

## The Ethical Regulator

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*So then, three cheers for a career  
when it's a career like that of  
Shakespeare or Pasteur,  
Newton or Tolstoy,*

...

*Why did they have mud slung at them?  
Talent speaks for itself, whatever the charges.  
They're forgotten, those who hurled curses,  
but we remember the ones who were cursed,  
All those who strove towards the stratosphere,  
the doctors who died of cholera,  
they were following careers!  
I'll take their careers as an example!  
I believe in their sacred belief,  
and their belief gives me courage.  
I'll follow my career in such a way  
that I'm not following it.*

— Excerpted from the poem *Career*, by Yevgeny Yevtushenko (1933–2017)

### Ethics Defined: Narrow and Broad?

In regulation, we usually view “ethics” as avoiding wrongdoing—bribe taking, ex parte contacts, favoritism, and conflicts of interest generally. Gardner defines ethics more broadly: To act ethically is “to think beyond our own self-interest and do what is right under the circumstances.” Gardner at xiv. An ethical worker “passes the hypocrisy test: She abides by the principles even when—or especially when—they go against her self-interest.” Gardner at 136.

Paradoxically, we can define broad ethics in terms of self-interest. Gardner asks: “In what kind of a world would we like to live if we knew neither our standing nor our resources in advance?” His personal answer: “I would like to live in a world characterized by ‘good work’: work that is excellent, ethical, and engaging.” Gardner at 127.

Can these thoughts help us solve regulatory problems? Any number of regulatory challenges involve tensions between narrow self-interest and broad ethics. Self-interest has

multiple versions: my company, my union, my state, my technology, my agency, my customers, my generating units. Addressing these tensions, we can always behave ethically, in the narrow sense, by avoiding bribes, ex parte contacts, and conflicts of interest. But what would a broader ethical view require? Two common challenges follow.

## What If “It’s Not My Department”?

Eric Filipink’s NRRI paper, [Serving the “Public Interest”—Traditional versus Expansive Utility Regulation](#), explains how a regulator’s “public-interest” responsibilities are expanding. To the traditional job of policing monopoly power, legislatures are adding new goals, roles, and decisional criteria. The very nature of “utility service” is changing: The public expects the regulator not only to extract high performance from utilities, but to make service affordable, environmentally neutral, and employee-protective.

What if these new public demands fall outside the regulator’s statutory authority? Speaking on a panel hosted by Canadian regulators, I fielded a question from an eloquent advocate for low-income consumers. (The Canadian regulators’ association maintains a fund, supported by utilities, that finances conference attendance by public-interest groups.) She urged regulators to address high prices. My inadequate response follows:

“It is painful to say this to someone devoting her career to a cause I care about. But it is not a regulator’s job to make service affordable. The regulator’s job is to get prices right: not low, not high, just right. If that right price hurts the poor, it is a legislative problem. Legislators should not shift their own public-interest obligations to regulators.”

The questioner thanked me for my “candor,” but it was clear I’d committed the error of “it’s not my department.” I do maintain, as a member of the regulatory profession, that economic regulators should focus on utility performance and infrastructure sufficiency, not on wealth redistribution. And they should not lower prices below economically efficient levels. But as Gardner points out (at 129), “Being recognized as a member of a profession is not the same as acting as a professional.” The better answer—the more ethical answer—would have been this: “Regulators are in the best position to know whether price increases are imminent and painful to the poor. They then should use that expertise to engage the appropriate branches of government, to argue that the credibility of utility regulation is linked to the credibility of all government action. A government that fails its poor—or picks shortcut solutions like artificially low prices—benefits no one.”

The ethical answer is not to hide behind professional boundaries, but to use one’s professional expertise to cross boundaries and stimulate solutions. A prominent example today: the many state commissioners who, while lacking statutory authority over broadband, are using their knowledge and stature to lead efforts toward broadband accessibility.

## What If Helping Your State Hurts My State?

***“We must all hang together, or assuredly we shall all hang separately.”*** (Benjamin Franklin, on signing the Declaration of Independence.) For 250 years, our 50 states have managed to hang together for the good of the nation. But it doesn’t come easily. Whether it’s allocating transmission cost to you and hydroelectric benefits to me, generating income for my local economy while polluting your lakes, or favoring my state’s renewable resources over your state’s lower-cost ones, our interstate relations are still part friend, part foe. As Gardner states (at 105), “Human beings have deeply entrenched inclinations to delineate groups, to identify with and value members of their own group, and to adopt a cautious if not antagonistic tone to other comparable groups, however defined and constituted.”

The ethical approach is to find the common denominator, the common purpose whose achievement benefits all, then protect that common purpose from interference. Doing so actually aligns self-interest with public interest. Recall Gardner above: What world would we choose if we did not know, in advance, whether our state was hydro-rich, solar-poor, high-income or low-income? We’d choose a world where merits prevailed over favoritism, because then all parties would work to improve their lot, with the benefits of that work accruing to all.

That self-interested choice would also be the ethical choice. Ethics does not require sacrifice. For some, ethics’ roots are in religion, because ethics equals goodness. Ethics is also consistent with Darwinian evolution, with natural selection, and with our race’s survival, because it produces the best results for all.

## Downsides and Upsides

***“A person who is determined to do something constructive with his life needs to come to terms with the fact that not everyone is going to like him.”*** Daniel Barenboim and Edward Said, *Parallels and Paradoxes: Explorations in Music and Society* (2002) at pp. 6, 10, and 11 (quoted in Gardner at p. 122). (Barenboim is a Jewish pianist and conductor; Said is a Palestinian-American writer. The two created the West-Eastern Divan Workshop, an orchestra of young Israeli and Arab musicians who make music each day, then discuss politics and culture each evening.)

Ethics-oriented regulators risk caricature as preachers and prigs, as naive non-players moved to the margins. They need not end up like an orchestra’s string bass players, who say of themselves, “It’s like wetting your tuxedo—you get a warm feeling but nobody notices.” Broad ethics does not ignore or disparage self-interest, or seek its sacrifice. Broad ethics aims to construct a consciousness of commonalities.

That way, the sum of self-interests, ethically oriented, advances everyone’s agenda. As Gardner concludes (at 129), “ethical orientation” is a “conviction that one’s community should

possess certain characteristics of which one is proud and a commitment personally to work toward the realization of the virtuous community.”