

Muddling through, or the pursuit of values?

*A comment to Ko de Ridder, Safeguarding public values in Social security: a public administration perspective.*¹

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1. Preliminary remarks

To reflect on Ko de Ridder's contribution is a challenge, both on a personal and a on a professional level.

A personal challenge, as my last discussion with Ko dates back some 25 years, when I was a student of *Law&Public Administration* and he was one of my senior lecturers. It's nice to be invited back and pick up where we left off, but there's also the pressure of reflecting on a par with his contribution.

This ties in with the professional challenge. My chair at the University of Twente is on *Public Governance Law*, which seems fitting. My research, however, focuses on the role of the regulatory state in technological innovation, such as in areas of telecommunication and sustainable energy-supply.

Hence, social security is not my *forte*. Then again, today's scientific challenge – to unveil the connection between defining and safeguarding public interests – necessitates to reflect on whether social security is an essentially specific public interest compared to others, such as energy-supply and telecommunication; so, I guess there's a window.

2. Leading question and core values

Today's scientific endeavour is channelled in a two part question: '*is social security considered to be a public interest, and how does the answer to this question reflect on the role of the state in social security?*'

Our present debate, and Ko de Ridder's contribution, concentrates on the second part of our leading question, safeguards, and so requires a stance as to the first, the definition.

The public interest at hand is social security. The backdrop of community and market failure in delivering social security, as a societal interest, is a given.³

According to De Ridder the related public values that define the public social security interest are: compensation for unequal distribution, solidarity, efficiency and social and economic participation.

3. Viewpoints & NPM

A preliminary question here is if and how we should rank these interests and values. This is not to open up the earlier debate on defining the public interest of social security – although

¹ J. de Ridder, Safeguarding public values in Social security: a public administration perspective, in: G. Vonk & A. Tollenaar (eds.), Social security as a public Interest. A multidisciplinary inquiry into the foundations of the regulatory welfare state, Groningen 2009 (forthcoming).

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³ I may add that in the liberal democracy the government decision to take a societal interest up as public, must come with an authoritative expression, including an argumentation why there is a societal need for government to be involved and to which extend this is necessary (as government involvement may come with unilateral infringement of citizen's liberties). This is not only relevant as a matter of political philosophy, but also in a legal sense, as there needs to be clarity as to the extend of government's powers and accountability under public law. Once a public interest is authoritatively defined, it becomes an interest under public law, and henceforth its implementation is bound by public law values both intrinsic (see further in main text) and extrinsic (e.g. equality, certainty, proportionality) to social security.

tempting. It's simply about getting more clarity on the magnitude of De Ridder's two overarching viewpoints, which are best described by two quotes from his text.

- the first quote expresses the scientific challenge of safeguarding social security: *'It is a continuous quest that has a lot in common with aiming for a moving target. 'Muddling through' while learning on the way seems, in most cases, the best available option.'*

- the second quote expresses a normative stance as to the 'definition-safeguards' connection: *'Safeguarding is not only a matter of harnessing adequate control mechanisms..., beyond that, the preservation of the value of solidarity in a society, fundamental to any welfare system, requires the expression of solidarity in the make up of that welfare system.'*

Both quotes may be placed in the context of New Public Management (eventhough 'muddling through' is of course an older notion) and its proposition of putting efficiency centre stage, its refutation of the essential specificity of public values, and it's subsequent call for unbundling the *what* and the *how* of public interests and promoting, as to the how, the use of market incentives.

De Ridder's first viewpoint – on 'muddling through' – (in keeping with Majones statement that there is no such thing as 'a perfect regulatory mode')⁴ seems to accept the New Public Management's position, as both in his analysis and evaluation, safeguarding social security seems to become a contingent puzzle, in which we must seek to balance three spheres of our social order – communities, markets and hierarchy – and determine the proper mix of public and private law tools, while accepting necessary trade-offs between the public values involved. An almost postmodern endeavour – if you pardon my rhetoric.

De Ridder's second viewpoint, however, suggests a rejection of New Public Management, as it proposes a normative connection between defining and safeguarding the public interest of social security, at least in the expression of solidarity; where 'form must follow value'.

The point of ranking the underlying values becomes important here. Only solidarity shares in the 'defining & safeguarding connection'. The others, compensation, efficiency and participation, almost seem prey to the whims of daily and local politics.

Considering also that reference to solidarity isn't presented as specific to social security, but rather to issues of social welfare at large, perhaps the second viewpoint is not intended to state more than government's legitimacy to interfere – given societal failure at spontaneously producing solidarity. As to the other principles, the ones that seem to separate social security from other areas of social welfare, De Ridder's analysis is clear in presenting their significance, but also in showing their relative impact on the role of government.

If this interpretation holds true, then the position seems to be that the first viewpoint – muddling through – prevails over the second: government has a legitimate cause in safeguarding social security, but that does in no way presuppose or prescribe a particular course of action for government in safeguarding this public interest. So, muddling through prevails, as does NPM.

I have not been able to deduce if perhaps De Ridder's statement on solidarity should be understood as an appeal to restrict outsourcing merely to social enterprises, being 'non-profit' organisations with strong stakeholder representation – so, no outsourcing to the market but to the community, albeit in regulated form.

⁴ Giandomenico Majone, Regulating the public interest in the heterogeneous societies, key-note speech at the Conference Regulating the Public Interest, Groningen November 17th 2009.

At this point in time, I am unsure if such an interpretation would fit with De Ridder's line of thinking, or whether in fact he is, perhaps in playful cynicism, throwing the leading question back at the reader, suggesting that after all the definition of social security does not provide us with strong clues as to the role of government in its safeguarding.

If the latter holds true, then I want to at least make some suggestions in support of such clues – if only to reject the image of the Regulatory State as 'the end of history', that is of 'grand idea's'.

4. A shift from welfare state to regulatory state?

It is my opinion that the NPM image of the regulatory state as a shift from rowing to steering must, in the context of public interests, be understood substantively. Steering isn't merely about setting the rules of the game, it's about the results which society has failed at bringing about spontaneously.

We are not concerned here, with the basic arrangements of a free market, where government merely seeks to ensure fair competition and basic consumer protection and does not take an interest in the delivery of any specific goods or services and thus limits itself to ensure system integrity through systemic supervision.⁵

Government responsibility for social security, however, whether founded in a fundamental human right or otherwise, carries with it intrinsic public value. It may involve quasi-markets which provide an arena for reciprocal value exchanges, but still government responsibility extends beyond ensuring system integrity and must ensure proper results, expressed in – amongst others, the principles of solidarity, compensation and participation.

So, while opening up input-legitimacy to reciprocal transactions, as 'exit' alongside 'voice', when public interests are involved, the regulatory state should meanwhile ensure output-legitimacy by insisting on a substantive government responsibility for the outcomes of the whole system of social security governance. This responsibility must come with strong public controls and a clear public expression also in terms of standards for service organisations and for service interactions with clients (and their empowerment).

So yes, there is a clear connection between defining some societal interests as public, and the role that the state must play in the safeguarding of this interest.

5. Managing private incentives

Furthermore I would propose that there is room for a 'regulatory bias', as a particular view on the definition-safeguard connection.

Where public interests are involved, the regulatory stance towards involving community or market mechanisms should be one of scepticism, simply as it is societal 'failure' that gave way to government involvement in the first place. So I would indeed favour a 'No, unless...', instead of 'Yes, if...'.

Surely it can be held that research has by now presented us with abundant evidence based knowledge to support some serious warning signs to governments that endeavour outsourcing vital social security services, such as the examples of ineffectiveness and inefficiency of quasi-market arrangements for reintegration services – as pointed out by De Ridder.

⁵ In which realm government involvement is a matter of 'meta public interest', ensuring the proper functioning of the market as a sphere for reciprocal commercial exchange, extrinsic in that government does not take an interest in the delivery of any specific goods or services and limits itself to ensure system integrity through systemic supervision.

I fully recognise that this stance is not in keeping with the general position that the liberal democracy presupposes: private and societal interests are best left to society, and if possible should also be considered as a means to rendering public services.

Perhaps then the choice between the 'No, unless....' and 'Yes, if...' approach should be linked to trust.

'No, unless...' may then be exchanged for a 'Yes, if...' if government finds that it can trust in private operators and their transactions as a matter of natural alignment between private and public incentives, much alike the free market, where property and contract regimes ensure mutually appreciated legal certainty between private parties.

However, if regulation and supervision merely function as a straightjacket for private transactions, and trust merely hinges on supervision, this should be considered counter-indicative for privatisation – leading to high transaction costs and low performance, which seems especially painful when it leads to a failure in solidarity. No trust, no privatisation!

Of course these sketchy remarks are still a far cry from a true legal governance design methodology, linking governance to management and systematically addressing the dilemmas that De Ridder has skilfully analysed in terms of different types of feedbacks and applying the input-throughput-output model.⁶ So clearly I believe that his contribution is most relevant as to bringing about such a multidisciplinary methodology, applicable to social security. Hence I gladly finish my comments by paying my respect to his contribution – of course also in the hope he will reciprocate by responding to my questions and remarks.

⁶ Public administration and law can provide a match in such a design methodology and thus lead to learning by doing on a level that transcends mimicry and actually leads to evidence based knowledge and proper design tools to avoid needless future misconceptions.