



Towards a Regulatory Welfare State?
State Regulation of Private and
Occupational Pensions in Europe



An Interdisciplinary Research Project Funded by the German
Research Council • Prof. Lutz Leisering PhD, Prof. Dr. Ulrike Davy
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From Redistribution to Regulation

Regulating Private Old-Age Pensions as a
New Challenge in Ageing Societies

Paper presented at:

4th International Research Conference on Social Security
(International Social Security Association, ISSA)

Antwerp, 5-7 May 2003

“Social Security in a Long Life Society”

REGINA - Working Paper No. 3

revised version January 2005

To be published in Roland Sigg, Bea Cantillon (International Social Security Association, ISSA)
(eds.), Social Security in a Long-Life Society. Transaction Publishers (forthcoming 2005)

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Summary:

Ageing societies encourage private provision for old age to reduce the demographic pressure on state pensions. The chapter argues that private (including occupational) pensions produce new problems and that governments increasingly have to take regulatory measures to deal with these problems. Private pension markets require regulatory legislation, regulatory authorities, tax deduction schemes, subsidies to the poor, consumer protection, last safety nets etc. As a result pension politics changes, with new policy instruments, new actors and new arenas of conflict. A 'regulatory welfare state' emerges which regulates the activities of non-state providers rather than providing benefits and services itself as done by the conventional redistributory welfare state. A paradox is implied: less state (reducing state pensions) means more state (regulating private pensions). Financial markets become state-regulated 'welfare markets'. The chapter explores the new issues conceptually, with evidence from Germany, Britain and Sweden.

‘... future pension politics will focus on the regulatory role of government, a role, however, that will create no small measure of political conflict around issues of income security.’ (Myles and Pierson 2001: 317)

One response to demographic pressures on social security systems in Western welfare states has been (partial) privatization.²⁾ The ageing of the population has been seen as a reason to retrench the welfare state, especially old-age pensions, health services and provisions for long-term care. This chapter explores some of the consequences of privatization for the future of the welfare state and for the structure of politics in advanced capitalist societies. We aim to show that the solution ‘privatization’ raises new problems (section 1). In particular, we argue that state regulation of private provision for old age turns out to be a growing and demanding task for governments (section 2). The increasing role of state regulation is not only a challenge for welfare states but also for welfare state analysis, especially for the comparative study of welfare regimes (section 3). We conclude that privatization does not imply a wholesale retrenchment of the welfare state but leads to a new type of welfare state, a

‘regulatory state’ (section 4). The chapter primarily aims at clarifying concepts and raising research questions.³⁾

1. Privatization as a response to demographic ageing?

During the 1990s there was a political tendency in many Western countries to reduce state pensions and, at the same time, to promote private and occupational pensions. This was seen as a way to reduce the ‘burden’ that the growing number of elderly, in conjunction with a decreasing number of the economically active middle-aged population, imposes on public budgets. The move towards privatization was advocated by national and international actors, especially the World Bank, under the flag of neoliberalism. In most countries there had been some public-private mix in old-age security for a long time – with state pensions, occupational pensions and private (individual) pensions as the main pillars⁴⁾ – but during the 1990s there was a call for changing the design of the mix and shifting its composition. Around the turn of the century, especially after the worldwide breakdown of stock exchanges, the high hopes directed to private provision gave way to disillusionment. Criticism of the potential of privatization and funding in old-age pensions was voiced (Orszag and Stiglitz 2001). The diagnosis of state failure or state incapacity in the face of demographic, economic and fiscal pressure was complemented by a diagnosis of (financial) market failure. A wider public became aware of what some scholars had emphasized much earlier, namely that private provision for old age is riddled with problems.

Private provision shares some of the *problems* of state provision and it even entails new problems. The increase in the number of years spent in retirement due to increasing longevity is a strain on private pension plans just as on state pensions. The same applies to the increasing discontinuity of biographies. In contribution-based state pension systems discontinuities reduce entitlements to pension benefits. But people who are, e.g., unemployed equally have problems of continuing to pay money into private pension plans. The impact of demographic change, of the ageing of the population, is disputed among scholars. An increasing number of researchers recognize that private provision may be

similarly affected by imbalances in the age structure of the population as public pensions, especially at the time of the expected demographic peak in 2030 (for a discussion see De Deken 2002: 288 f. Equity prices are expected to drop sharply, and large numbers of elderly (or the companies that administer their pension plans) will have to sell assets at a time when there will be few people of working age (who would have to buy these assets; for a criticism of the ‘melt-down hypothesis’ with regard to capital funding of private pensions see Börsch-Supan/Heiss/Ludwig 2003).

Two problems are new and specific to private pensions. First the inherent instability of financial markets creates new *insecurities* for pensioners. This problem is even more severe in the case of private providers than in the case of funded state schemes because under private plans there is less scope for compensation (redistribution) between different groups of pensioners affected by risks. Second, markets have always produced winners and losers, and financial markets in particular produce new *inequalities* in old age. This includes inequalities of access to private plans according to income and knowledge; inequalities of individual success or failure of one’s pension plan; and collective (cohort) inequalities due to the vicissitudes of stock markets. Again, private schemes are more limited than state schemes with regard to compensating for undesirable inequalities. For example, women normally have to pay more to get the same monthly (private) pension in old age because they have a higher life expectancy than men.

But politics is not only about solving social problems like providing for old age. Even when knowing about the problems of private pensions there may be a political case for privatization. Privatization implies *de-politicization*, it deflects problems away from politics. A shift from public to private will reduce the government’s involvement and expenditure. Externalization of risks makes them easier to handle for politicians, shifting public attention away from the government and enabling politicians to attribute problems to individuals or to private companies. State responsibility is less immediate than in the case of state pensions.

Furthermore, privatization as a political strategy may even be entirely unrelated to problems of ageing populations. Politicians are known to act in the short term and not to plan in advance for decades.

There is every reason to question the notion that pension reforms are designed to provide for the demographic peak of 2030 as rendered by politicians. There are indications that demographic change is often only depicted as an urgent issue to justify policy changes that serve other ends: '*demographic change as politics*' (Leisering 1996, Marschallek 2004). First, formulas like 'demographic change', 'demographic pressure' etc. may be instrumentalized by neoliberals to push for welfare state retrenchment which they have pursued out of principle for many years. Second, especially in social insurance states like Germany, pension reforms that include a component of privatization may primarily serve to cut labor cost (the share of contributions paid by the employers) even if 'demographic change' is portrayed as the main challenge (Leisering 2001, De Deken 2002).

This chapter questions a key rationale of privatization, namely the notion of de-politicization as a strategy to deflect and externalize political problems in an ageing society. We are witnessing, so we argue, a transformation of politics in the welfare state rather than outright retrenchment.

2. Regulating private pensions: a growing task for governments

In the welfare state literature processes of privatization have often been described since the 1990s. But privatization has always gone along with regulation, though this has received little attention. State regulation is not just an adjunct to private provision. We hypothesize rather that regulation is a functional requisite of privatization and that it is becoming a key political issue as expressed in the quotation by Myles and Pierson that we put in front of this chapter. 'Regulation' may sound technical, referring to the activity of some regulating authority, but it has wider political ramifications.

The term 'regulation' is not clearly defined, it has a variety of meanings. In a very broad sense any government interference can be referred to as regulation, like in phrases 'market or state regulation?'. By contrast, a narrow use of the term as preferred by legal scholars and economists only covers basic

legal rules and controls with regard to private actors. We propose a sociological definition of regulation that lies between or rather beyond the broad and the narrow usage. We define regulatory policy as those *political measures that frame non-state welfare production by legal, organizational, financial and normative means while preserving the relative autonomy of 'private'/non-state spheres.* Based on the general sociological assumption that markets rely on prerequisites that they cannot generate themselves this definition presents regulation as constituting (not only interfering with) markets. Regulation is a response to (actual or anticipated) failure of (financial) markets. Markets are in need of regulation in order to operate. Regulation, therefore, is a most basic form of the activity of governments.

The definition brings together measures from diverse fields of policies. We hypothesize that this diversity reflects the increasing broadening of the meaning and scope of pension policy. The forms and instruments of regulation in this broad sociological sense include:

- *Law*: Statute and other forms of law define rules for the operation of private agencies, covering procedures, parameters, entitlements and benefits etc.. Legal regulation may also specify the conditions under which private providers qualify for special state schemes that entitle citizens to claim subsidies for private pension plans. Legal regulation pertains to three institutional levels: to financial markets as a whole, with related institutions, especially the stock exchange; to single private providers and institutional investors like life insurance companies and pension funds; and to local sales agents that sell financial products and provide financial services. Private provision for old age rests on the operation of these three levels of the economic market. Regulation, therefore, has to address market failure on three levels.
- *Bureaucracy*: Regulatory authorities aim to ensure compliance by corporate actors with the legal rules. The authorities monitor the operation and outcomes of providers, e.g. with regard to the quality of financial products, to security standards, transparency of transactions, responsiveness to clients needs etc.

- *Tax policy*: Private provision is not really ‘private’ since in practically all countries it relies on tax deductions granted by the state. Tax deductions make it attractive for citizens to invest their money with a private pension fund. Tax policy is a vital requisite of the operation of private providers.
- *State subsidies*: When governments aim at spreading private provision to the whole population, they need to pay allowances to citizens with insufficient income to enable them to provide privately for their old age. More generally the government may choose to grant selective support for groups of people defined as being in special need or having special merit. In addition to low-income people this may include families, women and other social groups.
- *Consumer protection*: When ordinary citizens increasingly become consumers in financial markets (and/or in financial service markets) the traditional institutions of consumer protection acquire a new role. The scope and the required expertise of consumer councils becomes wider. Laws, agencies, counseling and media activity have to be geared to the new financial field. In Germany, for example, a consumer magazine specializing in financial products (*Finanztest*) was founded in addition to the general consumers’ magazine.
- *Financial safeguards*: Even if privatization is the overarching political strategy there may be situations when the state has to step in. In cases of acute failure of private providers only the state may be available as security net of last resort. This applies to corporate actors in the financial market (in case of insolvency) as well as to their clients. Most Western countries have established some kind of social assistance as a basic system of income maintenance. We can expect that the spread of private provision in European countries will lead to an increase in social assistance claims. Moreover, some – though not all – state pension schemes include a minimum pension. Germany was a latecomer in this respect, introducing a minimum pension as late as 2001. In some countries, for example in Britain, a flat-rate pension was designed to act as a minimum pension but benefits are so low as to leave many pensioners in poverty.

Some of the forms of regulation described in the list may partially be implemented by non-state actors. Actors in the financial market may impose certain rules on themselves and may establish their own

systems of financial safeguards for cases of breakdown of private providers, e.g. collective emergency funds or commercial rating agencies. The potential for self regulation, however, is limited. Most of the regulating activities will have to be taken over by the state.

State regulation of private provision is not new. Even in countries in which private provision has a small share in the pension mix, e.g. Germany, private (individual) and occupational pensions have been regulated by the state for a long time. Without regulation private provision could hardly have existed. However, in this chapter we hypothesize that regulation is growing since the mid 1980s or the 1990s (depending on the country); that regulation is increasingly geared to ‘social’ goals (i.e., more precisely directed to the well-being of the citizens rather than merely to economic ends); and that the political regulation of private (individual) and occupational provision for old age is increasingly designed in view of shaping the overall income mix in old age (rather than regulating the components of the mix in isolation from each other). To specify these hypotheses we distinguish different types of regulation that cut across the various instruments of regulation listed above. We posit two distinctions as crucial for the analysis of the current change in the role of regulation in social policy: socially oriented versus functional (economically oriented) regulation, and coordinated versus uncoordinated regulation of the pension mix.

Socially oriented versus functional (economically oriented) regulation: By this distinction we do not mean regulation of social affairs versus regulation of the economy. ‘Social’ and ‘economic’ refer to different policy orientations in the same policy field, namely private welfare provision. The regulation of private pensions is not necessarily oriented towards ‘social’ (welfare-related) goals. Conventionally an orientation towards economic goals prevails, relating to the economy as a whole or to business corporations. Policy makers may take an interest in private pension to boost investment in order to promote economic growth. Tax deductions for private pension plans that reward high-income groups indicate such an economic point of view. In Germany, as in some other countries, the regulation of occupational pensions has long served economic ends. Companies used to instrumentalize their

pension funds for the management of their financial reserves, and the government's regulatory policy has been geared to support these corporate policies.

The increase of regulation not only changes the nature of government activity in advanced welfare states but it also changes the nature of (financial) markets. The more regulation is socially (rather than economically or functionally) oriented, the more markets become '*welfare markets*' (Taylor-Gooby 1999). Social policy increasingly becomes regulatory policy, and, vice versa, regulation increasingly is socially oriented. Financial markets turn into '*welfare markets*' only when governments treat them as objects of social policy, when the actors in financial markets themselves define and present themselves as '*social*' providers, and when citizens use financial products to provide for their welfare needs. Financial markets are not intrinsically related to individual welfare, just as regulation of financial markets is not necessarily socially oriented.

Coordinated (integrated) versus uncoordinated (disjointed) regulation: Regulatory measures may be directed at single components of the pension mix (mainly occupational and individual private pensions) in isolation from each other and from state pensions, or, alternatively, regulation may aim to coordinate the three components of the pension mix with regard to welfare aims. The former is uncoordinated regulation, the latter is coordinated regulation. In Germany, for example, uncoordinated regulation had prevailed till 2001. The great pension reform act of 2001 was the first act to jointly redesign all three pillars of old-age security. State pensions, occupational pensions and individual private pensions were adjusted to each other. For the first time the legislator aimed to establish a well-regulated pension mix. The government defined a '*total benefit standard*' (*Gesamtversorgungsniveau*) as the combined outcome of public, occupational and individual private pension benefits. In addition, in 2004, an act on the taxation of pension income (*Alterseinkünftegesetz*) was passed which implemented an integrated tax policy for all pillars of pension provision. The three-pillar model propagated by the World Bank (1994, see also James 1996), which shaped the political debate of the 1990s, was an example of an additive concept of a pension mix, with little integration and coordination.

Both in politics and scholarly research the emphasis has been more on economic (economically oriented) than social regulation, and more on uncoordinated than on coordinated regulation. The emphasis of research has reflected the emphasis of politics. The narrow emphasis of research is also rooted in the disciplinary orientation of the researchers who studied regulation. Regulation has mostly been researched by lawyers and economists, the latter tending to look at regulation in view of economic rather than social requisites and norms. Economic regulation figures, for example, in the publications of the World Bank (e.g. Holzmann 2000). Economists normally talk of ‘regulation’ of non-state provision for old age only to denote government interventions that aim to secure the operation of competitive markets. Both the emphasis on economic regulation and on uncoordinated regulation lead to a negligence of social policy norms that are relevant in old-age security. In short: *Dominant scholarship has not viewed regulation as social policy.*

Countries differ with regard to the degree of coordination of the welfare mix. O’Higgins (1986) distinguished three national types of political coordination of the pension mix. In Germany O’Higgins found the most uncoordinated, additive pension mix while in Sweden the mix was holistically shaped by government. In Britain O’Higgins identified an unstable and asymmetrical coordination of the pension mix. Through the reform act of 2001, Germany has moved from an uncoordinated welfare mix to a coordinated welfare mix and coordinated regulation.

How significant is the purported increase of regulation as a form of social policy? We hypothesize that the rise of new regulatory social policy may represent a structural, ‘systemic’ change (see Hinrichs and Kangas 2003) of a welfare state, i.e., regulation involves the emergence not only of new instruments but also of new public and private actors and institutions in the social policy field and the formulation of new norms, goals and ideas. This will lead to new conflicts in the new arenas. By turning financial markets into welfare markets, policies of privatization paradoxically politicize markets more than ever before.

3. National ‘regulatory regimes’ towards a comparative analysis of regulation in old-age security

If the rise of regulatory social policy is not only a change of instruments but rather a comprehensive change of politics, we may be tempted to apply a holistic term like ‘regulatory regime’ to capture this structural change. However, it is an open empirical question, if – and if yes, what – national regulatory regimes can be identified. If we could make a case for the existence of regulatory regimes they could be seen as a new structural dimension of welfare states.

Esping-Andersen, in his ‘Three worlds of welfare capitalism’ (1990), defined welfare regimes only with reference to redistributive activities of the welfare state, mainly cash benefits. This led him to three types, the liberal, the conservative and the social democratic welfare regime. While most critics of Esping-Andersen retained the narrow focus on redistribution (proposing, e.g., a fourth or a fifth welfare regime type), Room (2000) went beyond redistribution. Room distinguished welfare states by the degree of public investment in human capital, what he called ‘de-commodification-for-self-development’. Room could show that differences between welfare states with regard to this new dimension cut across differences with regard to redistribution, i.e. social investment types are not congruent with Esping-Andersen’s welfare regime types. We can then ask if regulation equally gives rise to a new structural dimension of welfare states. The concept of regulatory regime, therefore, implies both a criticism and an extension of Esping-Andersen’s typology. We can also investigate how the redistributive side of the welfare state is related to the regulatory side or, in a comparative perspective, how welfare regime types are related to regulatory regime types.

To use the concept of regulatory regime in empirical research, we have to define it in more operational terms. We distinguish three dimensions (Table). This facilitates more complex comparisons between countries.

Table: Regulatory regimes – analytic dimensions for cross-national comparison

Dimension	Definition
<i>extension</i> (horizontal scope of regulation)	domain of regulatory measures (range of private provision covered)
<i>intensity</i> (vertical scope of regulation)	‘depth’ of interference with private provision by regulatory measures (depending on instruments of regulation)
<i>gestalt</i> (social pattern of regulation)	configuration of instruments, institu- tions and goals of regulation (‘regulatory regime’ in a strict sense)

Source: author’s systematization (expression ‘depth of regulation’ derived from economic regulation research, Sanmann 1988)

Three theoretical approaches

To identify national regulatory regimes and to explain differences between them, we can reconstruct three approaches: a functionalist approach, an institutionalist approach and a conflict-theoretical approach. None of these approaches can be found explicitly in the literature because there is no tradition of regulation analysis in social policy.

The functionalist approach. From a functional point of view the welfare mix (in this case: the pension mix) and the role of regulation (of non-state pensions) could be described as a zero-sum game (*substitution hypothesis*): less state provision in a country means more market provision and more regulation, and vice versa. This approach may be useful as a starting point when comparing countries and analyzing historical change in one country. Majone (1994) compared Europe and the USA in this way. In the USA, regulation has long been an object of extensive research (outside of social policy; Noll 1985). In Europe, by contrast, the term regulation has only been received since the 1980s. Majone explains the lag by pointing out that in Europe a ‘provider state’ had long prevailed, with large national companies, often state monopolies, in key areas of social infrastructure and utilities. In the

USA, private providers were more frequent and state regulation of private providers served as a functional equivalent (functional substitute) of nationalization.

The substitution hypothesis mainly applies to the *extension* of regulation. Questions about the depth and the social *gestalt* of regulation, i.e. the actual regulatory regime, remain. These questions lead beyond the functionalist view to the study of actors, strategies and instruments of regulation, i.e., to an action-theoretical and institutionalist approach.

The institutionalist approach. There are two versions. In recent welfare state research, especially advocated by Paul Pierson, institutionalist approaches have gained influence (see Pierson 2000). Although these theories do not normally refer to regulatory activities of the welfare state, one could, by analogy, derive the hypothesis that the institutional *gestalt* of regulation follows the institutional path of earlier regulation ('path dependency'). But in countries with a weakly developed private provision sector like Germany, regulation has long played a marginal role in policy making (with economic and uncoordinated regulation prevailing over social and coordinated regulation) and the institutional 'path' is rather weak. An abrupt increase in regulation in the course of major reform acts like the German act of 2001 may imply institutional innovations which are only loosely connected to earlier institutional patterns.

A second version of the institutionalist approach may be derived from Kaufmann's work on '*state traditions*' (Kaufmann 2003, for a review see Leisering 2003; for the term 'state tradition' see also Dyson 1980). Kaufmann emphasizes the 'singularity' of national welfare state traditions which in his view is rooted in ingrained ideas and structures of the state-society relationship peculiar to each country. The state tradition includes the historical concept of the state prevalent in a country, the notion of the proper scope of government, the traditional institutional structure of public administration, of the legal system, of the tax system etc.. The state tradition approach suggests a *homology hypothesis*, namely the assumption that redistribution and regulation in one country are

institutionally homologous because both forms of state activity are shaped by the national state tradition.

The homology hypothesis seems to be in direct opposition to the substitution hypothesis described above because according to the latter redistribution and regulation are inversely related rather than homologous. However, the substitution hypothesis mainly refers to the extension of regulation whereas the homology hypothesis refers to the intensity and the social *gestalt* of regulation. According to the homology hypothesis welfare states with a strong emphasis on redistribution, for example, could simultaneously display a very deep and intensive (though not necessarily extensive) regulation since these countries are characterized by the idea of a state that actively shapes society. Conversely, in welfare states with less emphasis on redistribution (e.g. state pensions) we would have to expect a less intensive (even if very extensive) involvement of government in regulating private pensions. According to the homology hypothesis the growth of regulatory social policy develops characteristics of the politico-administrative system that had already been apparent in the redistributory social policy in a country, mirroring the national state tradition.

The conflict-theoretical approach. Even if private provision only has a small share in the overall welfare mix, regulation can be a big issue in the political process. In countries with strong state pensions, benefits tend to be earnings-related to replace previous earnings in old age. When such welfare states increase private provision to make up for cuts in state pensions, private provisions may still be comparatively small but they can be crucial to secure the ingrained replacement ratio of the overall (public plus private) pension. In this situation regulation issues may arouse considerable controversy in the political public and citizens may call for extensive and intensive regulation. It is also a question of the political culture. While US citizens seem to be accustomed to insecurities of private pension plans, with fairly calm reactions to losses due to the recent downturn of stock markets, in Germany even minor regulatory details of the new very small private pension scheme of 2001 have kindled considerable public concern and added to a general distrust in government.

Types of national regulatory regimes

Myles and Pierson (2001) have made a stimulating contribution to the debate on old-age security under the ‘new politics of the welfare state’ paradigm. They seem to be the only authors who refer systematically to regulation although they do not elaborate the issue in more detail.⁵⁾ We can summarize their findings in four points.

First, in Western countries there are two main types of old-age security systems that reflect two *historical origins* or paths: ‘*mature systems*’, i.e., systems with a strong pay-as-you-go social insurance component established at an early stage (till c. 1970) either as the main pillar (for example Germany) or as a second pillar (for example Sweden). Referring to the great German and British social reformers, mature systems can be described in shorthand as ‘Bismarck’ (+ Beveridge’ in case of a built-in minimum pension) or ‘Beveridge + Bismarck’ respectively. ‘*Latecomers*’, by contrast, are countries which started with a low flat-rate pension which was complemented by a second pillar only at a late historical stage (in the 1980s and 1990s), and in that case the second pillar was mostly of a private or occupational nature (e.g. Britain).

Second, these two systems or historical paths give rise to two *future developmental paths*, each with specific problems and types of problem solving: Latecomer countries take the path of *regulation*, in response to the typical problems of private provision which dominates in these countries (the volatility of financial markets and market-produced inequalities) while mature systems continue to emphasize state pensions (redistribution) but embark on a thorough *restructuring*, in response to demographic pressure and other typical problems. In this view questions of regulation do not matter much in mature systems. The quotation by Myles and Pierson given at the beginning of this chapter (that future pension politics will revolve around regulation) only refers to latecomer countries.

Third, regulatory policies in old-age security are a new structural dimension in the welfare state. They entail new themes for public debate, new arenas of conflict and new actors or old actors with extended

roles. Fourth, within the group of latecomer countries, which emphasize regulation rather than redistribution, countries with *quasi-corporatist regulatory* regimes can be distinguished from countries with *state-led regulatory* regimes. ‘Rather than individualized personal retirement accounts, these plans [in Australia, Denmark and the Netherlands – L.L.] are typically large industry-wide plans in which organized labor remains deeply embedded both in policy making and administration. How the presence or absence of these quasi-corporatist arrangements affects the resolution of the distributive problems that will inevitably emerge in the coming decades is an issue that invites close attention from future researchers.’ (Myles and Pierson 2001: 317)

From the analysis of Myles and Pierson one could derive some hypothesis and typologies (which are not made explicit by the authors themselves). In mature systems like Germany and Sweden we would have to expect only a *residual regulatory regime* since the main pillars of security in old age are state systems and regulated private provision is politically a residual quantity. In latecomer countries like Britain, by contrast, we would expect a *structurally dominant regulatory regime* since the second pillar, the regulated pension market, prevails over the low flat-rate pension. In this view latecomer welfare states might be approaching a kind of ‘regulatory state’ while countries with mature systems would continue to be redistributory or ‘provider’ welfare states. This view would confirm to the functionalist approach depicted above which assumes a zero-sum game between state provision and private provision.

While the zero-sum assumption is plausible for the extension (horizontal scope) of regulation, the institutionalist state tradition approach (see above) would support a competing hypothesis with regard to the intensity (depth, vertical scope) of regulation. In the institutionalist perspective, regulation intensity may be high also or even especially in countries with mature systems, since these countries, like Germany and Sweden, often have a strong tradition of state bureaucracy and state intervention. Conversely, judging from its state tradition, Britain could be assumed to have a weak regulatory regime (low intensity even in the face of high extension). In the light of the state tradition approach,

we could distinguish *strong* and *weak regulatory regimes*. A ‘strong’ regulatory regime would be assumed to emanate from a strong state, with deep or intensive regulatory.

The conflict-theoretical approach, too, would allow for an intensive and complex regulatory regime in mature countries. In Germany, for instance, old-age pensions are highly politicized – they are the holy cow of the welfare state, equivalent to the National Health Service in the British welfare state. This politicization seems to spill over to the new regulated private pension scheme of 2001 even if it is small.

The distinction between corporatist and state-led regulatory regimes can also draw on the concept of ‘*national regulatory styles*’ (Jasanoff 1986: 4) which was developed for policy fields outside of social policy. In this strand of research a corporatist-cooperative regulatory style is seen to prevail in European societies, i.e., regulatory policies are negotiated between state and corporatist actors like trade unions, employers and professional associations, with a strong emphasis on consensus and shielded from the general political public. The US American regulatory style, by contrast, is seen to involve more direct confrontation and conflict between state and market actors, often accompanied by open controversies in the political public. The analysis of regulatory styles has not yet been applied to social policy. As a hypothesis a corporatist-cooperative regulatory style could be expected for social democratic and even more for conservative welfare regimes (like Sweden and Germany respectively) while a confrontational and state-led regulatory style may be assumed to prevail in liberal regimes like Britain.

Germany is the homeland of Bismarckian social insurance, founded in the 1880s. Through the great pension reform act of 2001 Germany seems to be moving from ‘Bismarck’ to ‘Bismarck + Beveridge’ or even to ‘Bismarck + Beveridge + market’. As mentioned earlier, this act for the first time introduced an integrated model of a pension mix regulated by the state. The private component is fairly small (4 % of wages, as compared to 19,5 % for the state pension) and participation is voluntary. In the making of the reform the trade unions had gained an unexpected strong influence. As a

consequence, in practice most of the private pension plans agreed under the new law are occupational plans even if in principle the law leaves citizens to choose whether they want to join an individual or an occupational scheme. In the public debate during and after the legislation, regulation issues have loomed large. This may be taken as evidence for a conflict-theoretical interpretation while Myles' and Pierson's assumption of a marginal role of regulation in mature systems does not apply to Germany. The act also introduced a minimum pension in the system.

Myles and Pierson interpret the great 1998 pension reform act in *Sweden* as the insertion of partial capital funding in the public system (Myles and Pierson 2001: 319 f). They admit that this reform goes beyond a mere adaptation of the state pension system typical for mature systems since market elements are brought in. Still regulation does not seem to be a big issue. The interpretation of the Swedish reform requires research. Myles and Pierson seem to underestimate the increasing role of regulation in Sweden. The 1998 act establishes three layers or pillars of old-age security: a *guarantee pension* (tax financed basic pension), an *income pension* (contribution-based, pay as you go) and the new, capital funded *premium pension*.

The *premium pension* leaves citizens to choose between several hundred private pension funds which are only administered by the state, the newly created *Premium Pension Authority*. It is difficult to judge if this scheme is 'public' or 'private'. Myles and Pierson interpret it as 'public' but it could also be seen as 'regulated private' close to the new German scheme. Generally the message from regulation analysis is that 'public' and 'private' are increasingly blurred. The premium pension is compulsory, unlike the German scheme, but compulsion has recurrently been considered by the German government as well.

Obviously, *Britain* offers a wide field for the analysis of regulation. Britain had installed a second state pillar of old-age security at a late stage, in 1975/1978 (SERPS = State Earnings Related Pension Scheme) but soon after, from the mid 1980s, the new conservative government pushed for a regulated private pillar, in conjunction with a gradual dismantling of SERPS through enhanced possibilities of

opting-out. Here, the substitution hypothesis between public and private pension became reality. This could be termed a 'defensive substitution strategy from above' (i.e., state-led). By contrast, an 'offensive compensation strategy from below' (i.e., led by corporatist actors) gained mastery in Denmark and the Netherlands. In these two countries the labor movement pushed for supplementing the low state pension by a second occupational pillar, with labor being involved in its administration (see Myles and Pierson 2001: 317). 'Defensive' and 'offensive' are meant to indicate the extension of social rights.

Corresponding to the theory of Myles and Pierson, regulation has become a big issue in Britain since the mid 1980s. Two scandals – the 'misselling scandal' (wrongful selling of private pension plans) and the 'Maxwell scandal' (misuse of large occupational pension funds) – even disconcerted the government and triggered intensified regulation of the private pension field. The *Stakeholder Pension*, a regulated private pension tailored to middle income groups and enacted in the 1999 pension reform act (effective from 2001), is a further step of a sustained strategy of installing regulated private pensions as the mainstay of financial security in old age. Agencies that control and regulate private pensions include OPRA, the *Occupational Pensions Regulatory Authority*, set up under the 1995 Pensions Act, and the FSA, the Financial Services Authority, set up under the 2000 Financial Services Act.

Recent challenges to the British pension system include increasing numbers of companies going bankrupt with an under-funded occupational pension scheme. In order to compensate scheme members for the resulting losses the 2004 Pension Act saw the introduction of the Pension Protection Fund (PPF), funded by the pension schemes. To this is being added a state-funded Financial Assistance Fund to pay out partial compensations in cases that occurred before the set-up of the PPF.

4. Towards a regulatory welfare state?

Originally the welfare state was designed to provide cash benefits and social services through public agencies. This could be called a 'provider state' or a 'producing welfare state': government agencies or public agencies close to government were the producers of welfare. The core of this activity was redistribution. Since the last two decades the tasks of the welfare state are being redefined.

Increasingly, the state is charged with controlling and coordinating the welfare production by non-state agencies rather than producing welfare itself. The emphasis is shifting from 'production' and redistribution by state agencies to the regulation of non-state agencies. We hypothesize that this change of policies is so far-reaching that it changes the nature of modern government. The hypothesis is that a '*regulatory state*' is emerging.

The concept of a regulatory state has been used by scholars to describe new patterns of financial policy vis-à-vis financial markets (Jayasuriya 2001) and patterns of ecological policy to fight air pollution (Münch and Lahusen 2000). Similar concepts have emerged in studies of the privatization of state monopolies in telecommunication, railway services and the electricity industry which took place in many European countries in the 1990s. Such privatization led to the erection of vast regulatory authorities. In the field of social policy, concepts like 'regulatory state' have received little attention as yet. As in the other policy fields, scholarly attention (or lack thereof) reflects social reality. For example in Germany, a long-term care insurance was set up in 1994 that opened the field for private providers. In studies of the care insurance, issues of regulation were touched upon although the term regulation was rarely used. The German pension reform act of 2001, which introduced a regulated private component, prompted some researchers to apply the concept of regulatory state (Leisering and Berner 2001, Lamping and Rüb 2004/2001). Much earlier, Gilbert and Gilbert (1989) had developed the related, more comprehensive concept of an "enabling state" in modern welfare capitalism (referring to the USA).

Generally we can see that the concept of the welfare state is being broadened in recent years. *New forms of welfare activity of governments* are called for by social reformers: social investment, that is investing in people at early stages in their lives rather than redistributing outcomes; 'activating' the

unemployed and the poor rather than (primarily) paying out cash benefits; introducing targeted tax deductions to create room for self-reliance and individual provision for the contingencies of life. Regulation could be another type of new activity of the welfare state. None of the 'new' forms is really new. It might be more appropriate to speak of 'hidden sides' of the welfare state. But some of these forms seem to be gaining weight in politics, at least in public debates. However, the finding is a shift in the mix, not a wholesale replacement of state welfare and redistributory policies by the new welfare activities.

*Is a regulatory state still a welfare state? Can the welfare state live up to its responsibility for the well-being of its citizens when it has (at least partially) surrendered direct control over the production of welfare? This is an open question. The move towards a regulatory state raises question of *social rights*. The original concept of social rights refers to the state as the source and safeguard of entitlements. In case of state regulation of non-state welfare production, the influence of the government is mediated. How can social rights be claimed and implemented in this situation? Will social rights turn into civil rights framed by state regulations? Will consumer rights (in financial markets) become a new key arena of 'social' rights in the 21st century, just as workers rights (in labor markets) concerning working hours, prohibition of child work etc. were the first protective rights created by state social policy in the 19th century?*

The analysis of regulation as a new or growing side of the welfare state also challenges the conventional comparative study of welfare states. Typologies like Esping-Andersen's that only account for 'producing' or redistributory activities of the welfare state need to be revised or at least supplemented by different or more complex typologies. It will be interesting to explore how different sides of the welfare state are related, e.g. if certain types of redistribution go hand in hand with certain types of regulation (or types of social investment). What does this mean for the question of convergence of Western welfare states? On the one hand, increasing regulation and social investment seem to be common trends, thus making welfare states more similar. On the other hand, the growth of

new sides of the welfare state creates a potential for increased internal heterogeneity of welfare states. More diversity in the world of welfare states would be the consequence.

Indeed, our ongoing research on state regulation of private pensions in Germany, Britain and Sweden (see note 1) shows that pension regulation is changing in different ways in the three countries. In Sweden more legislative regulation is called for to make capital funded pensions (both private and public) safer, especially in the wake of the Skandia scandal in 2003/2004. By contrast, resistance to growing regulation voiced by interested parties has recently increased in Britain (Davy 2005) as well as in Germany. In Germany, the take-up of the subsidized private pension plans created in 2001 has been much lower than originally expected. This has triggered a fierce debate on the complexity and the density of the regulations. Many political and financial actors accused the government of making the private plans unattractive through over-regulation. As a consequence of this debate, the regulation has been partially corrected and modified through the act on pension income 2004 (*Alterseinkünftegesetz*). All in all, the basic hypothesis of the research project on which this chapter is based – that state regulation of private pensions is growing – needs qualification and further research. Further research (in the next stage of our project) will also have to look at the growing role of the EU as a regulator of financial markets and at global forms of regulation.

The analysis of regulation hints at a *paradox of de-politicization*: Privatization of social security aims to de-politicize welfare provision but the need for state regulation of private provision leads to a new politicization. Even more: financial markets are becoming more politicized than ever before, they turn into ‘welfare markets’. Less state (reducing state pensions) may lead to more state (state regulation of private pensions).⁶⁾ When European countries privatized large utility industries like railway or electricity services they soon learned that de-regulation triggers needs for re-regulation. In social policy a similar lesson still has to be learned. If governments increasingly regulate private providers in view of welfare goals as we maintain - by ‘social regulation’ of ‘welfare markets’ – then the old ‘social questions’ crop up again, question about security, equality, social justice and social rights, and the same functional problems of effectiveness, cost reduction and responsiveness to clients needs will

have to be tackled. New answers will be required in the new setting. There is no 'unpolitical' escape route out of the problems posed by the demographic ageing of our societies. Maybe the concept of the regulatory state points towards a new historical compromise in the development of democratic welfare capitalism – creating openings for individual choice while retaining a basic state responsibility for the well-being of citizens.

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¹⁾ I am indebted to Ulrike Davy, Frank Berner, Uwe Schwarze, Patrick Blömeke and Christian Marschallek for many discussions and for help with the analysis. This chapter has grown out of the ongoing research project ‘The regulatory welfare state. A cross-national and interdisciplinary study of changes in old-age pensions in Europe’ (principal investigators Lutz Leisering and Ulrike Davy, Bielefeld University, Germany; funded by the German Research Council (*Deutsche Forschungsgemeinschaft*); website <http://www.uni-bielefeld.de/soz/Forschung/Projekte/regina/>).

²⁾ For a recent overview of pension reforms in advanced and transitional countries with an emphasis on privatization and changes in the welfare mix see Rein and Schmähl (2004). For the politics of public and private provisions in old-age security and health in the USA see Hacker (2002).

³⁾ I use ‘private’ to cover both occupational pensions and individual private pension plans.

⁴⁾ But see Hacker (2002) who elaborates the significant role of subsidization and regulation of private pensions and private health insurance by the US government.

⁵⁾ Cf. Hyde, Dixon and Drover’s (2003) seminal analysis of pension reforms which shows that privatization is not just about setting up a free-market model.