, which could have a major influence on domestic regulatory processes.

What follows is a review of some domestic and international factors that might play a role in shaping future regulatory developments across the world.

4. Domestic and international mediators of legacies' impact on regulatory change

4.1 The domestic dimension: the role of politics

This section will briefly reflect on the role of politics as crucial among the domestic factors that might mediate developments around the regulatory state and regulatory change. The

Table 2.
The economic, perceptual and institutional legacy of the pandemic and its potential implications for the regulatory state

Type of legacy	International level	Domestic level
Economic legacy	Economic crises of a global scale Disrupted global trade (supply chains) A potential shift in powers, although too early to declare the "winners" and "losers"	Some industries bankrupted or shut down A more active state role needed How it might play out: - Abandoning free market orthodoxies - Greater acceptance of an "active state" in economic recovery and growth promotion
Perceptual legacy	Increased need for participation	A more active state role needed How it might play out: - Abandoning free market orthodoxies - Greater acceptance of an "active state" in economic recovery and growth promotion - Stronger capacities needed to deal with crises - Sympathetic view of public services and greater understanding of: Pay/rewards for public officials Could lead to stronger tolerance of pressures, meaning that in other places cuts need to be achieved
Institutional legacy	Some early infrastructure for cooperation built (informal working groups, in and outside the WTO; other collaborative arrangements looming) In regional organisations, expertise built (e.g. EU), or informal mechanisms of cooperation in areas of vaccine development	Communitarian infrastructure, primarily intangible Temporary coordination teams created (OECD *** CITE ***) Red tape removed, some regulations suspended Some constitutional rights abandoned and government aggrandisement

role of politics may be reflected in several respects: the impact of ideology, incumbency, and electoral cycles and completion.

First, a party/coalition in power can be driven by its ideological leaning in choosing one regulatory choice over another. At a general level, one might imagine that leftist parties will be more in favour of stronger regulation, particularly in relation to social and environmental regulation. Thus, having a leftist party in power, in today's era of increasing political responsiveness by regulators (Koop & Lodge, 2020), might be associated with a stronger regulatory state concerning the "what" dimension of regulatory governance. Even when in opposition, leftist parties might impose pressure on the conservative parties in power to strengthen regulations.

Preferences over the "who" dimension are less predictable following parties' ideological leanings, although one might imagine that conservative parties, being proverbially more prone to hierarchical orientation and power centralisation, will be more in favour of a weaker regulatory state with the government playing a stronger role, and independent actors and non-state actors playing a weaker role in regulatory governance. Still, much will depend on the status quo leanings of the regulators in place. If a regulator, for instance, prioritises pro-market objectives with little economic regulation, one can expect that, in the case of a conservative party being in power, its appetite for undermining or disempowering the regulator will be lower.

Second, electoral competition, public opinion moods, party pressures, the proximity of the next election and the incumbent's prospects of winning the next election will significantly set the tone for how parties articulate their regulatory preferences. For instance, in the event of public opinion strongly swinging towards the view that the state should have a stronger coordinating role in the economy and that it should take up regulation itself, even pro-market parties might be swayed to pledge and potentially enact pro-state intervention policies. While this still does not mean that such policies will shape the organisation of the regulatory state (the "who" question), one can at least expect a shift away from a deregulation position in which, at a minimum, social and labour rights will receive greater attention.

Furthermore, in relation to the impact of party politics, the political input into the evolution of the regulatory state will also depend on the continuity or discontinuity of office – that is, whether the ruling party during the pandemic, when some early regulations were established, will have an opportunity to continue its agenda. If the given party loses power following or towards the end of the pandemic, then the future shape of the regulatory state might depend on whether the opposition party has campaigned strongly on a regulatory agenda and whether, correspondingly, it has created an obligation to work on strengthening the regulatory state.

On a bigger point, parties' responses to wider regulatory demands and expectations will depend on whether they are driven by functionalist or opportunistic motives. In everyday politics, usually, both motives are combined, but there are variations in the willingness of political leadership to sacrifice functionalist effects for the sake of opportunism. A functionalist response will be based on measures aimed at producing the best possible solutions to the challenges posed by the legacy of the pandemic, meaning that the solutions will be evaluated from the perspective of successful societal and administrative management. An opportunistic response, on the other hand, would be driven by the intuition to maximise electoral benefits. For instance, a government interested in the short-term closure of a fiscal gap might deregulate its economy in order to attract investments, and such cash injections might come from a country that "preys on" vulnerable states (e.g. those based on labour-intensive industries), requiring them to weaken some elements of the regulatory state (e.g. labour or safety standards). A functionalist-driven government, on the other hand, might start reorienting its political economy model (e.g. towards a skills-based economy) even if doing so would be accompanied by electoral cost.

4.2 The international dimension: global power shift and global mobilisation

4.2.1 International regulatory cooperation. As with any public management reform (Pollitt & Bouckaert, 2017), particularly in times of crisis (Lodge & Wegrich, 2012), the international context will play an important role in shaping developments around the regulatory state. One way the international context could shape the regulatory state is through the emerging arrangements of international regulatory cooperation (IRC).

As the realisation has grown that increasing global interdependence must be matched by increasing collaboration, the OECD and others have advocated the IRC agenda, whether through multilateral or bilateral mechanisms on which states could develop or draw. While not offering explicitly specified proposals, the IRC agenda could include various forms of regulatory alignment through mutual recognition of standards, the removal of barriers to inter-state cooperation and possibly the creation of further, deeper regulatory regimes.

It is questionable, however, to what extent such measures extend beyond the traditional definition of regulatory governance – that is, whether they relate merely to executive governance as opposed to regulatory governance as its narrower domain (Koop & Lodge, 2017). Some forms of IRC, particularly in the context of bilateral requests for cooperation, would be aimed at enforcement assistance in areas such as procurements, customs procedures and so on (OECD, 2021, p. 5).

How would IRC reflect on the regulatory state? To what extent will it impact its content and organisation? Will IRC weaken or strengthen the regulatory state? At this point, it is hard to say. The effect of IRC will very much be individualised and context-specific and will depend on what tools nation-states will develop to overcome or reduce some of the current elements of the regulatory state. It is likely that the regulatory state might remain more or less unchanged, whilst only the "jurisdiction" for certain issues would be transferred to the international level. Also, it is questionable to what extent IRC would go further than "soft coordinating" mechanisms, as in all likelihood, the majority of IRC regulations will not be binding. IRC, in other words, could be more about governance mechanisms than the content (the "what"), the organisation (the "who") and the behaviour of the regulatory state itself.

4.2.2 Geo-politics and global regulatory shift. The other impact related to the international aspect manifests through the imposition of regulatory standards. This relates to the observed rise of regional and/or global powers and the way they "upload" their regulatory standards internationally. One aspect relates to state-sponsored investments, in which the investor–recipient relationship is characterised by power imbalances. As the economic crisis worsens, an increasing number of countries, especially from the group of Low-to-Moderate Income (LMI) countries, might become highly dependent on foreign capital in their efforts to keep their economy afloat. In increasingly difficult economic circumstances, a recipient country becomes more vulnerable to deregulation requests made by an investor. Similar to prior accounts of states lowering their labour, tax and other standards, as observed, for instance, in China's investments in Africa (Chan-Fishel, 2007), the notorious "sweatshop-anisation" of the garment industry in Southeast Asia and beyond (Kumar, 2020), or, most recently, the de facto labour and environmental deregulation at the EU periphery in countries such as Serbia (Vukmirović *et al.*, 2021), the economic legacy of the crisis might further break down the resistance among LIM countries to deregulation, whether in the areas of environmental protection or other areas where the donor country might have interests in seeing lower standards.

With the logic of politically stricken deals prevailing in such investments, independent regulators, displaced from the government's hierarchy, will be seen as a potential "nuisance". Such regulators might then be dismantled by the government in order to prevent them from getting in the way of ongoing inter-state projects, or they can simply be brought under political control through the usual de facto route, which includes, amongst others tactics, politicisation pressures (Ozel, 2012). The recipient country of investment(s) can also use the legislative route to simply enact exemptions to the current regulatory landscape and thus "sidestep" the regulatory state.

In any of the above scenarios, the regulatory state would be weakened, whether in terms of its content, organisation or de facto behaviour. In that sense, the dire economic consequences of the COVID-19 pandemic might push struggling LMI countries, particularly those with "unfavourable geographies" and geo-structural positions, into arrangements with "predatory" regional and global powers that would require deregulation. While there is already a range of such countries that have significantly deregulated their markets as part of the proverbial "race to the bottom" process, the scope of such similar candidates might significantly expand and will likely encompass some new regions and territories.

Another aspect related to the imposition of regulatory standards concerns the global level and the ongoing rise of new world powers, whether it is China or rising middle-income powers such as India or Brazil. Given their increasing market share and purchasing power in the global market, these countries are expected to shift from the position of a rule-taker to a rule-maker, although it is far from certain that the motive for imposing their own rather than acceding to the existing standards will always prevail (Lavenex *et al.*, 2021). Still, in the wider scheme of things, one can see how the trend of deregulation is shaping up; this could mean a "less optimistic" future for the regulatory state.

A question that arises is whether this deregulation can deepen or even assume new dimensions across the world. Two logics will compete here: The "survival" logic, looking for economic recovery and growth, and the logic of population protection through improved regulatory standards. We can clearly see countervailing forces at play, and it is possible that, in various policy domains, shifts will occur in different directions. On the one hand, there might be a push for higher standards to address vulnerabilities such as those in healthcare or environmental protection. At the same time, new opportunities might be opened up for the rising global and regional powers to promote deregulation. For the rising middle-income powers, the interest in deregulation might prevail in a closer regional neighbourhood; whereas for the global powers, such interest might extend to distant markets too, including in far-flung continents.

Still, the crisis might be an occasion for a different sort of international mobilisation, whether around issues of inequality or sustainable growth. Such and similar initiatives at a global level can mobilise greater support for pro-regulatory agendas with implications for regulatory changes. Recently, for instance, the Camden Renewal Commission (Mazzucato & Gould, 2021) proposed an agenda for a radical rethinking of the world economy, the fairer distribution of money, and tangible and credible commitments for radical action, calling on domestic governments and other global players to embrace and implement the agenda.

5. Convergence or divergence?

Three scenarios are possible regarding the prospects for wider global convergence of regulatory regimes. The first is the acceleration of global convergence. This scenario would involve a worldwide harmonisation of specific sets of standards – for instance, standards related to sustainability and dealing with social costs, amongst other issues. This would mean a global strengthening of the “what” dimension of the regulatory state. It is questionable, though, to what extent this scenario is likely. Choices for cooperation and/or confrontation among the rising powers (Lavenex *et al.*, 2021) will determine whether and in which regulatory areas worldwide harmonisation is possible, as well as how narrow such areas will be.

A second scenario would involve maintaining the current level of heterogeneity in the global regulatory landscape. Organisation-wise, one rough divide that could be drawn is between countries that have an institutionalised regulatory state in place, whose regulatory action indicates (some) distance from the political locus of power, and the bloc of states without a consolidated regulatory state in place (Heims & Tomic, 2021). If this divide remains across the world, this would mean that the states have, through their own structures and practices, buffered or filtered out the pressures of the post-pandemic legacies for changes in the “who” element of regulation.

Finally, a third scenario would involve a convergence within specific blocs of countries with a simultaneous divergence between the blocs. Cross-bloc differences, in other words, would be maintained. This intra-bloc convergence would occur if, as speculated above, global and regional powers manage to impose their standards upon the “weaker” or “needy” countries within their blocs. Of course, regulatory standards can be diffused through non-coercive forms of isomorphism (DiMaggio & Powell, 1983), inducing unforced policy learning or transfer (Dolowitz & Marsh, 2000). This would constitute a more “benign” route to convergence.

One relevant question for considerations of divergence/convergence relates to the scope of sectors that are compared. Will potential convergence trends relate to an individual sector (e.g. a sector hit hard by the pandemic), a set of cognate sectors, the wider public management paradigm or the state-market model as such?

It seems realistic that the reforms will encompass a limited set of sectors first, after which a system-level change to the public management model could follow, although this is far from certain. In that sense, any regulatory reform could come as the product of a successive series of reform steps. In this sense, the question is whether we will observe a reform – that is, a pandemic-driven reform – or just the "usual" mode of change in place?

The longer this process drags on, the more difficult it will be to predict its dynamics and outcomes. On an analytical front, one way to distinguish regulatory reforms from "regular" regulatory changes would be to analyse regulatory changes taking place across various contexts, and whether they have cross-cutting drives and goals, as well as whether they have occurred in a relatively short span of time. Yet, the challenge with diagnosing such trends is that reforms are highly individualised in terms of dynamics, and these dynamics are often mediated by various local determinants.

Which of the above models of global convergence/divergence will materialise in practice remains to be seen. One can easily imagine a scenario of initial optimism regarding the willingness of various actors to develop new forms of international regulatory cooperation, optimism which might eventually dissipate over time as public attention wanes and turns to other issues. States might agree on a minimal set of international adjustments, but the realisation of such arrangements might be plagued by adjustment difficulties. States with lower standards, for instance, might not be willing to embrace the standards of more regulated countries. Similarly, when it comes to the harmonisation of regulatory reforms, there are various possibilities, as illustrated in Table 3. T3

6. Conclusion

Joining the wider conversation about the post-COVID-19 transformation of the state-administrative apparatus (Dunlop *et al.*, 2020), we have set out to explore issues around the impact of the COVID-19 pandemic on the regulatory landscape across the world. We have pointed to three main kinds of legacy – the economic, perceptual and institutional legacy – each of which, we have argued, could produce forces leading to various directions of regulatory change, whether in terms of the organisation of the regulatory state (the "who" element of regulation), its content (the "what" element of regulation) or the ways in which regulatory governance is accomplished (the "how" element of regulation).

Unlike prior crises, the current crisis is leaving a legacy that is more contestable and interpretable. How it will translate into regulatory changes will, to a large extent, depend on domestic political mobilisation and the narrative that will prevail in interpreting which priorities should manifest from the reforms, as well as countries' exposure to global regulatory pressures and shifts.

The framework provided in this paper aims to contribute to the analysis of the extent and nature of the forthcoming change to the regulatory state when it comes to its "content",

	One or several critical sectors only	A broader set of sectors	The totality of sectors (systemic administrative reform)
Convergence	Mutually dependent sectors, expectedly, move in the same direction	Possible coordinated transformation, or simply a natural push towards one model	System-wide transformation of the public management model
Divergence	If several sectors are included: Attending to different priorities that have arisen out of the COVID-19 legacy	Different logics prevail, an atomised approach, or adjustment of the regulatory state tapping into its trade-offs	N/A

Table 3. The debt and breath of regulatory reform: a comprehensiveness X consistency matrix to gauge the regulatory reform trend within countries

"organisation" and behaviour. As a starting point for the analysis, we highlighted the economic, perceptual and institutional legacies that the COVID-19 pandemic is set to leave in the context of their implications for the regulatory state. Some of these legacies might be expected to play into strengthening and others into weakening the regulatory state.

The paper has also pointed to a range of factors that might mediate the future development of the state and changes to the regulatory state. At the national level, the role of politics will be crucial, as ever, and this includes not only the ideological leanings of relevant parties but also their leadership decisions and the nature of ongoing electoral competitions. Electoral cycles can significantly alter the dynamics of regulatory state developments, as issues of incumbency and electoral turnover might catalyse new ideas about filtering the multiple pressures for regulation and deregulation coming from the international environment. At the international level, regulatory changes will depend to a large extent on countries' choices of international partners for investments and economic arrangements and participation in bilateral or multilateral "clubs" and trade agreements.

In any case, the main policy implication is that, compared to prior global crises, political actors will have a greater set of options concerning how they will set out to translate the post-COVID-19 legacy into regulatory change. The forthcoming fiscal and debt crisis will pose stronger urgency for change and severe constraints regarding the amount of resources that can be invested into regulatory mechanisms, but this still does not limit the breadth of possible directions that governments can choose, whether it is the political economy, public management or the regulatory model, which will to a large extent be shaped by the prior two models. At the same time, it seems that "policy entrepreneurs" will enjoy greater possibilities than after previous crises to impose their views on regulatory action by selecting and promoting certain narratives out of the multidimensional COVID-19 legacy. Such narratives could change public discourse, which would then de-facto influence policymakers' regulatory choices. In other words, there might be greater scope for social mobilisation to shape the AQ: 7 regulatory actions of political actors.

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