

Critical Reviews of Privatisation and Regulatory Governance:
An Institutional Approach
管制治理之批判研究：制度途徑的分析*

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摘要

民營化及管制革新已被世界上大多數的政府，視為解決公用事業之不良績效問題的處方，以期改善網絡型事業的傳輸及服務。本文先分析新公共管理的一些概念議題及其弱點，進而探求新公共管理及民營化之間的關係，以及一些國家的治理模式邁向管制型國家的肇因，並釐清公用事業民營化之再管制和管制治理模式等議題。本文研究發現：民營化、管制和競爭之間無庸置疑地環環相扣，且各有其必要意涵，其間所涵蓋的網絡關係，是為管制治理的基礎；研究其間的互動關係，治理途徑及概念更顯其重要性，吾人確立民營化絕非孤立的觀念或政策，也非新公共管理革新之唯一的萬靈丹。因此，文末主張以制度途徑來探討管制治理，進而提供一些管制治理上的政策建議給政策研究者和實務者，亦能藉此凸顯重要及具爭議性的未來研究議題。

關鍵字：管制治理；管制；民營化；制度途徑

Abstract

Governments are calling for privatisation and regulatory reform as the solution to the problem of the poor performance of 'public' utilities, and as the means to the improvements

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of delivery and service of public utilities. This study clarifies the concept of new public management and its weaknesses. Furthermore, it explores the relationship between new public management and privatisation and declares the reasons towards the regulatory state, especially re-regulation for privatisation. It also explores and clarifies the issues between regulatory governance and privatisation in a broader context. In conclusion, drawing from an institutional approach, this paper looks at the different choices of governance mechanisms for regulation in the public utilities. This study highlights the importance of employing an institutional approach to research governance mechanisms for regulation and reveals some question marks and matters as well. Given the variety of statements in the field of public management, it is argued that this differentiated approach to regulatory governance provides a more effective response than the narrow 'traditional' notion of new public management.

Keywords : Regulatory Governance; Regulation; Privatisation; Institutional Approach

1. Introduction

Analysing public management reforms must begin with the understanding that this is an area of 'contested' concepts (Minogue, 1998:17). Since the mid-1980s, the emergence of a new approach in the public sector management has been positive response to the traditional public administration (TPA). This new managerial approach has a variety of terminologies defined by different authors and countries: 'managerialism' (Pollitt, 1993); 'new public management, NPM' (Hood, 1991); 'market-based public administration' (Lan and Resenbloom, 1992); the 'post-bureaucratic paradigm' (Barzelay, 1992); 'entrepreneurial government' (Osborne and Gaebler, 1992; Hughes, 1998); 'Public Management Reform, PMR' (Hood, 1998; Pollitt and Bouckaert, 2000).

In practice, governments prefer to business approach borrowed from private sector management, such as downsizing, resource-squeeze, cut-back management, 3Es-efficiency, effectiveness, and economy, privatisation, outsourcing, marketisation, quasi-markets, surrogate markets, new public management, contractualisation, customerisation,

automisation, and agencification (Wright, 1997:7). They all believe that public and private organisations are alike in all unimportant respects and the efficient and effective approach can be adopted in any enterprises.

However, the inventor of the term NPM, Gladstone Professor Christopher Hood of LSE is not to use the term NPM any longer. There are some reasons: first of all, the initiatives that most characterise as NPM are no longer 'new'; secondly, NPM is now a 'loaded' term -- it carries too much negative baggage in that too many people associate it with a particular political perspective (conservative) or to privatisation or other specific initiatives they do not like. So, to these critics, when someone merely employs the term NPM they are against whatever is written regardless of evidence; thirdly, the term NPM means too many different things to practitioners and researchers. Those who work in the field of public management understand generally what NPM means to a certain degree, but the concept is not uniformly defined with clarity. Consequently, because NPM means so many different things to so many different people, it means virtually nothing for purposes of analysis. So, what is the alternative to using the term NPM? The alternative would be simply to use the terms 'public management reform' or 'public management change' i.e., generic terms that permit each scholar to define, without the use of a 'loaded' term, what the researcher is analysing. Indeed these reflections should be addressed the question of the governance mechanisms for regulation in the public utilities which follows the introduction of market mechanisms into previously monopolistic 'public' utilities.

2. NPM and Privatisation

As the fashion, NPM has caused a variety of evident changes all over the world and been criticised by many perspectives. A critical challenge is from new public administration, NPA. NPM criticised by Frederickson that it is a popular electoral politics for politicians and is more radical than NPA. Moreover, NPM has less significant issues of rationality, methodology, and epistemology (1996). Kettl (1991) also doubts the primary long-term legacy of NPM will diminish capacity of government to implement policy or create so-called 'hollow states'. Behn (1998) points out the advocates of the new

management of the public enterprise have the burden of providing a correlative concept of 'democratic accountability'. "In the short run, NPM probably has purchased some increased efficiency but at a considerable cost in the long range capacity of public administration and professional public management. There is no doubt that the near-term emphasis on efficiency in NPM has taken a toll on social equity" (Frederickson, 1996:269). Needless to say, government is of people, by people, and for people. Its behaviours must be under the obligation of the public interest.

We all agree that "each generation must construct its own reality. There is probably not much that is new under the sun, but, to each new generation, many things seem importantly new and useful" (Frederickson, 1996:269). Furthermore, the new paradigm envisions a public sector that will (OECD, 1995:10):

- I. Be less involved in direct service provision;
- II. Concentrate more on providing a flexible framework within each economic activity can take place;
- III. Regulate better, with more complete information about likely impacts;
- IV. Continually evaluate policy effectiveness;
- V. Develop planning and leadership functions to respond to future economic and social challenges;
- VI. Take a more participative approach to governance.

Amongst these approaches, privatisation can be seen as the sparkling approach to reinventing government and introduce market mechanism into public sector reform. However, no matter which paradigm combine with failures of which old paradigm, the real meaning of paradigm shift of public management is to find out strategies that can make public sector, market, and society better off, not worse off.

Privatisation is now a fact of life the world over. Some propositions that emerge from existing research literature are (see Minogue, 1998:21):

- I. Evidence for the superiority of private over public enterprises is mixed and inconclusive (Cook and Kirkpatrick, 1995; Shirley and Walsh, 2000).
- II. The real issue is monopolised state and its associated inefficiencies rather than

ownership (Cook and Kirkpatrick, 1994).

III. The link between privatisation and economic growth¹ has not been measured and demonstrated; privatisation should rather be seen as one of a bundle of measures necessary to successful economic reform strategies (World Bank, 1996; Cook and Kirkpatrick, 1994).

VI. Profitable and efficient public enterprises exist in all types of economy, and there is no reason why efficiency goals cannot be attained through the rehabilitation or corporatisation of public enterprises, ensuring commercial operation under public ownership (UNCTAD, 1992).

As discussed earlier, privatisation bears a set of complicated conceptions, explanations and methods. The research on privatisation also has showed a number of evidences and mixed consequences. Furthermore, the paradox of NPM or privatisation process is that a re-regulation process is needed. Regulatory governance is a necessary condition for fair and efficient competition in public utilities.

3. Via the Institutional Approach

Innovations in the field of public management recently represent what Thomas Kuhn referred to as '*paradigm shifts*'. In the field of public management, the application of market economics to political decision-making has influenced an approach to institutional reform and design utilising public choice analysis, the new economics of the organisation, and models of decentralised governments (Self, 1993). Public management reform (PMR) has offered the basis for research into the age-old politics-administration dichotomy by providing a theoretical framework through which there can be the integration of politics and administration. It has also proposed an intellectual chance to do research that considers government outcomes based on accountability and performance measurements, outcomes that evince better governance. This reform movement has generally manifested itself in developing countries through calls for entrepreneurial governments, privatisation, and

¹ The relationship between privatisation and economic growth in developing countries is found out 'negative' in the study of Cook and Uchida (2001).

public-private partnerships. PMR treatises, however, have yet to contribute to sound answers as to the role of institutions and organisation design in creating performance-oriented government entities, economies and public policies (Lynn, 1996).

New institutional economics, NIEs, extends the scope of traditional economics by including politics and the evolution of institutions to evaluate policy reforms. By integrating policy and economic institutions, it focuses on the behaviour of policy elites and politicians, voters, political parties and interest groups. It submits the modality by which an analysis can be made of the role of leadership, management and institutions in creating democratic and accountable states. The focus of NIEs on integrating economics and politics and studying institutions based on social structures and performance-oriented administration has generated a change advocated by some public administration theorists. That suggests the possibility of linking the macro concentration of economic development while addressing issues of microanalysis by incorporating individual and group behaviour, information, and the administrative capacity of government. By the same token, it provides a means whereby issues of politics and administration can be studied under the purview of public administration and public management. In the end, employing institutional analysis as the basis, such integration establishes the framework for pursuing comparative analyses of policy reforms in both advanced and developing countries including participation, property rights, citizenship, transparency, and accountability.

Institutional analysis, however, transcends the problems of polarising public and private in the development literature; separating politics and economics in the public management literature; dichotomising politics and administration in public administration literature; and ignoring politics and culture in the pure economic development literature. Institutional approach, through its holistic approach, attempts to relate policies implemented by government to economic performance. Economic performance is also affected by incentives schemes, contract performance, property rights, transaction costs, and participation evidenced in private sector and government. The microanalysis of the economics of organisations and other features of public management implied by institutional approach proposes the framework for improving administrative performance

in the public sector. This, in essence, establishes the basis of economic development.

A new perspective on regulation is emerging. It derives from the desire to open or explore the 'black box' of institutions that is assumed in the economic literature that focuses on concepts from the fields of public choice, NIEs, new institutionalism, and the new economics of organisations (institution matters!).

Majone (1996) states that there are two common elements of institutional theories of regulation. Firstly, there is an assumption that political control of regulatory bureaucracies is possible. That means that a matter of set up the extent and the means by which politicians can guide and control regulatory bureaucracies. On the other hand, there recognises political parties' central roles in the regulatory process and focuses on the problems of establishment of the appropriate level of delegation. They tries to research when politicians will delegate the policy making process to regulators, and when regulators will choose to exercise that delegated power. The central statement is determining the appropriate governance mechanisms and level of rules that should be set for regulatory agencies as opposed to the amount of discretion required by regulators to enforce those rules and governance mechanisms (Levy and Spiller, 1996).

Agency theory (principal-agent relation) always utilised to study governance structure of regulation argued that principals contract agencies to perform certain duties. However because of information asymmetries between the principal and the agent, the agent has the incentive to act in his/her own interest rather than the interest of the principal. In the regulatory environment, bureaucratic regulatory agencies shall obey democratically-elected politicians, but the interests of the politicians and bureaucrats diverge over time because of changes in the political environment (transparency mechanism matters) (Baldwin and Cave, 1999).

Majone (1996) also highlights one significant limitation in the employment of agency theory into regulation. Agency theory is most applicable to hierarchical relations between one subordinate and one superior. It is of limited utilisation in the regulatory environment where the regulator faces multiple principals, each with possibly different and conflicting objectives.

It must be clearly indicated that privatisation and related policies could be viewed as ideological matters, therefore, it would be unrealistic to assume a system which is totally independent of politics (self-regulation?). However, the actual process of regulation should be taken out of politics and placed in the hands of professionals who have the expertise. It is apparently that the governance approach implies examination and analysis not only of the institutions, policies and process, but also of the politics of regulation and competition. As a result, there are some requirements for regulatory governance for public utilities; it is quite possible to separate day-to-day management of regulatory bodies from the broader politics of policy making (political capture? democratic accountability?); ‘transparency’ is significant in its own right, particularly for developing countries which usually lack an atmosphere of open debate, since a requirement on regulators to explain their decisions and processes should reduce the likelihood of unfairness or incompetence (social regulation?). The public should be made aware of implementations of regulatory policies; ‘information issues’ are also crucial in the regulatory context, particularly between government and regulators, should enhance to make regulation more effective, by removing any possible confusion about which functions are carried out by regulators and which are carried out by Ministers or others. Regulators should have a clear statement of both their functions and their objectives in carrying out those functions (regulatory discretion?). The regulatory authority should have access to detailed information on related matters to operate properly (Stern and Holder, 1999). It should be noted that regulatory mechanisms should be properly designed in accordance with the country’s economic structure as well (culture matters!).

In addition, Fukuyama, at the broader level, regards ‘trust’ as necessary to the efficient operation of markets (1995). At the level of regulatory institutions, “trust is at the heart of regulation” (trust mechanism matters!) (McGregor et al., 2000, p.234). The spread of PMR has led to both opportunities and problems in relation to the establishment of trust-based relationship. Fukuyama has sought to distinguish between ‘high-trust’ and ‘low-trust’ societies (1995). High-trust societies offer more effective regulatory systems while low-trust societies (characterised by fewer civil society associations, formalistic

relationships, and primary social loyalties e.g. to family) exhibit an ‘implementation deficit’ (Minogue, 2001:18-19). As Centre on Regulation and Competition’s Research in developing countries indicates (CRC, 2004a) that a country’s legal system is related to its economic growth. However this does not imply that successful legal systems must conform to a Western model. It is true as CRC argued that some basic components seem to be important everywhere. These developing countries’ case studies include the protection of property rights, institutions that cannot easily be subverted by powerful individuals, an independent judiciary and stability of rule-making. But there are also some different variations which can be effective in their own countries’ contexts.

It can be concluded that regulatory policies in general, and regulatory governance in particular, have substantial roles to play in the privatisation process (Jordana & Levi-Faur, 2005). Regulatory mechanism in the U.K. presents an instance for developing countries where have adopted privatisation and liberalisation in the public utilities. However, two statements should be made clear: at first, the British regulatory system is not a perfect model, it has shortcomings as was indicated in previous section. Secondly, what is feasible for the U.K. may not be feasible for developing countries, therefore it would be unsuitable just to adopt the same mechanism. The tendency to transfer the idealised model of advance economies is not surprising, but likely to yield the ‘implementation deficit’ characteristic in developing countries (policy transfer or lesson-drawing!) (Minogues, 2001). Moreover, it is difficult to set up a regulatory mechanism especially in the context of developing countries, however, it needs to be kept in mind as a means of limiting the adverse effects of privatisation (capture theory of public choice regulation or regulatory failure!), not to constrain the operations of companies.

On the other hand, it can be argued that in reality there is a complex variety of forms of regulatory governance which, whilst not involving a government agency, often involve the government in some ways. Therefore, based on the result of the analysis, in terms of independence, in order to address the complexity and uncertainty of privatisation and regulation, it is important for the government to improve the independence of implementing agencies and regulators so they are free from influences of political

pressures and specific interest groups. Furthermore, the main problem with the accountability mechanism is where political pressures have typically dominated economic and commercial factors. In those circumstances, whatever the relevant law may specify, it is extremely difficult to sustain implementation effectiveness of privatisation and regulation or their independence. It is also important to develop well-designed institutions and a change of culture among implementing agents and regulators. This study has shown that transparency in the process of privatisation and regulation is essential for establishing a stable and accessible environment that promotes competition, and helps ensure against undue influence by special interests. The government in developing countries have made progress in these areas, but still have important problems, in particular to reduce excessive and powerful influences and improve accountability. In the end, it can be concluded that it is necessary to explore governance mechanisms of regulation, especially DCs.

4. Privatisation and Regulatory Governance

The introduction of liberalisation and PMR have arguably resulted in a shift from ‘the positive state’ towards ‘the regulatory state’ (Majone, 1994; 1999; Moran, 2001; 2002; Minogue, 2001; 2002) which is said to involve a shift from governmental to private ownership of public utilities and other social service infrastructures, an increasing emphasis on pro-competition regulation by quasi-autonomy independent bodies (Loughlin and Scott, 1997; Stirton and Lodge, 2001).

Governments the world over are calling for privatisation and regulatory reform as the solution to the problem of poor performance by public utilities, and as the means to the improvements of delivery and service (Levy and Spiller, 1996). Therefore, privatisation and regulatory reform need to be analysed in the broader context of PMR and governance approaches which have been initiating across both developed and developing governments (Minogue, 2001; 2002). There are some reasons for the shift towards the ‘regulatory governance’ or so-called ‘the rise of the regulatory state’ (Loughlin and Scott, 1997): first of all, it is the displacement of the welfare state model of government or of fiscal-difficult government and separates operations from policy making; secondly, it tends to establish

free-standing regulators and to institute mechanisms of oversight; finally, it is the increasing use of greater formality as policy instrument in the public utilities.

The significance of regulatory policies in the privatisation process has been emphasised so far. It is of evidence that the economics of privatisation cannot be analysed in the absence of the economics of competition and regulation (Vickers and Yarrow, 1988; Cook, 2001; Minogue, 2001; Newbery, 2001). It should be highlighted that regulatory mechanisms are just one element in the overall combination of public policies and that regulatory governance² is crucial to the exploration of the strengths and weaknesses of utilities regulation.

The fundamental idea of regulation is to design an incentive mechanism which will lead the company to act in accordance with the public interest, that will rely on the state of technology and demand, and the market conditions. It is apparently that government-owned enterprises have been criticised on the grounds of inefficiency most of the time. Privatisation policies, therefore, have been considered as a remedy of inefficiency. However, the achievement of efficiency improvements crucially depends upon the institutional framework of regulation in which the privatised firm is to operate.

The increasing use of regulation as a government instrument may thus arise due to the growing demand to 'steer not row' the involvement of a variety of public and private sectors which operate at some remove from the central government (Osborne and Gaebler, 1992). In other words, government is likely to retain greater responsibilities and accountabilities for economic and social regulation, especially in developing countries.

However, the establishment of a regulatory system is more difficult in the context of developing countries. There are deep-rooted problems arising from the less developed structure of these economies, especially building up good governance capacities. Although privatisation has been considered as an effective policy the regulatory aspect has been

² Rhodes declares that, "governance has too many meanings to be useful, but the concept can be rescued by stipulating one meaning and showing it contributes to the analysis of change" (Rhodes, 1997:52-53). According to Rhodes, governance refers to processes of regulation, coordination, and control (Rhodes, 1997).

neglected. It should be stressed that privatisation does not mean the retreat of the government from the economy. It should also be viewed that privatisation is not a means to get rid of the problems of government-owned enterprises, because it is not the case. Kooiman suggests that it is “generally more appropriate to speak of shifting roles of government than of shrinking roles of government” (1993:73). As a result, privatisation must be accompanied by properly designed regulatory policies in order to be successful.

As CRC (CRC, 2004c) stated that, Western models of regulation have a growing influence in developing countries. Privatisation promoted by the World Bank and IMF, they are assumed to lead to economic growth. But many problems arise when attempts are made to put these imported models into practice - strategies designed for a Western context often do not work well when transplanted to different economic, social and political cultures. Although this is well recognised the most common response is to simply carry on ‘as well as possible’ in the circumstances. However, it can be questioned whether a more creative response might produce better results. Moreover, discussion or case study cannot be confined to technical matters like subsidies and access, vital though these are. Researchers on regulatory governance and privatisation must also be aware of the political environment within which regulation is enacted, i.e. the public policy arena, in which power is exercised through a process of conflict, negotiation and resolution between different groups of stakeholders with both diverse and overlapping interests. More, some critical issues also need to question whether states will make policy rationally and whether non-state actors will be prepared to cooperate in designing and delivering policy. Also, do political leaders really want democratic and pluralist participation? Or will the regulatory process be ‘captured’ by powerful special interest groups such as large or foreign companies?

In the end, regulation is as old as the existence of societies and government. Majone states three principal types of regulation, namely, regulation through public ownership (nationalisation), statutory regulation by independent agencies (delegated regulation), and self-regulation. According to the comparative study of regulatory developments between the USA and Europe, Majone found that the form of regulation was dependent on

prevailing political systems, ideas, ideologies and interpretation of economic life. Majone argues that the traditional (early) public interest theories and the later economic theories of regulation (forward by Stigler/Peltzman) were complimentary rather than mutually exclusive. Both theories assume that market failure results in the demand for regulation. Majone (1996) also notes that the normative and positive theories are criticised for being silent on the crucial factors of the regulatory process. These factors include: the limits on political control over regulatory discretion, the requirements of public accountability of regulatory actions, the entrepreneurial skills of key individuals within the regulatory bureaucracy, and the importance of reputation and credibility to regulators.

Therefore, it is significantly important to explore the implications of the relationship between PMR (privatisation) and regulatory governance:

- I. The analysis of regulation goes beyond examination of the formal rules which govern relationships between the public and private sectors to the broader framework of government-market relations (Minogue, 2001) (Cheng, 2006; Levi-Faur & Vigoda-Gadot, 2006; Vass, 2006).
- II. Regulation is then seen as part of the whole range of neo-liberal market reforms, which include privatisation and reshaped government-market mechanisms such as contracting and public-private partnerships (Lane, 2000) (Crew & Parker, 2006).
- III. Since much regulation is carried out inside government (Hood et al, 1999), it is appropriate to consider the effects on regulatory policy and practice of PMRs that introduce the government the entrepreneurial disciplines of the market-place (Hutter, 2006).
- VI. Since regulation can be categorised as a distinctive mode of policy making (Majone, 1999), it is appropriate to examine its relation to the general public policy process (Levi-Faur, 2006).
- V. Finally, the significance effects on regulatory systems and processes of political ideas, institutions and relationships of power require analysis of governance frameworks and an understanding of such concepts as 'the regulatory state' (Majone, 1994; 1999; Loughlin and Scott, 1997; Moran, 2001; Moran, 2000),

‘regulatory capture’³ (Bernstein, 1955; Stigler, 1971) and ‘regulatory space’⁴ (Hancher and Moran, 1989).

Notwithstanding regulation should not be viewed as the opposition of market. It depends upon the nature and task of regulation. Markets and regulation are complementary rather than opposed and both of them can be viewed as means of delivering public interests (McGregor et al., 2000), so that regulatory governance can be viewed as the process in which economics, politics, and law are inextricably intertwined (Minogue, 2001). On the other hand, for some, the regulatory state represents a retreat from commitment for development and a decline in state autonomy. For others, the regulatory state can be as interventionist as the developmental state. Another view proposes that in the nineteenth century ‘Nightwatchman State’ (Braithwaite, 1999), most of the steering and rowing was done by civil society, whereas the Keynesian/Developmental/Welfare State has tried to do both steering and rowing. The new Regulatory State reached some balance: state steering and civil society rowing is its ideal. As will become apparent shortly, the variations in the advance of the regulatory state across the different sectors are greater than those across countries. This strengthens an understanding of the advance of the regulatory reforms as a

³ In his famous paper, George Stigler shifted attention away from the public interest approach, and named the public choice approach. He observed how the struggle over economic rents by interest groups would affect regulatory policy. The main actors in his study, namely enterprises and politicians, are assumed to be self-interested income-maximisers and not at all concerned with the public interest. Enterprises utilised all their resources to bargain with politicians in order to bring about policies that benefit them. They will favour regulation that reduces competition, and maximises economic rents. On the other hand, Bernstein develops the idea of a ‘regulatory life-cycle’. Bernstein declares that regulatory bodies go through four stages: gestation; youth; maturity; old age.

⁴ The importance of extending the analysis of regulation to the wider environment and the interaction between potentially multiple parties has been summarised in the notion of ‘regulatory space’. In Hancher’s and Moran’s account, regulatory space focuses attention not only on who the actors involved in regulation are, but on structural factors which facilitate the emergence and development of networks and which contribute to the institutionalisation of linkages (Hancher & Moran, 1989, p.292). Moreover, OECD (2002a) states that regulatory governance refers to a large domain encompassing the complex interplay of other regulatory actors such as the legislature, the judiciary and the sub-and supranational levels of government action.

sector-level phenomenon and the conviction that research aimed at the study of the reforms, should combine comparisons between sectors and nations (Cook & Minogue, 2002). This paper is argued that ‘regulatory governance’ as encompassing the whole system by which competition and regulation are exercised in the management of achieving the economic and social goals for development. Regulation also needs to be analysed in the broader context of PMR and governance-based approach which have been spreading across both developed and developing countries. The focus of this paper refers to the creation of new regulatory institutions in the wake of privatisation and liberalisation reforms, the term is so-called ‘**re-regulation**’ for public utilities.

5. Conclusion

Although institutional reform, including regulatory capacity building, is inevitably a deeply political act, I have argued that effective regulatory governance requires the promotion of appropriate methods to improve regulatory practice, such as regulatory impact assessment, RIA.

The evidence from CRC to date suggests that the effects of current regulatory reforms in developing countries are at least debatable. So far, it would seem that serious errors in the sequencing of such reforms have had widespread and significantly negative impacts, especially on the poor (CRC, 2004c). Where privatisation has been undertaken in a hurry, under international pressure, and in the absence of good regulatory controls and competent institutions, as in Russia for example, the result has been the massive enrichment of a small elite, a flood of capital out of the country, rapid industrial decline, damage to social institutions and an enormous increase in the numbers of people living in poverty (CRC, 2004a).

In contrast China, where the long march to a market economy has been both gradual and accompanied by strong state support for market-based regulatory reform, has enjoyed well above average growth and the most impressive reduction in poverty levels in the world (CRC, 2004b). The principal lesson for policy in the case studies by CRC appears to be the need to pay careful attention to the local and developmental context into which ‘best

practice' models of regulatory reform have to be inserted, and to which they must be adapted (CRC, 2006).

As we discussed above, many more utility privatisations are under way or are being considered in developing countries. Privatisation is a complex, and consequently controversial part, of the reform process because of the wide range of interrelated issues that must be solved. No country to date has been prepared to transfer a public utility into the private sector without imposing some degree of continuing public or social control over its activities. It can be observed that the government would benefit from the desired results to create or reform the regulatory framework, addressing rules for how competition will be allowed, and the structure and role of regulatory agencies in the process of privatisation. It is vitally important that the government in introducing regulation fully understands that multiple objectives can be pursued through regulatory governance. It can be suggested as follows:

5.1 Strengthening Governance Mechanisms

It is paramount to convince policy stakeholders in the process of privatisation and regulation about the soundness of the economic and political thinking in developing countries. These will be the key to understanding how complex and comprehensive the reform will be. As a result, it can be concluded that the government needs to strengthen its governance mechanisms in the complicated political-economic process of privatisation and regulation.

A key consideration regarding the process of privatisation is its transparency (Stirton & Lodge, 2001), if the new patterns of wealth and privilege that result from privatisation are to gain legitimacy. Therefore, transparency of the privatisation process is a vital factor for its success. The challenge is to make this debate an informed one and the procedures used need to be perceived as fair and open. The paper is argued that transparency in the process of privatisation and regulation is essential for establishing a stable and accessible environment that promotes competition, and helps ensure against undue influence by special interests. Its main requisites include official accountability, checks on discretionary

authority and power, and effective oversight by a genuinely independent congress and judiciary.

5.2 Strengthening Competition Principles

One of the main concerns of competition policy in the public utility is that the regulator should be an independent entity at least as regards the monopoly operator (OECD, 2000). However, it is very difficult to sustain independent regulation when: contract and commercial law is under-developed; competition policy is absent; the legal process is insecure and/or corrupt; and there is little or no separation of political powers. In those circumstances, whatever the relevant law may specify, it is extremely difficult to sustain effective regulation or an independent regulator. Where political economy pressures dominate, as they do on winter energy prices for households in Central and Eastern Europe, an independent regulator following standard economic principles of regulation is likely to be unfeasible (Hare, Batt, & Estrin, 1999). In practice, the risks to political leaders are too great and neither they nor the public will allow it. Furthermore, the absence of agreed legal and administrative procedures for regulation can cause similar problems for private investors in utilities, as has been the case for example in the Philippines (Stern, 1997). The costs of these uncertainties tend to be passed on to consumers, particularly industrial consumers of utility services.

Privatisation, the control of monopoly, the promotion of competition and the achievement of public service commitments are the central reasons for the establishment of regulatory agencies in the public utilities. Where competition is difficult or not possible, regulation can be seen as a market substitute by, for example, setting a 'competitive' price. Where competition is possible, regulation can be conceived as a process of market constitution and the maintenance of competition. There is also a debate on the need for increasing regulation and the trend away from self regulation, especially in public utilities. A more focused dimension of this policy remit is a stronger emphasis on the formulation of regulatory policy in the public enterprise area and on the enunciation of regulatory principles. The regulatory objective is to provide for an effective regulatory framework for

each sector in such a way as to strike a balance between independence and accountability.

5.3 Enhancing Regulatory Governance for Privatisation

Some issues of regulation must be introduced after public utilities reform. These issues are complex, interrelated, and sometimes, in conflict (Wellenius & Stern, 1994, pp.111-2), but good for the Taiwanese government to bear in mind as undertaking public utilities reform: prevent the incumbent operator from abusing its dominant position to prevent competition; ensure that a private monopoly does not make monopoly profits; continue to promote certain economic and social goals, including universal service; ensure adherence to certain technical standards; ensure that equality of service standards is maintained; monitor licence conditions and ensure that laws and regulations are respected; deal with interconnection problems; regulate tariffs and contribution payments for network development.

As this paper has stated, governance is not a very precise concept, and very often is conceptualised quite differently, depending on 'context'. Coming from NIEs, Oliver Williamson (1996, p.11) defines governance as "the science, theory or study of good order and workable arrangements", with its primary concern being "the means aspect of means-ends relations"⁵. This paper argues that regulatory governance can be seen in terms of relationships rather than structures, and thus includes more than public administration and the institutions, methods, and instruments of governing. It also encompasses the set of relationships between the government and regulatory actors, acting as both individuals and as part or through institutions, e.g. political parties, productive enterprises, special interest groups and the media. Thus, for governance theorists, analysing the process of co-ordination as such, the main concern is that the role of government in the process of government is perceived as an empirical question (Kooiman, 1993; R. Rhodes, 1997; R. A. W. Rhodes, 1996).

In addition, good governance for privatisation and regulation must have better separated policy formation and implementation, clear established lines of responsibility

⁵ Oliver Williamson borrows the definition from Lon Fuller's definition of *economics*.

and communication, and maximised opportunities to measure results and accountability according to the survey. Government is a non-market organisation, and it generally must do things on a large scale. It has the duty of maintaining internal security (including enforcement of contract), the provision of a system of ‘administration of justice’, the provision of information (such as agricultural research and extension), provision of basic public services which are inherently large-scale in scope (such as roads and communications and those things in which the government is at no disadvantage in providing on a large scale, and where private agents may face a disadvantage in attempting to do so) and to protect every member of the society from the injustice or oppression of every other member of it (Smith, 1776). Further, Adam Smith, even though he was a strong advocator of laissez faire, recognised the usefulness of government’s role in protecting rights (Smith, 1776). The importance in the protection of property rights has also been emphasised in North (North, 1990), according to whom, property rights are an essential prerequisite for growth. The economic theory of property rights suggests that economic growth requires a government to establish property rights so that economic agents can contract with minimal transaction costs and thus increase economic wealth for citizens of that country (North, 1981).

Therefore, there are some conclusions for regulatory governance in this paper: firstly, a legal mandate for the regulator created by congressional law; secondly, separation of operating activities from the regulatory roles; thirdly, autonomy and independence are improved by financial and budgetary independence; fourthly, avoiding free removal of commissioners; accountability can be strengthened with clear mechanisms for solving disputes; on the other hand, transparency and participation are supported by the existence of hearings for the setting of tariffs and other issues; finally, clarity of roles and objective is in accord with the regulatory authority’s ability to impose fines and set tariffs.

As a result, to understand fully the ‘regulatory governance’ is necessary and significant for public utilities regulation. It is an approach which has good potential for investigating the impact of public management reforms on regulatory design and practice. Moreover, we must go beyond description and analysis of the formal structures and

institutions of public management; furthermore, we also must examine the characteristics of the public policy process. This means looking beyond the institutional façade to grasp the ‘real world’ of public action (Minogue, 2001; 2002). Employing insights drawn from institutional approach, this study insists the important consequence of the different choices of combinations of governance mechanisms for regulation in the public utilities. Given the variety of statements in the field of public management, it is argued that this differentiated approach to regulatory governance provides a more effective response than narrow ‘traditional’ notion of new public management. We can say privatisation, competition, and regulation are closely intertwined with each other in accordance with economics, law, and organisation theory and significant essential elements in the complicated reform process of public utilities.

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