

Revisiting State and Market through Regulatory Governance:

Observations of Privatisation, Partnerships, Politics and Performance

Professor Graeme Hodge
Director, Monash Centre for Regulatory Studies
Monash University

Paper presented to
Revisiting the State and the Market Conference,
The University of Auckland,
October 28, 2011

Abstract: This paper argues that the lens of regulatory governance is a potentially useful one in understanding the evolving state and its relationships to both the market sector and to civil society. The lens of regulatory governance brings new conceptions to the meaning of regulation itself, and assists our understanding of how over the past few decades the modern state has developed. These both have implications for how we interpret questions central to contemporary government. For example, what do we now know about the effectiveness of privatisation, and of part privatisation? To what extent are the performance promises of its cousin ‘public-private partnerships’ being met? And what are the implications of the regulatory governance lens as we move forward in a post-GFC era? This paper suggests that even in a post-GFC environment, our beliefs around issues of ownership, the place of the state itself and how both the private and public sectors contribute to the economy and society are unlikely to change – indeed they may even harden. Nonetheless, there is much that can be learned. And the era of regulatory governance will encourage an array of questions around the systemic role of the state; how the state acts as one of many regulators; on the availability of a wide range of regulatory tools; and on what tools work most effectively for the benefit of communities. Moving forward, it is hoped that regulatory lenses will encourage greater cross disciplinary thinking and a stronger consideration of regulatory tools other than traditional command and control regimes. In this light, policy activists, interest groups and citizens will all rightly continue to contest who is winning and who is losing from post-GFC reforms.

Revisiting State and Market through Regulatory Governance:

Observations of Privatisation, Partnerships, Politics and Performance

Professor Graeme Hodge
Director, Monash Centre for Regulatory Studies
Monash University

1. Introduction

There is much chatter about our turbulent environment and angst about how governments might best deal with the challenges resulting from the global financial crisis (GFC). On the surface, there is little doubt that state-market relationships are changing and that as a result, the new post-GFC era is quantitatively different to what came before. Thinking back, we have certainly come through an age of the welfare state where what mattered most was good public policy developed in the best traditions of public administration. The issues at the top of our agenda involved questions such as ‘what is the role of the state here? or ‘how can the state best control these risks’, through to issues such as ‘should we privatize?’, and ‘how can we get the best out of the private sector and the best out of the public sector through partnerships?’ We have been repeatedly told that the state needs to be rethought, reinvented, commercialized, more joined-up, and act more as a ‘partner’ with a strengthened networked capability. And over the past century we have watched commodity and financial market engines provide spectacular growth and rising wealth for most of us. Indeed, we got to the stage over the past few decades of almost worshipping markets and their apparent wealth generating powers. Bigger forces were at work, however, and post-GFC, we now realize that we had some harder lessons to learn. Getting governments to serve the needs of citizens therefore remains a profound challenge today.

This paper suggests that an overarching theme across all of the disciplinary groups here at this conference is that of regulatory governance. It therefore argues that the lens of regulatory governance is a potentially useful one in understanding the evolving state and these bigger forces at work. It suggests that we have entered the age of regulatory capitalism, and that the lens of regulatory governance can help in understanding how the modern state has developed over the past few decades. This is important when it comes to questions central to contemporary government. This paper takes a journey. It starts by looking through the lens of a traditional public administrator or public policy analyst, and asks what we know about the effectiveness of privatisation, and its cousin, public-private partnerships (PPPs) after decades of experience? We then examine the lens of regulatory governance and look closely at how this lens might help to interpret some of the contemporary questions facing governments, as well as options as we advance in NZ. In taking this journey, it aims to give some insights and perspectives as well as being purposely provocative rather than proffering any single path forward. The hope is therefore to challenge our thoughts as to what might lie ahead.

2. Does Privatisation Work?

If we ask the simple question ‘does privatization work?’ and look at what we might have learnt from over 30 years of international experience, it turns out to not have such a simple and clear cut answer. There are several reasons for this, and each gives us a lesson from our experience to date.

Firstly, we need to understand that privatization is a phenomenon rather than a technique. At its broadest level it symbolizes the way we look at society’s needs and the very role of government in fulfilling them (Hodge, 2009: 545). Certainly, the sale of enterprises made famous by Prime Minister Margaret Thatcher’s program in the United Kingdom was legendary and the sale of government enterprises subsequently became the most common understanding of the privatization set of beliefs¹. However, the idea of private ownership, the legal structures around such property rights and our eternal search for what should be regarded as public and what ought rightly be regarded as private have all evolved through 1,000 years of political philosophy. With this long pedigree, it is no wonder that there are strong debates over any proposed privatization policy reforms. These debates continue today.

Secondly, even when we look at a specific technique, such as the sale or partial sale of a government enterprise, privatisation has multiple objectives. Although not widely acknowledged, the diversity is huge. Hodge (2000) listed 76 explicit and implicit goals documented by government in the privatisation reform literature. Of course, the most commonly quoted and best known objective for divestiture relates to economic efficiency, but goals for government have covered politics (reducing trade union power or the desire to simply have small government); consumer goals (such as lower prices, more choice, better quality); social goals (creating a share-owning democracy, encouraging an innovative society, or even rewarding political colleagues); economic goals (including efficiency, strengthening competition, developing capital markets or attracting investments); fiscal goals (improving cash flow to the Treasury, reducing annual deficits or public debt); or other objectives (such as reducing corruption, increasing business confidence or placating banks such as the IMF or World Bank). Clearly there has been a wide array of potential formal or informal goals from governments amidst all the loud noise of efficiency chatter. Perhaps this is a sign that privatisation is as political a phenomenon as it is a technical or economic activity.

Thirdly, the ideology or indeed religion that has accompanied privatization transactions has often drowned out discussions around empirical matters such as performance and new regulatory arrangements. The theoretical assumptions of self-interest dominating human behaviour, and the public choice belief that people are fundamentally no more than rational individual utility maximisers that should express their preferences through market exchanges rather than politics have both reigned supreme. Perhaps the loud advocacy of commercial interests involved in transactions also helped to drown out and reject notions of either public service or the public interest. The noise was all about governments needing to be smaller, all about bureaucrats looking after their own nest rather than the public’s interest, and all about governments needing to ‘steer, not row’ as privatisation proponent Steve Savas first put in the US². Theoretical critiques of these ideas have been plenty³ but they have been barely acknowledged let alone taken on board. The presence of a single, simple narrative around self interest on one side competing against a more diffuse and complex set of multiple narratives on the other also did not help win debates.

Fourthly, the empirical evidence on the privatization of State Owned Enterprises (SOEs) over the three decades has been mixed. The reality is that privatization has resulted in surprisingly modest net gains in

¹ We should formally note that privatisation is most commonly defined as the ‘transfer of enterprises/service functions from public to private hands’, but we ought equally acknowledge a wide range of definitions.

² See Osborne and Gaebler (1993)

³ See for example Boston (1991), Self (1994), Stretton and Orchard (1994), Kelsey (1993), Taggart (1992) and Hodge (2000) for some local critiques of privatisation logic.

economic terms; has had winners and losers; and has often fallen well short of the initial political promises made. Many international authors have reviewed privatisation experience⁴, and whilst most acknowledge the cash gains to governments and labour productivity improvements achieved in divestitures, many have also been surprised at the modesty of the gains observed, and the limited service improvements for citizens. For example, Hodge (2000) looked at 230 evaluation reports and 10 468 before and after measurements of performance in a meta-analysis of global divestiture results. Modest gains were confirmed for the financial performance of privatised firms (e.g. return on equity and return on sales) and productivity, finding slight improvements on average. In both cases, however, only a small part of the gains measured were associated with the enterprise sale itself, as performance improvements also occurred in organisations which were not privatised. Better capital investment was detected following privatisation, but no simple direct link between the size of the private sector and economic growth was found. Likewise, parallel comprehensive investigations by Martin and Parker (1997:215) also found ‘little evidence of any systematic improvement in performance’⁵. These results contrast the loud noise of stock market floats, and the constant positive buzz from those directly associated with the transactions. Divestitures have usually seen strong winners and losers, too. The World Bank’s own 1994 report on projected benefits from divestiture privatisations in the UK, Mexico, Malaysia and Chile, for instance, found investors winning in eleven of the dozen cases analyzed, whilst citizens either gained nothing or lost in two thirds of these (Galal, et al 1994). Individual case studies illustrating this point include the sale of Argentina’s telecommunications company ENTEL, where divestiture resulted in Argentina as a country losing some \$US2.2 billion, despite a ‘world-wide welfare gain’ being calculated because of massive offsetting gains made by New York Stock Exchange investors (Abdala 1992)⁶. More recent empirical studies including for example, Megginson et al (2004), Bel and Fageda (2009), Dagdeviren (2009) and Falkenberg et al (2009) have also yielded results broadly consistent with these conclusions.

Specific lessons from divestitures in different jurisdictions have differed. Parker (2004) listed 17 analyses of the UK experience and noted that the program of 51 divestitures was an important cultural, economic and political core to Thatcher’s desire to reverse the ‘corrupting effects of socialism’ (Thatcher 1993). Large labour savings were achieved (with, for instance, British Rail personnel numbers reducing from 238 000 at privatisation to 125 000 in 1999) and prices declined in real terms (by around 26-34 percent) over the 1990s although industry gained bigger reductions than poorer consumers. The overall theme then was one of a continued pattern of historical improvements gained prior to divestitures, with the modest improvements essentially being due to better competition and stronger regulation of new arrangements rather than the changes in ownership per se. To Parker’s mind, nevertheless, privatisation helped to create a more conducive environment for private investment compared to previously, less efficient, public enterprises. The modest improvements observed here contrast the large political promises made in terms of major benefits promised to citizens.

Our broader Australian experience, too, witnessed \$96.9 billion of sell-offs through the 90’s which I judged as ‘both a political and economic success, though again benefits to consumers appeared to be modest, and strong independent regulatory frameworks had been needed to achieve consumer benefits.’ I also judged that these transactions resulted in ‘reasonable value for money for taxpayers and modest

⁴ See for example, authors such as Hodge (2000), Martin and Parker (1997), Parker (2004), Megginson et al (1994), Boubakri and Cosset (1998), D’Souza and Megginson (1999) and Cook and Kirkpatrick (2003).

⁵ Interestingly, Martin and Parker (1997:215) observed performance improvements in 82 instances (51.6 percent) and deteriorations in 77 instances (48.4 percent).

⁶ Likewise, Ralston Saul (1997) reports that the privatisation of 80 percent of Mexico’s state 552 firms created 30 billionaires, all friends of the president or the party in power, whilst real wages plunged 52 percent. At the extreme, citizens of Cochabamba, Bolivia, rioted in the streets after the price of water tripled under a World Bank privatisation project. This was only stopped after the privatisation legislation was repealed and civilians took over water arrangements (The Corporation 2003). Further experience in developing countries has been reported by Cook and Kirkpatrick (1988, 1995, 1998, 2003) and Boubakri and Cosset (1998). Cook and Kirkpatrick (2003) found limited evidence of success following privatisation at the macro-economic level and for issues of social impacts, but stronger evidence of success at the level of the firm with 80 percent of firms increasing efficiency and 63 percent of firms improving profitability. Deepening inequality appears unfortunately to have been a worldwide theme with divestitures, though.

public welfare gains in some cases', and argued that although not perfect, Australia's privatisation performance had 'probably been better than for many earlier privatizations around the globe' Hodge (2003;183). Having said this, and contrary to much of the discourse at the time concerning economic efficiency, most Australian SOEs had generally been both profitable and increasingly commercial in their outlooks before being sold. Sectors such as Victoria's state electricity sector, Australia's national telecommunications regime, the Commonwealth Bank and Qantas airlines all exemplified this point. Only in a few cases were enterprises sold in distress⁷.

Fifthly, whilst privatizations have usually been one way, this has not always been the case. We have learnt that it is crucial to get the governance arrangements right. Our experience with prison privatisations in Victoria, Australia, for example, saw 3 facilities privatized but with one returned to government after poor private governance. Perhaps, as the rock group Meatloaf put it, '2 out of 3 ain't bad'! Likewise, Victoria's urban train franchising arrangements (privatised in 1999 and promising \$1800 million in cost savings over the coming 15 years) saw one of the contactors leaving the contract in 2004 and their contract going to the other provider (Connex)⁸. Indeed the New Zealand experience with Tranzrail also attests to the principle that privatisations are usually, but not always, a one way transaction, and that governments sometimes have to pick up the pieces (if they can see through the egg on their face!)

Sixthly, as I have been hinting on the way through, our overwhelming observation has been that the ownership issue has not turned out in practice to be the primary question in these reforms. Strong regulation mattered more than ownership, as well as the broader matter of governing with integrity. Indeed, for western nations, getting the regulatory regime itself right was probably the most crucial defining up-front task. We learnt that markets and essential service excellence did not exist naturally – both required clear regulatory structures and solid government decision-making. One reason for Australia's past privatisation relative success has been learning the lessons from US and UK experience – the need to create markets and establish strong regulatory regimes prior to any sell-off. Our electricity markets in Victoria, where power is fully privately owned, was judged by Hodge (2004) to be a privatisation success⁹. The contrasting experience was with Telecommunications, where we witnessed Telstra privatized but only under the cover of short term political opportunism which saw the regulatory debate effectively deferred for the next decade and a half¹⁰. Australia has since paid a long term price for this political tactic. Today, high profile policy debate still exists about how best to provider telecommunication services in Australia through a new \$11billion proposal to fund a National Broadband Network; ACCC (2011). The point here is that getting regulation right turned out to be more important than the colourful and boisterous debates around ownership. As Dagdeverin (2009) put it we came to 'a

⁷ Interestingly, the state banks of Victoria and South Australia both failed spectacularly before being then privatised. These two cases, though, were paradoxical. As Hodge (2003) explained, their poor performance followed a century and a half of successful management under state ownership. In both cases, the banks were put under the 'aggressive and entrepreneurial' leadership of former private sector executives, who took the banks out of their traditional role of 'the people's bank for home finance' into the realms of commercial lenders to entrepreneurs (Collyer, McMaster and Wettenhall, 2001). These entrepreneurs included characters such as Christopher Skase, Alan Bond and Allan Hawkins – all of whom have since become globally renowned as failed or jailed tycoons. Importantly, privatisation in both cases provided ammunition for governments eager to frame these failures as 'public' disasters as well as a source of much needed revenues for state coffers now required to better manage resulting state debts. In the words of Collyer et al. (2001), these two cases 'had an enormous impact on how politicians, officials and the public came to think about public enterprise and privatisation over the next decade'

⁸ Initial Kennett government franchise contracts estimated that with subsidies progressively declining every year and over an envisaged 12–15 year lifetime, the Victorian taxpayer would save a total of \$1.8 billion compared with a continuation of public operation. This was not achieved, with the state Minister eventually conceding through the press that the cost of operation was probably about the same through either the public or private providers. Interestingly, this franchising arrangement was judged by the Victorian Auditor General (VAGO, 2005) as being 'reasonable value for money'.

⁹ This contrasts judgments that we might make about the privatisation success when Victoria's urban train services were franchised. This reform failed to achieve initial cost-savings targets, and at best saw claimed performance improvements as dubious, although it did succeed at reducing union power, which was one strong, but implicit, objective.

¹⁰ Telstra was privatised through 3 tranches, one third (1997/98), 16 percent (1999/2000) and one third (2006), eventually leaving the government with 17 percent ownership which was placed in Australia's Future Fund. This was subsequently sold down further, reducing the governments share to 10.9 percent. Its vertical structure remained, and whilst it was required in theory to provide access to others fairly and not abuse its market power, experience saw constant delaying tactics and a torrent of legal challenges. Under the leadership of new American CEO Sol Trujillo three imported executives (dubbed the three amigos), it transmogrified from a trusted public asset into a pariah after privatisation.

new consensus which regard competitive pressures and regulation as crucial for utility privatisations to work'. The need to heed this lesson is crucial given my analysis of British Telecom data in the UK a decade prior to this (Hodge, 2000; 212), suggesting regulatory arrangements around reporting were some 3.4 times more influential than ownership. Likewise, analysis of contracting out data at this time also showed that competition drove cost reductions more powerfully than whether the contracts were undertaken by public sector business units or private sector companies¹¹.

Point number seven here is that even after privatisation, governments have remained accountable. Citizens have continued to view governments as answerable for essential services such as electricity¹² and urban transport, despite any attempts by Ministers to suggest that operational problems rested with new private owners. Whilst the arena of privatisation debates has shifted somewhat, responsibility for public service provision has inevitably and rightly been seen to finish at the Minister's doorstep.

Perhaps the strongest lesson, but one often not sufficiently acknowledged, is that strong government and a strong private sector are both needed, rather than one dominating the other. This is point number eight. Mintzberg (1996) put it nicely when he said 'the so called triumph of capitalism over communism in the 1980s was not so much of a triumph of the free market idea over government, but the triumph of balance. Not markets in preference to government, but the need for both.' Clearly, as Simon said in 1997 'a strong democratic society needs a dispersal of power, not one dominated by private business interests (to run government), or powerful governments (to corrupt democratic processes)'. Of course, there are many varieties of capitalism¹³, but the lesson here is clear; we have moved from a time of believing it was either public or private to a time when we must acknowledge that we need both. Philosophically, we have moved from 'public versus private' to 'public and private'. Having said that, our personal belief as to the balance required in meeting economic and social interests, as well as our belief as to the best ways to regulate this balance through either government action or private sector action remain strongly held.

3. Public-Private Partnerships

Given these lessons from our enterprise sales experience over past decades, what might we make of our global experience with its cousin - PPPs? On this score, there is an eerie parallel. At the broadest level, PPP (like privatisation), is itself a phenomenon which is not well understood. Both advocates and critics too often see PPP as simply an infrastructure delivery technique – the use of private finance arrangements to enable a consortia to deliver new public infrastructure through long term contracts.¹⁴ But PPP is a far bigger phenomenon than this. Everyday discussions of infrastructure refer to the individual project as 'a PPP', and thus enable Ministers to claim success when the project itself is delivered. After all, we all like shiny new public courts, hospitals and roads. And more broadly, too, PPP has been likened to a wide range of different methods of delivering infrastructure (either through the 14 acronyms touted by the OECD, 2008) or the admission by the UK's ANAO that the UK's private finance initiative (PFI) partnership type was only one of 'hundreds of different PPP techniques actually in use in the UK over the

¹¹ One of the most colourful examples of the importance of getting governance clean and regulation right before selling off SOEs was the case of the former Union of Soviet Socialist Republics. Poor advice was provided by the IMF and others to privatise quickly. Undue haste led to fraudulent and corrupt activities freely occurring in a vacuum of effective state governance and after many divestitures, results for citizens were disastrous. Hodge and Bowman's (2006) account cites Stiglitz (2002; 2003), who argues that the IMF's ideological pursuit of quick privatisations resulted in too little attention being given to corruption minimization, and privatisation being known comically as 'briberisation' (Stiglitz, 2002:58). Divestitures in the former U.S.S.R. were pursued at all costs, with the result that rather than creating wealth, assets were stripped at every level. Russian industrial production fell by 60 per cent – worse than the GDP loss suffered in World War II, poverty increased ten fold (from 2 per cent in 1989 to 23.9 per cent by 1998, and Russia today has 'a level of inequality comparable with the worst in the world' Stiglitz (2002:153, 154). As much as 70-80 percent of organisations have been estimated to be making corrupt payments to the mafia (Prokopenko 1998).

¹² The experience of Victoria's electricity companies over the past two years is a point here, with 'smart electricity meters' being introduced into urban areas but having now stalled after a formal review by the Victorian Auditor General suggesting poor governance by public sector officials criticising and widespread complaints from consumers.

¹³ See Hall and Soskice (2001).

¹⁴ We might add 'under new accountability and governance arrangements' as well to this definition.

past few decades'; NAO (2009). PPP is also a government policy on how they see the role of the private sector, and a strong symbol of how those in power wish to govern. Indeed, PPP is a tool of governance, and exists within a particular historical and cultural context; Hodge (2010c).

PPPs are also part old and part new practice. Historically, PPP advocates rightly remind us that governments have been using private finance for toll road infrastructure for thousands of years. And governments have for centuries also clearly been making large commitments for infrastructure projects lasting for decades. So the phenomenon of PPP in one sense has a long historical pedigree. But there are three aspects which are new. These new characteristics include the preferential use of private finance arrangements, the use of highly complex bundled contracts to enable a consortia to provide infrastructure and associated services, and altered governance and accountability assumptions (Hodge 2004b).

Like privatisation, PPP has also had a wide range of objectives, although this is rarely acknowledged. I have documented some 18 objectives covering the realms of financial goals (such as the oft repeated 'value-for-money' or 'VfM' promise), project delivery objectives (such as on-time or on-budget delivery), policy (such as providing infrastructure through user funding rather than government budgets, taking funding off-budget, or reducing risks to government), governance (through increasing business confidence, raising the profile of public infrastructure onto the political agenda or symbolizing new third way government), cultural change (such as more innovative projects or organisations) and economic objectives (such as efficiency, or supporting economic development).

What this means is that the PPP phenomenon is inherently ambiguous, and those who seek scientific analysis can be disappointed. Each of these levels of understanding of the phenomenon is important, though. Let me give an example here. One level at which we might understand PPP is at that of governance. What is meant by this? For a start, the use of huge private contracts with a consortia for the delivery of high profile government projects is a strong regulatory tool in governing. Large economic incentives can be employed to ensure that the promise of the early achievement of government objectives is met - even for complex projects and in controversial circumstances. When Melbourne's CityLink project was under construction, this PPP symbolised the Kennett government's crash through style of delivering what they promised compared to the timidity and paralysis of the previous regime. Indeed, the Kennett government delivered this project when the previous three governments over two decades had not been able to. And across the other side of the world, the Labour government of the UK throughout the 1990s had struggled to develop its relationship with the City of London. But as Hellowell (2010; 310) points out, privately financing infrastructure provided the incoming Tony Blair and his 'New Labour' government with advantages. Private finance not only had the 'crucial [political] advantage that borrowing undertaken through it did not score against the main calculations of national debt' and was thus essentially invisible to public sector borrowing measurements. It strengthened new Labour's relationship with the City of London, and through international promotion of PPP ideas, cemented it. Blair's re-branding of the British Private Finance Initiative as a public private partnership policy was also a masterful political move under the 'third way' banner; Hellowell (2010). These political characteristics of PPP suggest that it continues to have an inherently political, and thus governance related meaning, as well as any functional engineering or economic meaning.

Like privatisation, PPP is slowly becoming better understood as a phenomenon which by its nature is as political as it is technical.

Our performance lessons after a decade or so of empirical experience also parallel those of privatisation, too. My own analysis of 28 international studies for example, concluded that there had been 'mixed results' in terms of VfM performance, with an almost equal number of studies claiming VfM superiority

(nine) compared to those refuting the claim (ten); Hodge (2010a)¹⁵. The passion of both advocates and critics was clear, but with only a few exceptions¹⁶, the degree of analytical sophistication rarely matched this. Assessments of on-time and on-budget performance were also mixed. Other research looking more broadly at experience to date on matters of governance and accountability also concluded as well that there had been ‘mixed results’. Concerns here included the apparent cost premium of private finance projects, manipulation of public-sector comparator calculations, excessive secrecy amidst complexity, lack of public accountability, and ad-hoc nature of contract by contract deals; Hodge (2006). Little wonder then that both Fitzgerald (2004) and Hodge (2005) concluded some years ago that government treasuries ought to employ the philosophy of ‘buyer beware’ and be more of a steward for public funds rather than a PPP advocate. Likewise, recent assessments of UK PPP performance from the NAO (2009) commented that with financial modeling behind these schemes being both ‘error-ridden’ and ‘subjective’, the consequence is that ‘government cannot satisfy itself that private finance represents the best VFM option’.¹⁷ Perhaps Jupe (2009) put it best when he remarked that both PPPs as well as traditional infrastructure arrangements appear to have been ‘imperfect solutions’.

With over 500 of such projects of this type delivered in the UK, though, these governments have clearly regarded it as successful despite technical criticisms on matters such as poor VFM and even loss of face over official observations of manipulated business cases. Likewise, three successive state governments of Victoria, Australia, have also pushed ahead with a PPP policy over the past decade, announcing new deals for a \$5.7billion desalination plant and \$255million for 11 new Melbourne schools in the middle of the GFC, and seeing its own extensive PPP guidance materials adopted in dozens of jurisdictions worldwide. PPPs also continue to be a popular choice in other states of Australia, as well as in other jurisdictions such as British Columbia and many states of Canada. Indeed, short of embarrassing and large scale corruption or widespread incompetence, advocating governments have viewed PPP as inevitably successful. As well as the usual slipperiness of political language where, even if PPPs are expensive, they can be framed politically as ‘innovative’, or ‘iconic’, there are clearly real political benefits to governments to proceed down this road. In other words, PPPs seem to have been politically effective for these reformist governments.

Having contemplated the future of PPP, I have concluded that despite these issues, and perhaps paradoxically, PPP has a bright future. This is because it is an ideal. As such, we will most likely continue to seek the best of both worlds and PPP will continue to be as politically driven as it is technically driven. We will return to this theme later. Overall, though, our global public policy lessons from PPP experience to date do seem to have an eerie parallel with our learning from privatization reforms.

4. Reconceptualising Regulation

We have hinted several times so far that the success of privatisation (and for that matter PPPs) is intimately tied to notions of strong regulation to protect the interests of citizens and consumers as well as requiring governance with integrity. The idea that the state needed to protect citizens from any excesses of private ownership through new laws and regulations is a worthwhile lesson from experience. But this technical lesson has been overshadowed by some important broader regulatory insights. The notion of regulation itself has been rethought over the past two decades, and the implications of this rethinking are profound. In this section we therefore briefly examine this evolution.

The concept of regulation has itself been heavily contested, and there are now a wide variety of different concepts and definitions for regulation. Two ideological extreme vantage points have always been

¹⁵ There was also a similar number of studies (nine) which were ambiguous, undecided or non-committal in assessing PPP VFM superiority.

¹⁶ See the assessments offered by Fitzgerald (2004) and Blanc-Brude et al (2006) for examples of such exceptions.

¹⁷ Similar sentiments have also been voiced by other auditors. A Parliamentary Inquiry in Victoria, Australia, for example, stated several years ago ‘the Committee cannot conclusively state whether the PPP policy is delivering value for money over the life of the projects, compared to traditional procurement methods’... PAEC (2006; 26).

possible; at one extreme, regulation can be ‘a dirty word representing the heavy hand of the authoritarian governments and the creeping body of rules that constrain human or national liberties’; and at the other, it can be ‘a public good, a tool to control profit-hungry capitalists and to govern social and ecological risks’.¹⁸ Some have viewed regulation only with reference to the work of governments, whilst others have gone beyond this. Moreover, disciplines have traditionally viewed regulation differently; legal scholars have emphasized legal instruments, whilst sociologists have emphasized other forms of control; economists have viewed regulation as a tool used only when necessary to deal with market failures; and public administration scholars have emphasized the authority of the state and its formal regulatory organisations.¹⁹

Pooling these observations, it seems that our fundamental conceptions of regulation have ranged from, at the one end, seeing regulation as a strict legal concept in which laws and regulations are determined through the legislative processes of Parliament through to a more fluid behavioural concept in which regulation is seen as a focused attempt at controlling the behaviour of others. Such competing notions of regulation have been progressively subject to cross disciplinary analysis, and our early narrow ideas have been broadened. Contemporary regulation is now viewed as covering multiple disciplines. It is also seen as ‘decentralised’ and as crossing all sectors; industry and civil society both ‘regulate’, as too does government. The traditional ‘command and control’ concept of regulation has thus been broadened to include instruments and activities which extend well beyond the law. According to Black (2002, 19), for example, regulation is:

‘the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes’.²⁰

This broader notion of regulation has led to several important insights, not only for the language of regulation, but for debates around revisiting the market and the state.

First, today’s concept of regulation includes a wide range of regulatory mechanisms and tools. These range from government Acts and Regulations through to codes, guidelines, standards, contracts, grants, economic incentives, information usage, markets, licences and accreditation schemes. There are a multitude of regulatory tools and techniques now at our disposal, with black letter law being only just one of these options. Moreover, if our conception of regulation has been broadened to one where regulation involves sustained attempts to alter behaviour according to standards for an outcome, then the role of regulation involves far more people than simply those employed in formal regulatory agencies. As Levi-Faur (2010; 10) put it ‘whilst only few of us are acting as professional regulators, most, if not all, of us act as regulators in some capacity’. The point being made here is profound – if we aim to change behaviour in a sustained way– we are regulating.

Second, the extent to which regulatory activity includes a range of activities from hard law through to soft law has also been described in frameworks such as the enforcement pyramid first articulated by Ayres and Braithwaite (1992)²¹. The implication of this framework is that much regulatory time is spent on establishing systems of compliance for ‘normal behaviour’ (through licensing and accreditation schemes for example), and on measuring and monitoring, as well as in regulatory conversations, assessing and reporting, and as opposed to formal court proceedings. In other words, regulation involves ‘soft law’ pressures as much as it does black letter law. And many of these activities are inherently cross

¹⁸ Levi-Faur (2010;4)

¹⁹ Levi-Faur(2010; 4,5)

²⁰ Note that this particular definition of regulation does not even include the usual criteria of ‘rules’ which is most commonly taken as the central criteria for definition.

²¹ There are today dozens of different versions of this regulatory pyramid idea; Freiberg (2010)

disciplinary and cross sectoral rather than belonging to one specific group. Regulation has quietly become a multi-disciplinary professional pursuit.

The third insight is that the locus of regulation may be from inside government, through independent institutions or through hybrid mechanisms. It may also occur through co-regulation, self-regulation or even ‘meta’ regulation, where our regulatory bodies oversee others (as occurs with accreditation bodies for the professions, for example) who themselves do the detailed oversight. The last two decades, too, have seen the rise of the independent regulator, as noted by Gilardi, Jordana and Levi-Faur (2006) in relation to many jurisdictions and sectors. They found that the number of independent regulators across thirty six countries increased through the 1990s by two and half times the increase over the previous three decades. Whilst regulatory agencies were not, strictly speaking, a new feature of modern systems of governance, they became a highly popular form of governing throughout the 1990s²². Not only was it essentially a global phenomenon, but it was also observed across both economic sectors (electricity, telecoms, competition...) and social sectors (food safety, pharmaceuticals, media, environment.) This is shown in Figure 1, below. What is clear from this expansion is that the regulatory phenomenon was in practice far broader in its application than narrow legal or economic notions of regulation only being applicable to instances of say market failure²³.

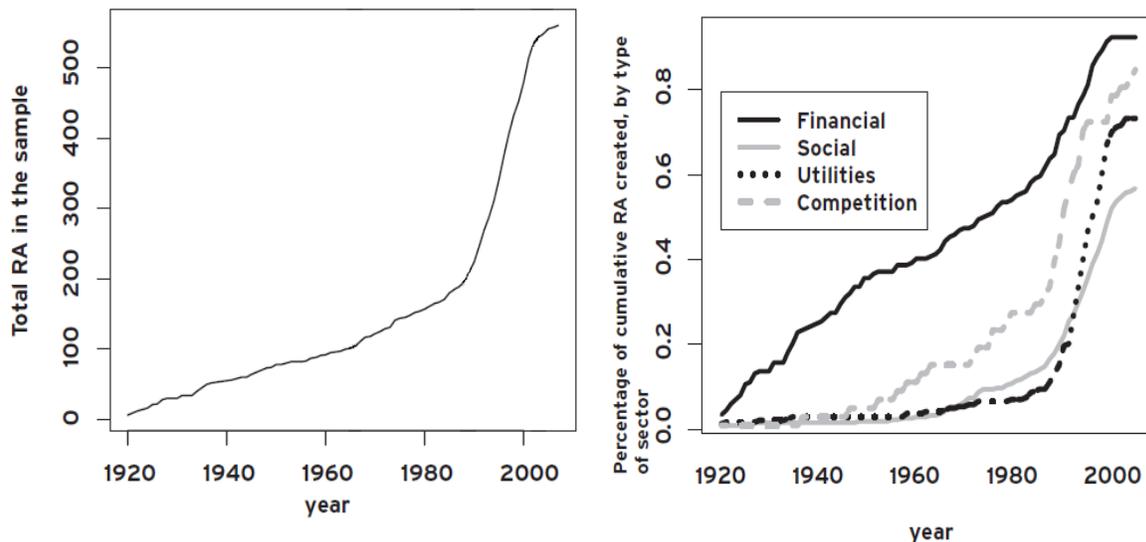


Figure 1: Cumulative annual creation of regulatory agencies (RA) across 48 countries and 16 sectors over 88 years (1920–2007). Source: Jordana, Levi-Faur and Fernandez (2009).

As our fourth insight we have come to understand that regulation has not simply been a phenomenon which has occurred as a result of the frequent privatisation of essential public services. It has represented a more fundamental re-ordering of societal priorities and power. Regulation, as argued by Majone (1999, 1), has essentially been recognized as ‘a distinctive mode of policy making’ and become an ‘alternative mode of public control’. This is a powerful insight. Braithwaite et al (2007) push this notion further, suggesting that the regulatory role of government was not only an important one, but a role which was increasing. They noted that the work of governments broadly included three functions: providing, distributing and regulating and they observed that whilst the government’s role in directly providing

²² Levi-Faur (2010; 15)

²³ Victorian regulators such as the Environmental Protection Authority (EPA) or The Victorian Assisted Reproductive Treatment Authority (VARTA), which provides services supporting fertility and assisted reproductive treatment needs are further clear examples of non-economic regulators.

services was currently decreasing (through, for example, outsourcing and privatisation), and their role in distributing (or redistributing) wealth will continue unabated through time, the government’s role in regulating is increasing through a myriad of ways. Indeed, regulation has now become a policy preference of government. We have indeed been changing the architecture of governing, and applying in the words of Roberts (2010a; 4), the ‘logic of discipline’ to government by shifting power to technocrat guardians shielded from political influence.

Numerous regulatory instruments are now available, and our fifth insight stems from this. Looking at how governments regulate, for instance, Freiberg (2010) lists six different ‘pure’ modes. And each of these modes typically has dozens of different tools within it. He explains that states may act through *economic* tools (such as through creating or shaping markets, taxing, quotas or pricing), through *transactional* tools (where governments influence behaviour through contract or grant conditions for minimum wages, for example), through *authorizing* tools (of registration, licensing, permission, accreditation or litigation), through *informational* tools (such as product labelling or disclosing interest rates for example), through *structural* tools (of physical design, or processes such as Australia’s ‘our ‘Pay as You Go’ tax arrangements²⁴) or through the more traditional and familiar *legal* tools (where laws, rules and regulations are made). What is clear here is that there are a range of regulatory tools available to the government and that traditional ‘command and control’ instruments, where government acts as a legislature, constitute only one of these tools²⁵. Perhaps less clear, but equally important, is the sense that regulation activities may be either positive (so that particular behaviours are encouraged through incentives) or negative (where behaviours are discouraged through disincentives). Figure 2 outlines these concepts.

Regulatory Tools for Govt					
Economic Price/tax/subsidy	Transaction Contract/grant	Authorisation License/register/certify/accredit	Information Disclosure/PIs/credit rating	Structural Physical or process design	Legislator Primary/delegated/quasi

Figure 2: The Regulatory Tools of Government (Source: Freiberg, 2010).

Rather than focusing on the degree of perfection achieved in the text of legislative instruments, therefore, scholars and decision makers have shifted their attention to questions of how regulatory systems can be best designed, what tools and mechanisms work most effectively in particular circumstances and the degree to which citizens and other stakeholders see regimes as having legitimacy and credibility (see, for example, Bartle and Vass, 2007; Black, 2008). As well, scholars rightly concern themselves with the responsiveness of regulators to dynamic environments and the overall effectiveness of the regimes in practice.

The sixth insight is that regulatory activity has remained – despite what some commentators care to argue – an inherently political activity. Whether governments choose to regulate directly through, for example, legislation, independent institutions, monitoring and reporting regimes, markets or the employment of incentives or contracts, the choice of mechanism and the content comprising the regulatory fabric are political decisions. Moreover, regulation is preceded by policy choices in the face of public interest debates and discussion. Such choices involve, by very definition, conflicts in values. Indeed, as Van de Walle (2009, 45) states, government by its very nature ‘is constantly dangling in an uneasy equilibrium between competing values.’ As a consequence, there is rarely one single ‘best approach’ to organise

²⁴ In this scheme, the employer takes out a standardised percentage of the employee’s tax and forwards it to the tax office before each salary or wage payment get to the individual.

²⁵ We might also observe that whilst we cede the power of law making to governments, most of these pure modes of regulation are also available to the business and civil society sectors.

regulatory regimes to the advantage of citizens. Such choices on regulatory activity also involve discussions which continually move between today's reality of 'what is', to differing conceptions of 'what should be' in a better, future world.

Overall then, it is clear that today's conceptions of regulation are far more expansive than in the past. These broader conceptions of regulation also assist us in understanding how over the past few decades we have progressively changed governance structures and how the state itself has been reshaping and adapting. These have real implications for how the state might adapt in future. A richer and more sophisticated approach to discourse around issues of market and state is needed.

To begin with, the very notion of the state as the centre of regulation has been a misconception. Regulatory space is always more complex than that, and the state competes with others for regulatory influence. As we hinted earlier, the three sectors (the state, market actors and civil actors) potentially regulate each other as well as themselves. Businesses regulate other businesses (through contractual standards for food manufacturing or processing throughout the world, for example), and parts of government regulate other parts of government. NGOs accredit codes of conduct to assure clean business practices. International accounting bodies regulate reporting standards. ISO steers standards which underpin law supporting trade and economic flows. And so on. As well, the practice of auditing and the growth of Ombudsmen can also be viewed as regulatory tools.

As well, given our reconceptualisation of regulation as a phenomenon, we can now examine deeper questions concerning the nature of regulation within modern governing systems. We certainly appear to live in an era of 'the regulatory state' (Majone 1994) and as Jordana and Levi-Faur (2004; 8) remind us, and it has been a popular and convincing label which seems to capture the essence of changes in governing capitalist economies. But this label is somewhat of a misnomer, too. On the one hand the term regulatory state 'suggests [that] modern states are placing more emphasis on the use of authority, rules and standard-setting, partially displacing an earlier emphasis on public ownership, public subsidies, and directly provided services. The expanding part of modern government, the argument goes, is regulation...' ²⁶ But it is also a state centric view in a world where in order to understand how any one single actor is regulated, we need to look well beyond the state to multiple overlapping 'webs of influence' ²⁷. So, regulatory regimes are complex and overlapping, with governments being only one of the influential players. This view is also accompanied by some warnings: that multiple forms of control are employed in governing capitalist economies with several modes often co-existing; that the state does not operate as the sole source of regulatory control in any event; and that the regulatory state probably has a certain 'multi-levelness' to it both within one country as well as internationally. Nonetheless, public policy analysts probably recognise the major elements characterizing the regulatory state:

- Bureaucratic functions of regulation are separated from service delivery
- Regulatory functions are separated from policy making (and therefore are placed at arm's length from their political masters), and
- Regulation and rule making emerge as a distinct stage in the policy-making process, and therefore, a distinct profession and administrative identity; Levi-Faur (2010).

Allied to this 'regulatory state' idea is the concept of 'regulatory governance'. Minogue and Carino (2006) argue that 'regulatory governance is now fully accepted as a significant part of the literature on regulation in general and privatisation and post-privatisation regulatory reforms in particular'. To them, it is

²⁶ Jordana and Levi-Faur (2004; 8).

²⁷ Indeed Grabosky (1995) goes as far as to suggest that 'it is perhaps more useful nowadays to regard a regulatory system as consisting of layered webs of regulatory influence, of which conventional activities of regulatory agencies constitute but a few strands'.

‘an attempt to go beyond the formal rules that govern relationships between the public and private sectors, to the broader framework of state-market relations, and drawing on disciplinary contributions that range across economics, law, politics, and public policy and management’.

This view therefore sees regulatory governance as aiming to examine regulatory arrangements in relation to the general public policy process, and as ‘looking behind the institutional façade to grasp the ‘real world’ of public action’ as Minogue and Carino nicely put it. In doing so, it acknowledges fully that ‘independence from political control does not mean independence from public accountability’.

Even more broadly again has been the suggestion that we live in an age of ‘regulatory capitalism’. Braithwaite (2008; xi) explains that whilst many people saw the state running fewer things and regulating more, some analysts started talking about the regulatory state. He continues that

‘then it was recognized that many other organisational actors beyond the state were also doing a lot more regulating of other organisations than in the past, so some analysts ... spoke of a regulatory society. Along came David Levi-Faur and Jacint Jordana to point out that capitalist markets had become more vibrant at the same time as regulation of markets had become more earnest’.

Not only did they coin the phrase regulatory capitalism, but they also produced a large body of data showing that privatised markets and regulatory institutions had expanded beyond the west to around the world, and that markets themselves had been used as a regulatory mechanism of choice. To Braithwaite’s mind, then, we therefore saw not only ‘Freer Markets, More Rules’ (as Vogel, 1996 pointed out) but ‘more capitalism, more regulation’; a proliferation of new technologies of regulation; increased delegation to business and professional self-regulation and to civil society, to international networks of experts, and to increased regulation of the state by the state (particularly for competition).

More formally, Levi-Faur (2010) describes regulatory capitalism as:

- the growth in scope, importance, and impact of regulation at the national and global levels
- the growing investments of political, economic and social actors in regulation in general and regulatory strategies in particular, and
- the emergence, extension and consolidation of hybrid forms of regulation which shape diverse and more complex forms of regulatory regime.

To him, the idea of regulatory capitalism took regulatory thinking beyond national boundaries and beyond formal state centred rule making. It denoted a world where regulation was increasingly also a hybrid of different systems of control, where statist-civil regulation evolved, where national regulation expanded with international and global regulation, where private regulation expanded with public regulation, and where voluntary regulation existed with coercive regimes. And not only were we dealing with the growth of the regulatory state but also the growth in the number of civil and business actors that invested in regulation and their own business-to-business regulatory institutions and instruments²⁸.

²⁸ We ought to acknowledge that this broader idea of regulation and accompanying notions such as regulatory capitalism has been a serious challenge to legal scholars. As Morgan and Yeung (2007) put it, this breadth challenged traditional legal perspectives in three ways. First, it challenges our assumption that the state is the *primary locus* for articulating community goals (cf the social influence of multiple non-state, civil society and business organizations). Second, it challenges the assumption of *hierarchy* - that the state has final authority (compared with multiple sites of governance operating in overlapping ways rather than simply vertically). And third, it challenges the assumption of centrality of rules – or in other words *commands as the primary mode of shaping behaviour* (compared to the real limitations of legal rules and potential for alternatives such as economic incentives to steer business, moral suasion, by shaming, and architecture...)

The implications of this notion of regulatory capitalism have been profound. Braithwaite (2008; xii), for instance, argues that this notion was a challenge to traditional social science disciplines that were preoccupied with geographically bounded political systems, legal systems and cultures. He also argues that the oft told story – of the triumph of neoliberalism at the end of the twentieth century - (and to him, widely believed on the far left and far right) - is a ‘fairytale’. Neoliberalism (defined as ‘a program for destroying collective structures which may impede the pure market logic’), and its Hayekian prescriptions of small government, privatisation and deregulation did not occur. Government typically got bigger in terms of spending power and employment numbers and was not hollowed-out, the state was still seen as vital to long term economic growth prospects, and changes from state ownership to private led to more regulation not less. Likewise, the cousin of neoliberalism, the ‘Washington Consensus’, stalled after disastrous privatisations in jurisdictions such as Russia and the ‘Washington Consensus’ became the ‘Washington Consensus plus good governance and the rule of law’.²⁹ To Braithwaite, then, regulatory capitalism triumphed, whilst neoliberalism lost the war for the hearts and minds of the world’s policy makers³⁰.

All of this is interesting, but again, so what? What are the implications of these ideas as we revisit notions of the state and its role in a time of global turbulence?

5. The Post-Global Financial Crisis Era

‘We are now at a unique point in history’ said one commentator the other day on Melbourne radio. Well yes, I guess technically we are because this point in time will never occur again. But like PPPs, there are some things which are old and some that are new. Whether it was the Tulip Crash of 1637, the South Sea Bubble of 1720, the Great Depression (1929-1930s), the collapse of the Savings and Loans industry in the US (1980s) or the Asian Financial Crisis in the 1990s, financial upheavals are in a sense not new at all. But as Jain and Jordan (2009) put it, ‘this one was truly different, stunning in its breadth, speed and dramatic consequences’. This is not a paper on the GFC itself, the lead up, how the crisis in confidence developed and how the contagion spread, but given our almost naivety thus far in our discussions, a few comments on the event and its aftermath are in order to provide a context in which our pathway ahead can be considered.

Authors such as Legg and Harris (2009) describe ‘How the American Dream Became a Global Nightmare’. They chart the ‘largest global shock since the Great Depression, inflicting heavy damage on markets and institutions at the core of the financial system’; the emergence of ‘sub-prime’ mortgages in the US and its ‘low-doc’ loans; how defaulting loans then led to the collapse of Lehman Brothers and the spiral of others that followed. As Michael Kirby said in his piece, ‘no country in the contemporary world seemed to be entirely immune from such a crisis’; Kirby (2010). From the rash of analyses following this collapse, it seems that there were a host of causative factors. Jain and Jordan (2009) argue that two factors were central;

- *Complexity* (in which ‘financial engineers managed to baffle their boards and even themselves, and through which financial products became incomprehensible gibberish’³¹)

²⁹ To Braithwaite, this description showed that despite regulatory capitalism having occurred rather than the neoliberal prescription, the neoliberals still could not use the dirty word ‘regulation’.

³⁰ Moreover, Braithwaite (2008; 20) argues that regulatory capitalism ‘is a story of reciprocal causation’ and that ‘the regulatory state creates mega-corporations, but large corporations also enable regulatory states’.

³¹ For example, ‘A Cayman Islands special purpose bankruptcy-proof vehicle borrows money from qualified institutional buyers in order to acquire a credit-linked note issued by a Luxembourg entity, guaranteed by a Jersey financing subsidiary of a Cyprus corporation that in turn hedges the risk with a credit default swap written by an Irish entity’; Buchheit (2008) cited in Jain and Jordan (2009).

- *Ideology and denial* (where both ‘foolish and irresponsible lending practices’ and the slow reaction of the US Federal Reserve and US Treasury exacerbated the crisis rather than ameliorated it³².)

In Kirby’s view, a common theme behind the regulatory gaps that emerged was the ‘failure of financial institutions to disclose essential information to investors and shareholders’. Underneath this, too, was the foundational belief in the power of markets - the efficient market hypothesis – or as Stiglitz (2004) coined it ‘market fundamentalism’. The market, alone, was seen as the driver of social progress, under the tight logic that full information rationally guaranteed equilibrium.

On the other side of the globe, Europe was caught in the contagion, and in more recent times, is now engulfed in the Eurozone sovereign debt crisis. The manner in which the current Eurozone crisis will be resolved is the subject of our daily newspapers and we all watch with interest. Unique times indeed? Actually, no. Roberts (2010b) argues that the current Eurozone crisis is not unique at all – and that tellingly, the US experienced a similar crisis following the financial panic of 1837. This is a profoundly interesting story. Between 1837 and 1848, the US saw the ‘bursting of an asset bubble, followed by a banking collapse, followed next by a depression and defaults by eight of the country’s twenty six state governments’. Indeed, 1837 saw the US struck with a ‘paralysis of private credit’. This series of events led to extraordinary political turmoil and undermined the stability of the federal system itself. The subsequent restoration of political and economic order was ‘a long and painful process, as enraged voters confronted the costs of inaction and [eventually] accepted new constraints on democratic processes’.

The parallels here are again eery. First, the fragility of the social trust systems underpinning financial markets and economies became apparent. Indeed, the US, a vibrant but young federation could not borrow money from Europe (on which it had become dependent) in 1842. European investors saw the US as lacking credibility. As Roberts (2010b) remarked:

[European] ‘investors refused to distinguish between defaulting states and those which still honoured their debts – all were frozen out of the overseas capital markets. London’s Barings Bank warned its American agent in 1842 that ‘no new Loan shall be introduced here while there is any one of the states as a defaulter’. To some degree, investors were asserting a doctrine of collective guilt. ‘It is quite in vain’, The Times of London said, ‘for the honest portion of the United States to assert that because they have no direct share in the guilt and turpitude of the repudiating states, therefore they are to stand clear...[T]hey are citizens of a country in which such acts are committed with impunity...’

Even the Federal government – with an impeccable record of honouring its debt was tainted. Its own attempt to borrow in London and Amsterdam in 1842 met with failure. ‘You may tell your government,’ the financier James de Rothschild told US agents, ‘that you have seen the man who is at the head of finances of Europe, and that he has told you that they cannot borrow a dollar, not a dollar.’

Secondly, and tellingly, infrastructure was also implicated to a degree in this crisis. The Erie Canal, completed in 1825, was pronounced an engineering and financial masterpiece - it demonstrated that public works could be funded through the use of sovereign debt that was then repaid with toll revenues rather than through ‘politically awkward tax increases’. And by 1837, a mammoth internal improvement

³² Jain and Jordan indeed argue that the US Federal Reserve and the US Treasury ‘were a main driver of the chaos’ when they finally did intervene against their overwhelming faith in the market to self steer).

bill had been racked up by US states for funding canals, toll roads and railroads. Once the economy collapsed, it was these infrastructure financing debts which could not be repaid.

Third, as early as 1839 American and British financiers were already floating ‘the idea of having the federal government help states by guaranteeing or assuming state debts’. So, privatising the profits from transactions and socialising the losses during financial crisis seems to be a well worn historical position from the financial sector.

Fourth, the social effects of the economic crisis were, in Roberts’ words ‘profound and sometimes unexpected’. Civil order became difficult to maintain and ‘elections became especially violent’. By 1842, workers felt disenfranchised and powerless and this grew into a mass movement.

Finally, it took some years before, in 1843 some of the defaulting state governments eventually agreed to honour their debts. Many voters, though, ‘resented measures that rewarded foreign and domestic bankers who had played such a large role in triggering the crisis’. And this occurred in places such as Pennsylvania and Maryland only after major European investment banks had financed a public relations campaign and made generous contributions to friendly legislators!

6. Some Performance Thoughts Moving Forward

Clearly, we do live in a very different time than 1837. But just as clearly, there are some things that are new and some that are not. A potential starting point in considering our future is to determine which is which. Many factors obviously have a long pedigree; the inevitable dance between the interests of capital and those of social progress; the difficult task of publicly contesting and defining the public interest through open politics; and the shadowy influence of powerful private players are some that immediately come to mind. These are huge issues covering tricky territory. But they are also crucial. For example, one observation that I would make of the past few decades was the use of language so that the very phrase ‘public interest’ was not used. Like an Orwellian story, it wasn’t broadcast by public servants, so it simply did not exist. I would hope that our post-GFC environment sees a resurgence of the phrase. After all, pursuing the public interest is surely the central purpose of government³³. It is the common good or collective good. As Mulgan (2000; 7) put it, though,

‘judgements [regarding the public interest] are inherently complex and contestable’ ...
‘policy choices in the public interest cannot be reduced to objective, technical calculations’ ...and ‘assessments of the public interest are thus always political assessments, whether taken by politicians, public servants, courts, advisory councils or any other citizens’.

The public interest is therefore complex and as much about national development, the use of public, private or civil society power, the place of public ownership and collective influence as it is about economics, business or markets. Clearly, defining and regulating in the public interest is a long term and complex political endeavour because, as Morgan and Yeung comment, it seeks a higher order position than simply market equilibrium, customer satisfaction or satisfying sectional interests. Ministers determine the public interest, always subject to Parliamentary and electoral accountability, and it is the task of public servants to defend due process in this regard.

On the matter of public versus private interests, too, a regulatory lesson of the past few decades is also that if we see the world in terms of simply a private versus public battle, we miss a bigger point - it is

³³ Contrasting this noble sentiment, and emphasizing the art of governing, Shaffritz and Russell (1997; 40) note that the ‘public interest is the universal label in which political actors wrap the policies and programs that they advocate’.

really the fabric and effectiveness of regulatory arrangements that matters most. We used to regulate through public ownership, and governments historically achieved a level of behaviour change from these enterprises on behalf of citizens. Such behavioural influence can also be achieved through effective regulatory regimes. Whether our debate is centred in the economic domain or the social, regulatory effectiveness itself matters – albeit that those debating regulatory options today from different disciplines often mean quite different things by these words and talk past each other in their advocacy.

One of my own surprises when reading about the lessons from the GFC is the extent to which people have already decided what the lessons have been. On one side, some emphasize poor government policy and ineffective regulators, whilst those opposing this explain the lessons as an example of the complete failure of the capitalist model altogether. My version of our real lesson here probably comes down in between these two sides, and is that some of the varieties of capitalism (particularly the financial sector of the US, as well as others that followed that model) clearly did fail, and the regulatory environment (which assumed that a perfect market would self regulate amidst weak formal regulation) was a central feature of this failure. But the bigger learning is that whilst this was a clear failure of public policy with global consequences, our personal views on whether governments of the future should favour this sector or that has probably been hardened rather than been changed.

But there are also some factors which are new. Whilst we may have lived in a globalised and interconnected world for some time, today's world is one of greater immediacy, real time access and information overload. Technically, we ought admit that we live longer and are more healthy than ever before, so some things are going well! We are all also subject these days to a huge raft of transparency and accountability mechanisms, ranging from our traditional expectations of political accountability (which for the past few centuries have clearly been imperfect!) through to a powerful media³⁴ and a raft of oversight and accountability bodies. Indeed, the oversight and accountability space is now both more crowded and contested than it once was. Greatly increased complexity, too, is a factor of today, as is also the presence of a globally influential consultocracy. Hodge and Bowman (2006), for example, put the size of the global consulting sector as one employing some 463,000 employees across 123 countries, and these days, global consulting revenues probably amount to around \$185US billion per annum.³⁵

We will also no doubt now need to relearn some old lessons – like the importance of public scrutiny, being sceptical of financial salesmen, acknowledging conflicts of interest and getting professional accounting and performance monitoring numbers correct as well as learning some new ones. I have been struck by the continuing salesmanship of the financial sector post GFC. There has been a consistent promise of future gains (to governments, consumers and citizens) which we might contrast against the actual current fees and immediate cash rewards attached to the transaction for those directly involved. Is this new? No. One of my major conclusions when I reviewed the privatisation literature during the 1990s was exactly this – the contrast between future general promises to the populace as against immediate cash paid to individuals today; Hodge (2000)³⁶.

More profoundly, too, there has always been a continuum of public – private forms of organisation rather than a clear line of public on one side and private on the other. And this has progressively become blurred

³⁴ Studies such as McMillan and Zoido (2004) suggest that the role played by a free media is surprisingly strong compared to traditional mechanisms such as ministerial responsibility, or even the judiciary. Their study examined the corrupt regime of Peru, which in the 1990s had a full set of democratic institutions. The secret-police chief Montesinos, however, systematically undermined almost all of them with bribes. McMillan and Zoido quantified the bribes paid out. Surprisingly, Montesinos paid a television-channel owner about 100 times what he paid a judge or a politician. Indeed, one single television channel's bribe was five times larger than the total of the opposition politicians' bribes. Their conclusion was that the strongest check on the government's power was the news media.

³⁵ This figure is derived in Hodge, Greve and Boardman (2010).

³⁶ We also witness the never ending desire for capital growth from business, with even the richest individuals, such as Australia's richest person, Gina Reinhart, calling for governments to reduce the 'suffocating level of red tape' burdening business such as hers so that her companies can become more competitive (and thereby increase her inherited wealth further); Kilnger (2011).

over the past several decades. Thinking about this issue from a regulatory perspective, though, perhaps we need to not only acknowledge this blurring, but challenge it as well. It seems to me that when governments use private contract law as their regulatory tool and choose to keep key performance figures secret along with information such as public sector comparator calculations, citizens have every right to cry foul. In much the same way as workers and shareholders cry foul when executive salaries rise whilst sackings or losses occur in a company³⁷. In this respect, the current ‘Occupy Wall Street’ social protest movement has a point. Even if business practices are deemed ‘legal’, that doesn’t mean they are fair or socially legitimate.

Perhaps the regulatory tool of ‘transparency’ could be tried out in innovative ways – why not put all executive salaries on the internet (a la Wiki-leaks style?) and challenge our previous assumptions as to what is public and what is private? Why not make conflicts of interest declarations matter and have high profile public halls of shame? Why not subject existing infrastructure contracts managed by an independent regulator who oversees the percentage returns to shareholders and stops excessive payments to either workers (who at the Victoria’s Desalination site can earn up to \$230k pa) and company executives? Indeed, why not simply put PPP contracts as well as other government contracts onto the net for scrutiny? Of course there are plenty of arguments against increasing disclosure. Stiglitz (2010), for example, answers the rhetorical question ‘Who can object to more transparency and better information?’... by stating simply that actually, hedge funds and their representatives in Treasury already have.

Also relevant is the historical lesson concerning the alliance of ideology and economic interests which lay behind the US initiated GFC. There has for some time been alliances of interest, both behind privatisation transactions (where investors and bankers have statistically gained far more than citizens), and PPP (where privatised finance has generally been good for upfront bankers, consultants, lawyers, business advisors, and contractors as well as good for governments who have wanted photo opportunities and good looking infrastructure before the next election. But will the next global financial crisis be a PPP led collapse? This has already been suggested by one US scholar (Sclar 2009). The idea, whilst to me somewhat overblown, is nonetheless intriguing in light of the lessons from the 1842 financial crisis, and it is certainly controversial.

Another old lesson has been the imperfect nature of the homo-economicus model. People are as generous, altruistic and accepting of obligations to others as they are selfish; they are clearly co-operative as well as competitive; and they are swayed by beliefs about which party will do the most for national prosperity and welfare as well as their own pocket. Models which ignore such factors are ‘at best incomplete, and at worst misleading and damaging’ as Boston (1991) and Self (1994) said two decades ago. Likewise, the notion that humans are essentially not comprehensively rational but are subject to bounded rationality is hardly new either. Herb Simon’s writings on this go back over five decades; Simon (1957).

Complexity is a modern day fact of life, so perhaps the real question here is not complexity per se, but how it is used. Relevant here is the issue of secrecy and disclosure, including access to information under complex contractual arrangements, and the practice of appealing to ‘commercial-in-confidence’ to shield reforming governments from disclosing contract information. In such instances, the public sees the use of complex arrangements as well as commercial-in-confidence as little more than a ‘figleaf’ behind which governments hide.

³⁷ Social concern in the face of outrageous executive remuneration arrangements has long occurred but with little follow-up action. A year before the global financial crisis, Australia’s Prime Minister John Howard criticised the \$11.78 million annual pay of Telstra boss Sol Trujillo, calling it unreasonable and saying that the capitalist system was being abused. Not only was Mr Trujillo’s total pay packet a factor of 38 times the salary of the Prime Minister, but this salary was received when during his tenure Telstra’s share price underperformed the market by around twenty percent, Telstra lost over \$25 billion in value, and customer complaints rose 300 percent.

And what of New Zealand's specific privatisation challenges? New Zealand not only faces the challenges of rebuilding after the financial turmoil of the GFC, but also recovering from debilitating natural disasters as well. I am sure having a win in the World cup (Go all Blacks!) boosts national confidence. With reference to today's conference location, I am equally sure that being one of the world's 'most liveable cities' according to The Economist augers well for your future as well. But what of political matters such as the proposed part privatisations of three electricity companies (Genesis Energy, Meridian Energy and MightyRiverPower), and the state coal company Solid Energy, and the sell down of the government's 79% stake in Air New Zealand? The plan, I am told, is for the government to keep a 51% stake and limit the role of foreign investors. The financial press I notice is already in a small frenzy counting the fees ahead of the sale, and boosting the confidence of potential buyers. And what of the strategy itself? I can well understand the nervousness of New Zealanders of full privatisation given the disastrous full privatisation of Tranzrail in 1993 and the forced buy back from government years later. Such reversals are never a good look. But difficulties with rail privatisations have been experienced around the world – the UK's disastrous rail privatisation attests to this. So, more generally, should a government sell 100% of an SOE³⁸? Into a competitive market – yes. But remember that it is government's responsibility to ensure that a competitive market exists as first priority before the sale³⁹. Australia's partial privatisation of its Telstra enterprise without having an agreed regulatory regime in place prior to the sale is a great example of what not to do! In other words, regulating effectively is the priority over maintaining partial public ownership.

We ought remember too, after multiple bank nationalisations following the GFC, that there is to my mind a sizeable difference between a government aiming to simply maximise proceeds from a sale (or else maximising the performance) of an individual corporation on the one hand, and nationalising an entity with the objective of stabilising the banking or financial system as a whole on the other. Clearly, part of tomorrow's public interest calculus for government will increasingly be concerned with systemic stabilisation or even systemic rescue initiatives rather than simply matters of either corporate efficiency or dashing for cash⁴⁰. Indeed, in turbulent times measures encouraging stabilisation are surely at the heart of the 'the public interest'. Notwithstanding this, we ought to still be asking both 'who is paying what for these measures?' and 'who is getting what from these measures'? These are priority questions amidst the inevitable complexity.

Remember, too, that our historical habit was to regulate through ownership, and for purposes of economic development or industry policy, ownership may be a sensible strategy. But in terms of corporate management, economic efficiency and maximising the proceeds from privatisation for citizens, my preference for a government which has made the decision to privatise, is for a clear regulatory framework to be established up front, followed by a full privatisation program. There is a parallel with PPPs here. We are promised the best of both worlds – the best of what the private sector can deliver in markets and the best of public sector involvement and control, too. But such regulation through public ownership leaves the new company with conflicted goals and may paralyse the government itself from taking independent judgments on what just constitutes 'the public interest' over coming decades as well as reducing sale proceeds⁴¹. Whilst we are promised the best of both worlds, part privatisation may end up delivering the worst of both worlds instead.

³⁸ Note one valid argument against fully privatising up-front might be on the basis of transaction size, where multiple transactions may be required in order for markets to absorb the sale.

³⁹ We ought to acknowledge too, that this involves more than simply writing a new regulatory regime to promote competition. Competition typically takes a decade to develop effectively.

⁴⁰ This point ought not be oversold however. History again provides us with a suitable reminder because a complete banking crash was avoided in the instance of the South Sea Company bubble in 1720 because of government assistance in stabilising the banks.

⁴¹ See Boardman, Freedman and Eckel (1986) for early research on the effect of government control on the value of a private company. They suggested a loss of between 8 to 19% in share value. Later research (Boardman and Laurin (2000) was more ambiguous and suggested long run corporate performance was effected positively by retained government ownership and negatively by the presence of a golden share.

7. Conclusions

There is much to learn from the global privatisation and partnership experience of the past few decades. In terms of enterprise sales, decades of mixed results conflict with the often heard claims of guaranteed superiority after sale from advocates. The need for government to set a strong and clear regulatory regime up front has also been a central theme. Indeed, regulation has turned out to be a more powerful influence than ownership change, despite our rhetorical debates to the contrary. This has turned out to be the new consensus. Privatisations that have worked well have enjoyed clear regulatory arrangements and strong regulators to protect the interests of consumers. We also concluded that in order to maximize the sale proceeds for citizens, an entity should be fully privatised (rather than part privatised) prior to sale. Indeed, partial privatisation should only be adopted as a last resort, and even then, only on the basis of excessive size. Far from getting the best of both worlds (public and private), part privatisation may result in the worst of both worlds. In any event, however privatisation is framed locally, clear regulatory arrangements are needed, along with transparency. Having said this, citizens will inevitably, and rightly, continue to hold the government to account for future essential services, whether privatised or not.

The lessons from PPPs were similar in that these arrangements offer an innovative and useful experiment in providing public infrastructure. Mixed results, however, have again been reported in terms of both value for money and the integrity of governance, and there is now room for learning on both sides.

Importantly, too, the notion of regulation has been found to be a useful one in that it not only brings together many of the disciplines here today, but also encourages new questions and the use of new lenses for problem solving as we traverse public-private debates. We will continue to want the best of both worlds as we move forward, and new regulatory options may well be possible if we are prepared to challenge old boundaries between public and private. Nonetheless, we should continue to ask ‘who is giving what’ and ‘who is getting what’ when financial engineering experts advise ministers, and political decisions are made to stabilise or correct markets. New debates will also hopefully be encouraged so that we may debate just what constitutes effective, legitimate and credible regulation; how we develop suitable regulatory capacity and avoid regulatory ritualism; and what regulatory regime is proportionate to the harms? Governments have tough decisions to make in turbulent times ahead, so perhaps they should also have as many historians on staff as they have lawyers and economists. Perhaps also a renewed energy is sensible to make clear conflicted interests along with stronger scepticism concerning the advice of the many who hold such conflicts. There are interesting times ahead.

References

- Abdala, M. A., (1992), *Distributional Impact Evaluation of Divestiture in a High Inflation Economy: The Case of Entel Argentina*, Boston University: Unpublished PhD Thesis.
- Australian Competition and Consumer Commission (2011), *Assessment of Telstra’s Structural Separation Undertaking and Draft Migration Plan*, Discussion Paper, August 30, 195.
- Ayres, I. and J. Braithwaite (1992), *Responsive Regulation: Transcending the Deregulation Debate*, New York: Oxford University Press.
- Bartle, I. and P. Vass (2007), ‘Self regulation within the regulatory state: towards a new regulatory paradigm?’, *Public Administration*, **85** (4), 885–905.
- Bel, G. and X. Fageda (2009), ‘Privatisation, regulation and airport pricing: an empirical analysis for Europe’, *Journal of Regulatory Economics*, **37** (2), 142-161.
- Black, J. (2002), ‘Critical reflections on regulation’, *Australian Journal of Legal Philosophy*, **27**, 1–36.
- Black, J. (2008), ‘Constructing and contesting legitimacy and accountability in polycentric regulatory regimes’, *Regulation & Governance*, **2**, 137–64.
- Blanc-Brude, F., H. Goldsmith and T. Valila (2006), ‘Ex ante construction costs in the European road sector: a comparison of public-private partnerships and traditional public procurement’, *Economic and Financial Report*, European Investment Bank, 1, 49.
- Boardman, A., R. Freedman and C. Eckel (1986), ‘The price of government ownership: a study of the Domtar takeover’, *Journal of Public Economics*, **31** (3), 269-285.

- Boardman, A. E. and C. Laurin (2000), 'Factors affecting the stock price performance of share issued privatisations', *Applied Economics*, **32** (11), 1451-1464.
- Boston, J. (1991), 'The theoretical underpinnings of public sector restructuring in New Zealand', in J. Boston, J. Martin, J. Pallot, and P. Walsh (eds), *Reshaping the State: New Zealand's Bureaucratic Revolution*, Oxford: Oxford University Press, 1-26.
- Boubakri, N. and J.C. Cosset (1998), 'The financial and operating performance of newly privatised firms: evidence from developing countries', *Journal of Finance*, **53** (3), 1081-1110.
- Braithwaite, J. (2008), *Regulatory Capitalism: How it works, ideas for making it work better*, Cheltenham: Edward Elgar.
- Braithwaite, J., C. Coglianese and D. Levi-Faur (2007), 'Can regulation and governance make a difference?', *Regulation and Governance*, **1** (1), 1-7.
- Buchheit, L. (2008), 'Did we make things too complicated?', *International Financial Law Review*, **27** (3), 24.
- Collyer, F., J. McMaster and R. Wetenhall (2001), *Public Enterprise Divestment: Australian Case Studies*, Pacific Institute of Management and Development, The University of the South Pacific, Suva, Fiji Islands.
- Cook, P. and C. Kirkpatrick (1988), *Privatisation in Less Developed Countries*, London: St Martins Press.
- Cook, P. and C. Kirkpatrick (1995), *Privatisation, Policy and Performance: International Perspectives*, London: Prentice Hall.
- Cook, P. and C. Kirkpatrick (1998), *Privatisation, Enterprise Development, and Economic Reform: Experiences of Developing and Transition Economies*, Cheltenham: Edward Elgar.
- Cook, P. and C. Kirkpatrick (2003), 'Assessing the impact of privatisation in developing countries', in David Parker and David Saal (eds), *International Handbook on Privatization*, Cheltenham: Edward Elgar, 209-219.
- D'Souza, J. and W.J. Megginson (1999), 'The financial and operating performance of privatisation firms during the 1990s', *Journal of Finance*, **54** (4), 1397-1438.
- Dagdeviren, H. (2009), 'Limits to competition and regulation in privatised electricity markets', *Annals of Public and Cooperative Economics*, **80** (4), 641-664.
- Falkenberg, H., K. Naswall, M. Sverke and A. Sjoberg (2009), 'How are employees at different levels effected by privatisations? A longitudinal study of two Swedish hospitals', *Journal of Occupational and Organisational Psychology*, **82** (1), 45-65.
- Fitzgerald, P. (2004), *Review of Partnerships Victoria Provided Infrastructure*, Final report to the treasurer, Melbourne: Growth Solutions Group.
- Freiberg, A. (2010), *The Tools of Regulation*, Sydney: Federation Press, 352.
- Galal, A., L. Jones, P. Tandon and I. Vogelsang (1994), *Welfare Consequences of Selling Enterprises: An Empirical Analysis*, Oxford: Oxford University Press and International Bank for Reconstruction and Development, The World Bank.
- Gilardi, F., J. Jordana and D. Levi-Faur (2006), 'Regulation in the age of globalisation: the diffusion of regulatory agencies across Europe and Latin America', in G. A. Hodge (ed) *Privatisation and Market Development: The Global Spread of Policy Ideas*, Cheltenham: Edward Elgar.
- Grabosky, P. (1995), 'Using non-governmental resources to foster regulatory compliance', *Governance*, **8** (4), 527-550.
- Hall, P.A. and D. Soskice (2001), 'An introduction to varieties of capitalism', in P. A. Hall and D. Soskice (eds.), *Varieties of Capitalism: The Institutional Foundation of Comparative Advantage*, Oxford: Oxford University Press, 1-68.
- Hellowell, M. (2010), 'The UK's private finance initiative: history, evaluation, prospects', in Hodge, G.A., C. Greve and A. Boardman (eds), *International Handbook in Public-Private Partnerships*, UK: Edward Elgar, 307-332.
- Hodge, G.A. (2000), *Privatisation: An International Review of Performance, Theoretical Lenses on Public Policy Series*, Boulder: Westview Press.
- Hodge, G. A. (2002), 'Privatisation: lessons from the war', *Alternative Law Journal*, **27** (4), 177-183.
- Hodge, G.A. (2003), 'Privatisation: the Australian experience', in D. Parker and D. Saal (eds), *International Handbook on Privatisation*, Cheltenham: Edward Elgar, 161-186.
- Hodge, G. A. (2004a), *The Global Spread of Privatisation Ideas Around the Globe*, Melbourne: Monash Institute for the Study of Global Movements.
- Hodge, G.A. (2004b) 'Governing with accountability: has Parliament abdicated in the age of public-private partnerships?', paper presented at the Parliamentary Environment and Public Works Committees National Conference, Melbourne, 12 July.
- Hodge, G.A. (2004), 'Conclusions', in *Power Progress: An Audit of Australia's Electricity Reform Experiment*, edited by Hodge, Sands, Hayward and Scott, Melbourne: Australian Scholarly Publishing, 196-215.
- Hodge, G.A. (2005), 'Governing the privatised state: new accountability guardians', paper presented at Accountable Governance: An International Research Colloquium, Queens University, October 20-22.
- Hodge, G.A. and C. Greve (2005), 'Conclusions: PPPs - a policy for all seasons?', in G. Hodge, and C. Greve (eds), *The Challenge of Public-Private Partnerships: Learning from International Experience*, Cheltenham: Edward Elgar, 332-349.
- Hodge, G. A. (2006), 'Public-private partnerships and legitimacy', *University of New South Wales Law Journal*, Forum, **29** (3), 318-327.
- Hodge, G.A. (2009), 'Privatisation', in *International Encyclopaedia of Public Policy: Governance in a Global Age*, edited by P. O'Hara, 3, 545-560.
- Hodge, G.A. (2010a), 'Reviewing public-private partnerships: some thoughts on evaluation', in *International Handbook on Public-Private Partnerships*, edited by G. A. Hodge, C. Greve and A. Boardman, Cheltenham: Edward Elgar, 81-112.
- Hodge, G. A. (2010b), 'On evaluating PPP success: thoughts for our future'. Keynote address presented to the Finnish Association of Administrative Sciences, Helsinki, November.
- Hodge, G.A. (2010c). 'Towards service oriented government through public-private partnership: some reflections and directions for China', paper presented at the Guizhou Workshop, China-Australia Governance Program, April 28-29.

- Hodge, G.A. and D.M. Bowman (2006), 'The consultocracy: the business of reforming government', in *Privatisation and Market Development: Global Movements in Public Policy Ideas*, Edited by G. A. Hodge, Cheltenham: Edward Elgar, 97-126.
- Hodge, G.A., C. Greve and A. Boardman (2010), 'Introduction: the PPP phenomenon and its evaluation', in G.A Hodge, C. Greve and A. Boardman (eds), *International Handbook in Public-Private Partnerships*, UK: Edward Elgar, 3-16.
- Jain, A. and C. Jordan (2009), 'Diversity and resilience: lessons from the financial crisis', *UNSW Law Journal*, **32** (2), 416-446.
- Jordana, J. and D. Levi-Faur (2004), 'The politics of regulation in the age of governance', in J. Jordana and D. Levi-Faur (eds), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, University of Manchester: Edward Elgar, 1-28.
- Jordana, J., D. Levi-Faur and X.I.M. Fernandez (2009), *The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion*, Working Paper No.28, Institut Barcelona d'Estudis Internacionals.
- Jupe, R. (2009), 'New labour, public private partnerships and rail transport', *Economic Affairs* **29** (1), 20-25.
- Kirby, M. (2010), 'Bankruptcy and Insolvency: Change, Policy and the Vital Role of Integrity and Probity', paper presented to the Insolvency Practitioners' Association of Australia, Adelaide, May 19.
- Klinger, P. (2011), 'Red tape burying mining industry future: Rinehart', *The Age*, 21 October.
- Legg, M. and J. Harris (2009), 'How the American dream became a global nightmare', *UNSW Law Journal*, **32** (2).
- Lendman, S. (2011), *How Wall Street Fleeces America: Privatised Banking, Government Collusion and Class War*, US: Clarity Press.
- Levi-Faur, D. (2010), *Regulation and Governance*, Jerusalem Papers in Regulation & Governance, Working Paper No.1, February.
- Majone, G. (1999), 'Regulation in comparative perspective', *Journal of Comparative Policy Analysis: Research and Practice*, **1** (3), 309-324.
- Martin, S. and D. Parker (1997), *The Impact of Privatisation: Ownership and Corporate Performance in the UK*, London: Routledge.
- McIntosh, K., J. Shauness and R. Wettenhall (1997), 'Contracting Out In Australia: An Indicative History', Canberra: Centre for Research in Public Sector Management, University of Canberra.
- McMillan, J. and P. Zoido (2004), 'How to Subvert Democracy: Montesinos in Peru', CESifo Working Paper 1173, Centre for Economic Studies and ifo Institute for Economic Research, Stanford Graduate School of Business.
- Megginson, W., R.C Nash and M. Van Randenborgh (1994), 'Financial and operating performance of newly privatised firms: an international empirical analysis', *Journal of Finance*, **49** (2), 403-452.
- Megginson, W.L., R.C. Nash, J.M. Netter and A.B. Poulsen (2004), 'The choice of private versus public capital markets: evidence from privatisations', *The Journal of Finance*, **LIX** (6), 2835-2870.
- Minogue, M. and L. Carino (2006), 'Introduction: regulatory governance in developing countries', in *Regulatory Governance in Developing Countries*, Manchester: Edward Elgar, 3-16.
- Mintzberg, H. (1996), 'Managing government-governing management', *Harvard Business Review*, **74** (3), 75-83.
- Morgan, B and K. Yeung (2007), *An Introduction to Law and Regulation: Text and Materials*, Cambridge: Cambridge University Press, 16-78.
- Mulgan, R. (1998), 'Identifying the 'core' public service', *Canberra Bulletin of Public Administration*, 87.
- Mulgan, R. (2000), 'Perspectives on the public interest', *Canberra Bulletin of Public Administration*, 9, 6-12.
- National Audit Office (2009), *Private Finance Projects*, A Report to the House of Lords Economic Affairs Committee.
- OECD (2008), *Public-Private Partnerships: In Pursuit of Risk Sharing and Value for Money*, Paris: 2, Rue Andre-Pascal.
- Osborne, D. and T. Gaebler (1993), *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, Reading MA: Addison-Wesley.
- Public Accounts and Estimates Committee (2006), *Report in Private Investment in Public Infrastructure*, Seventy First Report to the Parliament, October.
- Parker, D. (2003), 'Privatisation in the European Union', in D. Parker and D. Saal (eds), *International Handbook on Privatisation*, Cheltenham: Edward Elgar, 105-128.
- Parker, D. (2004), *Lessons from Privatisation*, Oxford: Blackwell.
- Prokopenko, J. (1998), 'Privatisation: Lessons from Russia and China', Enterprise and Management Development Working Paper EMD/24', *International Labour Organisation*.
- Saul, J. R. (1997), *The Unconscious Civilisation*, London: Penguin Books.
- Roberts, A. (2010a), *The Logic Of Discipline, Global Capitalism and the Architecture of Government*, Oxford: Oxford University Press.
- Roberts, A. (2010b), 'An Ungovernable Anarchy': The United States Response to Depression and Default, 1837-1848', *Intereconomics*, **45** (4), 196-202.
- Savas, E.S. (1987), *Privatization: The Key to Better Government*, N.J: Chatham House Publishers.
- Sclar, E. (2009), *The Political-Economics of Private Infrastructure Finance: The New Sub Prime*, Centre for Sustainable Urban Development, Columbia: Columbia University.
- Self, P. (1994), 'Public choice and public benefit: politics, public service and markets', paper presented to the Annual RIPPAA Conference, Melbourne.
- Shafritz, J. M. and E.W. Russell (1997), *Introducing Public Administration*, New York: Addison-Wesley.
- Simon, H. (1957), *Administrative Behaviour*, 2nd edn, Free Press: New York.
- Simon, H. (1997), Keynote address presented to the American Society of Public Administration Annual Conference, Pittsburgh, July.
- Stiglitz, J.E. (2002), *Globalisation and Its Discontents*, New York: Penguin Books.
- Stiglitz, J.E. (2003), *Roaring Nineties*, New York: Norton.
- Stiglitz, J. E. (2004) Capital-Market Liberalisation, Globalisation, and the IMF, *Oxford Review of Economic Policy*, **20** (1), 57-71.

- Stiglitz, J.E. (2010), 'Government failure vs. market failure: principles of regulation', in *Governments and Markets: Towards a New Theory of Regulation*, edited by E. J. Balleisen and D. A. Moss, Cambridge: Cambridge University Press, 13-51.
- Stretton, H. and L. Orchard (1994), *Public Goods, Public Enterprise, Public Choice: Theoretical Foundations of the Contemporary Attack on Government*, New York: St Martins Press.
- Taggart, M. (1992), 'The impact of corporatisation and privatization on administrative law', *Australian Journal of Public Administration*, **51** (3), 368-373.
- The Corporation (2003), A documentary film by M. Achbar, J. Abbott and J. Bakan.
- VAGO Auditor General of Victoria (2005), Franchising Melbourne's train and tram system, Victorian Government Printer, September.
- Van de Walle, S. (2009), 'International comparisons of public sector performance: how to move ahead', *Public Management Review*, **11** (1), 39-56.
- Vogel, S.K. (1996), *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*, New York: Cornell University Press.
- Wright, R. (ed) (2010), *Bailouts: Public Money, Private Profit*, Columbia: Columbia University Press.