DEMOCRATIC GOVERNANCE APPROACH TO REGULATORY REFORM IN CROATIA: OPPORTUNITY FOR DEVELOPMENT OF CONSTITUTIVE POLICIES?

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(1) Introduction

Regulation is a type of compulsory policy instrument which has high level of state involvement (or coercion) (Howlett, Ramesh, 1995:80-101). Contemporary policy-making characterized by governance is the context of decreased faith in formal-legal powers of the state. Efficiency of the command through hierarchies and control through ‘top-down’ principles is decreasing and losing importance, so authority of contemporary state is less based on legislative powers. Hence, understanding of the modifications in the ways regulations (but not only laws) are created, implemented and evaluated represents great challenge for the political science researcher. In that sense, political science is focused on decision-making processes about or within the reform, on interpretation of reform’s purposes and goals, and on effects of the regulatory reform on policy making.

Regulatory reform, as a part of public sector reform, refers to a change in ways or in modes regulation is used as policy instrument, especially (but not exclusively) in its creation. Historically, main impulses for regulatory reform came from economic crises in the 1970s, which brought up the reorientation of state goals towards more competitiveness. To achieve those aims higher level of efficiency and effectiveness of public administration are necessary. Parallel trend of privatization also fostered regulatory reform.

Today, regulatory reform is a global trend, present in almost all OECD countries (although in different stages and with different success). In that sense, regulatory reform and introduction of regulatory impact analysis (RIA) is almost unavoidable for new democracies as Croatia. Even if some countries are not able or willing to introduce regulatory reform in an extensive form, it’s hard to reject / not to use it on a discourse level – as a normative concept, as policy as intentions (Page, 2006). Today’s “necessity” of regulatory reform is accompanied by its hard criticism, especially as a neoliberal “product”. In a simplified manner critique says that regulatory reform is a set of tools that is presented as value-neutral, but is in fact promoting interests of big business and neoliberal world-view. In that sense, regulatory reform is “accused” as being illegitimate, or, at best, missing a big part of it.

This paper will explore different understandings of regulatory reform – different sets of its goals – and claim that broader framework of understanding reform is coherent with more value systems and values different / opposite to the neoliberal ones. In that aspect, regulatory reform can involve more types of actors and bigger number of actors, and enhance its own
legitimacy. This idea is inspired by democratic governance approach to regulatory reform research, and that approach will be the applied to Croatian regulatory reform. Croatia is at the beginning of regulatory reform – just started to introduce it, so is quite adequate example to research the logic of reform’s introduction that democratic governance approach promotes. That is a change of opportunity structures for actors to interact to create more open and transparent systems of regulatory governance (Radaelli, De Franceso, 2007). So the paper will try to explore positive effect of the regulatory reform and claim that it’s a chance to develop constitutive policies.

(2) Modes of regulatory reform
Regulatory reform is a quite diffused process, so it has different forms, understandings, intensities… in different countries and policy practices. For the purpose of this paper diverse features of the regulatory reform will be summarized as two modes, which differ as two phases of the reform, two frameworks of understanding its goals and two sets of policy sectors as objects of the reform. In practice, of course, phases can appear simultaneously (as in “late comers” as Croatia), or some features can be “cross-listed”, but following simplification onto narrower and broader regulatory reform will help in emphasizing and analyzing its benefits. Shortly, regulatory reform went from ‘deregulation’ phase to the ‘better regulation policy’ phase. First phase is coherent with the ‘quantitative’ framework of understanding its goals, and better regulation policy with ‘qualitative’ framework. Deregulation and ‘quantity’ focus on the economic policy sectors. Quality framework and better regulation policy add noneconomic policy sectors as objects of the regulatory reform. Let’s us describe this development a bit.

Regulatory reform started with the phase of deregulation or with the efforts to simplify regulatory systems to reduce (administrative) burdens, costs, risks and barriers for business sector activities. But deregulation, as the least sophisticated way of reforming regulation-creation (Radaelli 2004:737), was critical juncture (see Thelen, 1999) in the development of regulatory reform. Second phase of regulatory reform was development as better regulation policy (and regulatory management, usually in a form of special governmental office for coordination of regulatory reform). Better regulation policy means application of the new principles and techniques of creating regulation onto non-economic sectors also. So the term of regulatory reform, in last 15 years, is applied on different trends of deregulating and re-regulating, and same changes can be noted on the EU level (Majone, 1996).
Symbol for regulatory reform and central element in its discursive properties (Radaelli, 2007) is regulatory impact assessment (RIA), special kind of policy analysis applied on regulation, dominantly in formulation stage of policy process (as ex-ante evaluation). RIA has a special focus on evaluating different alternatives, on the one hand, and on systematic process of consultations with stakeholders, on the other hand. Hence, RIA tends to expand empirical base for decision-making and to make regulatory process more transparent and accountable (Radaelli, 2004).

Therefore, deregulation, highly dominated by neo-liberal values, comprehends regulatory reform as a necessary element of economic development and growth of competitiveness. Regulatory system has to be simplified to eliminate, as much as possible, (administrative) burdens and obstacles for business sector. Development of regulatory reform towards better regulation policy expanded its scope and aims. So regulatory reform tries to comprise not only regulative policies, as Lowi’s type (Lowi, 1988; Lowi, 1972), but also constitutive policies or protective regulative policies, as Ripley and Franklin have modified the type (Birkland, 2001).

Hence, in a second phase, special set of standards and procedures are applied on regulation that targets to diminish market failures (as pollution) and to protect consumer and other human rights. Anticorruption policy is also a good example of constitutive policies that should be included in regulatory reform as better regulation policy. Or, in EU language, better regulation policy should accomplished not just single market, but also sustainable development and social cohesion. Those movements were accompanied by development of different kinds of RIA (beside the fiscal one, grounded on financial cost and benefits), as broader economic RIA and environmental and social RIAs. This kind of understanding of regulatory reform is not focused on simplification of regulatory system, but on its quality. So, regulatory reform within it has a normative bias, or two distinct frames of interpretation – ‘quantity’ vs. ‘quality’ (Radaelli, 2007:190).

(3) Importance of constitutive policies
As regulatory reform has became more an (international) context (‘It’s out there’, Radaelli, 2007:195), than a process that can be reversed or ‘jumped over’, it’s critical to evaluate it through its two goal-frameworks. Main hypothesis of this paper is that, when border understanding or ‘quality frame’ of regulatory reform is accepted, critic that it is dominated by neoliberal values is less strong. And exactly that’s the way to ensure its otherwise
questionable legitimacy because it opens regulatory process for more actors, different types of actors, and potentially more value-systems. Within broader framework of understanding reform’s purposes, quality of regulation is public good *per se*, and this is the “engine” that could enhance development of constitutive policies. That’s reform’s most important potential. If regulatory state is unavoidable trend (especially in European context), which means that regulatory function of the state is becoming more and more important, on the expanse of the stabilization and redistribution function of the state (Majone, 1996), constitutive policies are becoming crucial ones.

Redistributive policies, through which state used to fulfill its redistribution function, lose importance, especially because they heavily rely on the budgetary funds. Redistributive policies, which are most typical topics of electoral campaigns and party affiliations and public debates, with the reduction (or at least stop of growth) of public sector and public expenditures, necessarily have diminished maneuver space. Same range of visibility in the public can be attached to constitutive policies, because they share the feature of broadly distributed benefits, and they could / should partly substitute redistributive policies in contemporary policy making.

*Table 1: Lowi’s public policy typology*

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<th>BENEFITS</th>
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<td>Narrowly concentrated</td>
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<td>Narrowly concentrated</td>
<td>Regulatory policies</td>
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<td>Broadly distributed</td>
<td>Constitutive policies</td>
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Constitutive policies, in difference to redistributive ones, heavily rely on the regulation as policy instrument, and they share a feature of narrowly concentrated costs with the regulative policies. So they are somehow “inborn” with the regulatory state. As regulative policies are often criticized as those who privilege capital and business and have hidden neoliberal values within, constitutive policies could became its counter-balance. If the regulatory state (as ‘post Keynesian welfare state’ – Majone, 1996) is unavoidable, which means that a big part of
redistribution is / will be abolished, constitutive policies (as consumer rights or disability rights policy) are those to achieve goals of social cohesion / inclusion and solidarity.¹

(4) Approaches to the regulatory reform research

Beside the extensive diffusion of practice of regulatory reform, that topic is becoming fastly increased field of research (Scott, 2006). Basic political science research questions about regulation as a field of research is about the relationship between the logic of the adoption of regulatory reform and RIA to the model of the regulatory state (Radaelli, De Francesco, 2007). Four approaches deal with this question (Table 2) and stress out: importance of delegation chain and principal-agent relationship; usage of regulatory reform as an instrument for achieving broad economic goals; or as a part of rational policy making for increasing net welfare of the community. Fourth approach to the research of regulatory reform is democratic governance, by which this paper is inspired.

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<th>Logic underlying the adoption of regulatory reform</th>
<th>Models of regulatory state</th>
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<td>Political control of bureaucracy (principal-agent models)</td>
<td>- Regulatory state as creation of control capacity and increased reach of public intervention</td>
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<td>- Symbolic models</td>
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<td>Economic outcomes (politico-economic models)</td>
<td>- Politico-economic models of the regulatory state</td>
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<td>Changing the opportunity structure of regulatory choice in order to achieve open governance</td>
<td>- Neo-pluralist regulatory state</td>
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<td>- Civic republican governance</td>
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<td>Rational policy-making</td>
<td>- Non-majoritarian regulatory Governance</td>
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Modified from: Radaelli, De Francesco, 2007:5.

Democratic governance approach sees introduction of regulatory reform as new administrative procedures that are used to change opportunity structure in which actors interact. Change in the opportunity structure is used to offer more pluralism or to achieve civic republican governance, which are two sub-approaches. Difference between the two variants of democratic governance approach to the research of regulatory reform is that neo-

¹ This does not mean that corporations or firms are banished out from the policy making process. Quite the opposite. Business lobbies are powerful and influential actors in designing constitutive policies. Also, constitutive policies are not necessarily opposite to the interests of capital. Development of constitutive policies could enhance change in hierarchy of goals of corporations, from short-term profit to long-term sustainability. Precondition for that is redefining self-understanding within corporations as primarily social actor highly dependent on their social environment.
pluralism seeks to open possibilities for all pressure groups, or to make process transparent and open for all big interests affected by some regulation. On the other hand, civic republican governance emphasizes that actors can pursue their own (economic) interests and broader community interest also. For that purpose regulatory reform should open opportunity structure especially for public interest groups, civil society organizations and citizens. One of the main functions of regulatory reform is to open regulatory process for “weaker” interests.

Event though both branches of the democratic governance approach could be applied on both modes of regulatory reform, civic republic governance variant is more suitable for the analysis of the ‘qualitative’ mode. Civic republican governance stresses out that goal of regulatory reform is to empower community as a whole. That correlates with the preceding explanation of constitutive policies as “new” majoritarian policies – as policies for fostering social inclusion and solidarity. Also, democratic governance approach is most adequate to research the question of the legitimacy. For the question of legitimacy of some policy-making system best expertise has political science with its interaction-oriented research of public policies (Scharpf, 1997:10-15). Interaction-oriented research of public policies is focused on the issue of who is and who is not included into policy process (Colebatch, 2004). So, democratic governance approach to regulatory reform follows basic idea that to representative democracy some forms of participatory and deliberative democracy have to be added. Because deliberation and participation could heavily influence specifying and clearing up preferences on many policy issues (Fung, 2006:673-676). One of them is the question of goals of regulatory reform, which different actors differently interpret.

(5) Actors of regulatory reform
As already stressed out, democratic governance approach to regulatory reform is focused on actors in the policy process; with the key question “RIA for whom?” (Radaelli, 2005). Five different types of actors can be distinguished within the issue of regulatory reform, who differ by the criteria that’s most important for them in the application of RIA, by the definition of success of the process and by their logic of action. Three types of actors are crucial and unavoidable – experts, civil servants and politicians. Overview of the actors in regulatory reform and their features are presented in Table 3.
Two things have to be emphasized in connection to types of involved actors. Firstly, last type of actors – citizen – is more important in the ‘quality’ framework of interpreting regulatory reform, which aims not only to regulate business, but also to regulate constitutive policies. Of course, as opposed to column ‘firm’, typical for regulative policies and for ‘quantity frame’. Secondly, as citizens / voters / individuals are marginal actors in policy process (Howlett i Ramesh, 1995:52-53), theirs main criteria / logic of action / definition of success can be represented as NGOs, or more specified, as public interest groups that are focused on policy advocacy of non-economic interests.2 NGOs are actors that take over the role of policy entrepreneurs (Majone, 1996:74-78). They, on the one hand, represent population that benefits from constitutive policies, which is highly heterogeneous and diverse and large in number, so hard to mobilize. On the other hand, NGOs are important actors in constitutive policies because they also mobilize resources spread throughout society in policies that does not rely primarily on state money.

In this understanding, governance approach to regulatory reform is really a policy network perspective to the issue. For that purpose is useful to differ from two schools of policy networks – Anglo-Saxon tradition and continental European tradition. First school is known as ‘interest intermediation school’ which sees policy networks as superior concept of representation of all state-society relations. The second tradition is ‘governance school’ of policy networks, which conceives policy networks as distinct mode of governance (Börzel, 2005:937).

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2 In difference to economic interest groups (as unions) or non-economic NGOs which main purpose is service delivery.
Second approach defines policy networks in more narrow and more specific manner – not as every state-society relation. Main difference between traditions could be explained as the difference in actors which they emphasize as crucial. Anglo-Saxon school mostly focuses on the relations between politician and interest groups. On the other hand, European tradition dominantly explores the structured interaction between public administration and non-governmental organization. This distinction is coherent with the two aspect of democratic governance approach to regulatory reform. So, ‘interest intermediation school’ is mostly what neo-pluralism branch, and European continental tradition is closer to civic republican governance. So Anglo-Saxon / neo-pluralist version is more applicable to the research of regulative policies, and looks for the opening of opportunity structure for firms / business lobbies as actor in the regulatory reform. European continental tradition searches for citizens / NGOs in the process.

Theoretical approach and presumptions described above are used as lenses to analyze Croatian regulatory reform.

(6) Croatian experience with regulatory reform
Croatia is, in the field of regulatory reform, a ‘late comer’. Regulatory reform is, as discourse or normative concept on the one hand and, as policy practice on the other hand, already well developed throughout Europe for 20-30 years. Croatia started with its own in 2005. Case-study of Croatian regulatory reform is devoted to the agenda-setting stage for two main reasons. Firstly, Croatian regulatory reform hasn’t gone too far. In the understanding of the levels of agenda (Birkland, 2001:107-8), from the agenda universe and systemic agenda to the institutional and decision agenda, Croatian regulatory reform really never made the transition from institutional to decision level (to the phase of state intervention in the problem). In Croatia regulatory reform was never seriously implemented. Secondly, and more importantly, agenda-setting phase is the one in which problems and goals are defined. So, that stage is convenient for the research of understandings (frameworks) of what regulatory reform’s purposes are. Main theoretical presumption is that broader framework – ‘quantitative’ – is the one that will be more coherent with the larger public support for regulatory reform (by the types of agenda-setting stage, Howlett, Ramesh, 1995:116). Also, that’s the framework that “goes along” with the inclusion of constitutive policies in the reform and the activation of NGOs as actors of the reform. So, main research question in the case study was could
democratic governance approach logic of introduction of regulatory reform be applied on Croatian example?

As a late-comer, Croatia simultaneously introduced both phases of regulatory reform, with both frameworks of goal-understanding, but quite soon process was completely “frozen” or stopped. This is how it appeared in practice:

(1) **Deregulation.** Special project and temporary government’s unit were formed for creation of deregulation recommendations. After the analysis of regulatory system that affects business and writing down recommendations how and what to deregulate, implementation failed almost completely.

(2) **Better regulation policy.** By the Government’s Rules of procedure different types of RIA (social, financial, environmental…) were introduced as obligatory part of creation of new regulation. Standard methodologies for different kinds of RIA were created. So, Croatian regulatory reform could be spread onto constitutive policies also (for example, onto disability rights policy within social RIA). But still almost all regulation, form all policy types, are voted in without application of RIA (except the Ministry of finance and basic fiscal RIA in some cases). Special new governmental body for the coordination and evaluation of regulatory reform was founded (as regulatory management). But it took two years to get that government’s office to start to work. Even today is not fully operational.

(3) **Frameworks.** In the aspect of understanding regulatory reform’s purposes, both theoretically formed frames were used in Croatia, but not in the same intensity and dept. Frame of ‘quantity’ dominated the process. Documents and actors explain the purpose of introducing regulatory reform as to simplify extremely complex regulatory system to lower administrative costs for business and to enhance economic competitiveness. Even though syntagm ‘better regulation’ is used in discourse, it is mostly only some kind of a discourse ornament, rarely backed-up with the understanding that quality of regulation is a special public good, and that regulatory reform could / should be applied to non-economic policy sectors also.

For this research most interesting feature of Croatian regulatory reform context is a structure that could potentially become a policy network. During the first part of the deregulation phase – in the part of creating recommendations how and what to deregulate – Business-advisory board was formed. It contained many highly positioned bureaucrats from different governmental bodies and representatives of Croatian business community. Board was crucial
instrument in gathering data on the present state of Croatian regulatory system. Also, same Board, with continuing process of consultations, was crucial instrument of forming recommendations on what regulation should be modified, abolished or kept in the present shape. Business community representatives had to argue their position about specific regulation. Quality of their argumentation what to do with that specific regulation was crucial criterion for the special governmental unit to make the recommendation about it.

This form of institutionalized channel of interaction between business community and highly positioned bureaucrats was evaluated by state and non-state actors involved, and especially second ones, as most successful part of Croatian regulatory reform. It had only one big fault – short duration. It decomposed after recommendations on deregulation were presented. Reasons for that were really outside the described network – within the reasons of ‘freezing’ regulatory reform in general. Even so, described structure opened-up regulatory (governance) process, in a small part at least, for some non-state actors. But not for noneconomic public interest groups, which means it was closer to neo-pluralist idea of regulatory reform, than to civic republican governance ones.

(7) Conclusion

Democratic governance approach to the research of regulatory reform was not useful in explaining why Croatia started to introduce regulatory reform or why it failed to go further with it. For more precise explanation why Croatian regulatory reform is unsuccessful more complex research should be done. Quite simplified explanation is that crucial problem is the lack of political will to foster reform because of the potential EU membership. At first it seems paradoxical to claiming that regulatory reform and EU accession process are not compatible. But Croatian context made those two as incoherent priorities. Croatian political elite is promising EU membership in the shortest possible period (of course, date is moving all the time). That seeks for extremely quick harmonization with EU acquis communautaire, in Croatia mostly done by accepting new laws through so called ‘urgent parliamentary procedure’. That would be almost completely impossible to do with the RIA procedural demands.

So what could we conclude about Croatian regulatory reform (policy practice) through lenses of democratic governance approach? The approach could be applied as prescription of public administration reform (Rhodes, 2006), or as critical approach to Croatian regulatory reform n
the sense of emphasizing what’s missing. Example of the reform shows how Croatian business community entered regulatory process in more extensive manner, at least for a short period, and was removed from it afterwards. Civic republican governance, or the quantity framework of regulatory reform, could be used to form an argument that lack of NGOs participating in the process diminished potential of non-state actors to more heavily influence the reform. Maybe understanding that, for example, right to access information act or law on golf-terrains, both characterized by the NGOs as important parts of anticorruption policy, are important object of regulatory reform too, would open space for more public interest for regulatory reform; for more actors interested in regulatory reform; for more legitimacy of the regulatory reform; and maybe for more success of regulatory reform.

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