**Better Regulation in Europe:**

**Administration, Public Management, and the Regulatory State**

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Abstract

Can the European regulatory state be managed? The European Union (EU) and its Member States have looked at Better Regulation as a possible answer to this difficult question. Better Regulation has become a political priority. The research agenda that has emerged around this topic in Europe, however, is mostly descriptive and normative. In this paper we discuss the role of conceptual frameworks in Better Regulation research and show why/how public administration scholars could usefully bring Better Regulation into their research agenda. Specifically, we situate Better Regulation in the context of key debates on the New Public Management, the political control of bureaucracies, evidence-based policy, and the regulatory state in Europe.

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BETTER REGULATION IN EUROPE: ADMINISTRATION, PUBLIC MANAGEMENT, AND THE REGULATORY STATE

1. Introduction
One of the recent innovations in governance is the idea to manage the regulatory state by taking a ‘whole of government’ approach tracking the life-cycle of regulations and (especially in Europe, but not in the US and Canada) laws, from the early stage of policy formulation to implementation. This set of innovations affects the way in which rules are assessed before adoption, how stakeholders intervene in rule-making, how the executive and parliaments should appraise the evidence-base of policy proposals, down to the level of inspections and enforcement.

The ambition of these innovations is threefold: firstly, to change governance and law-making processes by increasing the role of evidence in political decision-making and by creating opportunities for affected interests to be consulted at an early stage, when options are being devised. Secondly, to increase competitiveness by minimising regulatory burdens and providing efficient regulations. Thirdly, to address the legitimacy problems of the regulatory state: the more regulation is delegated to independent bodies, and the more the core executive increases its power over the parliament, the more procedural legitimacy brings to bear on the overall public acceptance of rules. Hence the importance given to transparency, systematic and open consultation processes, and detailed information on the costs and benefits of regulation.

Governance, competitiveness, and legitimacy come together in the political manifestation of these trends, the so-called ‘Better Regulation agenda’. The latter has
spread rapidly both at the EU level and in the member states. In a recent article on regulatory politics in Europe, Martin Lodge notes the rise of academic interest around regulatory review mechanisms across the member states as well as the EU (Lodge 2008:289). There are significant differences between the Better Regulation policies carried out by the European Commission and the governments of the EU (Jacob et al. 2008). The toolkit, however, contains various combinations of regulatory impact assessment (RIA, including cost-benefit analysis and the assessment of administrative burdens via the so-called Standard Cost Model, SCM), simplification programmes, programmes to foster market-based alternatives to traditional regulation, consultation standards (including notice and comment procedures), risk-based approaches to enforcement and inspections, and conceptual grids for the appraisal of complex multi-level systems of rules (Doern and Johnson 2006). Political interest inBetter Regulation (BR) has risen steadily since the launch of the EU agenda for competitiveness (also known as the Lisbon agenda). Elected politicians believe that improvements in the regulatory environment can deliver on competitiveness, growth, and regulatory legitimacy.

Conceptually, the political direction of Better Regulation in Europe varies across time and in some cases even within single countries, depending on how this policy addresses the issues of governance, competitiveness and legitimacy. Previous studies have shown that in some cases Better Regulation is the modern re-incarnation of de-regulatory trends, in other manifestations it mutates into risk-tolerant de-regulation, and finally it can be a policy with a clear open governance agenda targeting quality rather than quantity of regulation (Jacob et al. 2008; Radaelli 2007a;
The three aims in this paper are (a) to discuss the role of conceptual frameworks in Better Regulation research (b) to show why/how public administration scholars could usefully bring Better Regulation into their research agenda, and, to be more specific, (c) to situate Better Regulation in the context of key debates on the New Public Management, the political control of bureaucracies, evidence-based policy, and the regulatory state. To achieve this, however, we cannot simply import the North-American literature to Europe and start measurement and tests. It is indispensable to relate theoretical frameworks to what Better Regulation actually means and is in Europe.

We start in Section 2 with definitional problems. Section 3 briefly reviews current research on European Better Regulation. We then show why and how Better Regulation is relevant to the scholarly agenda of public administration. We do so by discussing on the implementation gap (Section 4), the comparison of US and European notions of rule-making (Section 5) and the connections and differences between NPM and Better Regulation (Section 6), with a special focus on evidence-based decision-making (Section 7) and the macro-analysis of the regulatory state in Europe (Section 8). Section 9 concludes.

Three qualifications are appropriate. First, we cover both the EU level and the member states. In consequence, when we refer generally to Europe we consider both levels. Second, most of the paper is on concepts and frameworks, not on empirics. Third, we make any possible effort to avoid the somewhat obsessive trend to relate any policy innovation to the NPM; as will become clear from the discussion.
throughout the article. We ask ourselves instead why – amidst this obsession – the link between BR and NPM has been so conspicuously absent in the scholarly debate.

2. Conceptualising Better Regulation
What sort of beast is Better Regulation? Foss Hansen and Holm Pedersen distinguish four types of regulatory reform: deregulation, better regulation, re-regulation and alternative regulation. They argue that these different types are characterized by different dynamics and follow different pathways (Foss Hansen and Holm Pedersen 2006, 333-334). Thus, in this way of reasoning Better Regulation is but one type of regulatory reform.

However, if we scratch underneath these labels and compare the sets of assumptions and theories behind them, this distinction does not hold. Whereas deregulation and re-regulation can be conceptually compared in a meaningful way, alternative regulation is of a different category altogether. The latter term refers to techniques of regulation whereas the other two terms denote an increase or decrease in ‘regulation-free’ space for economic actors. More importantly still, Better Regulation does not have an unequivocal identity of its own. It is an umbrella term for a set of structural regulatory policy measures, at best a way of mediating deregulation and re-regulation and at worst an empty political catchphrase. Therefore we propose to define Better Regulation as an explicit policy for government-wide change of the process through which rules are created, assessed, adopted, implemented, enforced, appraised ex-post and revised. This definition is based on process, not outcome. It refers to changes in the governance architecture of regulation, and goes beyond specific regulatory changes that may occur in one sector but not in another.
Consequently, our definition is not contingent on whether Better Regulation in a given country is aimed at, say, reducing regulatory costs for businesses or at balancing private and public interest in regulatory governance architectures.

If we unpack this broad definition, we enter an interesting debate on what Better Regulation is at the conceptual level. It has been argued that Better Regulation is a new type of public policy (Radaelli and De Francesco 2007), but others prefer not to go so far and argue that Better Regulation is ‘a movement’ (Baldwin 2005). The case has also been made that Better Regulation is a meta-policy – it provides centralised rules about how rules should be produced, assessed, and enforced (Black 2007). Intriguingly, some scholars have argued that Better Regulation is a new mode of governance (Schout and Jordan 2007) – a point that brings us back to the governance dimension.

But perhaps there is nothing new under the sun: Better Regulation could be the new name of well-known devices and procedures for administrative rule-making, well-known to countries such as the US, Canada, Australian and New Zealand – a point explored by literature developed outside Europe (Carroll 2007; Coglianese 2002; Kagan 2001; McCubbins et al. 1987). Other studies have noted that researchers can make serious mistakes if they use the BR vocabulary - useful for policy-makers - as scientific terminology, with the consequence of comparing apples with oranges (Radaelli 2007b). In short, the challenge is to provide a coherent theoretical framework, based on an interdisciplinary comparative perspective. The challenge involves concept formation, measurement, and theory building. Has the literature been up to the challenge? Let us now turn to the European scene.
3. **Academic research on Better Regulation in Europe**

Research on Better Regulation has been slow to take off in Europe. Apart from a few publications from think tanks containing mostly policy recommendations, a few public policy research papers and a few edited books (Kirkpatrick and Parker 2007; Weatherill 2007), existing research on Better Regulation in Europe tends to be descriptive and normative - as opposed to explanatory and positive.

This is arguably a consequence of the relative academic neglect of the topic on one side, and the fact that consultants and research institute respond to call for tenders requesting ‘assessments’, ‘indicators’, and ‘evaluations’. The commonplace ‘we need an impact assessment of impact assessments’, a popular comment at conferences on Better Regulation,¹ is illustrative for the state of BR research in Europe. Instead of building on sound ‘analysis of policy’, the strong demand for Better Regulation charts, indicators and benchmarking exercises has spawned a considerable amount of ‘analysis for policy’ (that is, a body of recommendations (Hill 2005). The often scorecard-based studies deal with the economic analysis used in RIA, how organisations live up to their Better Regulation goals (Lee and Kirkpatrick 2004; Renda 2006; Vibert 2004; Vibert 2005), measures of simplification efforts, the scope of burden reduction exercises, and the total costs introduced each year by the government - as measured by compilations of RIAs (Ambler et al. 2007; Boeheim et al. 2007).

Wider issues such as governance, political control of the regulators, implicit normative benchmarks used in Better Regulation have been addressed by European scholars, but not systematically. However, usable knowledge for policy makers and

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society as a whole requires conceptually robust analysis of policy (Brady and Collier 2004; Stame 2004). To illustrate: research projects fail if they assume that we can import theoretical suggestions from the US literature and test propositions on Better Regulation drawn from principal-agent models as if the North-American and European administrative rule-making concepts were identical. Hence the first step is to check if US-born concepts travel well.

The second step is to align measures with theoretical conjectures. Here we note the following problem. Research on European Better Regulation (Renda 2005; Vibert 2004; Nilsson et al. 2008; Lee and Kirkpatrick 2004; Opoku and Jordan 2005; Meuwese 2008; Jacob et al. 2008) has a tendency to produce case studies of how individual impact assessments were or were not used in the regulatory decisions for which they were prepared. However, this approach tells us something about direct, instrumental utilization of evidence at best, whereas a more fruitful theoretical conjecture to drive our measurement is that of long-term, indirect utilization (Weiss 1979). This is also relevant to the current demand for appraisals of the ‘quality of Better Regulation policy’ – a topic that has spawned several studies funded by the European Commission and the OECD. Evaluation strategies work better if they problematise concepts such as regulatory quality – experts, politicians, and civil servants may have different preferences regarding this term (Radaelli 2005). But a recent evaluation study commissioned by the European Commission and carried out by The Evaluation Partnership copied the preset questions and took the official policy goals of EU impact assessment for granted. This is fine for a research institute that has to win a tender. But it is not a general template for research. Luckily the annexes to
the TEP report carry a lot of valuable empirical information that could easily be used by researchers for secondary analysis (The Evaluation Partnership 2007).

The literature focusing on indicators to measure quality of regulation and quality of RIA has attempted to be systematic about evaluation (Conway, Janod and Nicoletti 2005; Kaufmann et al. 2005; Radaelli and De Francesco 2007). There have been proposals for dynamic indicators which are sensitive to the stage of development of a particular BR policy and thus can be used in policy processes over time. Most indicators take the level of implementation of BR tools as a proxy for regulatory quality on the assumption that the two are positively correlated. The debate here is lively but researchers have just started exploiting its potential (Radaelli and Meuwese 2008 forthcoming).

4. The implementation gap
In this Section we carry on with the discussion of conceptual frameworks to show how some current research puzzles can be re-shaped by an alignment of empirical research with what we know about the interplay between discourse and substance of public policy. In order to achieve this, we start from transparency.

Transparency is a key principle of Better Regulation (Mandelkern Group on Better Regulation 2001). This should make research a bit easier: researchers can take into account the whole package: from guidelines to procedures to outcomes. However, there is a catch. On the basis of the self-assessed questionnaires compiled by the governments for the OECD and the European Commission, one would get the impression that most Member States have sophisticated Better Regulation policies in
place. Moreover, EU leaders (prime ministers and ministers of finance) talk enthusiastically about Better Regulation and publicly endorse it.

Having said that, the first research efforts to collect independent data have shown a gap between adoption and implementation. The European Network for Better Regulation (ENBR) and Evaluating Impact Assessments (EVIA), two projects funded by the Sixth Framework Programme, have produced databases containing a wealth of information. EVIA includes comparative research on impact assessment systems across Europe. The main output of ENBR is Diadem, a database on individual assessments but also containing information on general regulatory policies.\(^2\) The findings contained in these databases show that a lot of countries have still not gone further than pilot projects (Jacob et al. 2008) – implementation of the BR toolkit has therefore been minimal. Even more widespread is the tendency to water down regulatory tools so far when adapting them to the specific administrative structures already in place, that they begin to look rather like ‘policy-making as usual’. Overall, transparency is a missing property. Getting hold of actual documents in which the result of BR procedures, such as impact assessment have been laid down, can prove tricky, particularly when they are used for intra-institutional negotiations rather than external communication (Radaelli 2007b).

The fact that Better Regulation *discourse* is much more popular than Better Regulation *activities* (Radaelli 2007a; Meuwese 2008) is a problem but also an opportunity for researching on symbolic politics. Similarly, this warning on the ‘data problem’ is also an encouragement not to forget about the ‘null hypothesis’ of no effect of Better Regulation policies on governance structures.

5. **European regulatory policy**

A further gap can be identified between the concepts in Better Regulation discourse and our theoretical understanding of these same concepts. Notions of ‘rule-making’, ‘regulation’ and ‘consultation’ are used as if they were self-explanatory in policy papers, yet no one has thought these concepts through at a level that links up theory and practical implementation.

For a start, Better Regulation as defined in policy-making circles is not exactly the same as the academic concepts of good regulation, smart regulatory governance, and efficient rules (Baldwin 2005). Additionally, as mentioned the meaning of ‘regulatory quality’ is contingent on causal explanations, the constellation of dominant actors in this policy, and historical contexts (Radaelli 2005). Thus, Better Regulation may work for some key stakeholders but not for others, in relation to a given administrative context but not in another, and so on. Yet again, we find the problems originated by the tendency to put the measurement cart before the ‘theory and concept formation horse’.

As mentioned, one important property of concepts is their capability to travel (Sartori 1970). Where do BR-related concepts stand then? On the face of it, many rules on administrative rule-making invented in the US have now made their way to Europe, the scope of these rules and the context in which they operate are entirely different. But conceptually there are important differences.

The word 'rule-making' is reserved in the US for the production of regulations by independent agencies, sometimes referred to as a ‘quasi-legislative’ process (West 1983). RIA is used for federal executive agencies that belong to the Presidential administration. If the term is used in a European context at all, it usually has a much
wider connotation, namely the production of all rules that are not laid down in statutes. This is because in European countries delegated rule-making tends to take place strictly within ministerial responsibility. Consequently the Better Regulation toolkit operates differently in a European context than in the American Presidential administration (Kagan 2001). For instance the US rationale that impact assessment is to tie the exercise of regulatory discretion to the condition that its outcome needs to pass a cost-benefit test – a point reiterated by several Executive Orders. But this does not make much sense in a situation in which a minister is expected by a parliament to exercise his discretion in accordance with the political preferences of the parliamentary majority. The migration of tools like RIA from the US federal executive agencies under Presidential oversight to European law-making processes in Parliamentary democracies is not irrelevant. Better Regulation in Europe revolves around primary legislative and policy processes mainly. Overall, ‘Better Regulation’ and ‘independent agencies’ are treated as separate issues in discussions on governance in Europe. In the EU’s system for impact assessment, European agencies (which virtually lack regulatory powers) have a role in data gathering but only as an extension of their general function in that regard, not as ‘regulators’ producing RIA (Meuwese 2008, p. 185).

Better Regulation tends to be organised through pivotal central government structures – typically the Prime Ministerial Office, the Finance Ministry or the Ministry of Trade and Economic Affairs. The relationship between these core executive structures on the one hand and the other government departments and parliament on the other is qualitatively different from the relationship between OIRA
(the body in charge of Better Regulation in the US Presidential administration) and
the federal executive agencies.

In the UK, Better Regulation was traditionally the domain of the Cabinet
Office, but after the new Brown government took office, the Better Regulation
Executive has been moved to what is now – perhaps significantly – called the
Department for Business, Enterprise and Regulatory Reform (BERR). In the
Netherlands responsibility for Better Regulation – at least during the period in which
it came to be narrowly defined as concerned with administrative burdens – used to be
split between the Ministry of Economic Affairs and the Ministry of Finance. But as a
result of a reorientation of Dutch regulatory policy (it is still business-oriented, but it
now covers a wider set of issues) in summer 2007, a new joint organisation called ‘the
Regulatory Reform Group’ has been established and there are plans for the Ministry
of Justice to coordinate a RIA-like ‘integrated balancing framework’. In some
countries there is also a Minister or, in the case of the European Commission, a
Commissioner who champions Better Regulation.

Depending on the countries we are considering, the constellation of actors
includes some components of the business community, independent regulators, and,
less frequently, communities of experts with statutory consultation rights in the policy
formulation process, environmental policy organisations, civil society groups, and
independent research institutes. International organisations such as the OECD, the
World Bank and the European Commission (and joint initiatives like the Sigma
project) are important actors in Better Regulation programmes, either as agents of
policy transfer, or, simply, in the case of the member states of the EU, because of the
importance of regulations produced in Brussels for the quality of the domestic regulatory environment.

Thus, the European context in which evidence-based tools like RIA are used revolves around the core executive, the formulation of legislation, and inter-administrative relationships among government departments. The notions of ‘political control of the regulators’, ‘political oversight of agencies’, and ‘fire-alarm mechanisms’ that originated in the US literature on Congress (McCubbins et al. 1989) and re-appeared in the discussion of the ‘Presidential administration’ and ‘the administrative state’ (Bressman and Vandenbergh 2006; Kagan 2001; Katzen 2007; Moe & Wilson 1994) cannot be transposed uncritically to the European scene.

6. **Between managing and regulating**

Better Regulation is often portrayed by the OECD and other international organizations as a policy that helps institutions think and changes the way in which governance operates. As such, this is a bold idea that resonates with some of the ambition of the New Public Management. The latter is the classic example of ideas entering the public domain, seeking to change the way government works (Christensen and Laegreid 2001).

The question arises: is Better Regulation yet another (late) manifestation of NPM? Of course, NPM itself is a somewhat elusive creature with many differences across time and space. But the the two main roots of the NPM movement have been identified as the emergence of new institutional economics and the rise of managerial thinking in the public sector (Pollitt 1993). Better Regulation shares the former root, although the latter theme has cropped up only in discussions of regulatory
management promoted by the OECD (2002). However, political control of the regulators seems more important than managerial thinking (Froud et al. 1998).

Just like NPM, Better Regulation was adopted swiftly by various administrations, including those with a left of centre government. The two movements also have in common a desire to bracket politics and leave the ‘political’ out of governance reforms. Finally, both NPM and Better Regulation provide several examples of ‘triumph of hope over experience’ (Hood and Peters 2004). Hood and Peters refer to the introduction of pay-for-performance schemes ‘in the face of repeated negative outcomes of such schemes’ (Hood and Peters 2004:274). Scholars of Better Regulation are puzzled by the repeated reference, in governmental guidelines on the economic analysis of proposed regulation, to rational synoptic theories of the policy process, although experience has shown the empirical and normative limitations of these theories (Jacob et al. 2008; Radaelli 2005).

However, these are superficial similarities. To what extent are NPM and Better Regulation similar or comparable as architectures of public sector reform? And what are the interesting research questions to cross-fertilize the two fields? According to Aucoin, regulatory reform can be initiated either as public management reform or for economic policy reasons (Aucoin 2006, 113). Better Regulation clearly involves the latter, but is it also an instance of public management reform?

The first answer is ‘it depends’ and invited a short remark on problem-definition. In some European countries, such as Germany, France, and Italy, the emergence of Better Regulation in the 1990s was clearly the result of a push towards the modernization of the state. As such, the initial idea was to make administration more efficient and more transparent. In other countries, such as the UK, Better
Regulation was initially driven by economic (deregulatory) policy goals although in the 1990s later on governance goals crept in, and more recent trends point to a new phase of risk-tolerant deregulation (Dodds 2006)

The second answer is that, although European policy-makers are eminently interested in how much Better Regulation policies can deliver on growth and competitiveness (i.e., economic goals), the most intriguing research questions are about the consequences of Better Regulation as an attempt to manage the regulatory process. For instance the implementation of impact assessment in the European Commission has an impact on its strategic planning cycle. In this connection, Better Regulation has borrowed quite a few ideas from NPM, such as procedures of ex ante evaluation used as internal control mechanism. Furthermore, Better Regulation has triggered the involvement of auditors in reviewing the way the government guards the quality of regulation. The British National Audit Office has published four reports on the UK system for regulatory impact assessment and there are calls for the European Court of Auditors to follow suit (Mather and Vibert 2006). Better Regulation has also introduced the concept of value for money to regulation: on the meta-level of regulatory management (value for money of Better Regulation tools such as IA), but also on the level of sector-specific regulation the idea is promoted that it is possible to have the same regulatory protection for citizens at lower costs. Even the NPM focus on customer satisfaction has somewhat percolated into Better Regulation. Some Better Regulation discourse talks about stakeholders as ‘end users’ of regulation and comes close to treat them as ‘customers’ just like NPM often treats citizens as ‘customers’.

To show that ideas from NPM are similar to those we find in Better Regulation policies and discourse does not mean that the have moved from one paradigm to the
other. Neither does it show that Better Regulation is just yet another manifestation of NPM – as mentioned, the economic policy orientation and the governance ambition of Better Regulation are quite unique. But it suggests that the two fields have communicated – via ideational transfer processes, or simply via catalysts such as communities of consultants and international organizations.

So how can the public administration research community make the most of both the similarities and the differences between NPM and Better Regulation? First, Better Regulation can work well as a key test for the generalising properties of NPM research. Second, comparison between the diffusion processes of NPM and Better Regulation can shed light on how economic and management ideas and tools circulate and transfer across nations. One interesting question is why was NPM concerned with ex-post control and evaluation whilst Better Regulation seems more keen on ex-ante appraisal (of proposed rules) and management of the regulatory process? At the level of the European Union, does this show a pattern from French-dominated management cultures dominant in the European Commission in the 1990s to an Anglo-Saxon and Dutch public sector culture?

Thirdly, research on public sector reforms needs to deal with a special predicament: implementation of reform initiatives often runs into the very challenge these initiatives were designed to overcome. For example, research on neo-managerial reforms amounts to studying the implementation of a policy that was aimed at overcoming the failures of implementation theory (Moynihan 2005, 221). Conversely, Better Regulation tries to apply insights from regulation theory and – in the process of doing so – ends up creating extra rules on a meta-level in order to support a simplification of the regulatory environment. Thus, it contributes to the growth of
regulation within government (Hood et al. 1999). Another paradox is that Better Regulation standards introduce rigidity, forms, and targets in policy formulation processes and that can be counter-productive. Baldwin has drawn attention to the inability of regulatory impact assessment to produce ‘smart mixes of regulation’ as a regulatory outcome (Baldwin 2005).

Fourthly, how qualitatively different are regulatory processes really from other administrative processes? The European context, characterised on the one hand by a greater entanglement of ‘rule-making’ and on the other by a special legal treatment for general rules (only marginal judicial review in many cases), makes for an interesting ground of comparison with the US, where delegation is more rigorous. The idea of using regulatory reform in research projects as a lens for developments in governance is not new (Armstrong 2000; Lynn 2003). As Lynn has pointed out, the consequences of the way governance is organized are discussed most explicitly during reform debates. Therefore the analysis of Better Regulation and in particular an exploration of its many faces and side-effects, could serve as a means of enhancing our understanding of public sector reform more generally, just like NPM research once started out (Hood and Peters 2004).

Fifthly, we can compare NPM and BR by using the lens of the analysis of power. Who is empowered by Better Regulation? How does the constellations of actor affected by Better Regulation differ from the one targeted by NPM reforms? How has bureaucratic politics changed as a result of two waves of change – first NPM and more recently BR? Although the ‘do politicians control bureaucrats?’ question cannot be transposed without adaptation from the US rule-making context to Europe, the relationship between politicians and civil servants is central to some of the Better
Regulation discussions, especially on RIA. Rather than being seen as a straightforward tool for politicians to minimise the discretion of bureaucrats, concerns have been expressed in Europe that impact assessment could be used to limit the scope for political decision-making. Thus, one proposition to test (albeit not realistic at first glance) is whether RIA is increasing the legitimacy and power of public administrations in Europe, instead of tying their hands. More interestingly, research could be done on the scope conditions under which Better Regulation alters the power dynamics between the core executive and the regulating departments.

Finally, like in NPM research (Page and Wright 2007), there is a research agenda to be built around how BR influences the traditional division of roles in bureaucracies. Theories on bureaucracies may also want to take into account ‘better regulators’ as a new type of bureaucrat. If Better Regulation represents a new professional standard on how to go about law-making, it may well be a relevant factor in explaining how bureaucracy is changing and why. Alternatively, the various Downsian types of civil servant (Downs, 1967), the climber, the conserver, the advocate, the zealot, and the state-person, may each give their own interpretation to Better Regulation. William West had found that more scientifically or technically oriented personnel in US agencies have less favourably views on cost-benefit analysis than personnel trained in policy analysis. West attributes these professional differences to varying viewpoints on the nature of the rule-making process (West 1988). Indeed, differences on the future of Better Regulation at the EU level are also connected to actors’ views on Europe’s wider constitutional future (Meuwese 2007). BR policies can also easily conceal mixed motives within one institution.
7. **Better evidence-based decision-making?**

One of the prominent items on the late NPM agenda is evidence-based policy, often connected to the idea of transforming public administrations into learning organizations. BR tools, and impact assessment in particular, have drawn considerable attention from the evaluation community. A learning function of regulatory policy tools is often assumed in policy documents on Better Regulation (European Commission 2002), although empirical work has raised doubts and qualifications (Radaelli 2007c). As mentioned, there may be different kinds of learning than the standard ‘instrumental learning’. Emulation (Padgett 2003; Strang and Macy 2001) and political learning (May 1992) may all be relevant in researching the way Better Regulation impacts on bureaucracies.

What can Better Regulation offer to this discussion? To begin with, since the North-American literature has insisted on administrative procedure as an instrument of political oversight, tools like RIA provide an opportunity to test learning hypothesis against a clearly-specified rival alternative hypothesis arguing that evidence-based policy is used to exercise political control of bureaucracies. Secondly, and again considering RIA, most of the discussion on evidence-based policy (Nutley et al. 2007) deals with the question of how research and evidence produced outside public administration is used or not used in the public sector. Since RIA is often performed by civil servants, here we have a case in which the bureaucrat is transformed into an analyst. The issue of use, lack of use, and perhaps abuse of RIA has therefore less to do with the relationship between the community that produces evidence and public administration and more with inter-organizational dynamics in the public sector, as...
well as with the politics-administration nexus. This is a new perspective on evidence-based policy.

Furthermore, a claim often made in public administration is that performance information is capable of contributing to the quality of democracy and of informing citizens, rather than just functioning as a ‘cold’ management tool (Pollitt 2006). Moynihan has reported a common belief among budgeters that the collection of performance data is important as a process, even if they do not use the information as such. At the same time the limited body of literature on into the use of performance information by democratic ‘end users’ (ministers, parliamentarians and citizens) suggests that the information contained in evaluations and performance reports is seldom used by politicians and citizens (Pollitt 2006, 52). With the emergence of Better Regulation a different type of information is increasingly available: data on regulatory impacts, on administrative costs of government intervention and possibly in the future even aggregated indicators on ‘regulatory performance’. Will this new type of information change perceptions that evidence does not contribute as much to the quality of democratic debate as it could? Our research on the use of impact assessments at the EU level suggests a relatively high level of support for the use of the tool compared to limited use of the actual data by key decision-makers.

This brings us to a final research question. Why do actors support the BR agenda? Why should decision-makers be interested in analysis? Why would public organizations want to introduce Better Regulation? The literature on organizational behaviour, bounded rationality, and the symbolic use of information and knowledge (Boswell 2008) could highlight Better Regulation as an exercise in knowledge utilization. One concrete starting point could be Moynihan’s conclusion that for
elected officials the symbolic benefits of ‘Managing for Results’ programmes are more important as an incentive for supporting the policy than instrumental benefits (Moynihan 2005).

8. The ‘better regulatory state’

Turning to the macro-political picture, in this Section we look at the implications of Better Regulation for our understanding of governance. The reference is obviously to the different models and images of the regulatory state (Moran 2002), and to the notion of a possible regulatory state within the state (a meta-regulatory state) then it is well possible that these mechanisms become more reflexive. Julia Black has exposed the paradox of simultaneous institutional centralisation and decentred regulation. She argues that the emergence of BR policies is evidence that dispersion of sources of regulation is inevitably accompanied by a move on the central level to control this development by imposing meta-rules (Black 2007). Looking at the UK, Moran has found that the regulatory state has triggered the colonization of areas of social life that were previously insulated from political interference and managed like clubs (Moran 2003). The advance of democracy has pushed regulation into these areas, producing an extension of political control, constellated by political fiascos rather than efficient solutions. Jabko adds that the EU is another case in which market ideas have been trumped by politics (Jabko 2006).

The implications for Better Regulation are straightforward. To begin with, we would expect Better Regulation to be concerned with political control and the creation of regulatory capacity as much as the promotion of rationality and market ideas. Thus we would expect guidelines on regulatory impact assessment to be somewhat cautious
on cost-benefit analysis and certainly less economics-oriented than the US guidelines. Better Regulation is enhancing the capacity of key units in the Commission and the governments of the member states to control the rule-formulation process. Therefore, one would not be surprised to observe that the unit responsible for Better Regulation is the Secretariat General of the Commission, and, in the member states, it is either in the cabinet office or elsewhere in the core executive.

These conjectures stand in contrast to another rival image of the regulatory state (Majone 1996), arguing that the rise of the regulatory state in Europe can be explained by an important ideational shift (the turn from market intervention to efficiency-preserving regulatory policy) exploited by skilful bureaucratic actors, such as the European Commission. Power is transferred at the EU level in areas – such as regulation – in which the distribution of values is much less important than efficiency. The ensuing mode of decision-making is non-political, or in any case more informed by economic logic than political logic. The argument carries on: regulatory legitimacy is eminently a question of procedures. Regulators are credible if they provide reasons for their regulatory choices, support decisions with transparent economic analysis and objective risk analysis, involve stakeholders in processes of consultation, and enable courts to review their decisions. Better Regulation should therefore be situated at the core of tensions: between economic analysis and the attempts to use it as political ammunition, between procedural legitimacy and substantive legitimacy, between open processes of consultation and pressure group influence. To observe how these tensions are resolved within Better Regulation policies at the EU level and in the member state presents us with clues on how the regulatory state is evolving.
A third model of the regulatory state is the civic-republican model (Ayres and Braithwaite 1992; Sunstein 1990). This is often presented as a sharp contrast to Majone’s procedural-rational template. Its features are direct participation of public interest groups, civil society organizations, and citizens. The model, therefore, opens up networks of regulators, strong economic pressure groups typical of neo-corporatist arrangements, and goes beyond pluralism in that weaker groups are deliberately empowered. Instead of technocratic decision-making, this model argues for fully political and participatory policy-making styles. Consequently, Better Regulation should be characterized by an emphasis on balanced approaches to economic, environmental, and social impacts of rules, direct inclusion of public interest groups in the community of stakeholders, open consultation processes. The big idea behind Better Regulation should be governance, not efficiency. Incidentally, there are traces of this civic-republican model in the documents of the Commission on the future of governance, specifically the Sections on regulation of the 2001 White Paper on Governance (European Commission 2001). The question whether the Commission, or the Member States of the EU, stand up to this governance aim in its own BR strategy is obviously a completely different one (see Bartle 2006 for some sceptical thoughts).

Finally, the regulatory state can also be seen as a manifestation of the rituals of verification (Power 1999). Given the increasing relational distance between principal and agents, audit procedures replace trust and meta-regulation replaces informal coordination. The EU regulatory state is eminently yet another explosion of audit rules, this time applied to the regulatory process in its entirety. There is no expectation that Better Regulation will be used to improve on efficiency. Neither will it provide a better mode of governance or responsive regulatory institutions. The result is more
paper trails, more ‘tick the box’ exercised, and more bureaucracy within government. Should this explosion be eminently discursive and symbolic, paper-trails and the like will be generally ignored by decision-makers. Should it really affect actors and their environment, there will be more hurdles to produce new rules, regulators will always take risk-aversion decisions and stifle regulatory innovations, and a pyramid of audit structure will emerge – for example, rule-formulation will be audited by impact assessment, but the quality of impact assessment will be checked by special bodies, which in turn will be controlled by…we are back to the theme of ‘impact assessment of impact assessment’ mentioned above!

9. Conclusion
Reform of the public sector comes with the need to be reinvented, and this reinvention often occurs at a much quicker pace than in substantive policy areas. Perhaps this is why the developments in the area of Better Regulation in Europe and their potential governance implications have gone largely unnoticed in public administration literature, which has failed so far to link it to subjects such as delegation of regulatory powers and the trend towards ‘value for money’.

In this article we have shown the limitations of current research on Better Regulation in Europe, and made suggestions towards more promising research agendas. This strand of research has potential for empirical research and theoretical sophistication in the areas of New Public Management, the political control of bureaucracies, the dynamics of evidence-based policy, and the European regulatory state.
Better Regulation provides a good case for testing or probing some theoretical propositions on the nature of the regulatory state in the EU and its Member States. It provides new theoretical suggestions, such as the emergence of a meta-regulatory state. It draws our attention to the key tensions in the evolution of complex governance architectures. And ultimately it contributes to a more informed understanding of where power lies in areas such as policy formulation, core executive dynamics, and the control of the law-making process. The successful implementation of this promising research agenda, however, requires more work on concepts and frameworks and on the adaptation of theoretical models originally formulated with reference to the US to the European institutional-administrative context.
References


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