

## Essential to Effectiveness: Community Acceptance of Regulation's Mission

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*Public services are never better performed than when their reward comes in consequence of their being performed, and is proportioned to the diligence employed in performing them.*  
— Adam Smith, *The Wealth Of Nations*, Book V, Chapter 1, Part II, p. 719, para. b20.

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Previous essays have addressed the attributes and actions of effective regulators, and the obstacles they face. Essential to improvement is acceptance, throughout the regulatory and political communities, of regulation's mission.

That acceptance is incomplete and episodic. Regulation's many participants bring different ideas about regulatory purpose, about performance standards and the consequences of falling short. This absence of commonality undermines regulatory effectiveness. I'll first remind us of the effective regulator's attributes and actions, then introduce the challenges that inhibit community-wide acceptance of regulation's mission.

### **The Effective Regulator: Attributes and Actions**

The effective regulator has four attributes: purposefulness, education, decisiveness, and independence. Recognizing that commissions are not courts and regulators are not judges, she not only presides; she leads. Her commission's relationship with the legislature is one of alignment according to comparative advantage—legislators making the big tradeoffs, commissioners making the technical judgments. Because she understands, per Dr. Alfred Kahn, that the "central, continuing responsibility of legislatures and regulatory commissions" is "finding the best possible mix of inevitably imperfect regulation and inevitably imperfect competition" (see Kahn's *The Economics of Regulation*, Introduction), she rejects rhetorical bipolarity in favor of conversational clarity based on facts and logic.

She accepts the pressures of public-interest politics—the need to make tradeoffs among meritorious but conflicting goals; but avoids the distortions of private-interest politics—the pressures from narrow forces seeking benefits for themselves. And she accepts settlements as public spirited only when the "jointness" arises not from short term baby splitting, not from one party dominance masked as compromise, but from expert idea sharing.

## **Essential to Effective Regulation: Community Consensus on Regulation's Purposes, Standards, and Consequences**

In any line of work, leadership—political, policy, or business leadership—requires acceptance of the leader's mission by those whom the leader seeks to lead. See Garry Wills, *Certain Trumpets: The Nature of Leadership* (2007).

Regulation's many participants do not share a common understanding of (a) the purpose of regulation and regulators, (b) standards for utility performance, or (c) the consequences of noncompliance. Ask any five people, "What is a regulator's job?" The views vary with the viewer. The electorally oriented legislator might want prices lowered before the next election. The utility shareholder might want assurance of share value. The industrial customer might want reliable service priced to meet global competition; the residential customer, protection from monopoly abuse. The environmentalist might see the commission as emissions reducer; the union sees a job protector. While simplified, this list is a realistic distillation of roles commonly played on the commission's stage.

Even within a commission there are differences in mission. Ask five commissioners, get five answers. "We process submitted cases within the statutory deadline, determining each outcome based on facts presented." "We are members of the Governor's economic development team, helping to attract and maintain business investment." "We diversify the state's fuel use to reduce price volatility." "We keep the utility healthy so it can serve reliably." "We hold utilities to state-of-the-art performance standards."

Then there are the differences over performance standards (excellence, optimality, average performance, lowest feasible cost, do no harm) and how to enforce them (fines, franchise revocation, cost disallowance, rate-of-return penalty, "if you do that again we'll clobber you").

I hope there is consensus for the following statement: The purpose of regulation is to align private behavior with the public interest. Applied to utilities, this purpose requires regulators to define standards of performance, create financial inducements (positive and negative) to produce that performance, and impose consequences for subpar performance. Applied to consumers, the duty is to implement pricing and programs that produce consumption behavior consistent with society's long-term interests.

Where consensus evaporates is over the "if, when, and how." The spectrum of regulatory intervention covers mandates, prohibitions, encouragements, discouragements, and non-involvements. A participant's comfortable spot on this spectrum should depend on facts (Would private behavior, unregulated, undermine a societal goal; and if so, what intervention will most likely achieve that goal at reasonable cost?). But one's spot also depends on one's acceptance of the societal goal. If one favors immediate economic development over long term environmental protection, then one might prefer immediate plant construction over customer conservation investments. Differences over societal goals prevent consensus over the commission's roles. That is why I have urged that legislatures specify large goals more often, so that commissions are less often the forum for determining the big tradeoffs. (See essay, "Legislatures

and Commissions: How Well Do They Work Together?").

## **Instead of Shared Vision, We Have Differences Over the Scope and Longevity of Regulation**

Absent a common view of regulation's purposes, each interest assesses regulation's worth self interestedly. We favor regulation when it protects; we disfavor regulation when it obstructs. If protecting you obstructs me, I want regulation weakened. If obstructing you protects me, I want regulation strengthened.

This variation in viewpoint makes regulation's political support unstable. Absent a commitment to regulation's permanent purposes, those aggrieved by a commission's current actions seek legislation diminishing its jurisdiction. Those having a deeper commitment to regulation's purposes, in contrast, accept the commission's jurisdiction: They make their cases and take their lumps.

The instability in regulation's political support appears less explicitly, but more pervasively, in the states' common hesitance to fund regulatory staff at size, salary, and expertise levels commensurate with their billion-dollar responsibilities and comparable to the regulated entities whose performance they are to assess. This canyon in the regulatory landscape is so deep, so longstanding, so pervasive, and so infrequently acknowledged that it deserves continuous attention. See Chapters 18 and 19, on Regulatory Resources.

## **Recommendations for Regulators**

*A regulator's effectiveness requires not only personal attributes and practices, but community acceptance of regulation's mission. Regulators, therefore, should:*

- 1. Develop, and articulate publicly, a clear statement of that mission.*
- 2. Work to persuade participants that regulation's mission is larger than any policy difference; an issue grievance is not grounds to diminish the institution.*
- 3. Remind participants that almost everyone occupies both ends of the protection obstruction spectrum. Those who bemoan regulation's "burdens" should remember that government intervention provides (a) for traditional utilities, protection from competition; and (b) for new competitors, removal of bottlenecks that historically precluded competition.*