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

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Abstract

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

Design/methodology/approach – This is a de-contextualised analysis of regulatory developments drawing on the prior regulatory state literature and literature on post-crisis responses. Taking into account recent empirical developments related to the COVID-19 pandemic, the paper sets out, in a comparative context, scenarios for the future development of the regulatory state.

Findings – Predicting the direction in which the regulatory state will develop is challenging, particularly at this early stage. Yet, we provide a conceptual framework for thinking about possible futures of the regulatory state and how domestic and international factors might mediate these futures.

Originality/value – The paper provides a structured approach to the analysis of the regulatory state bringing together insights from 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. So will transform the regulatory landscape around the world. How might this affect the future 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)?

In this paper, we discuss some possible directions of regulatory change that will result from the ongoing COVID-19 pandemic. Of course, our ambition is not to predict the future shape of regulatory systems and general governance systems. Given that the pandemic is not over and that its full scale, costs and implications are yet to be realised, it is hard, if possible at all, to establish with certainty what the future of regulatory governance will look like. Nonetheless, we can still offer early considerations about potential pandemic's effects on the regulatory state and thus feed into the wider conversation pandemic's implications for the future of governance (Dunlop, Ongaro & Baker, 2020). In doing so, we will highlight several pandemic legacies that are likely to impact regulatory developments across the world and will point to a range of factors that might mediate the way these legacies play out to shape these future regulatory developments. These factors include domestic political mobilisation,

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technological development and the political-economic position of states in global economy. Our analysis will offer preliminary insights about how various constellations of these factors might play out to produce specific effects on regulatory change across the world.

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 most prior crises. Its economic consequences will be stronger than in any previous crisis in recent 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 a regulatory crisis.

Situated in the broader scholarly conversation about the development of regulatory capitalism (Braithwaite & Drahos, 2000; Levi-Faur, 2005), the paper aims to contribute to debates around the shape of the regulatory state (Majone, 1994, 1997; Loughlin & Scott, 1997; Moran, 2002, 2003; Lodge, 2008), and how changing socio-political settings impact its de facto operation (Koop & Lodge, 2020). Further, it is understood that the regulatory state is one morph of the polymorphic state's political economy model (Levi-Faur, 2014). Part of the paper's analysis will consider how developments related to the welfare state could impact the nature of the regulatory state, as well as how changes in the latter produce welfare implications. Finally, it is argued that, to understand how the future regulatory state might develop, we need to take into account the impact of the global political economy landscape 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

Regulation is a key instrument of governance (Koop & Lodge, 2017) in the contemporary era of regulatory capitalism (Braithwaite & Drahos, 2000; Levi-Faur, 2005). Regulation is defined as steering the behaviour of businesses, social or political actors through rules (Higgins, 1997; Moran, 2003, p. 13); it is often divided into economic regulation and social regulation. Economic regulation shapes the rights and obligations of market participants, thus defining market conditions and competition (Stigler, 1971; Peltzman, Levine & Noll, 1989); social regulation is primairly about standards of citizens' protection and equity, from safety to equity to environmental standards. The nature and direction of the respective social and economic regulation in one society can be similar (e.g. both highly regulated or deregulated), but the two can also differ in one society, just as each of these two types of regulation can potentially differ, i.e. be non-uniform across various policy sectors in one state.

The concept of the regulatory state has been widely understood as an epitomisation of regulatory governance (Majone, 1994, 1997; Moran, 2002, 2003). Yet, it does not have a unique meaning. Depending on the geographical context, it can imply two different notions. In the American tradition, the concept of the regulatory state is equated with the presence of regulatory rules (see, e.g. Sunstein, 1990). Here, the regulatory state is synonymised with a highly regulated society as opposed to a "deregulated state" in which actors operate unconstrained by rules. In this context, the regulatory state denotes a mode of regulatory governance that is displaced from the traditional centers of political power, namely government and/or parliament. IRAs are, by definition, structurally separated from government, which arguably enables them to produce credible, time-consistent and expertise-driven regulatory decisions (Majone, 1994, 1997; Gilardi, 2002). At the heart of the European tradition of the regulatory state is the concern "who makes the regulation and how"; the American tradition is concerned with "how pervasive and prescriptive the regulations will be, and how much the markets and social life will be regulated as a result".

For the purposes of our analysis, we will unify the two - the American and European notion - of the regulatory state, rather than choosing one over another. When considered together, the two notions encompass two main aspects that should be at the heart of analysis of regulatory reform and regulatory developments, namely the "who" and the "what" of regulatory governance. There is a third aspect too, which will be considered in the forthcoming discussion about the future of regulatory change, and this aspect refers to the "how" of regulatory governance. It is about the way regulation is produced and implemented, usually conceived in terms of regulatory strategies (Baldwin, Cave & Lodge, 2012, p. 105) and enforcement styles (Gormley, 1998). By looking at these three aspects, one can gauge the nature of a regulatory system, trace its evolution and compare the regulatory systems of different countries.

On the "who" component, several options can be distinguished (1) regulatory governance performed by government or other political actors under the government's control; (2) regulatory governance performed by an independent regulator (IRA) – the institutional species that, in the European tradition, as said, is seen as the embodiment of the regulatory state (Majone, 1997; Gilardi, Jordana & Levi-Faur, 2006); and (3) regulatory governance performed by non-state actors whose prominence is central, for instance, in the "new regulatory state" (Braithwaite, 2000).

Typically, in every state, the system of regulatory governance will involve each of the above arrangements even if one of them is predominant. The presence of such various arrangements could be found in across different stages of the regulatory cycle, whether in the standard-setting, monitoring or enforcement stage (Braithwaite & Drahos, 2000, p. 3). As regulatory systems evolve, the constellation of roles and powers of the above three arrangements can change. Sometimes, regulatory powers shift from one actor to another (e.g. from government to an IRA or non-state actors), and at other times, powers become shared or joined (as, for instance, in collaborative regulatory arrangements; see, e.g. Gunningham, 2009).

The "what" of regulatory governance is about 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 is about the ways in which various regulatory techniques and instruments are applied. This defines regulatory strategies and enforcement styles. There are various regulatory strategies, from command and control, which is characterised by oversight and hierarchical relationships, to other forms of standard-based regulation; to responsive regulation and the enforcement pyramid, where sanctions are escalated as non-compliance recurs; to risk-based regulation, are allocated to tackle what has been appraised as the and to other strategies (Baldwin *et al.*, 2012, pp. 105,311). Overall, to analyse variations in regulatory systems, including their evolution over time, changes across the three aspects - the "who", "what" and "how" - need to be scrutinised.

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 ongoing social, technological and political developments. When such developments impose new challenges and priorities, the need to regulate them comes to the fore; socio-political mobilisation and contestation could ensue then with stakeholders and political actors articulating and asserting their views and proposals, which might precipitate shape 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 the regulatory state.

Struggles for regulatory change usually take place in domestic arenas. Still, the wider forces of internationalisation can significantly influence the extent and shape of the regulatory change. Ever since the early days of the "neo-liberal" revolution back in the 1980s, internationalisation has been cited as a key force shaping policy developments as well as regulatory responses. Internationalisation refers to increased market integration worldwide, which increases interdependence among states and markets and the mobility of capital, goods and humans (Simmons, Dobbin & Garrett, 2008). Internationalisation has often been portrayed as producing ever-increasing economic deregulation (but, for a different, “deregulation that didn’t happen” argument, see Vogel, 2018).

Crises, in particular, can catalyse regulatory changes. Crises often bring necessity for major change, often due to fiscal and economic urgencies (Djankov, Georgieva & Ramalho, 2017). Crisis also prompts actors to reflect on the failings of and consider improvements to the regulatory model in place. Crisas also provide a window of opportunity (Kingdon, 1984) - for policy and political entrepreneurs to articulate and mobilise around various visions of regulatory reform.

Regulatory reforms that are adopted in response to major crises can differ in scope and depth. Sometimes, they will focus on making regulatory fixes” in the affected sector. This is especially the case in situations in which the cause of the crisis has been a regulatory failure. The reform would therefore seek to dispel the root cause of the failure to prevent similar crises in the future. Following the latest Global Financial Crisis (2007–2008), for instance, a number of regulatory “fixes” were introduced 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).

In other times, a crisis can precipitate a paradigm change (Hood, 1994), in which the overarching public management and even the state’s political economy model transform. Following the 1970s world economic crisis, in the UK - and this was subsequently emulated worldwide - the state-ownership model was replaced by a liberalised model centred around market competition in newly privatised industries. In the public sector, New Public Management was introduced (Hood, 1991); thereafter, a host of regulatory institutions and standards were adopted for the privatised industries in order to safeguard various social objectives, which could have been undermined by market distortions and abuses (Heald, 1988; Scott, 2006).

2.2 Towards (de)regulation?

If the root of a crisis is regulatory, a regulation reform will likely be initiated. This means the creation new, more adequate rules and potentially new institutions that would oversee the implementation of these and other rules across the governance system. One such “regulatory overhaul” scenario occurred in the aftermath of the 2008 financial crisis (Black, 2010), as well as after many other crises before. Which direction of regulatory changes we can expect to be taken in the wake of a major crisis? Should we expect a (re)-regulation or deregulation agenda? Apart from the theory of post-crisis improvement of business environment through deregulation (Djankov, Georgieva & Ramailho, 2017), 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 pursuit of a (de) regulation agenda 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 floundering regulatory institution enabling negative externalities that have been destabilising the system. With economic and public management crises, it is a dysfunctional public management or political economy model that triggers the crisis.

For crises whose root cause was not a major regulatory failure but another weakness in the broader governance or economic system, the direction of the subsequent economic reform will depend on whether, in the recovery process, a stronger government’s role is needed as well as whether it is appraised that an “overhauled” market should be central to the recovery. A stronger government’s role means government acting as an investor, a market coordinator or “consolidator” (Kourula, Moon, Salles-Djelic & Wickert, 2019). The Great Depression from the late 1920 and early 1930s is an example of increased government’s expenditure coupled with the rise of the welfare state, whose purpose was to mitigate the adverse effects of the economic recession (Amenta & Carruthers, 1988).

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

The current pandemic-related crisis is different from previous crises in several major respects. Most notably, the (post)COVID crisis is neither regulatory nor managerial. It emerged as a health pandemic and thereafter evolved into an economic crisis. This economic costs seem unprecedented in modern history; its scope it yet to be established, but it is already known that its damage is greater than the damage wrought by previous big international crises (Roubini, 2021; Djankov, Georgieva & Maemir, 2020).

As in any crisis, it is and will be necessary to rethink the role of the state and of the regulatory state, in order to support the recovery process. In the post-COVID-19 era, specifically, alongside the economic legacy, there will be two more legacies at least that need to be dealt with. One is the perceptual legacy - the changing views about our society, the vulnerability of the individual and changing citizens' priorities, including expectations of the state in supporting the realisation of these priorities. The second is the institutional legacy, which refers to new institutional practices and new institutional priorities that have been emerging in response to the pandemic. Unlike previous crises, all these legacies could be complex, giving rise to multiple and sometimes contradictory interpretations regarding "what to do next". Views about 'the best way forward' are likely to be subject to stronger than ever contestation when it comes to post-crisis solutions.

Unlike with the other sorts of crises (see Table 1), the priority in developing a response to the crisis caused by the COVID-19 pandemic will not be dispelling underling regulatory or state management failings. At the same time, regarding economic recovery, a priority will not be achieving "mere" economic growth but a growth that - given the "perceptual legacy" which prioritises social objectives - will be able to achieve "sustainable growth"; the "sustainable" implies that social-environmental and health objectives should not be compromised, and ideally should be boosted by the post-COVID-19 governance model.

Further, the post-COVID-19 recovery will be taking place in a specific international, technological and political environment. This environment will be characterised by ever-increasing internationalisation, further "technologisation" across the world and an environment where many social and political issues and debates easily become hyper-politicised, all that within a context of growing cynicism towards politics and the politicians (Citrin & Stoker, 2018). The following section will review in more detail the above mentioned three types of legacy of the COVID-19 crisis, namely the economic, perceptual and institutional legacy, seeking to explore what issues and dilemmas these legacies are going to produce for policymakers, and what regulatory and public management choices they will need to grapple with.

3.1 The economic legacy

The scale of the economic damage of the COVID-19 pandemic is going to be enormous. Economic growth has been stifled, and double-digit falls in countries' annual GDP have been observed across the world. In the UK, in 2020, the GDP fell by around 10% (Milliken & Schomberg, 2021). For social and economic mitigation measures alone, the UK government, 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 suppressed growth, states are beginning 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

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; collapse of the financing sector collapse; collapse of international trade; rapid impoverishment and massive welfare deterioration	– 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 industry) – *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 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” state 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

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

(*continued*)

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.

states has shifted towards the view that the state should take a stonger role as a market condolidator (YouGov, 2021). This might lead some countries to move, for instance, from their LME model towards a model with stronger public welfare and social policy or view that, to boost economic recover, the government needs to take on a stronger coordinating role among market and other social actors.

Some countries, therefore, might develop more coordinated market economies where the state would have a stronger developmental role (Leftwich, 1995). Hypothetically, of course, it is possible that the (post-)COVID crisis has prompted some states to go in the opposite direction, namely retreating from market regulation. For instance, one strategy could rely on attempts to spur 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, which relate to multiple fronts. As the crisis unfolded, new perceptions have emerged about individuals’ vulnerability, the nature of risks to which they are exposed, individuals' and states' capacities to cope with and handle these risks, and interdependences at the global level as well as across national spaces. Such changing perceptions can lead to changed views about the responsibilities that the public sector needs to take in order to regulate the social and economic life. Thus, we might see calls that the state expands its regulatory responsibilities, whether those could be discharged by the state or non-state actors. 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" aspect of regulation. The number of social and environmental regulations will likely increase. More resources will be dedicated to social and environmental causes, sometimes at the expense of other policy sectors. In addition to the changes to the "what" element of regulation, the "who" element might be affected as well, as new perceptions of environmental endangerment might mobilise 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. Regarding implications for the shape of the regulatory state, this means that a further hybridisation would occur. Finally, the "how" element of regulation might be affected too. This perceptual shift calls for reflection on the extant failings and weaknesses in the regulatory system of environmental regulation. Novel strategies and techniques might appear more optimal than the current ones. For instance, companies might be pushed toward greater takeup of self-regulation or meta-regulation schemes; 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, in the UK and USA – which have been perceived by a wider audience as the paragons of a free-market economy – opinion polls have indicated rising support for state interventionism in the economy (YouGov, 2021). It is difficult to predict whether such public perceptions might over time "revert back" to the prefernce for a "minimalist state role" in the economy. As the scale of the costs of state involvement becomes clearer and as trade-offs between economic and social objectives come to the forefront, the view on how purposeful state interventionism is will crystalise.

3.3 Institutional legacy

3.3.1 Coordinative structures. States are also emerging from the COVID-19 pandemic with a range of institutional legacies. At the central level, we could witness increasing inter-institutional collaboration, as ministries increased their engagement with health regulators, business representatives, associations of local authorities and others to address the rising challenges of dealing with the pandemic. At the international level, states have established crisis-response institutions and teams to share data and resources, whether through existing international organisations and "clubs", such as the OECD, G7, G20, or through regional associations.

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, some of these groups will die out or simply get disbanded. Some, however, might see further institutionalisation, by acquiring novel powers and mechanisms to undertake coordinated responses to future crises.

If the coordinative structures formed at the domestic level remain in place and get institutionalised, one can imagine at least two possible implications for further regulatory developments. One is a "stakeholderisation" of regulatory governance. These structures could foster their members to collaborate more with a potentially more inclusive attitude towards stakeholders increasingly keen to join such collaborations. This might foster their embrace of a "consultative" culture. Parties might "listen" to each other and develop stronger understandings of each other's priorities. They might develop practices and protocols of information exchange thus strengthening the habit 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 will affect the "who" component of regulation by way of fostering hybridisation in which a wider range of actors participate 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 have major effects on the volume of rules and standards in the given policy sector. An important consideration will be 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. On the other hand, joint work might lead actors to realise that new rules, such as enhanced reporting procedures, need to be put in place to facilitate mutual collaboration. This could lead to pledges for and/or the implementation of new regulations.

Regarding the international domain, if the emerging collaborative structures remain they could be accompanied by the imposition of new or the formalisation of ongoing standards linked to the coordinating practices. Such standards would likely concern health emergencies, for instance in relation to the production of medicines, the operation of supply chains and the sharing of data including early crisis alarms. Such standards might limit and at the same time harmonise states' regulatory policies. Also, new competencies could be granted to organisations such as the WTO, just as some 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 clubs in Asia, Europe and elsewhere, will start embracing such coordinative mechanisms. Changes of this type, however, would probably be limited to health-related areas and would concern emergency reactions, without major implications for a wider regulatory reform.

In any case, in terms of the "who" of regulation, the implication is that a shift might occur from the state level towards the international level will occur, 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 COVID-19 pandemic unfolded, a number of governments worldwide centralised power through emergency measures, *ad-hoc* abandonment of government oversight regulation, and even the takeover of other institutions' powers (OECD, 2020). Emerging digital infrastructures, such as databases and apps, some of which could have strengthened surveillance prospects (Amnesty International, 2020), have also contributed to the centralisation of powers by governments.

It remains to be seen how lasting these legacies will be. Will they be abandoned soon, following the calls of international observers like the OECD (2020) and other oversight actors and anti-surveilance campaigners going back to the excutivisation state? One can imagine two directions in which the extant executivisation might inform regulatory developments. First, if the trend persists, it will tip the power balance further towards the executive. This means shifting powers away from independent regulators and other non-executive actors participating 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 used secondary legislation to increase their regulatory powers (see, e.g. House of Lords, 2021). This has enabled them to start avoiding the approval and sometimes the oversight of independent regulators, as well as due procedures (e.g. 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”. This could spur regulators to align their activities to the government’s preferences rather than act independently of it, thus contrasting the fundamental postulate of the regulatory state (as per the ‘European notion’). This might 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 alignment of UK economic regulators with perceived government’s expectations).

In any case, when it comes to the “who” of regulation, the observed executivisation/power centralisation can feed into a shift away from the regulatory state model. The “how” component of regulation could be impacted too. Incrased powers at the central executive level might lead to a stronger emphasis on oversight and potentially command and control as regulatory instruments and techniques. Still, this will likely be balanced by resource constraints, which can only be exacerbated by the crisis.

Equally, however, the “executivisation” trend might reinvigorate oversight communities, which could mobilise resistance and push for further “stakeholderisation”. A cultimation of this would be de facto shifting of powers to non-state actors. Where there is sufficient mobilisation against the empowerment of government, demands for stronger “stakeholderisation” of the regulatory process (see, e.g. Heims & Lodge, 2018; Lauren, 2021) could prevail.

To the extent that such counter-mobilisation succeeds, one might observe, in the future, the reverse-trend of “stakeholderisation” leading to the shift of powers away not only from the state but potentially from regulators as well. 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 policy monitoring. Collaboration could be stricken with public authorities, from the local to the regional to the central level, or it could simply involve self-organisation of particular groups. Examples include charities or alternative service providers, who, in a “bottom-up” manner, can take action to contribute to dealing with the pandemic, making this sort of engagement part of the existing regulatory arrangements. This could lead to resource savings.

Such “communitarianisation” of the regulatory state could have spillover effects on other regulatory actors. The power of local authorities could be weakened, but equally, the communitarian legacies might develop into a more durable structure that would provide elements of the communitarian state (Ostrom, 1993) which provides some “compensation” for the state’s resource scarcity. Of course, “hollowing out” of the state (Rhodes, 1994) might intensify. Yet, even if an early “stakeholderisation” is achieved, the enthusiasm for communitarian activism could wane over time, and the overtaken functions could be resumed by the regulator.

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

Table 2 below summarises the range of indicaed legacies. 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 overview demonstrates, following the COVID-19 pandemic, states will find themselves in a substantively changed habitat. There will be multiple legacies, each producing specific forces for regulatory change. How will all these forces add up, and what will be their resultant effect?

At this point, any definitive answer is difficult, if not impossible, to provide. Whether the respective legacies’ forces for change will generate lasting reforms will depend on other intervening factors. Some forces are complementary and together they will pull in one direction of regulatory change. But there will also be mutually conflicting or offsetting forces pulling in different directions for regulatory change. Some forces, for instance, will push

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. in the EU), or informal mechanisms of cooperation created in areas such as vaccine development	– Communitarian infrastructure, primarily intangible; – Temporary coordination teams created – Red tape removed, some regulations suspended; – Some constitutional rights abandoned and government aggrandisement

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

towards increased 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); a third trend would be greater inclusion of non-state actors in the regulatory process. Alongside these countervailing influences on the "who" and "what" dimensions of regulatory governance, clear predictions concerning the "how" dimension cannot be made either. It is hard to predict what regulatory strategies might prevail as a result of the influence of the above forces/legacies.

Local mobilisation dynamics as well as the international position of a state including its global geopolitical position will certainly be important mediating variables shaping the regulatory reform. Neither a single legacy, nor a single aspect of one legacy, will be determinative of the subsequent regulatory change.

The aftermath of the pandemic will be an era of struggle for sense-making. Unlike prior crises, the current crisis of the COVID-19 pandemic could be framed to generate various narratives, and this could help the promotion of different political agendas. 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 how many resources can be devoted to the regulatory state and to what extent one such state is compatible with the recovery efforts and growth priorities. All of this will play out in a context of hyper-politicisation accompanied by high political volatility and widespread distrust in political institutions. In such circumstances, dominant narratives could be challenged and reversed, affecting the prospects for planned reform. Hyper-internationalisation could also have a major influence on domestic regulatory processes.

The following part of the text will turn to provide 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 a key domestic mediating factor of developments around the regulatory state and regulatory change. The role of politics could be insturmental at least in several respects: the impact of ideology, incumbency, and electoral cycles and political completion.

First, a party/coalition in power can underake one regulatory choice over another purely as a result of its ideological leaning. Generally, it is not hard to imagine that leftist parties will prefer stronger regulation, particularly in relation to social and environmental regulation. Thus, having a leftist party in power, in the environment of increasing political responsiveness of regulators (Koop & Lodge, 2020), might be associated with the development of a stronger regulatory state (in the "what" dimension of regulatory governance). Even when in opposition, leftist parties might pose pressure on the conservative part(y)ies in power to strengthen or expand regulations.

Preferences over the "who" dimension are less predictable from parties' ideological leanings, although one might imagine that conservative parties, being proverbially prone to hierarchical orientation and power centralisation, will be more in favour of a weaker regulatory state where and a stronger government's control of regulation, and that independent actors and non-state actors will prefer a weaker government's 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 weak economic regulation, one can expect that, in the case of a conservative party being in power, the latter's 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, if public opinion is considerably swinging towards pro-state interventionism in regulatory governance, even pro-market parties might be swayed to enact state intervention policies. While this still does not mean that such policies will shape the organisation of the regulatory state (the "who" aspect), one can at least expect a shift away from a deregulation position. The least that could be exepcted is that social and labour rights attract greater policymakers' attention.

In relation to the impact of party politics, political input into the regulatory state will also depend on the continuity or discontinuity of office. A relevant detail here is whether the ruling party during the pandemic, when early regulations were instituted, will stay in power and thus have an opportunity to continue its regulatory agenda. If they lose power towards or immediately after 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 promised to work on strengthening the regulatory state.

On a bigger point, parties' responses to wider regulatory demands and expectations could be mediated by functionalist or opportunistic motives. These are two distinct logics. 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 electoral politics. A functionalist response would include measures seeking best possible solutions to the challenges posed by the legacy of the pandemic. Regulatory solutions, in other words, will be evaluated from the perspective of successful societal and administrative management. An opportunistic response, on the other hand, is driven by 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), which require the host 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 engender 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 global interdependence must be matched by increasing collaboration, the OECD and others have advocated the IRC agenda, whether through multilateral or bilateral mechanisms. While not being specified in detail, 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 'deepening' of regulatory regimes.

It is questionable, however, to what extent such measures extend beyond the traditional definition of regulatory governance, that is, whether they relate to executive governance as a broader phenomenon or to regulatory governance as a narrower governance domain (Koop & Lodge, 2017). Some forms of IRC, particularly in the context of bilateral requests for cooperation, will aspire to 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 be individualised and context-specific and will depend on which tools nation-states will develop to overcome or remove current components of the regulatory state. One possibility is that the regulatory state remains more or less unchanged, whereby the "jurisdiction" for certain issues only would be transferred to the international level. Also, it is questionable to what extent IRC would represent more 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 itself through the imposition of regulatory standards. Of paritcular interest here is the rise of regional and/or global powers and the way they "upload" their regulatory standards internationally. In state-sponsored investments, for instance, 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 even more dependent on foreign capital as they seek to keep own economy afloat. In such difficult economic circumstances, a recipient country might become more vulnerable to deregulation requests made by an investor. Prior to the crisis, we had seen examples of developing states lowering their labour, tax and other standards, to accommodate investment requests of big powers. The state-sponsored investments of China, for instance, are examples where the investment-recepient country had to lower its standards. Alongside cases of social deregulation observed in African countries (Chan-Fishel, 2007), we could also see the "sweatshop-anisation" of the garment industry in Southeast Asia and beyond (Kumar, 2020), and, most recently, the de facto labour and environmental deregulation at the EU periphery in countries such as Serbia (Vukmirović *et al.*, 2021). This phenomenon could expand in the wake of the COVID-19 pandemic, as the unfavourable economic legacy might further break down the resistance among LIM countries to deregulation, whether in the areas of environmental protection or in other areas where the donor country might have interests in seeing lower standards.

Where politically stricken deals drive such investments, independent regulators, those outside the governmental hierarchy, will be seen as a potential "nuisance". Such regulators might then be dismantled by government in a push to prevent them from getting in the way of ongoing inter-state project(s). Or 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.

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. It could repersent an opportunity to globally mobilise support for pro-regulation agendas. Recently, the Camden Renewal Commission (Mazzucato & Gould, 2021) has attracted global attention with its agenda for a radical rethinking of the world economy, setting out fairer distribution as its key goal. The Commission looks for 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 standards aimed at the protection from social harm, amongst others. This would imply 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 the 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?

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 drivers 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 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.

	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

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 pursued (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 interpretations of the main priorities that the reform should achieve, as well as countries' exposure to global regulatory pressures and shifts.

The paper has pointed to a range of factors that might mediate the future development of the state and the regulatory state as its component. At the national level, the role of politics will be crucial, as ever, and this includes not only parties' ideological leanings but also their leadership decisions and the ongoing electoral competition. Electoral cycles can significantly alter the dynamic of regulatory state developments; the issues of incumbency and electoral turnover might catalyse new ideas as to how to filter 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 investment and their participation in bilateral or multilateral "clubs" and trade agreements.

Overall, it seems that, compared to prior global crises, political actors will now have a wider set of options for 'translating' the post-COVID-19 legacy into regulatory change. The forthcoming fiscal and debt crisis will pose stronger urgency for change; it also poses severe constraints regarding the amount of resources that can be invested into regulatory mechanisms. Yet, 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. At the same time, "policy entrepreneurs" could enjoy greater possibilities than in the aftermath of previous major crises to impose their narratives about regulatory action and 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 regulation related actions taken by political actors.

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