

## The Respectful Regulator

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*The insights from sociobiology and evolutionary psychology are genuine. No doubt 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. But such biologically accented explanations have limitations.... [E]ven if biological bases can be found for dichotomization, stereotypy, or prejudice, human beings in every generation must attempt to deal with these proclivities and, when possible, to mute or overcome them.*

— Howard Gardner, *Five Minds for the Future* (Harvard Business School Press, 2008) at p. 105

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Prior essays have urged alternatives to divisiveness, provincialism, and zero-sumsmanship. They have emphasized regulators' responsibility to establish a public-interest polestar, a centrifugal force that draws private interests toward the common good.

In this effort, what is the role of the respectful regulator? The question is not how to show respect; I know no regulators who do not. The question is how to get opposing economic interests to show respect—for each other and for the regulatory purpose. “Respect” here refers not to social etiquette, but to appreciating the value brought to regulation by “others.” What are the benefits of this respect, what do we lose by its absence, and how can a regulator encourage and sustain it?

### **Regulatory Disrespect: Across Industries and Decades**

I have seen inter-party disrespect from my earliest days in regulation. It is not a pretty sight. Nuclear power opponents in the 1970s and 1980s were labeled “tree huggers,” “anti-growth,” “anti-jobs.” Independent co-generators in the 1980s and 1990s were derided as “fly-by-nighters” and “PURPA machines,” certain to shut down at the first hint of high winds. For several decades prior to FERC's landmark Order No. 888 (1996), proponents of transmission access—mostly small municipal utilities—were caricatured as opportunistic cream skimmers insensitive to reliability.

How about the hearing rooms, which bring out the adversaries in all of us: the lawyers who disparage their opponents; the witnesses who condescend to commission staff; the CEO who told a commissioner to speed up his questions because “I've got a company to run”; the

lobbyist who got the governor to issue a press release that belittled staff's testimony and threatened their non-civil service jobs?

Then there's Hush-a-Phone. In a passage entitled “Alien Attachments,” Alfred Kahn recounts the Bell Companies' opposition to this cup-shaped device. Snapped onto the phone, it gave the speaker privacy and reduced room noise. Hush-a-Phone typified what Bell called, in 1955, “foreign attachments which are marketed by persons who have no responsibility for the quality of telephone service but are primarily interested in exploiting their products.” (The FCC granted Bell's request to ban Hush-a-Phone; it “impair[ed] telephone service” because “the person to whom the Hush-a-Phone user is speaking hears a lower and somewhat distorted sound.”) See Kahn, *The Economics of Regulation*, Vol. II at pp. 140-141.

Disrespect is bidirectional: Opponents criticize incumbent utilities as monopolizers, slothful, lacking in innovation—odd statements to make about the entities that achieved electrification, described by experts as the greatest engineering achievement of the 20th century. See National Academy of Engineering, “[Greatest Engineering Achievements of the 20th Century](#).”

In these situations, disrespect depends on demonization—a technique comprising oversimplification, exaggeration, and hyperbole, a strategy of attaching moral significance to a policy difference. The goal is not merely to win but to vanquish: to persuade decisionmakers that the winner is the sole source of truth, that denying the opponent's existence would make the world a better place. This practice hardens differences; it raises the cost of acknowledging that the other side might have a point.

## **Disrespect's Antidote: Open-Mindedness, Knowledge, Achievement**

Years of exposure to these behaviors can lead one to stereotype the stereotypers. But companies are more complicated. If one looks past the strategists, demonizers, and opposition defeaters, one finds a different sort: power supply planners, back-office systems managers, IT experts, generating plant operators, control room operators, gas pipeline inspectors—the people who make things work. They operate within a hierarchy rooted not in economic or political power but in performance. This difference helps us define “respect”: respect for merit.

I once interviewed two different candidates for two different senior positions. Both had been through the traditional conflicts—nuclear power, transmission access, \$100 million rate cases, wholesale markets, scarcity pricing, and standard market design in electricity; interconnection comparability, Operations Support Systems, intercarrier compensation in telecommunications. Both were confident, articulate, well-read, excellent writers—all-round ballplayers at the top of their game. But were they “respectful”? Two pieces of evidence said yes.

First, each had worked for and with multiple industry sides—incumbents, new competitors, commission staff, consumers—earning praise from all these stakeholders for being straightforward, thorough, respectful of facts, logic, and the ideas of others. Their references spoke of a confidence grounded in open-mindedness, objectivity, curiosity, productivity, and humility. Second, these candidates, despite their industry seniority, engaged our non-senior staff in conversations that demonstrated deference to the latter's expertise, a deference reflecting respect for knowledge rather than preoccupation with status.

It is these traits of open-mindedness and humility that prevent divisiveness, that define “respect” as honoring knowledge and achievement regardless of source.

## **Respect's Results: Better Regulatory Policies**

*“[A]ccept the differences, learn to live with them, and value those who belong to other cohorts.”* Gardner at 107. How might policymakers mirror these values in policies? We are seeing these efforts in real time: The U.S. Department of Energy’s efforts to diversify our electric generation base, FCC and state commissions rethinking ways to accommodate multiple competitors in a central network while designing new outlets for universal service funding, FERC's requiring regional transmission organizations to give “comparable” treatment to demand-side and generation resources, states mandating utility purchases of renewable energy. These actions make possible a virtuous circle, where respect for new ideas breeds barrier-dissolving policies, which in turn allow new entities to perform and gain respect, leading to more such policies.

Psychologists describe “mirroring” as when two people in conversation mirror each other's facial expressions and tone—frowns producing frowns, smiles begetting smiles. The same goes for regulation. Mutual respect will attract the best skills from the diverse participants and produce gains; mutual disrespect denies the value of others, pushing us back toward zero-summanship. The “respectful regulator” is the one who persuades parties that respect raises the gain for all.