

British economic regulators in an age of politicisation: From the responsible to the responsive regulatory state?

Christel Koop and Martin Lodge

Abstract

The regulatory state that developed in Britain and elsewhere in the 1980s and 1990s was characterised by independent agencies, efficiency-based objectives, 'econocratic' analysis, and an emphasis on output- and outcome-based legitimacy. Yet, with economic regulation becoming increasingly politicised, the 'responsible' regulatory state has come under pressure. How have British regulators adapted to these changes? Building primarily on interviews with regulators, we find that the regulatory state has become more responsive to broader political and public concerns. Key responsible features have been maintained, but new responsive layers have been added, contributing to a broadening of decision-making and conceptions of regulation, a greater role for communication and outward-oriented activities, and a widening of stakeholder engagement and accountability. Though supporting theories of organisational reputation and survival, the (ongoing) changes raise new questions about how much 'political space' independent economic regulators can feasibly and legitimately occupy.

Key words: regulation; regulatory state; agencies; responsiveness; stakeholder engagement; Britain

1. Introduction

Over the past decade, regulation as a field of policy-making has seen continuing debates on how to govern systemically important global financial institutions, questions about how to respond to climate change, scepticism of the use of proprietary data by 'Big Tech', and a widespread critique of regulatory outcomes and private ownership in the utilities sphere.

Such politicisation of regulation – defined as the increased awareness of, mobilisation around, and polarisation of regulation (cf. De Wilde and Zürn 2012, p. 139)¹ – was not envisaged in the 1980s and 1990s when the regulatory state emerged in Europe. Economic regulation was designed to be an 'econocratic' matter (Self 1975), to be delegated to independent agencies dedicated to the pursuit of Pareto optimal outcomes (Majone 1996; Stern 2014). This removal of politics from markets would provide predictability and stable investment. To the extent that regulation had distributive implications, these were seen as the domain of social spending.

Focusing on developments in the British regulatory state over the past two decades, our study asks how and to what extent independent economic regulators have responded to the recent politicisation of regulation. We argue that regulators have moved away from practices associated with 'responsibility' towards practices aimed at 'responsiveness' to public and political concerns. To empirically assess this argument, we primarily rely on semi-structured interviews with (former and current) senior regulators, complemented by policy documents. Our study mainly assesses the broader, over-time changes, whilst also paying attention to differences across areas of regulation.

We take the British regulatory state as a 'paradigmatic case', given its leading role in public sector reform since the 1980s (Foster 1992). Britain was a frontrunner in utility privatisation, and its regulatory agencies and instruments were trend-setting in Europe and beyond. Yet, since the financial crisis, Britain, like other advanced economies, witnessed rising concern over the impact of neoliberal reforms, the rise of big corporations and tax-'efficient' arrangements, the protection of consumers, and individual and regional inequalities. These concerns found partial expression in the Brexit referendum of 23 June 2016, one of the key 'populist' upheavals in recent European politics.

Starting our analysis in 1997, when New Labour entered office, allows us to compare the periods before and after the financial crisis of 2008/9. We look at financial market supervision, competition policy, and utility regulation (telecoms, energy, water, railways). These areas have

¹ Our definition of 'politicisation' differs from those emphasising political interference in organisational activities, especially appointments based on political ties.

been at the heart of the provision of essential public services, and have been integral to reform of the British regulatory state (Moran 2003).

By exploring the impact of the politicisation of regulation, we contribute to the extant literature in two main ways. First, we add to the emerging literature on organisational responses to the turbulent political environment of the past decade. This period has not only been characterised by distrust of established party politics, but also by scepticism towards the neoliberal political-economic model and its emphasis on privatisation, markets, and ‘disciplined’ (and disciplining) bodies such as independent central banks (e.g., Roberts 2010; Moschella and Pinto 2018). These dynamics have encouraged policy change, but will also have triggered organisational adaptation (cf. Hood et al. 2001, Ch. 9; Bressanelli et al. 2020). Second, the study improves our understanding of the nature of the (British) regulatory state. Existing characterisations still heavily rely on studies conducted (well) before the financial crisis (e.g., Majone 1997; Moran 2003). In view of politicisation of regulation, our study offers insight into how the regulatory state has changed, and which ‘original’ features have, as yet, remained resilient.

2. The British ‘responsible’ regulatory state under pressure

British economic governance in the 1980s and 1990s was marked by a shift from economic interventionism to regulation (Majone 1997). Leading other European countries, regulatory expansion followed privatisation and the move away from self-regulation in industries such as finance (e.g., Majone 1997; Moran 2003). According to Moran (2003), it was the product of a ‘high-modernist’ political movement that encouraged institutional hyper-innovation. In response to the economic and political stagnation of the 1970s, the Thatcher administration (1979-1990) was devoted to replacing the old world of informal ‘club government’ with formal statutory and codified regulation (see Moran 2003, pp. 155-171). One central aspect of this British political project was to deliberately depoliticise the regulatory state. Depoliticisation is defined as a decline in awareness and polarisation of, and public and party-political mobilisation around, regulation.² The depoliticisation of regulation in the 1980s and 1990s was government-driven, taking primarily the form of delegation to independent, trustee-like regulators (e.g., Majone 1997).

The desire for political insulation combined the (functional) logic of credible commitment and the (political) logic of blame avoidance. First, independence was a response to the diagnosed time inconsistency problem of democracy; namely the limited power of incumbents to bind

² Depoliticisation is thus the opposite of politicisation as defined in Section 1 (see De Wilde and Zürn 2012, p. 139).

their successors. Tackling this problem was seen as central to economic success, especially in sectors relying on private investment (Levy and Spiller 1996). Governments were expected to provide ‘credible commitment’ to investors by mitigating the risk of regulatory instability (cf. Majone 1997). Institutions that increased the costs of political intervention – independent regulators but also non-discretionary tools such as licenses – were considered key solutions.

Second, these institutions would allow politicians to shift responsibility and potential blame for regulatory decisions (Hood 2011, Ch. 4). Blame avoidance is of particular concern to politicians in a context of ‘negativity bias’ in which blame affects re-election (whereas ‘good news’ rarely does). Independent regulators would represent ideal blame magnets: their insulation adds credibility to claims about the locus of responsibility, whilst regulation involves ‘hard choices’ that will be unpopular with some groups (Thatcher and Stone Sweet 2002, p. 9).

The ‘logic of discipline’ (Roberts 2010) was also promoted by granting regulators narrow, economic efficiency-based objectives. Combined with economic analysis and competition as the means to maximise consumer welfare (Stern 2014), agencies would pursue Pareto optimal outcomes (Majone 1996). A narrow set of objectives was to reduce agency discretion and thereby address legitimacy concerns (Majone 1997). Legitimacy had to rely primarily on output and outcomes; in particular, investment and (lower) consumer prices. Similarly, accountability arrangements focused on performance and were directed at the agencies’ parent ministry, with a limited role for parliament (Scott 2000).

The British regulatory state that developed had a number of additional features. At its heart were the ideas that key industries should be removed from budget discussions within government, that market failure was generally less problematic than government and regulatory failure, and that competition could be generated, even in monopolistic industries (Stern 2014). ‘Light-touch’ economic regulation would attract and sustain domestic and international investment, both in the newly privatised utilities and in finance (e.g., Pagliari 2012; Stern 2014).

In sum, economic regulation was an ‘econocratic’ exercise (Self 1975), to be undertaken by specialised agencies with a fiduciary relationship with government. To the extent that policy decisions had distributive implications, these were seen as the domain of the welfare state (Foster 1992). This mode of regulatory governance can be characterised as ‘responsible’ in its meaning of ‘prudent’ and ‘consistent’, and as opposed to modes of governance that accentuate responsiveness to public demands and opinion (Birch 1964, pp. 18-20).³ Responsibility in this

³ Our use of responsiveness is different from its use in the literature on regulatory enforcement, where it refers to regulation being responsive to industry conduct and structure.

sense is associated with predictability and discipline, as well as with expertise and professionalism (Mair 2009, p. 11). Although the emphasis on responsibility echoed a long-standing constitutional focus (Birch 1964), it gained a new purchase after the transformation of economic governance in the 1980s and 1990s. At least until the late 2000s, it was part of a political consensus, epitomised by Blair's New Labour project embracing the thrust of the Conservative's regulatory approach (Corry 2003, p. 16).

The actual workings of the British regulatory state were, of course, never completely apolitical. The delegation of far-reaching competences to arm's length agencies attracted 'democratic deficit' criticism (e.g., Scott 2000), and depoliticisation was never fully achieved (Moran 2003). Nonetheless, in their first decades, independent regulators remained outside direct attack. Though some individual decisions raised (ministerial) eyebrows (especially in railways; see Lodge 2002) and privatised companies were criticised (over executive pay and service quality), regulatory output was largely uncontested. Moreover, as the economy fared well, and easy cost savings could be made by privatised companies, the model could for a long time satisfy all stakeholders (Corry 2003, p. 47).

The financial crisis changed these conditions, generating unintended politicisation of regulators. At least three mechanisms were at work. First, as economic conditions worsened, regulatory outputs came to be questioned. In finance, the crisis exposed the limits of light-touch instruments (e.g., Pagliari 2012). Though not directly implicated in the crisis, other regulators also faced increased scrutiny, especially once the rise of inequality had gained traction (e.g., Haldane 2016). Debate centred on those who had lost out from liberalisation, and on whether regulators had done enough to protect consumers. A growing concern about consumers being 'ripped off' and paying 'loyalty penalties' led to more interest in 'vulnerable consumers', thereby increasing regulatory attention to redistributive outcomes (e.g., BEIS 2018; NAO 2019).

Second, the crisis dealt a blow to the belief in markets, which put pressure on politicians and regulators to intervene more. For instance, the Edelman Trust Barometer of 2009, run in 20 advanced and emerging economies, found that 62 percent of respondents trusted corporations less than they had done the year before. Almost a decade later, a YouGov poll of August 2018 found that 74 percent of British adults did not have (much) trust in people running large companies, whilst a poll in October 2017 pointed out that 67 percent agreed that 'business corporations make too much profit'. The change in views was reflected in debates about alleged anti-competitive behaviour by 'Big Tech' (e.g., House of Lords 2019), and in discussions of utility regulation, with the question of ownership returning to the political agenda; especially in water and railways (see Labour Party 2017).

Parliamentary select committee reports also highlighted an increasing ambivalence regarding regulatory state institutions, especially in terms of instruments and approaches. Prior to 2008, there were concerns about regulated energy and water prices, but overall, there was a consensus on the institutions of economic regulation. For example, in 1997, the Trade and Industry Select Committee expressed support for existing approaches and recommended a consistent competition-based approach across regulators (House of Commons 1997). However, over the past decade, committee reports questioned appropriate regulatory models and thus regulators' jurisdictions. They were driven by industry dynamics, by the perception that regulators were not 'delivering' on political problems⁴, and by policy fiascos.⁵ In contrast to the pre-crisis period, the dominant call was now for differentiated and adaptive regulatory approaches.

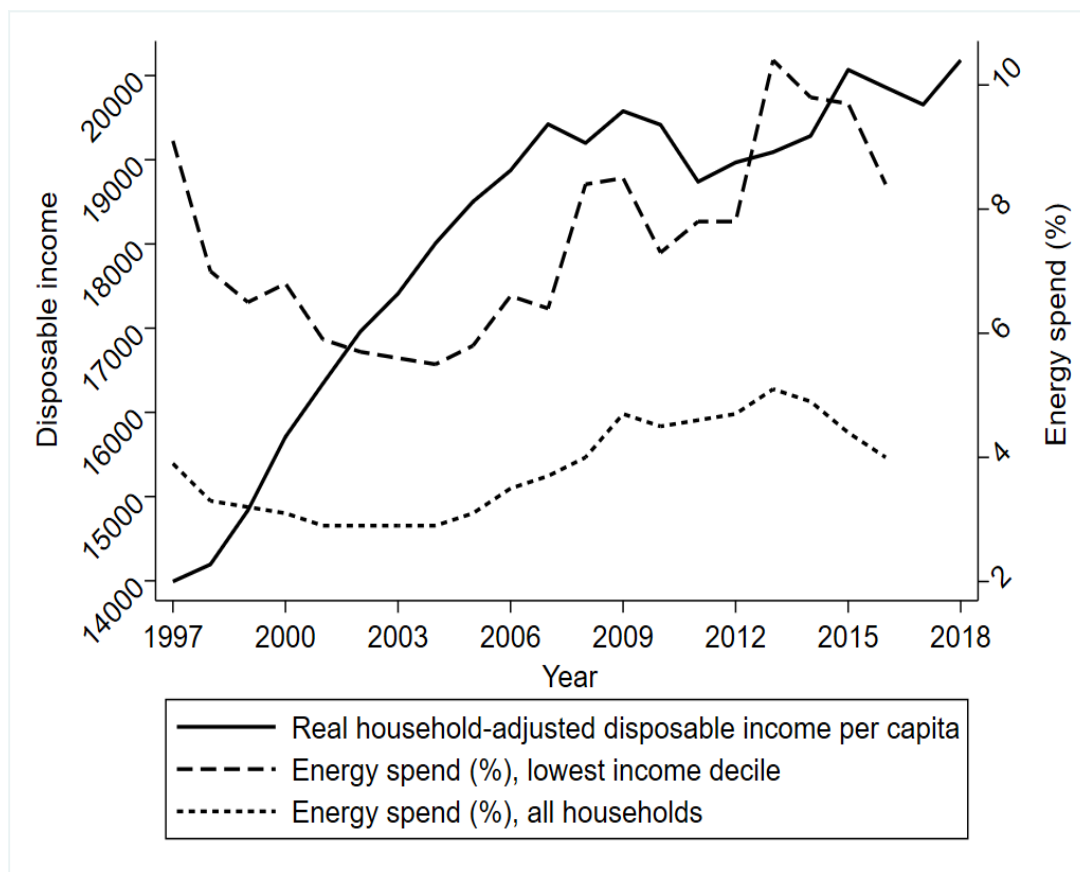


Figure 1: Living standards and household energy expenditure

Sources: UK Economic Accounts time-series; Ofgem, based on ONS family spending data

⁴ For instance, in 2011, government imposed a new statutory strategy and policy statement on Ofgem.

⁵ For example, 2018 saw system-wide railway timetabling chaos.

Third, regulatory decisions started attracting more scrutiny because their implications had become more salient when living standards fell, particularly for low-income households. Moreover, the fall in living standards partially coincided with the rise of utility prices, which again hit low-income households foremost, and led to reputational problems for regulators (Stern 2014, p. 166). Figure 1 highlights both the stagnation in living standards from 2009 (compared to the previous period) and the rise in household energy expenditure.

In sum, the aftermath of the financial crisis contributed to the politicisation of regulation by (a) triggering questions about regulatory output and outcomes, (b) increasing demand for intervention and even systemic transformation, and (c) increasing the importance of regulatory decisions for consumers. The politicisation was reflected in media attention for the activities of regulatory agencies. Figure 2 presents the monthly number of references to British independent regulators in national newspapers.⁶ The reference lines indicate when the structure of regulators changed; for instance, when the Competition and Markets Authority (CMA) took over from the OFT and Competition Commission. As the figure shows, coverage of regulatory activities has increased over time for all regulators, especially after 2012. Moreover, the volatility of the coverage has been much higher post-2012.⁷

The increase in coverage is relatively modest in competition policy, and more prominent in energy, communications, water, railways and financial regulation. In financial regulation, attention increased rapidly in the aftermath of the financial crisis of 2008-2009, and remained high. In energy, media attention increased after the financial crisis, and most notably around 2013, when the question of price caps was put on the political agenda by then opposition leader Ed Miliband (BBC 2013). Though attention decreased after that peak, it never returned to pre-crisis levels. Coverage of Ofcom, the communications agency, rose during the Leveson inquiry (2011-2012), but did not afterwards return to pre-crisis levels. Water regulation was not covered as much as other areas, but the peaks started growing after the financial crisis, with an emphasis on consumers' water bills, windfall gains of water companies, and the role of the regulator in the process. Railway regulation saw a similar increase starting from low levels of attention, with coverage focusing on price hikes, failing services, and the role of regulation, especially following the reorganisation of the infrastructure company (Railtrack) into a non-dividend paying public company (Network Rail).

⁶ The figures do not distinguish between different types of content, but are aimed to capture changes in overall levels of attention. For details on the data, see Methodological Appendix.

⁷ More specifically, the standard deviations on news coverage for the pre- versus post-2012 periods are: 67.7 versus 96.9 in competition, 31.6 versus 70.0 in energy, 62.2 versus 105.6 in communications, 17.2 versus 26.8 in water, 17.8 versus 29.0 in railways, and 140.1 versus 161.0 in finance.

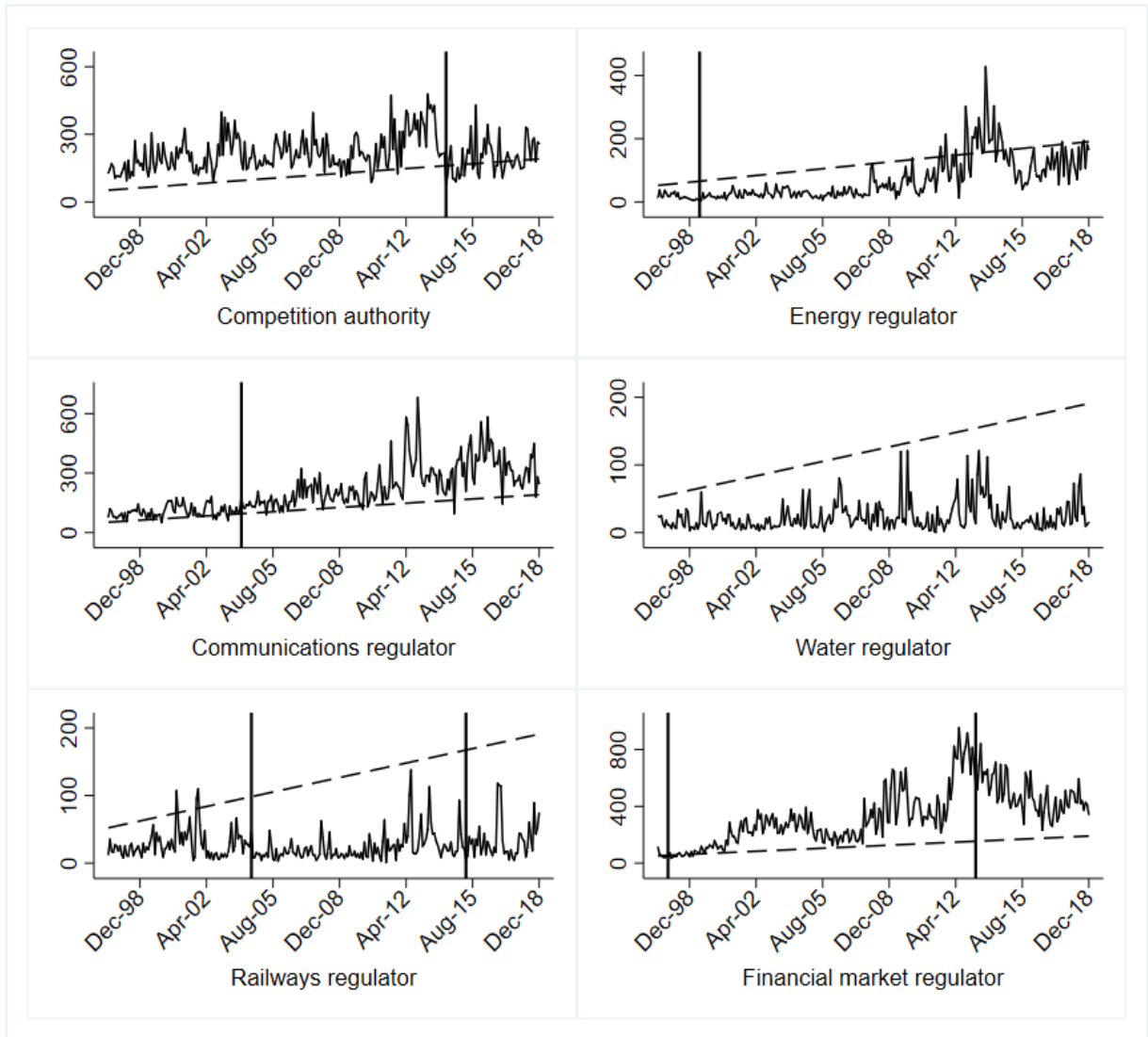


Figure 2: UK national newspaper coverage of regulatory agencies (by month)

3. Organisational responses to politicisation

The extant literature emphasises that government agencies are survival-driven and concerned about their reputation (e.g., Carpenter 2010). Thus, they are expected to respond strategically to external pressure; they will seek to align their practices with societal norms and political expectations, without compromising their core identity (Gilad et al. 2015). Empirically, US agencies have been found to change their performance in response to (repeated) political pressure (e.g., Wood and Waterman 1991, Whitford and Yates 2003). When political demands are driven by societal changes or greater urgency ('disruptive demands'), change becomes almost unavoidable, though agencies still have discretion to 'translate' demands into activity (Lodge and Hood 2002; May et al. 2008). Indeed, they may choose to either 'reclaim the shadow'

or move into the political sphere, depending on what they consider best for long-term survival (Bressanelli et al. 2020).

As disruptive pressure threatens organisational reputations and survival, we expect inaction not to be feasible. Given the scope and targeted nature of the pressure, British regulators are expected to make their practices more 'responsive' to political and public concerns. As noted earlier, the politicisation of economic regulation in the UK can be traced back to the financial crisis, which raised questions about outcomes for consumers, and led to calls for more intervention, and an increase in the importance of regulation for consumers. Altogether, regulators came to face more demand for market correction with a view to consumer protection. This contrasted with previous decades, where market creation and competition were key concerns. It was in that context that the regulatory practices that we characterise as 'responsible' had been developed.

Regulatory practices that are 'responsive' – in particular, widened interpretations of regulation, accountability and engagement – are more compatible with market correction aimed at consumer protection. First, regulatory policies and decisions emphasising market correction are more salient than policies and decisions aimed at competition and market creation because they more directly touch on consumers' lives and concerns. Previous research has linked issue salience to the widened use of accountability (Koop 2014) and a shift from disproportional business influence towards the inclusion of a broader range of interests (Culpepper 2011). Such widening may be a direct consequence of salience or a deliberate strategy by more salient agencies to protect and enhance their reputation and legitimacy (see Introduction to this special issue; cf. Busuioc and Lodge 2016; Koop and Reh 2019).

Second, the shift in focus has made the trade-offs involved in regulation more immediate. Though decision-making with a view to competition and market creation may in practice have distributional consequences, it can at least in theory aim for Pareto efficiency. Moreover, the distributional implications can be attributed to politically-set objectives. By contrast, decision-making aimed at consumers is associated with a wider range of regulatory 'solutions' – enhancing competition being one of them – and the choice of solution cannot easily be justified given ambiguity in regulatory objectives. Under these conditions – where regulation is sensitive and reputational threats are ubiquitous –, we expect regulators to adopt a more responsive approach. Indeed, various studies have linked reputational threats to a widening of internal and outward-facing activity (Maor et al. 2013; Moschella et al. 2020).

As regards the scope of the change, we set out three scenarios. Assuming that agencies are change-resistant, and respond selectively and strategically to disturbances, change depends on environmental features (e.g., Hood et al. 2001). We take the distinction between first-order and

second-order organisational change as our starting point (e.g., Laughlin 1991). Under first-order change, policy instruments are altered, but the 'policy core' remains unaffected. Such change resembles 'dynamic conservatism' (Schon 1971); standard operating procedures are adjusted, but continue to build on institutionalised policy beliefs. In the regulatory state, such change might reflect the entrenchment of regulatory beliefs, represented by well-established 'epistemic communities', or support for these beliefs by wider coalitions.

Second-order change, by contrast, is more far-reaching, involving change to both instruments and core understandings. Such change may result from sustained pressure that 'disembeds' existing entrenched views in an evolving pattern (Hood et al. 2001, p. 151) or from other processes of change, including periods of 'punctuated equilibria' where policy issues are transferred to different sets of political actors (Baumgartner and Jones 2009) and more endogenous negative feedback mechanisms that reduce entrenchment (Weaver 2010).

We distinguish between incremental and abrupt second-order change (Streeck and Thelen 2005). The incremental type can be described as 'gradual transformation' (ibid, p. 9). Here the interplay between existing approaches and new standard operating procedures slowly alters core understandings, which shapes the way in which established instruments are understood and used; for instance, existing institutions may change in nature as they become layered with new elements (ibid, p. 31). Abrupt second-order change can be referred to as 'replacement' (ibid, p. 9): new approaches and understandings are brought in, whilst established ones are removed or discarded. For example, changes in leadership and career structures may alter agencies' core mission. Under all scenarios, we expect the regulatory state to move from responsible to responsive, though the scope of the change varies.

4. Data and methodology

To analyse how and to what extent British economic regulators have responded to the recent politicisation of regulation, we primarily rely on twelve semi-structured interviews with current and former regulators. As we were interested in strategic changes over time, we contacted, and conducted interviews with, individuals who could offer a long-term perspective by currently and/or formerly holding senior positions (chief executives, chief economists, and senior directors) in at least one of the regulatory agencies that are of interest to our study. Most of them had cross-sectoral experience across different regulators (for further information, see Methodological Appendix). The interview data are complemented by policy and other documents which serve to illustrate further information.

To characterise the (scope of the) observed changes, we need to operationalise both the ‘status quo’ and the three scenarios for change proposed in Section 3. Building on the regulatory state literature (Section 2), we distinguish between six critical elements: the status of regulation, the emphasis of regulatory decision-making, the key instruments used, the legitimacy basis of decisions, the relationship of regulators with government, and the nature of their accountability.

Table 1 presents both the elements of the responsible regulatory state and the forms that organisational change takes under the three scenarios. First, in terms of relationship with government, under first-order change, there is a continuation of ‘regulators as trustees’, though with more emphasis on the need for political responsiveness. Under transformation, regulators are still trustees, but there is no longer the attempt to strictly distinguish the political and regulatory sphere. Finally, in the replacement scenario, regulators have become agents, where boundary lines between ministerial departments and regulators become difficult to distinguish.

Accountability broadens under each of these scenarios. Under dynamic conservatism, the audience of performance-based reporting has widened, whilst under transformation, both the scope and the audience of accountability have broadened. Under replacement, ex post accounting has been replaced by full-fledged political and societal control.

The core emphasis in regulatory decision-making is still on competition and ‘econocratic analysis’ under first-order change, but this is combined with behavioural insights to assess market failure and differential implications of regulatory decisions. In the transformation scenario, economic analysis is still used, but customer engagement and other ‘input-oriented’ instruments are more central, and differentiated citizen requirements and the different goals that regulation may serve are explicitly recognised. Under replacement, regulation serves broader political objectives and is not different from, for instance, fiscal policy.

As regards the status of regulation, we associate first-order change with a continued emphasis on the ‘technical’ and non-political character of regulation (with ‘political’ issues to be decided by politicians). Under transformative second-order change, there is an acceptance of the redistributive implications of regulatory decision-making, whilst in a replacement scenario, regulation would be fully associated with political objectives.

Table 1: Different scenarios of responsive change

	Responsible regulatory state	First-order change	Transformative second-order change	Replacement-style second-order change
Type of change		Dynamic conservatism	Incremental, with considerable discontinuity as result	Abrupt, with far-reaching discontinuity as result
Agency relationship with government	Trustee	Trustee with some acceptance of need for political responsiveness	Trustee with mutually agreed understandings over spheres of influence	Agent
Nature of accountability	Ex post, performance-based reporting to parent department	Ex post, performance-based reporting to wider audiences	Broad ex post reporting (beyond performance) to diverse stakeholders	Political (ex ante and ex post) control; societal accountability
Emphasis of regulatory decision-making	Competition to enhance efficiency and aggregate consumer welfare	Competition central, but differentiated analysis of market failures and distributive outcomes	Broad conception of consumer welfare and protection	Supporting political objectives
Key instruments	Econocratic analysis	Primacy of econocratic analysis, supplemented by behavioural insights	Econocratic and participatory instruments on equal terms	Evaluation of public preferences, including customer engagement and outreach
Status of regulation	Technical	Technical	Technical with recognition of distributive implications	Political
Legitimacy basis	Aggregate economic outcomes	Aggregate and disaggregated outcomes; communication to explain	Economic outcomes broadly defined; widened engagement as input	Responsiveness to public preferences; regulators as 'thermostat'

Finally, as regards the legitimacy basis of decisions, dynamic conservatism involves a broadening of the types of outcomes that are seen as relevant, combined with more emphasis on communication. Under transformation, we would see a greater emphasis on outcomes that are not directly economic (e.g., accessibility to services; redistributive outcomes). Widened engagement is used as a communication tool but also serves to gather input (cf. Haldane 2018). Under replacement, societal and political ‘input’ would be fully incorporated, with the regulator serving as ‘thermostat’ by adjusting their settings according to changes in their environment.

To avoid ‘steering’, our interview guide only included open questions associated with the six elements of the regulatory state (see Methodological Appendix). We present the data in Section 5, and return to the question of the scope of the change in Section 6, where we discuss the findings in relation to the operationalisation of responsive change.

5. Analysis

Interviewees agreed that regulatory agencies had witnessed an increase in public and media attention in recent years that had also become more critical in tone. Various regulators indicated that the attention had partially been driven by the widening of their powers and remit (Interviews 2, 3, 4, 5, 9, 12). For instance, Ofcom’s competences had increased since its creation in 2003, Ofgem and Ofwat had been granted environmental objectives, and the financial regulators had seen their powers and remit expand post-financial crisis. Yet, many also pointed to a qualitative change: the debate had become more critical, with regulators expected to prevent price hikes, challenge excessive profit-making, and tackle ‘rip-offs’ and other forms of misconduct (Interviews 1, 2, 5, 7, 10).

Politicisation was particularly felt in sectors where prices had increased: energy, water and railways. These price hikes impacted more strongly on (low-income) consumers after the financial crisis (Interviews 2, 5, 6, 7; cf. Stern 2014).⁸ Politicisation was also associated with the erosion of trust in markets, which had raised expectations on regulators (Interviews 1, 3, 4, 7, 9, 12). Furthermore, the more critical attitudes were seen as reflecting a more general increase in scepticism towards ‘experts’ (Interviews 1, 4, 10, 12).

The politicisation of regulation had brought government closer to regulators. Interviewees had witnessed an increase in government attention and, to some extent, scrutiny and intervention. Government’s interest in correcting markets and protecting vulnerable consumers had

⁸ The new environmental objectives in energy and water contributed to the pressure as they translated into costs that were added to consumers’ bills (Interview 5). As these ‘taxes’ are flat, they are regressive, hitting those on lower incomes harder.

increased, thus enhancing interactions with, and pressure on, regulators. Before the crisis, regulators had been left alone as they were seen as delivering 'value for money'; particularly, falling consumer prices (Interviews 7, 10, 11). In finance, the situation changed rapidly after 2008. Other areas of economic regulation saw a delayed impact, with the early years of the Cameron administration still emphasising the virtues of free markets and the need for a reduction of quangos and regulation (Interview 9; cf. Osborne 2010; Cameron 2011). Eventually, though, all areas were affected, with both government and opposition affirming the need for regulation to better protect consumers (Interviews 7, 10; cf. BBC 2013; May 2016). Ministerial departments became more open to interventionist strategies (Interview 4, 9), and more reluctant to protect companies and investors (Interview 7). For instance, in 2017, a 'growth duty' was added to the statutory guidance to regulators.

Moreover, intervention became more explicit (Interviews 2, 5, 6, 9). There was a formalisation of regulatory guidance set out by departments (Interviews 4, 5, 9, 12; cf. Stern 2014, p. 167). Some saw this as reinforcing rather than infringing upon independence as it formalised boundaries between departments and regulators (Interviews 5, 12). There were also individual interventions. For instance, in 2008, Labour Business Secretary Peter Mandelson overruled the OFT recommendation to block Lloyds TSB's takeover of HBOS on 'public interest' grounds, despite competition concerns, and in 2017, the Conservative government announced energy price caps despite earlier recommendations against such caps by the CMA and Ofgem. One interviewee observed that these interventions took place in the grey areas between government policy and regulation (Interview 6). Yet, for another, they represented a return to the 'normal' situation of political intervention in regulation following an 'exceptional' period of political disinterest prior to 2008 (Interview 5).

Regulators had also witnessed an increase in accountability to parliament; especially to select committees (Interviews 2, 6, 7, 9, 10, 11, 12). This was regarded as a response to the increase in powers and remit and the salience of regulation (Interviews 3, 4, 6, 7, 9, 10, 12); not a consequence of changes in select committee leadership selection. Members of parliament received more constituency correspondence about regulatory issues, and passed this on to regulators (Interviews 6, 7). One interviewee pointed out that government and parliament had come to realise that no matter how independent regulators were, politicians would ultimately be held accountable for regulatory outcomes (Interview 10).

For regulators, the mid-2010s had been years of 'existential questions' and stocktaking (Interviews 1, 3). Indeed, internal debates had changed fundamentally. Interviewees noted that the balance of regulatory decision-making had shifted from investors and companies to consumers, with the protection of 'vulnerable consumers' being particularly important

(Interviews 2, 3, 4, 8).⁹ This was seen as a way to restore and enhance trust in regulators and regulation (Interviews 4, 6). This shift was perhaps most clearly expressed by then CMA Chairman (and former Conservative MP) Andrew Tyrie, who proposed legislative changes to 'ensure that the economic interests of consumers, and their protection from detriment, are paramount' (2019, p. 9).

The emphasis on consumers found expression in different ways. Regulators started questioning whether the (aggregate) consumer welfare standard was sufficient (Interviews 1, 3, 4, 7, 9, 10). Established approaches and instruments were now seen by many (but certainly not all) as treating consumers as too homogeneous a category (Interview 10). Most regulators had always assessed how different consumers and regions were affected by markets and regulatory decisions (Interviews 2, 6, 11), but recent advances in economic analysis, driven by behavioural economics, led to 'uncomfortable' findings on consumers who had 'lost out'. In areas like banking, insurance, mobile telephony and broadband, the category of consumers who did not switch and paid 'loyalty penalties' was larger than expected, and consisted disproportionately of people who were older and on lower incomes (Interview 1, 3, 4; CMA 2018). In these areas, there was a growing consensus that traditional solutions focusing on competition and information were neither sufficient nor politically acceptable; instead, more interventionist strategies were needed (Interviews 1, 4, 5, 7, 10, 11).

Regulators had also learned about the limits of competition and the implications of under-enforcement and under-regulation. They were established to be 'light touch' in their interventions. Market competition was believed to eventually make some regulators redundant (Interviews 7, 11). Over time, though, it became clear that regulators were here to stay and that beneficial effects of competition were conditional (Interviews 1, 3). 'Light-touch' approaches proved to be insufficient (Interview 12), and in the utilities sphere, regulators were seen as having erred too much on the side of promoting private investors (Interviews 1, 7). This was partially because attracting investment had initially been the key concern (Interviews 6, 7, 10). Yet, under-regulation and under-enforcement had also been driven by 'one-way pressure': decisions were appealed by affected companies; not usually by consumer groups (Interviews 1, 2).

The perceived status of regulation had changed in the process. Regulators now paid more attention to distributional consequences of liberalisation and regulatory decisions. Until the mid-2010s, broad agreement existed that regulators had to be blind to such consequences;

⁹ This concept of vulnerable consumer does not have an agreed-upon meaning (Interview 4; cf. Interview 11), but traditionally relates to categories of age, education, socio-economic standing, physical and mental health problems.

questions of fairness were reserved for politicians (Interview 7). This was now increasingly seen as neither acceptable nor feasible (Interviews 1, 2, 6, 7, 9, 10), despite concerns about the legitimacy of regulatory activity in distributional issues. Yet, regulators remained reluctant to use more interventionist solutions (e.g., price caps; Interviews 4, 6), and shunned fully distributive ones like cross-subsidisation to tackle loyalty penalties (Interview 6). There was a shared view that only politicians should make judgments regarding which consumers deserved more protection (Interviews 6, 7, 9, 10).¹⁰

Regulators' increased use of communication and engagement as legitimisation strategies was less controversial. Communication was traditionally aimed at the regulated industry, but regulators had come to use a wider range of tools (e.g., social media, videos, Op-Eds), aimed at wider audiences and using less specialist language (Interviews 1, 4, 7, 9, 12). These changes sought to respond to wider public concern in regulation (Interview 6, 7) and to explain decisions better to consumers (Interview 5), thereby engendering trust (Interview 4, 12). Furthermore, communication could serve as a regulatory tool to send signals to companies, investors and other stakeholders about what to expect from the regulator (Interviews 4, 7, 12; cf. Tyrie 2019, p. 8). Speeches were particularly attractive: they could not be appealed but allowed regulators to air their evolving regulatory strategy, thus enhancing predictability (Interview 7). Customer engagement had also expanded. Across sectors, regulators required companies to engage with so-called customer challenge panels (Interview 5, 6, 8, 10; Heims and Lodge 2018). Whilst consumer organisations like Citizens Advice remained key intermediaries (Interviews 2, 6), and some regulators had used consumer panels for a longer time (e.g., the FSA and Ofcom; Interview 11), regulators overall made more use of consumer surveys and panels (Interviews 2, 3, 10).

Finally, there was a growing recognition of regional variation (Interview 4, 9). This concern went beyond expanding regional offices. The CMA, for instance, ensured that cases were investigated across all regions of the UK, both as a regional deterrence message and as signal that the regulator cared about competition in regional and local markets (Interview 4). Ofcom also witnessed an increase in importance of the regions, particularly since the Scottish referendum in 2014 (Interviews 3, 11).

The importance of a more differentiated understanding of consumers was reflected in some personnel changes. Though lawyers and, particularly, economists still dominated – especially at the senior level (Interview 6) –, regulators had started recruiting somewhat more broadly (Interviews 7, 9). There was no full agreement on the role of economists in the process: some

¹⁰ Moreover, in the case of the CMA, its statutory duty – which emphasised the promotion of consumer interests via competition – constrained the use of alternative remedies (Tyrie 2019, p. 9).

suggested that there was resistance to the move away from competition and aggregate welfare (Interviews 2, 6, 7); others noted that (senior) economists had been the ones driving the changes as they had been in the best position to (credibly) challenge neoclassical assumptions (Interviews 1, 6, 11).

Changes were remarkably similar across areas of regulation, though some variation was observable. First, the timing of the changes varied, with both politicisation and responses starting earlier in finance, driven by the financial crisis (Interviews 9, 11, 12). Second, there was variation in the pressure on regulators. Ofcom had been relatively exempt, whilst in finance, pressure was largely a crisis product. Within finance, the bodies in charge of prudential supervision were more sheltered than the Financial Conduct Authority. In energy, water and railways, price hikes generated pressure, combined with the dominant perception that investors (or, in rail, franchise holders) had benefitted at the expense of consumers (and, in rail, tax-payers) (Interview 10). This had also strained relations with regulated industries. Water had been particularly exposed: private water companies had been created almost debt-free, but their incentive structure resulted in (international) investors with activist boards making substantial returns by exchanging equity for debt (Interviews 3, 5, 6). Some interviewees highlighted that water and energy were still regarded as public services (Interviews 5, 7, 10). Also, the source of sectoral investment was seen as important for relations with government and parliament: given the extent of public money involved, the railway regulator had always 'enjoyed' closeness to its parent department (and parliamentary attention) (Interview 7, 8).

6. Towards a responsive regulatory state?

The politicisation of regulation has put the 'responsible' regulatory state model under strain. Our analysis suggests that British economic regulation has witnessed a shift towards greater responsiveness to public and broad political concerns and demands. Despite some variation across sectors, the most striking finding is the similarity in dynamics. We summarise our findings in Table 2, noting observed change using the 'original' responsible regulatory state, outlined earlier, as default.

Table 2: Summary of the findings

	Responsible regulatory state	Observed changes
Agency Relationship with government	Trustee	Shift towards acceptance of areas of mutual interest/ definition of respective roles
Nature of accountability	Ex post, performance-based reporting to parent department	Shift towards broad (voluntary) account-giving to diverse stakeholders
Emphasis of regulatory decision-making	Competition to enhance efficiency and aggregate consumer welfare	Shift towards more differentiated consumer needs, especially regarding 'vulnerability'
Key instruments	Econocratic analysis	Shift towards greater role of communication and customer engagement
Status of regulation	Technical	Shift towards regulation as tool to address broader demands on political system (e.g., low energy prices, carbon reduction, regional broadband)
Legitimacy basis	Aggregate economic outcomes	Shift towards responsiveness to broader and differentiated public needs and demands

In line with our expectations, we observed a shift towards greater responsiveness in view of growing politicisation. The observed changes point to a mostly transformative type of change, towards a responsive regulatory state. We saw a growing (though, often, reluctant) acceptance of the need to address broader demands on the political system, encouraging a reconsideration of the respective roles of regulators and government. No new equilibrium had been established at the time of writing; instead, there was both uncertainty and debate about how much 'political space' regulators could feasibly and legitimately occupy. The change was accompanied by a shift towards greater attention to differentiated consumer needs (rather than aggregated outcomes), and a move towards widened use of communication and customer engagement. Regulators had increased their direct engagement with consumers, but had also created incentive structures to encourage regulated entities to engage more. Finally, a shift took place towards broader and often voluntary account-giving, by means of speeches and other forms of communication, and consultation and other engagement activities.

These changes touch on the core of the regulatory state. They can neither just be understood as (first-order) dynamic-conservatism nor as replacement-style second-order change. They are transformative, with new elements 'layered' on existing ones. There continues to be an emphasis on responsibility, in terms of distance from politics, the centrality of evidence-based decisions, the value attributed to competition, and the persistence of 'mild interventionism'.

Observing layering means that going back to a world of Pareto efficiency seems impossible; more importantly, certain 'layered' elements are incompatible. The tensions contributed to internal debates about, for instance, how issues such as 'vulnerability' could be tackled within the existing paradigm. Also, there was no established agreement on the role of stakeholder engagement. For some, it provided an opportunity to justify decisions; for others, it represented a fundamentally different way of decision-making.

These internal debates raised uncomfortable questions for regulators. By adapting to politicisation, they had entered a more political sphere, thus re-opening questions about the appropriate spheres of decision-making for elected politics and non-elected regulators respectively, especially as politicians' were seen to shy away from 'tricky' redistributive issues arising in economic regulation. Hence, the broader question was not whether regulators could be political, but how political they could be without being caught in the cross-fire of partisan conflicts.

Politicians had, so far, refrained from 'de-delegation' (Ozel 2012), even though intervention seemed somewhat more likely. Furthermore, regulators' mandates and funding structures had not changed in ways that necessitated immediate responsiveness to changes in public opinion. Hence, overall, the changes had transformed but not challenged the existence of the regulatory state.

The findings have implications for our understanding of the British state. They suggest that the political logic of a majoritarian Westminster system – with its potential for radical change – has not resulted in the replacement of the regulatory institutions created in the 1980s and 1990s. At the same time, regulatory bodies are not static. Driven by considerations of reputation and survival, agencies have adapted strategically. The ultimate extent of the change, however, remains a matter for contestation at the regulatory and political level. There is, however, no indication of a return to a purely responsible regulatory state. Demands for commitment still lead to calls for political insulation – for example, the Environment, Food and Rural Affairs Select Committee recently concluded that '[a] strong, independent regulator will be needed in England and Wales in the future, under all circumstances' (House of Commons 2018, p. 30). Yet,

the politicisation of regulation is unlikely to fade away; hence, demands for more responsiveness are not likely to go away either.¹¹

Politicisation and an increased emphasis on protecting consumers from markets, investors and big corporations are by no means limited to the UK. Therefore, we should expect to see a similar responsiveness in regulatory practices in other European countries. Their political systems may be less prone to change, but equally, their regulatory states will have been less 'responsible' than Britain's 'paradigmatic' one. Having established wider patterns of change, this study needs to be complemented by more fine-grained analysis of individual elements of the regulatory state and of politicisation as driver of responsiveness. Thereby, we would gain a greater understanding of the transformation of the regulatory state in Europe.

List of references

- Baumgartner, Frank R. and Bryan Jones (2009). *Agendas and Instability in American Politics*. Second edition. Chicago: University of Chicago Press.
- BBC (2013). Ed Miliband: Labour would freeze energy prices. BBC News, 24 September. Available from: <https://www.bbc.co.uk/news/uk-politics-24213366> (last accessed: 7 June 2019).
- BEIS (2018). Modernising consumer markets. Consumer Green Paper. Department for Business, Energy and Industrial Strategy, Cm 9595, April.
- Beioley, Kate, George Parker and Kadhim Shubber (2020). Tyrie was ousted in CMA boardroom coup. *Financial Times*, 28 June.
- Birch, Anthony H. (1964). *Representative and Responsible Government*. London: George Allen and Unwin.
- Bressanelli, Edoardo, Christel Koop and Christine Reh (2020). EU actors under domestic pressure. *Journal of European Public Policy* 27(3): 329–341.
- Busuioc, E. Madalina and Martin Lodge (2016). The reputational basis of public accountability. *Governance* 29(2): 247–263.

¹¹ The period since the 2019 general election, not covered in the interviews, points to such a future: there are demands for greater political responsiveness, especially in relation to Brexit-related issues. The resignation of Andrew Tyrie as CMA Chairman in June 2020 might, in contrast, be regarded as evidence of 'dynamic conservative' resistance to far-reaching change (Beioley et al. 2020). The collapse of passenger numbers in the era of COVID-19 led to a suspension of the franchising system in the railway sector.

- Cameron, David (2011). Letter from the Prime Minister on cutting red tape, 7 April, available from: <https://www.gov.uk/government/news/letter-from-the-prime-minister-on-cutting-red-tape>.
- Carpenter, Daniel (2010). *Reputation and Power*. Princeton, NJ: Princeton University Press.
- CMA (2018). Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018. Competition and Markets Authority, 18 December. Available from: https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfafa/response_to_super_complaint_pdf.pdf
- Corry, Dan (2003). *The Regulatory State: Labour and the Utilities 1997-2002*. London: Institute for Public Policy Research.
- Culpepper, Pepper (2011). *Quiet Politics and Business Power*. Cambridge: Cambridge University Press.
- De Wilde, Pieter and Michael Zürn (2012). Can the politicization of European integration be reversed? *Journal of Common Market Studies* 50(s1): 137–153.
- Foster, Christopher D. (1992). *Privatization, Public Ownership and the Regulation of Natural Monopoly*. Oxford: Blackwell.
- Gilad, Sharon, Moshe Maor and Pazit Ben-Nun Bloom (2015). Organizational reputation, the content of public allegations, and regulatory communication. *Journal of Public Administration Research and Theory* 25(2): 451–478.
- Haldane, Andrew G. (2016). Whose recovery? Speech given in Port Talbot, Wales, 30 June. Available from: <https://www.bankofengland.co.uk/speech/2016/whose-recovery>.
- Haldane, Andrew G. (2018). Climbing the public engagement ladder. Speech given at the Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA), 6 March. Available from: <https://www.bankofengland.co.uk/speech/2018/andy-haldane-royal-society>.
- Heims, Eva and Martin Lodge (2018). Customer engagement in UK water regulation. *Policy & Politics* 46(1): 81–100.
- Hood, Christopher (2011). *The Blame Game*. Princeton, NJ: Princeton University Press.
- Hood, Christopher, Henry Rothstein and Robert Baldwin (2001). *The Government of Risk*. Oxford: Oxford University Press.

- House of Commons (1997). Energy regulation. First Report (1996-97), Select Committee on Trade and Industry (HC 50-I). London: Stationary Office.
- House of Commons (2018). Regulation of the water industry. Eight Report (2017-9), Select Committee on Environment, Food and Rural Affairs (HC 1041). London: Stationary Office.
- House of Lords (2019). Regulating in a digital world. Second Report, Select Committee on Communications (HL 2017-2019). London, Stationary Office.
- Koop, Christel (2014). Theorizing and explaining voluntary accountability. *Public Administration* 92(3): 565–581.
- Koop, Christel and Christine Reh (2019). Europe’s bank and Europe’s citizens. *Maastricht Journal of European and Comparative Law* 26(1): 63–80.
- Labour Party (2017). For the many, not the few. The Labour Party Manifesto 2017.
- Levy, Brian and Spiller, Pablo T. (1996). *Regulations, Institutions, and Commitment*. Cambridge: Cambridge University Press.
- Lodge, Martin (2002). The wrong type of regulation? *Journal of Public Policy* 22(3): 271–297.
- Lodge, Martin and Christopher Hood (2002). Pavlovian policy responses to media feeding frenzies? *Journal of Contingencies and Crisis Management* 10(1): 1–19.
- Mahoney, James and Kathleen Thelen (Eds) (2010). *Explaining Institutional Change*. Cambridge: Cambridge University Press.
- Mair, Peter (2009). Representative versus responsible government. MPIfG Working Paper 09/8. Max Planck Institute for the Study of Societies, Cologne.
- Majone, Giandomenico (1996). *Regulating Europe*. Abingdon: Routledge.
- Majone, Giandomenico (1997). From the positive to the regulatory state. *Journal of Public Policy* 17(2): 139–167.
- Maor, Moshe, Sharon Gilad and Pazit Ben-Nun Bloom (2013). Organizational reputation, regulatory talk, and strategic silence. *Journal of Public Administration Research and Theory* 23(3): 581–608.
- May, Peter J., Samuel Workman and Bryan D. Jones (2008). Organizing attention: Responses of the bureaucracy to agenda disruption. *Journal of Public Administration Research and Theory* 18(4): 517–541.
- May, Theresa (2016). Keynote speech delivered at the Conservative Party conference in Birmingham, 5 October. Available from:

<https://www.independent.co.uk/news/uk/politics/theresa-may-speech-tory-conference-2016-in-full-transcript-a7346171.html>.

Moran, Michael (2003). *The British Regulatory State*. Oxford: Oxford University Press.

Moschella, Manuela and Luca Pinto (2018). Central banks' communication as reputation management. *Public Administration* 97(3): 513–529.

Moschella, Manuela, Luca Pinto and Nicola Martocchia Diodati (2020). Let's speak more? How the ECB responds to public contestation. *Journal of European Public Policy* 27(3): 400–418.

NAO (2019). Regulating to protect consumers in utilities, communications and financial services markets. Report by the Comptroller and Auditor General, National Audit Office (NAO), HC 1992, 20 March.

Osborne, George (2010). Speech by the Chancellor of the Exchequer, Rt Hon George Osborne MP, announcing £6.2 billion savings, 24 May, available from: <https://www.gov.uk/government/speeches/speech-by-the-chancellor-of-the-exchequer-rt-hon-george-osborne-mp-announcing-62-billion-savings>.

Ozel, Isik (2012). The politics of de-delegation. *Regulation & Governance* 6(1): 119–129.

Pagliari, Stefano (2012). Who governs finance? *European Law Journal* 18(1): 44–61.

Robert, Alasdair (2010). *The Logic of Discipline*. New York: Oxford University Press.

Schon, Donald (1971). *Beyond the Stable State*. London, Maurice Temple Smith.

Scott, Colin (2000). Accountability in the regulatory state. *Journal of Law and Society* 27(1): 38–60.

Self, Peter (1975). *Econocrats and the Policy Process*. London: Macmillan.

Stern, Jon (2014). The British utility regulation model. *Utilities Policy* 31: 62–172.

Streeck, Wolfgang and Kathleen Thelen (2005). 'Introduction: Institutional Change in Advanced Political Economies. In Wolfgang Streeck and Kathleen Thelen (Eds). *Beyond Continuity* (pp. 1–39). Oxford: Oxford University Press.

Thatcher, Mark and Alec Stone Sweet (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics* 25(1): 1–22.

Tyrie, Andrew (2019). Letter to the Secretary of State for Business, Energy and Industrial, 21 February. Available from: <https://www.gov.uk/government/publications/letter-from-andrew-tyrie-to-the-secretary-of-state-for-business-energy-and-industrial-strategy>.

Weaver, R. Kent (2010). Paths and forks or chutes and ladders? *Journal of Public Policy* 30(2): 137-162.

Whitford, Andrew B. and Jeff Yates (2003). Policy signals and executive governance. *Journal of Politics* 65(4): 995-1012.

Wood, B. Dan and Richard W. Waterman (1991). The dynamics of political control of the bureaucracy. *American Political Science Review* 85(3): 801-828.