

CHAPTER 8. REGULATORY GOVERNANCE

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1. INTRODUCTION

The European Union is now conventionally described as a regulatory state *par excellence* (Knill and Lenshow 2004: 218; Majone 1994; McGowan and Wallace 1996; Loughlin and Scott 1997; Lodge 2001; Lægreid, Steinthorsson and Thorhallsson 2005). While there are some doubts as to the appropriateness and usefulness of characterizing the European Union as a “state”, there is no doubt that the intersection of regulation and Europeanization creates one of the most intriguing political spaces of our era. It is hardly surprising, therefore, that scholars of European politics and policy are increasingly interested in regulatory change across such diverse areas as telecommunications, competition, finance, health, environment, food, equal opportunities, minority rights and labor standards. Accordingly, there is also strong and increasing interest in issues of regulatory design and in the growth in the number of regulatory agencies and probably also in the scope of their authority.

Regulation, despite some expectations to the contrary, is still high on the agenda of scholars and is expanding in Europe and well beyond it. Indeed, regulation – as both

policy instrument and subject of study - is here to stay despite the assertion that it is *deregulation* that is the defining characteristic of our era. Surprisingly enough, and seemingly by stealth, Europe is experiencing a surge in the growth of regulation across diverse levels and arenas of political action (Vogel 1995; Majone 1997; Levi-Faur 2005; Gilardi 2005). Alasdair Young suggested that “the single market programme is probably the most far-reaching and ambitious regulatory project in the world” (Young, forthcoming). Majone (1997) asserted that Europeanization amounts to very little without regulation because the EU’s power to tax and spend is greatly constrained. Yet the close relations between Europeanization and regulation are served by more than these budgetary constraints. As asserted by Scot Jacobs, once head of the OECD’s program on regulatory reforms, far from living in an age of deregulation, we live in the golden age of regulation (Levi-Faur 2005). Growing expectations of a “riskless society” on the one hand and a shrinking willingness to trust political authorities on the other contribute to increasing reliance on regulation that reduces risks and replace some trust relations by others (Jordana and Levi-Faur 2004). Even if the constraints on the EU’s powers to tax and spend are somehow relaxed, we have good reason to expect the intimate relations between Europeanization and regulation to develop further. Indeed, to study Europeanization without reflection on the nature of regulation as system of controls, or to study regulation without close attention to European Union developments, is to miss important elements of our political, economic and social order.

It might be useful to start with a brief clarification of the notions of Europeanization and regulation as they are applied here. Regulation is the promulgation of an authoritative set of rules, accompanied by some mechanism for monitoring and

promoting compliance with those rules. This set of rules can be shaped by a public or a private authority, and at the international or national levels; and it can target sector-specific as well as economy-wide action (cf. Baldwin, Scott and Hood 1998: 3; Parker and Braithwaite 2003; Jordana and Levi-Faur 2004: 2-4; Djelic and Sahlin-Andresson 2006). I understand Europeanization as the development of *institutions* and *actors* at the European level. Accordingly, I suggest that we can talk of a process of Europeanization to the extent that there is institutional development at that level and that this development is characterized also by new types of actors that derive their power from the EU-level institutions, policy and politics. This definition captures some of the more important dimensions of Europeanization as explicated by Olsen (2005) and by Cowles, Caporaso, and Risse (2001). Yet, unlike these definitions, it emphasizes the co-evolution of actors and not only institutions as criteria for the evaluation of the process of political change. In this respect, our definition of Europeanization reflects the balance between actors and institutions as put forward by Scharpf (1997) better than notions which pay attention solely to institutional aspects. The definition leaves for empirical investigation the question of the domestic effects of Europeanization which this essay suggest might be less direct, less tangible and less critical than many assume.

Regulation and Europeanization are intimately connected. Take for example the following definition of Europeanization by Radaelli:

Europeanization consists of processes of a) construction, b) diffusion and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first

defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies. (Radaelli 2003: 30)

Rules and procedures, therefore, stand as the core of what is constructed, diffused and institutionalized as the essence of Europeanization. It is therefore reasonable to suggest that regulation and Europeanization advance hand in hand to create an innovative and in some respects unprecedented multilevel system of regulatory governance. This innovative system may well fashion model governance for the coming century well beyond Europe; and at its core stand elaborate, complex and challenging systems of regulation. Changes in our understanding of regulation, regulatory instruments and regulatory compliance are expressed in the way the European system of governance is constructed. To study the European model of multilevel regulatory governance is to study some of the most important features of international politics and policy for the 21st century.

2. CORE QUESTIONS

Europeanization and regulation were brought together in the most forceful way in the work of Giandomenico Majone, whose work dominated the field over the last decade. It is Majone who single-handedly “virtually invented the notion of a ‘European regulatory state’” (Moran 2003: 17) and it is therefore only natural to start the discussion. Majone suggested that changes in the governance of capitalist economy

and society are best expressed as a transformation from a “positive state” to a “regulatory state”. This transformation is evident in the amalgamation of five shifts: (a) from taxing and spending to rule making; (b) from centralized bureaucracy to autonomous agencies; (c) from party and parliamentary politics to legalistic and professional politics; (d) from corporatist to pluralist political culture; and (e) from direct to indirect political accountability (Majone 1997). Majone’s interest in the process of regulatory change is derived from his interest in EU integration and EU public policy processes. His research agenda therefore prioritizes problematization of Europeanization over that of regulation and regulatory change generally. Most important, in his interpretation the driving force of regulatory change is Europeanization as a causal force. The Europeanization of policy making (by which he meant the increasing interdependence of domestic and supranational policies within Europe) involves two major aspects. The first is the central position of regulation at the EU level and the second involves the impact of EU policies on regulatory developments in the member states (Majone 1997: 144). The progress of Europeanization is the progress of *re*-regulation at the EU level, accompanied by an increasing transfer of authority to the EU level. Re-regulation at the European level and the ensuing supra-nationalist interpretation of the process seems to reflect the decline of “taxing and spending” policies and of the “positive state” more generally. The assumption that Europeanization is “*force majeure*” in the domestic political process of the member state is either explicitly or implicitly embedded in his work.

Not only did Majone characterize the change and define its ultimate outcomes, but he also set out (somewhat less successfully to my mind) the explanatory framework to deal with it. Regulatory change is portrayed by Majone as the

outcome of the concentration of several basic strategies: “privatization, liberalization and deregulation... fiscal retrenchment, economic and monetary integration and various policy innovations associated with the New Public Management paradigm” (Majone 1997: 140). The most important causal forces are threefold. First is the perceived failure of public ownership modes of control and the ensuing turn to privatization policies. This led him to suggest that regulation serves as an alternative mode of control for public ownership. A second source of the rise of regulation in Europe is the process of Europeanization itself. Fiscal constraints make regulation the preferred instrument of government at the EU level, leading in a second stage to the proliferation of regulatory agencies and regulation at the national level. In order to take an active part in the formulation of new rules at the EU level, and then to implement them at the national level:

[M]ember states have been forced to develop regulatory capacities on an unprecedented scale. (Majone 1997: 146)

It is the reluctance on the part of member states to increase the taxing and spending options of the EU that led them to give up on the regulation “front”:

Paradoxically, the attempt of the member states to limit the scope of supranational policies by imposing a tight and rigid budget constraint on the Commission has favored the development of a mode of policy making that is largely immune from budgetary discipline. (Majone 1998: 26-7)

The third cause of the growth of the regulation is a shift from direct to indirect or proxy government. The various aspects of this development include “administrative decentralization and regionalization; the breakdown of formerly monolithic entities into single-purpose units with autonomous budgets; delegation of responsibility for service delivery to private and non-private agencies, competitive tendering and other contractual or quasi-contractual arrangements” (Majone 1997: 146). Majone makes here an implicit link to theories of regulatory governance, as he suggests that new forms of control and accountability and responsibility are emerging as a force that propels the regulatory explosion at the European level. Citing Seidman and Gilmour’s *Politics, Position and Power* he suggests:

If policy makers wish to control or influence agencies and other organizations operating at arm’s length, they must do so by contractual arrangements, and by means of rules and regulations: ‘government by regulation is the inevitable concomitant of government by proxy’. (Majone 1997: 147)

One may note the circularity of the analysis as the third cause of growth of regulation is also one of the five characteristics of the regulatory state as described above. Yet, for our purpose it might be useful to discuss the turn in Majone’s attention after 1997 to the rise of the regulatory agencies as the administrative nerve centers of the regulatory state.

Majone examines the rise of agencies in general and regulatory agencies in particular through an exploration of the logic of delegation. How can one explain, he asks, the willingness of legislators and political executives to delegate powers to institutions

independent of the political process? The answer he offers is basically and most prominently framed as a solution for the low credibility of intergovernmental regulatory agreements on the one hand and democratic politics on the other. While there is more than one reason (or logic) for the act of delegation, he suggests that the central reason is policy credibility rather than the alternative explanations that were proposed by scholars, including the demand for expertise, blame shifting by politicians and decision costs.

Policy credibility explanations suggest that governments delegate authority in order to enhance the credibility of their policies in the eyes of their citizens, potential investors, and other governments (Franchino 2002). The demand for “credible commitment” is increasing in the age of international interdependence and should therefore be especially strong in the EU policy context. Here policy credibility becomes an essential condition of policy effectiveness and is achieved to a large extent through the delegation of powers to autonomous institutions (Majone 1996: 616). Majone discusses some of the implications of the growing delegation to regulatory agencies and regulators (and more generally to non-majoritarian institutions), including the problems of democratic deficit and challenges to legitimacy and accountability, but he is essentially concerned with the strengthening of the policy credibility of the regulatory institutions of the European Union. Normatively he clearly prioritizes the efficacy and efficiency of policies over the goals of democratic legitimacy and political accountability of the technocrats. Member states’ objections to further increases in the scope of the EU’s authority are portrayed as the major obstacle to strengthening the regulatory powers of the EU. The particular form of Europeanization that Majone envisions goes beyond increasing

delegation to the Commission. He suggests that the growing complexity of the Community policy-making system should be matched by greater functional differentiation, in particular by the explicit assignment of an autonomous role to EU-level agencies. These agencies are expected to take over responsibilities both from the EU Commission, which is increasingly portrayed as a politicized form of supranational institution, and from the member states. Such a development represents a new stage in the strategic use of regulation and regulatory theory in the service of Europeanization.

Unlike Majone, Thatcher and Gilardi focused on regulatory developments at the domestic level, thus offering a new dimension for the study of the regulatory state. Thatcher embarked on a study of the regulatory agencies in the larger countries of Europe and focused on their autonomy from ministerial supervision and from the regulatee, and on their decision-making processes (Thatcher 2002a; 2002b). His findings emphasized the continuity of national variations or the persistence of divergence, as well as the interaction of contextual and functional factors in determining the shape and direction of change. Adopting a principal-agent perspective, he later revisited the issue of agencies' autonomy and examined their legitimacy problems and operation in a broader framework (Coen and Thatcher 2005; Thatcher, 2005). Gilardi dealt with similar issues but developed an index of agency autonomy (probably the first such index outside central banking) and applied quantitative analysis to the topic (Gilardi 2002; 2005). The design of regulatory agencies is best understood, he concluded, by the credibility aspirations of government. Again, unlike Majone, Gilardi seems to believe that member states' politics merit scholarly attention even in the era of Europeanization. Yet the link

between EU-level regulatory change and member states' politics remains largely unexplored and still open to debate even in the work of these authors. Consequently, as I will elaborate soon, the link between regulatory developments at the EU level and those at the member state level remains largely unexplored. When it is explored, the research design of the scholarship often suffers from serious problems of case selection and validity (Haverland, this volume).

3. KEY PROBLEMS

The domestic effects of EU-level changes constitute probably the most important issue to be raised in the context of this volume. The dominant account of the domestic effects is, not surprisingly, that of Majone, who detects a territorial shift from “the national” to the “European” (Majone 1997). The domestic effects of Europeanization, not unlike much of the 1980s literature on the effects on globalization of the nation-state, are expressed in something like the hollowing out of the member-state. Indeed, this view gets some support from the growth in the number and power of regulatory agencies at the EU level. More than 25 agencies have so far been set up at the European level. These agencies were established in diverse policy fields such as vocational training, safety and health at work, food safety, aviation safety, maritime safety, railway safety and interoperability, and police cooperation. They employ more than 2,700 statutory staff and receive a total EU subsidy of almost €300 million a year (Szapiro 2005: 1; see also Kelemen 2002; Majone 2002b). Note, however, that these agencies, with the notable exception of the European Central Bank are social regulatory agencies, and that a critical number of them were established after 2000. If

one examines developments at the member state level, however, it becomes clear that regulatory agencies were established earlier (mostly in the mid-1990s) and that most of them were established in the economic rather than social sphere (Gilardi, Jordana and Levi-Faur 2006).

The standard account, as formulated by Majone, of the establishment of regulatory agencies at the member state level suggests that member states have been forced to develop regulatory capacities in order to take an active part in the formulation of all these new rules in Brussels, and then to implement them at national level (Majone 1997: 9). Elsewhere I have expressed some serious doubts about the alleged effects of Europeanization on the member states in two important industries (telecoms and electricity). I have also claimed that Europe does not vary that much from Latin American on a number of indicators and that this may suggest that European Union has a less pervasive presence in the member states than is usually suggested (Levi-Faur 2002). It might well be the case that the sources of regulatory change are to be found and best explored from a diffusion perspective and are dominated by a global rather than a European change in the thinking about the relation between states and the economy (Levi-Faur 2002; Levi-Faur and Jordana, 2005; Gilardi, Jordana and Levi-Faur, forthcoming). Indeed, by Majone's own account, legal prohibitions (the Meroni Doctrine and Article 7 of the EC Treaty) constrain the ability of the EU to create fully independent regulatory institutions at the European level (Majone 2002b); but the author portrays this situation as anachronistic, and forecasts that functional pressures will lead to the creation of an elaborate structure of regulatory institutions at the European level in the not too distant future (Majone 2002c: 303)

The top-down view of the domestic effects of Europeanization leaves many questions unanswered. If the sources of change are indeed at the EU level, why the imbalance in the establishment of agencies between social and economic arenas? And if the member states are forced to develop regulatory capacities, why are they capable of blocking the establishment of regulatory agencies in important economic sectors? Indeed, efforts to create European regulatory agencies either ended in failure (for telecoms, see Levi-Faur 1999; Michalis 2003) or did not eventuate at all (for electricity, see Jakobsen 2004). The only case of a powerful regulatory agency at the European level, though hardly a marginal exception, is the European Central Bank (Jabko 2004; McNamara 2001). As an alternative to influential regulatory agencies at the regional level, which have proved so difficult to establish, the European Commission is promoting networks of national regulators and a coherent European identity in each sector through the exchange of information (Dehousse 1997). A group of European telecommunications regulators was established in Paris in 1997 to coordinate on issues of market liberalization, as well as acting as an advisory body to the European Commission. For electricity, the Florence Forum of European regulators was established in 1998 and its existence formalized in 2003 (Decision 2003/796/EC of 11 November 2003). In the regulation of securities and exchange, a Federation of European Securities Commissions (FESCO) was set up in 1997 (Muegge 2004). The common denominator of all these arrangements is their low level of institutionalization.

All this represents some important challenges for Majone's "top-down" view of the role of EU institutions as a major source of regulatory change at the member state level. Another difficulty with Majone's interpretation (which is probably widely

accepted) is manifested in the claim that the EU is becoming the major source of legislation in the member states. “Even in Britain”, wrote Majone (1997: 9), “the chairman of the Health and Safety Commission has recently noted that the EC must now be regarded as the principal engine of health and safety regulations affecting the UK, not just in worker safety but in major hazards and most environmental matters”. A recent paper by Christensen (2005) examines this widespread belief, critically arguing that it is empirically unsupported and inherently imprecise. For one thing, it is an analytically complex task but the challenge, as Christensen approaches it, reveals that the EU effect is more elusive than is usually portrayed in the literature. In his words, despite the extension of EU power and scope:

[t]he EU of the millennium was still far from being the prime political and legal source of at least economic regulation.... (p. 26)

It might be useful, therefore, to open the question of the relations between Europeanization and regulatory change.

A second important problem touches on the nature of regulatory change in the European system of governance. For Majone, the regulatory state is about “limiting the role of the interventionist or positive state” (Majone 1997: 140). The regulatory “state” is portrayed as a *neoliberal* state and, it is only reasonable to infer, the “Europeanization” of regulation is for Majone a process that structures neoliberal actors and institutions at the heart of Europe. This is probably why he suggests that he viewed the growth of regulation as mainly driven by the EU. It is not that Majone did not recognize that much of what is usually understood as “deregulation” is really

about “re-regulation”. He certainly did, yet the real scale and scope of regulatory expansion hardly featured in his work as something that was puzzling in its own right, and the “neoliberal” features of the change are emphasized in the face of contradictory evidence.

Indeed, even critical accounts of Majone, such as that offered by Jabko (2004), agree with him on this interpretation. Yet to suggest that Europeanization is about the promotion of a neoliberal agenda through regulation is to ignore some of its characteristics. First, regulation is by nature a form of intervention. Some regulations represent more intrusive forms of intervention than taxing and spending; their application can be inflexible, rigid and alienating (Bardach and Kagan 1982). Moreover, consider the regulatory explosion that characterized fields like competition, telecommunications, finance, the environment and food safety in the last two decades (Vogel 1996; Levi-Faur 2005). On the one hand governments and other actors used their power to open a space for market and commercial activity. On the other hand they used multiple regulatory controls to create an ever more intrusive system of governance. Regulation-*for*-competition created a “new state” that is more neomercantilist than neoliberal (Levi-Faur 1998; Jordana et al. 2006; but see Cerny 2004). A similar critique came recently from the pen of Moran, who assessed Majone’s characterization of the European regulatory state in light of the British developments:

These images, then, identify the regulatory state with withdrawal from utopian interventionism, with the construction of regulatory institutions to fit the new task of steering, and with renunciation of command. ... They are images of

great analytical and rhetorical power. Unfortunately, they are also inaccurate, or at best only half accurate. (Moran 2003: 6).

This observation by a British scholar on the basis of the British experience is especially important since Britain is the European prototype of a regulatory state. The observation led Moran to raise the possibility that “[i]t may be that the European regulatory state is not at all as Majone imagines; that it has its own interventionist ambitions and utopian projects quite as marked as older interventionist systems” (Moran 2003: 21). After the great crisis of the 1970s, the state in Britain did indeed scale down many of its central ambitions, argues Moran, but it also acquired some startling new ones. It did indeed renounce many responsibilities that lay at the heart of the positive state, but the turn to regulatory modes of control also greatly widened the range of social and economic life that was subject to public power. A portrayal of regulation and regulatory reforms in general as the manifestation of the “retreat” and “hollowing out” of the state may be therefore misleading and represent an oversimplification of the nature of the change and the forces that shape it.

A third problem is that in some accounts, including Majone’s, the regulatory state is portrayed as a functionalist or adaptive response to changing economic and technological conditions. Politics comes into the picture in the form of member states’ objections to the requirements of adaptation and in the more general form of ideational change, which is the public’s “rediscovery of efficiency” (Majone 1996). The adaptive nature of regulatory developments at the EU level and therefore of Europeanization more generally is expressed in the dominance of delegation theories in the study of regulatory change in general and the establishment of regulatory

agencies in particular. Most important in this respect are delegation explanations that emphasize transaction costs, the pressures for credible commitment, and time inconsistency as an explanation for the delegation of regulatory powers (Majone 1999; Gilardi 2002). Yet, as Thatcher (2002, 2005) and Elgie and McMenamin (2005) showed, these functionalist explanations only very partially explain the widespread forms of delegation upward to the EU and downward to domestic institution. Coen demonstrates the persistence of strong national and sectoral variations in business-agencies interactions that cannot be accounted for by functional or market explanations (Coen 2005). Eberlein and Grande (2005: 90) recently concluded that these "functional pressures rarely translate seamlessly into corresponding allocations of regulatory authority". In rather similar vein, Jabko (2004: 215) argues that "it is important to see the regulatory state for what it is, that is, a form of coercive state power instead of a non-political and arguably utopian form of state power". In his interpretation the emergence of Europe as a regulatory state is the result of political maneuvering by the commission, rather than evolving functional requirements" (Jabko 2004: 200). Jabko seems to point to the prominence of political processes in the intersection between Europeanization and regulation.

Finally, proponents of the new regulatory order advocate depoliticization and technocratization of the new order (Harcourt and Radaelli 1999). This is an old theme of mainstream liberalism and it may therefore be claimed that there is nothing new in this process that and it doesn't represent a severe challenge. Indeed, the advantages of delegation from politicians to experts were recognized very early in the American context of regulatory governance. Thus, Bernstein wrote in the early 1950s:

In general, the commission form has been championed by those who believe that administrative regulation requires a high degree of expertness, a mastery of technical detail, and continuity and stability of policy. These requirements, it is alleged, can only be met by a board of commissioners functioning in a neutral environment, free from partisan political considerations. (Bernstein 1955: 4)

Similarly, in the current European context, Majone emphasizes that regulation requires detailed knowledge of, and intimate involvement with, the regulated activity (Majone 1994a: 81). Yet, while the “technocratization” of politics and policy is not new, and while there are grounds for believing that the new European agencies are less autonomous than the American ones (Eisner 2000; Scott 2003), the process of change in the making of the current regulatory order goes further than that. Indeed, the rise of the “regulatory state” at the European level is accompanied by a growth in the scope of authority and autonomy of a new type of public servant, best called “regulocrats”. Unlike their elders, the bureaucrats, the regulocrats are free from the direct and formal controls by elected members of the executive branch of government. Not only are they free from the direct control of the executive branch, they seem to increasingly be members of transnational networks of regulators, well beyond the state (Slaughter 2004; Eberlein and Grande 2005: 90-1).

These empirical observations are often followed by strong normative advocacy. For Majone, the rise of regulocracy is a necessary condition for depoliticization and the institutionalization of regimes for “credible commitment”. Bartle (Forthcoming) suggests that this reflects a rationalist-procedural model of policy making and contrasts it with a “republican-participatory” model. While the first model draws on the

American administrative experience and on clearly defined administrative procedures to ensure good administration and accountability, the second rests on scepticism about an easy separation of economics and politics and on a republican theory of participative citizenship as laid out by Ayres and Braithwaite's (1992) theory of "responsive regulation". Rather than advocating either of these models, Bartle suggests that each has its own limitations and that probably the best way forward in terms of institutional design is to rely on careful selection of accountability-maximizing elements of both models.

4. EVALUATION

Probably the greatest challenge to scholars of Europeanization is to overcome the tendency to study it in the framework of conventional "statist" forms of political order and power and at the same time to overcome the tendency to develop a Euro-centred analysis. When a comparative analysis is applied it is often confined to the history of regulation in the United States and its particular form of federalism (e.g. Kelemen 2003; Doren and Wilks 1998). While this is useful, other comparative strategies may be of value as well. The European Union is an exceptional political order but it does not stand outside the more general frames, interests and institutions that shape our world. Moreover, it may well project the way forward for many countries and regions in other parts of the world, an expectation that is only forcing the need to study it in a more global context. The challenges are not easy to tackle as scholars are required to deal with three shifts: from government to governance (Rhodes 1997), from the national to the regional and the global (Rosenau and Czempiel 1992) and from unitary

state to disaggregated states (Slaughter 2004: 12). All these three shifts are hardly new to scholars of Europeanization and more generally to scholars of the European Union; and all of them require us to move beyond the notion of “regulatory state” (Kohler-Koch 1999; Jachtenfuchs 2001). To do so might prove useful not only in a purely theoretical sense but also in more “mundane” and practical ways, notably through a more profound critique of the malaises of Europeanization and a more powerful exposition of its promises.

If Europe is at the same time more and less than a “regulatory state”, how can one best capture its nature? And, if regulation is not necessarily primarily about neoliberal goals and interest, what is it about? Elsewhere I argued against a Euro-centred bias and have suggested that the changes in Europe, including the rise of the “regulatory state”, are best understood in the framework of the rise of new order of “regulatory capitalism”. I suggested characterizing this order as an order that is at the same time more open than is usually portrayed by pessimists and more socially and politically oriented than is usually portrayed by proponents of neoliberalism (Levi-Faur 2003, 2005; see also Braithwaite, forthcoming; Henisz, Zelner and Gullén, forthcoming; Jabko 2004). This new order rests on regulation to an unprecedented degree, and it is not surprising that it is characterized by both the advantages and the pathologies of governance by rule-making (Sunstein 1990).

More generally, and with an eye well beyond Europe, the notion of “regulatory capitalism” requires us to reconsider and possibly modify our understanding of the working of power and politics; to identify and explain new instruments of governance and to point to the problems and challenges that are either intended or unintended

consequences of the new order. Most important, it might be useful to better explore the working of multi-level systems of governance, especially those systems where states matter but not necessarily in a hierarchical or coercive manner. At the same time, in order to best capture the changing pattern of governance we may also need to work beyond the zero-sum assumptions that characterize the current literature on Europeanization and regulation. It may well be that more authority at the EU level is accompanied by more authority at the national and organizational levels. If new instruments of regulation are expanding the tools and the scope of power that are available to political and social actors, the zero-sum assumption is less valid than it might have been in the past. In short, we may want to move away from the zero-sum assumption that dominates our scholarship, or at least place ourselves at some critical distance from it. If scholars of regulation and Europeanization succeed in this goal, their contribution may be felt well beyond Europe and well beyond the sub-discipline of European Union studies.

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