# The Disciplined Regulator

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February 2017

*The future belongs to those organizations, as well as those individuals, that have made an active, lifelong commitment to continue to learn.*

*People unable to engage in disciplined thought may sport trendy dress and use up-to-date argot, [but] they are essentially stranded in the same intellectual place as barbarians.*

— Howard Gardner, Five Minds for the Future (2008) at 36.

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## The Regulator's Role: Thirty Years of Change, More Ahead

As of the late 1970s, utilities built infrastructure, served customers, made rate requests. Commissions approved projects and set rates. A regulator could describe her role in a single sentence: "We protect customers from monopoly abuse—from inefficiency, sloth, cost overruns, excessive rates." Consumers were passive, at-risk individuals, lacking options, needing protection.

Today, regulation's consumer protection role is only one star in a growing galaxy of responsibilities. Regulators make markets, plan infrastructure, collect and manage investment funds, incubate renewable energy, assess mergers, promote broadband, design energy-efficiency programs, provide low-income assistance, even run auctions. They host interest-group gatherings, resolve stakeholder differences, even act as political shields for executives and legislators paralyzed by the complexity of it all.

To keep track of these roles, let alone excel in them, will require each of Dr. Gardner's five minds. Let's start with the disciplined mind.

"Those who do not have a discipline, as well as a sense of discipline, either will be without work or will work for someone who does have a discipline." Gardner at p. xx. Regulatory success requires both mastering a discipline, and being disciplined. What do these concepts mean?

### Mastering the Discipline

"Neither teachers nor students nor policymakers nor ordinary citizens sufficiently appreciate the differences between subject matter and discipline." Gardner at 27. What is the "discipline" of regulation? What distinguishes it from a series of facts about engineering, economics, accounting, finance, law, and management; from the subject matters of electricity, gas, telecommunications, and water?

Each of these subject areas is its own discipline, contributing its insights to the regulatory decisionmaker. But the discipline of regulation is not merely the sum of these other disciplines. Regulation has a distinct purpose: to induce high-quality performance from entities that, absent regulation, would perform suboptimally. The discipline of regulation requires mastery of the motivations and forces that cause this diversion of private performance from public interest. These diversions call for regulation but also define its proper boundaries, for when private behaviors align with public goods, we need no regulator.

The disciplined regulator therefore focuses on forces that undermine optimality. She masters the tradeoffs. Sales can increase profits but cause environmental costs. Acquisitions can increase scale economies but weaken competitive markets. Technology can excite innovation but distract from the mundane (broadband and smart grid are exciting, but plenty of Americans still depend on wireline). Dispersed ownership can increase diversity but diminish accountability (if we replace a vertically integrated utility with separate generators, efficiency suppliers, transmission providers, and "wires" operators, whom do we sue when the lights go out?).

Addressing these forces, the disciplined regulator appreciates and anticipates the changing roles of consumers and utilities. Consumers are no longer mere protectees. They are actors: They demand quality of service and choice of services; they also engage in behaviors that, unregulated, cause problems for others—like overconsuming, which causes their children to pay for the parents' pollution. To define the regulatory purpose as "protecting consumers" both insults their intelligence and disregards the damage they can cause.

Utilities have new roles, too. They used to control the markets they served and the assets they needed to serve. Now their telephone and gas (and, in some states, electricity) customers can come and go, self-generate, cut their usage or drop off the system entirely, all while insisting on a right to return without penalty. As for assets, though regulated industries are still mostly "network" industries, the network assets are owned, controlled, and used by multiple entities.

Utilities confront this instability in different ways: some by using their captive customer base to acquire new territories or finance new ventures, some by shedding less profitable assets and activities in favor of new products, some by seeking market protection through the political process. Some are inert: As novelist John Dos Passos wrote, "Apathy is one of the characteristic responses of any living organism when it is subjected to stimuli too intense or too complicated to cope with. The cure for apathy is comprehension."

The discipline of regulation, then, requires more than mere awareness of these facts. Discipline depends on purpose: aligning the behaviors and performances of actors and assets with the public-service obligation.  Mastering the discipline of regulation requires asking the right questions.  The right questions are not "Are you for or against decoupling?" or "How do you feel about smart grid?" or "Should we approve this merger?"  The right questions are:  "What actions must the utility take to fulfill its obligation to serve the public with excellence, at reasonable cost?" and "What actions must regulators take to induce those actions and compensate appropriately?"

## Being Disciplined

"An individual is disciplined to the extent that she has acquired the habits that allow her to make steady and essentially unending progress in the mastery of a skill, craft, or body of knowledge."  Gardner at 40.  Having entered the discipline of regulation, what then does the disciplined regulator do?  Some suggestions:

1. To avoid overdependence on interest group arguments, **find objective sources**.  Know whom to consult for advice on rate design, energy efficiency, return on equity, performance measures, gas hedging options, broadband penetration, water conservation options, the risks of large construction programs.

2. To avoid intellectual ruts and error repetitions, **identify one's knowledge gaps**—about technology, legal developments, jurisdictional boundaries, corporate motivations, customer behavior.  The key words here are humility (the state of realizing that one knows less than one should) and curiosity (the state of wanting to know more than one does).

3. To salvage one's ability to think independently, **avoid the distractions**, like one more plane trip to one more stakeholder-dominated conference, in favor of daily blocks of quiet reading and study time.

4. There cannot be discipline without **self-criticism**; there cannot be self-criticism without humility and confidence.  Humility and confidence, seemingly in conflict, in fact reinforce each other.  Confidence comes, circularly, from experiencing the self-improvement that comes from self-criticism, which in turn depends on humility.

Regulators, and regulation, have experienced all these phases.  Even the rare regulator with 30 years' experience finds the swirl of statutes, case law, engineering limits, and innovation options humbling.  Imagine the reaction of our newest regulators (who continuously constitute the supermajority of state decisionmakers) to a revenue requirements spreadsheet, whose cells have 10 digits.  The self-criticism comes—we hope—after experiences like the billion-dollar cost overruns of nuclear power's first era, and the billion-dollar clean-up cost we now face from our fossil fuel dependence.  In these two cases, the self-criticism must be as much institutional as personal, since nearly 100 percent of the individuals responsible for these regulatory errors left their posts decades ago.  Given these experiences, decisional overconfidence should be in short supply, replaced with confidence in our ability to respond skeptically to those offering easy answers. That skepticism is essential for independence, for, as Gardner writes (at 27), people unable to engage in disciplined thinking “are completely dependent on others when they must make decisions about their own health and welfare or vote on issues of importance for their time.”