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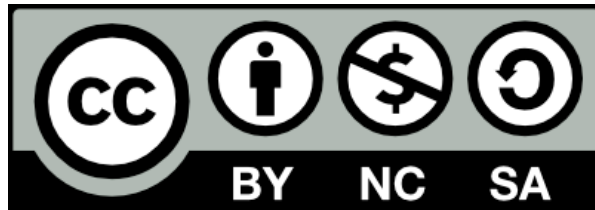
The Future of Regulation

Policy Possibilities for Public Discussion

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June 2009

Published by the Interactivity Foundation
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Printed in the United States of America

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ILLUSTRATIVE POLICY POSSIBILITIES

FOR PUBLIC DISCUSSION

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THE IF DISCUSSION PROCESS

Public policy discussions in America too often focus upon the specific actions that governments might take instead of the broader, or conceptual possibilities that might motivate them. This is unfortunate, since the wise choice of a public policy requires an exploration of a wide range of conceptual possibilities—including the different possible concerns, questions, beliefs, values, and goals that might inspire them. The Interactivity Foundation (IF) believes that governments too often act without considering a wide range of conceptual possibilities for public policy, and that citizen discussions of such possibilities can help to improve both our public policy choices and our ability to make them. IF supports discussion projects that are designed to explore, develop, articulate, and test contrasting conceptual possibilities for public policy in selected areas of concern. We believe these discussion projects and the conceptual possibilities that we develop in them can help citizens to explore an area of concern with their neighbors and make individual choices about which policy possibilities might be worthwhile to pursue.

The aim of IF is *not* to recommend specific policy possibilities or courses of action. It is to improve public policy by encouraging citizens to participate in democratic discussions about their concerns—and about the different possibilities for addressing them. The contrasting conceptual possibilities presented in this Discussion Guide were developed by citizens in confidential, ‘sanctuary’ discussions for use by their fellow citizens. We hope these possibilities will provide a starting point, a springboard for citizens who wish to participate in public discussions and explore the different possible ends that we might want to achieve as a society.

With the support of IF, two discussion panels met in south central and southwest Wisconsin to explore and develop contrasting conceptual possibilities for regulation. One panel consisted of interested citizens, the other of citizens who work with regulation issues in their professional lives. Our panels met from September of 2007 to December of 2008. In these discussions they explored contrasting conceptual possibilities and developed their ideas as individual citizens rather than as representatives of groups, institutions, or special interests.

This Discussion Guide describes nine contrasting conceptual possibilities for public policy for privacy that our citizen panelists explored, developed, articulated, and tested during the course of their sanctuary discussions. This Discussion Guide does not, however, promote or advocate for any of these possibilities—or any of the actions that might be taken to implement them. As a consequence, there are possibilities in this report that few if any of our panelists would endorse, but which they nonetheless think should be part of the public policy discussion about regulation. We invite you to review and discuss the possibilities in this Discussion Guide. We hope that you will compare each of them with each of the others and develop them further before deciding which, if any, would be worthwhile to pursue.

The aim of IF is not to recommend specific policy possibilities or courses of action. It is to improve public policy by encouraging citizens to participate in democratic discussions about their concerns—and about the different possibilities for addressing them.

REGULATION AS AN AREA OF CONCERN

Many Citizens see regulation as a necessary evil in the conduct of government. There is a basic understanding that government operations have grown sufficiently complicated to require day-to-day supervision of many relationships and transactions. Still, there is chafing and suspicion about regulation's reach.

While citizens see regulation today as mostly a governmental affair, a review of what is regulated soon reminds them of the background to regulation. This stroll down history's lane reacquaints them with the role of religious and craft organizations in much of the early framework of regulation.

Regulation is the sum of what we call those administrative functions to make rules and set standards, monitor and enforce compliance, set rates, grant licenses, mediate disputes, allocate resources, manage competition, and develop plans—for starters. Almost any activity that requires legislative or judicial action may be handled by the administrative function of regulation. That is why regulators are said to possess quasi-legislative and quasi-judicial powers in addition to executive powers.

Discussion about regulation often generates a sense that it both over—and under—utilized, that it is perhaps too cozy with the interests it regulates, that is a day late and a dollar short in terms our fast moving economy, and that it is not as accessible to citizens as our view of democratic practice might suggest.

In the case of the panels in this project, these attitudes led to a number of basic questions that shaped the possibilities they later developed. These questions deal with the conduct of regulators, regulatory methods, public participation, matters of scale, and distribution of power. The two panels explored a total of 66 questions related to their ideas of regulation and developed answers to them that resulted in the possibilities in this report. The questions listed in the box at the top of the next column represent some key ones that influenced the course of discussion.

Rapid technological change and globalization shift some regulatory needs. Citizen concerns about regulatory integrity also create new demands for accountability. Citizen discussions on regulatory approaches might well ask some of the following questions:

- *What forms of regulation best serve emerging social and economic conditions?*
- *What purpose does regulation serve in a democratic market economy?*
- *What are the roles of politics in regulation?*
- *What sorts of things go wrong with regulation and what are our options for remedies to regulatory malfunctions?*
- *What is the role of "standards" in regulation and how do we improve confidence in them?*
- *What alternatives to traditional regulation might be examined?*
- *What sorts of regulators do we want? Do we know how to hold them responsible? Do we give them the tools they need?*
- *What types of information about regulation do citizens need? Where is the best place to get that information?*
- *What roles might citizens assume in regulatory systems?*
- *What regulatory forms might we need in the future? Do we use regulation to cope with change or drive change?*
- *What are the consequences in our democracy of not asking and dealing with these questions?*

These questions reflect broad conceptual concerns about the future of regulation that are fundamental for the future of our democracy. Different people may answer them in different ways. But we need to decide as a society the extent and form of useful regulation, the level of our expectations of regulators, the types of relationships we want with regulatory agencies, and the levels of responsibility we are willing to accept in regulatory systems. We may need to rethink such things as the boundaries between the public and the private, the kind of society we want to live in, and the kind of state we need to govern it. The panelists in IF's Future of Regulation Project used these questions, and questions like them, as springboards for their

discussions. Their discussions led them to develop several different concepts of useful regulatory approaches. And these concepts helped them to explore a wide range of governance concerns about regulation—including questions about where, for what, and when we should regulate; and the various rights and interests that might compete with these expectations. These discussions, in turn, led to many related questions that were addressed during development of the contrasting conceptual possibilities regarding regulation in this report. Many more could have been developed, but panelists were faced with the need to choose a workable number for discussion purposes.

Both panels had five basic concerns about regulation that they repeatedly voiced during the course of our discussions:

- ***That regulation needs to be focused on the things that matter most in society***
- ***That regulators have access to the best information and state-of-the-art technology***
- ***That citizens have access to useful information that helps them understand the regulatory process and its outcomes***
- ***That citizens have opportunities to interact and influence regulators and regulatory outcomes***
- ***That regulation be matched to the appropriate scale and that it deal with emerging conditions***

The panelists did **not** attempt to define the term regulation in this project. They **did** describe an array of actions and activities that they saw as part of what makes up regulation. Their primary descriptive elements include the following:

- Setting and adjusting relationships through practice and adaptation
- Exercise of executive authority, especially under time pressures
- Direct and indirect democratic influence over the direction of regulation
- A thinking enterprise where experience and insight are valued
- “Bringing under control” matters previously lacking oversight
- Making interactions somewhat predictable through regularity and consistency
- Those delegations of power a society allows in the interest of self-preservation and development

They did not attempt to reconcile the contradictions and inconsistencies between these descriptive elements. Project discussions could be seen as looking at regulation in several different ways, which might be seen as categories of goals, outcomes, processes, and behaviors. These categories were often considered interchangeably as purposes of regulation. A post-discussion review of the panelists’ thinking on purposes suggests some unifying concepts of regulation:

- A core element of the rule of law
- A system for dealing with complexity
- An approach to developing and exercising wisdom
- A defense mechanism for the public interest and protection against narrow interests
- An adjustment mechanism allowing for steering, braking, and acceleration based on conditions
- A means of driving and implementing change

This is not to say that they felt that regulation always lives up to these purposes, but there was a sense that it should and could operate more in line with these hopes.

Much attention was focused on having the regulators do the right thing, but with due regard for assisting them with resources and incentives. Related to the issue of regulator behavior was the matter of giving them the best information. Behaviors of regulated interests, stakeholders, and the general public also played a part in these discussions.

The Conceptual Possibilities

The following pages describe **nine** different conceptual possibilities for public policy for regulation. They also describe the concerns, values, and beliefs that inspired these possibilities and some of the practical consequences that they might have if we were to actually adopt them.

The “contrasting conceptual possibilities”

each present a somewhat **different** way of thinking about regulation, and a somewhat different way of addressing them as public policy concerns. This means that the possibilities often arise from different interests, values, and beliefs, and that they may have different objectives. And it means that the possibilities may even arise from entirely different concepts of regulation. Some value regulatory goals while others value regulatory process.

Some seek to modify the behavior of regulators while others seek to enlarge the scope of citizen action. Some look to regulatory deliberation based on factual information while others consider political influences.

As you consider these issues yourself and discuss them with others, you may wish to ask yourselves some of the following questions:

- What are the values that motivate this particular possibility?
- Why might someone hold these values?
- Why might someone be opposed to them?
- What goals is this possibility trying to achieve?
- Why might someone have those goals?
- Why might someone be opposed to them?
- What actions might we take to implement this possibility were we to adopt it?
- What effects might those actions have upon individuals, groups, institutions, and society at large?
- How might they affect you personally?
- What are the strengths of this possibility?
- What are its weaknesses?
- Who would be likely to benefit from the adoption of this possibility?
- Who would be unlikely to benefit from the adoption of this possibility?
- What other approaches are available for pursuing the values and goals that inspired this possibility?
- Who might be more likely to benefit from choosing those other approaches?
- Who might be less likely to benefit from choosing those other approaches?
- What actions would we be likely take to implement this possibility, given our current political realities, were we to adopt it?
- What effects would those actions be likely to have upon individuals, groups, institutions, and society at large?
- How effective would this possibility be in achieving its desired ends if we were to adopt it?
- What would you do to strengthen this possibility?
- How would you compare this possibility to each of the other possibilities in this report?

Many of the possibilities considered similar ways of reaching their policy destinations. For example, almost every possibility seemed to touch on the potential usefulness of expert advisory bodies “above the fray” that might be more capable of deliberative depth. Similarly, multiple possibilities implicated the importance of regulation as more than a defensive perimeter around the status quo, seeing real potential for regulation as an engine of change.

These many differences also mean that it is not helpful or useful to try to align the possibilities along a singular line or issue for comparison. Each possibility represents a broad conceptual approach toward regulation that we believe should be explored in its own right. And taken together, they collectively represent a wide range of different concepts, beliefs, values, interests, concerns, and goals—or ‘contrasting governance possibilities’—that might motivate government action regarding regulation.

The Interactivity Foundation is not advocating for any of these nine possibilities. But we do believe that the ideas and issues within them merit further consideration and should be included as part of broader and longer term public discussions and deliberations about regulation.

For each possibility on the following pages, we also briefly describe ideas about different possible ways to implement the possibility as well as the possible effects that those actions might have upon individuals, groups, institutions, and society at large. The listed possible effects are not at all intended as certain or required consequences—but rather only as descriptions of what our panelists thought might happen if we were to actually adopt the possibility. You and others will almost certainly think of different ways to implement each of the possibilities. Similarly, you will also likely foresee different possible effects upon individuals, groups, and institutions.

Predicting the actual effects of adopting a conceptual possibility is always difficult and will largely depend upon which actions are taken to implement it. So it should not be surprising that our panelists themselves often disagreed both about how a conceptual possibility might be implemented and about what effects those actions might have. The possible effects listed for each possibility are not in any way intended to be complete or even consistent with each other.

The Interactivity Foundation is not advocating for any of these nine contrasting possibilities. But we do believe that the ideas and issues within them all *merit further consideration* and should be **included** as part of broader and longer term public discussions and deliberations about regulation and our public policies concerning it.

IMPROVE REGULATORY MANAGEMENT

Complex regulatory systems require professional development for regulators and continuous improvement of best practices. The challenges here are both ethical and technical. Our regulatory systems could deliver on their potential with improved management practices.

Most citizens recognize the need for sound regulation of important social and economic activities. Many would see regulation as a key feature of a complex democratic society. Some might go as far as to say that regulation is even more important in a modern pluralistic society as a part of the confidence-inspiring measures needed to make our institutions work in fair and competent ways. Growth in government size and increasing complexity places pressure on regulatory systems to perform at high levels. The scale and pace of change also poses challenges to regulatory systems.

The vision expressed by this possibility is a regulatory environment where regulation is expected to work and produce the desired results, where regulators are trusted and viewed as guardians of the public interest, and where procedures and resources are devoted to these objectives.

This possibility flows from the perspective that many citizen concerns about regulation have to do with the competency of our regulators and the fairness of regulatory processes. Competency and fairness may be seen as linked issues where it is felt that a combination of bungling, corruption, and inadequate skills may contribute to outcomes that are neither sound nor fair.

Discussion of the types of things that would likely be helpful to improving regulatory management covered quite a bit of ground in the project. Many of the panelists were concerned about methods of fact-finding and setting standards. There was particular concern about foresight and prediction in regulation, especially in relation to anticipating hazards and projecting costs. Many panelists felt that professional development of the regulators was crucial to improving regulatory practices. Some imagined a more developed form of regulatory professionalism that would emphasize not only technical competence, but would also maintain high ethical standards and communication skills to engage the public.

This possibility looks toward a regulatory approach that upgrades the individual and collective skills and ethics of regulators, identifies and implements best practices, and emphasizes our society's traditions of fairness.

Skills and ethics would flow from more intense development of professional standards and codes of conduct. Development of best practices would go the matters of audits, full accounting, use of advisory bodies, and periodic review. The tradition of fairness would include what we traditionally think of as due process, but at levels above the informal practices of many regulatory agencies. The possibility could also include enlarged understandings of openness and predictability.

The vision expressed by this possibility is a regulatory environment where regulation is expected to work and produce the desired results, where regulators are trusted and viewed as guardians of the public interest, and where procedures and resources are devoted to these objectives.

Other views. You might feel that efforts toward improved regulatory management are all well and good, but will founder on the inevitable politics that ties the hands of regulators. On the other hand, you may fear that this possibility will so enhance the standing and trust given to regulators that they will be more empowered to abuse the public trust. You may even feel that this possibility is already the norm and that our distrust blinds us to the high professional and ethical standards already observed in many agencies.

Outline of the Possibility: Develop and implement approaches relying on professionalism, management skill, best practices, and monitoring of outcomes to achieve fairness and raise regulatory competency.

Thinking Behind the Possibility:

Some areas of regulation lack frameworks for quality improvements and seem susceptible to favoritism and corruption. The possibility flows from a perspective that transparent standards are key to inspiring trust and confidence.

Citizens are not always confident that regulators are competent and ethical. They are often unsure about what standards of conduct and performance apply and whether such standards are consistently applied.

This possibility assumes that accountability standards and guidelines that stress proven management approaches would be helpful, especially in the form of best practices. Included in such best practices would approaches like benchmarks, full accounting, and periodic performance review.

The possibility also assumes that regulator conduct is an important starting point for improved regulatory practice. This calls for treating regulation as a “high calling” and developing approaches to regulate the regulators.

The goal would be to offer a fair and understandable regulatory system that values outcomes, accountability, and predictability. The vision here is not simply one of efficiency, but also one of public trust and confidence in regulation.

Possible Approaches to the Possibility:

Professionalism and competency

- Establish certification and codes of ethics for legislators
- Close the “revolving door” between regulators and regulated interests
- Empower regulators to stand up for the public interest and protect them when they do

Best practices and monitoring

- Set clear objectives
- Conduct regular performance audits and develop impact statements
- Improve accounting for social and environmental costs
- Staff and fund agencies at high performance levels
- Use expert advisory bodies

Fairness-Openness-Predictability

- Observe high level of due process
- Treat like matters consistently
- Make agency business as understandable as possible

Possible Consequences of the Possibility:

- Greater understanding and confidence from the public
- Improved compliance with regulation
- More consistency of results and continual improvements in methods

USE SCIENCE AND TECHNOLOGY TO SUPPORT AND IMPROVE REGULATORY PRACTICE

Scientific findings should shed light on regulation, technology should help improve regulation, and both should serve the public interest rather than narrow interests.

Do you think that regulation is sometimes shaped more by powerful interests than by objective fact-finding and sound research? Have anti-scientific sentiments about “hot button” social issues spilled over into regulatory decisions? Do political controversies about “good science” versus “bad science” make it difficult for citizens to decide how much a role science and technology should play in regulation?

This possibility flows from a perspective that modern regulatory systems are unavoidably dependent on many of the tools and methods of science. This perspective also includes a recognition that regulators must be scientifically and technologically “literate” and must possess the resources in these areas that permit them to keep up with innovation.

Science and technology have much to contribute to regulation and some of the best regulatory processes are extremely open to the input of sources from these fields. Key areas of regulation on subjects like health care, food safety, environmental protection, and energy center on questions that must be answered largely by science. Other regulatory fields like intellectual property and communications are often engaged through an understanding of emerging technologies.

Under this possibility regulators would look chiefly to science and technology to provide guidance and set standards. Our regulatory processes would look to enhance their credibility and legitimacy by usage of generally accepted scientific methods. Regulatory decisions would be framed mainly in terms of their use of science and technology. Scientific findings in the regulatory field would be given some degree of deference. We would also rely more on those in scientific and technological fields to develop consensus about generally accepted methods.

Other Perspectives. But even if you agree that science and technology are helpful tools for regulators and useful for determining what is, you may be concerned about allowing the scientific community a large amount of power over regulatory outcomes in a democratic society. You may argue that science and technology, no matter what their benefits, do not tell us how to balance societal interests and make trade-offs.

Regulation would look to science and technology to provide guidance and set standards. Scientific findings would be given some degree of deference.

Some citizens may fear that scientific findings might be used to preclude public discussion. Others may have the concern that science, despite our best intentions, will continue to be subject to political manipulation. Still other may worry that we will apply science and technology without appreciating its limits and the ways its methods must be allowed to work toward continually improving understanding of the world around us.

Outline of the Possibility: Use science and technology to improve the reliability of regulatory decision-making, implementation of rules, and continuing adaptation of regulatory processes and learning by regulatory staff.

Thinking Behind the Possibility:

Some citizens have come to doubt whether regulatory processes are based on sound science and wonder whether political pressure acts to distort or ignore the useful roles of science and technology.

Many citizens feel that scientific findings should shed light on regulatory directions, that technology should benefit the public, and that instead narrow interests often dominate these matters.

This possibility envisions regulation that uses science and technology to improve regulatory practices and serve the public interest. This includes clearer reference to the underlying science supporting regulatory decisions.

The possibility would also rely on providing sufficient scientific and technological resources to effectively carry out regulatory missions.

The purpose of this approach is to increase the credibility and usefulness of regulation by use of sound methods. It also offers the advantage of an approach that is open to inquiry and improvement.

Possible Approaches to the Possibility:

Reliability

- Use state-of-the-art technology
- Apply widely accepted analytical methods
- Use independent scientific advisory bodies and consult broader scientific community on the issue of “sound science”

Implementation

- Improve standing and resources of regulatory science and technology
- Link decision more clearly to supporting science and disclose uncertainty
- Rely on “watchdogs” to prevent manipulation

Continual Adaption and Learning

- Provide ongoing training and equipment upgrades
- Expand role of regulators in educating the public about science and technology
- Regularly schedule assessments and evaluations

Possible Consequences of the Possibility:

- Increased dependence of regulators on science and technology
- Expanded need for scientific and technological “literacy” among the public and officials
- Recognition of a “feedback loop” between science and government

KEEP POLITICS IN ITS PLACE

The conduct of regulators and the business of regulation should be more than just another political arena for the powerful to prey on the weak or to maximize their interests at the expense of the general public. Regulation needs to be clear-headed and clean. We should regulate the regulators, assure integrity of regulatory processes, and support those who monitor the health and honesty of regulation.

Do you share the concern that the rough and tumble of politics often bend regulation to shortsighted and narrow ends? Is your notion of regulation connected to values of fair play and “neutral” decision-makers? Does blatant politics in regulation undermine its legitimacy? Is it realistic to set regulation totally apart from politics? Such questions address many of the issues that regulation in a system of democratic governance must contend with.

This possibility flows from the perspective that many of the worst features of politics have spilled over into regulation. There is concern here that contentiousness and partisanship cloud some regulatory thinking and worry here that some regulatory outcomes are simply window dressing for raw exercises of power.

This possibility would develop and implement multiple safeguards—fitted to the type and scale of regulation—against overly political regulation. The possibility makes the distinction of the democratic politics of setting the general direction and goals of regulation and politics of cooptation and influence-peddling.

This possibility is concerned procedural safeguards, regulator conduct, and the general public interest. It would look to develop more of a separation between the function of setting direction and the administrative functions of enforcing regulation and deciding individual cases before regulators.

This policy would look to prevent overly cozy relationships between regulators and powerful regulated interests. It also foresees an expanded role for public interest bodies and advocates.

Public sector regulation would need to meet public interest tests and there would be no tolerance for “captured agencies” and public regulatory forms that act primarily to serve private interests.

Neutral, skilled professionals recruited through merit-based systems would be the primary actors in regulatory agencies. They would be protected from political pressure and retribution.

This possibility would develop and implement multiple safeguards—fitted to the type and scale of regulation—against overly political regulation.

Other Perspectives. But even if you agree with this approach, you may still be concerned about going too far in the direction of “politically sanitizing” regulation. You may wonder if regulators in such a system might become isolated and operate in a self-contained world that does not reflect changes in society. At worse, regulators might become aloof and arrogant. That is why that those project panelists most devoted to this possibility, still recognized the legitimate role of politics in setting and changing regulatory direction

Outline of the Possibility: Develop and implement safeguards against special interest pressure and partisanship in regulation in order to serve the general public interest by leveling the playing field between competing interests.

Thinking Behind the Possibility:

Some regulatory areas are susceptible to political pressure and dominance by special interest.

Blatant partisan agendas tend to discredit processes and outcomes. Too much in the way of raw interest advocacy tends to overwhelm deliberative capacities of regulation.

Appointment of regulators based on political affiliation also undermines public confidence and handicaps agencies in terms of experience and temperament.

The result can be the appearance or reality of unfair results and lack of neutral enforcement.

This possibility confronts these concerns enlarged protections against special interest dominance and aggressive partisanship.

Strong conflict of interest measures and “firewalls” are among the types of safeguards anticipated by the possibility.

This possibility recognizes that a democratic society must employ political means to select its broad regulatory approaches. The point is to avoid undue political pressure, not democratic agenda-setting or public input.

However, the desired results are non-partisan regulatory conduct and decisions that deal with regulatory issues on their merits.

Possible Approaches to the Possibility:

Procedural Safeguards

- Clearer separation of political function of setting direction and regulator function of deciding outcomes
- Select regulators through non-partisan means
- Severe penalties for corruption
- Close the “revolving door” between agencies and regulated interests

Regulator Conduct

- Regulator divestment from the regulated sector
- Regulator withdrawal in actual and possible conflicts of interest
- Regulator resignation from partisan affiliations

Public Interest Protections

- Credible advisory bodies with greater deliberative capacity
- Enlarged roles and support for “watchdogs”, interveners, and ombudspersons

Possible Consequences of the Possibility:

- Stronger codes of regulatory conduct and ethics
- Greater emphasis on political means to shape regulatory approaches instead of pressures on outcomes
- More consistent outcomes and fewer pendulum swings

FOCUS REGULATORY EFFORTS ON KEY SOCIETAL GOALS

Regulation may overreach in some cases and weaken the case for effective regulation where we need it most. Leaner, more focused regulation may be our best guarantee of regulation that deals with what we value most and is confident enough to take strong measures in those areas.

Do you think that some forms of regulation seem out-of-sync with societal needs? Does regulatory inertia sometimes rob it of relevance and vitality? Does regulation try to do too much and be all things to all people? Might regulation benefit from more targeted approaches that reflect a more general sense of priorities? Some project panelists felt strongly that the answer to the above questions was “yes”.

This possibility arises from the sense that regulation may overreach in some cases and as a result make regulation weaker. This view flows from a belief that it is hard for any governance system to do all things effectively and efficiently. Conversely, it reflects a belief that leaner, more focused regulation would likely lead to better results in those areas that we think need regulation the most.

Part of the appeal of this approach is the less intrusive nature of a focused system of regulation. This possibility would thus try to regulate effectively within simpler understandings of what is minimally needed to achieve desired outcomes. This is not necessarily a timid approach to regulation and regulation under this approach should be quite muscular when important goals are at stake and when great harms would result from inaction.

The hope here is a more developed sense of ‘matters too important to deregulate,’ as well as of what regulation we might do without.

Government, under this possibility, would devote regulatory resources to the core goals as expressed through representative government. Regulation would be “responsive” in the sense that it would adjust over time to reflect changing goals and needs. It would not react solely to whim and popular pressure. It would look to feedback mechanisms that involve the public, officials, experts and regulators in gradual adjustments of priorities, evaluation of performance, and assessment of risks.

The possibility should prove most useful in dealing with issues of health and safety. But it might also prove helpful in resisting the impulse toward deregulation pushed by some special interests. The hope here is a more developed sense of “matters too important to deregulate”, as well of what regulation we might do without.

Other Perspectives. But even if you share these concerns, you may still worry about regulator ability to anticipate what will be important to regulate in five, ten, or fifty years.

The matter of whether citizens and officials might be manipulated concerning priorities and potential risks is also something to be considered. Such an approach would also need to be fairly cautious about abrupt change that is not well thought out and preceded by extensive discussion.

Outline of the Possibility: Focus on clear, understandable, and minimal regulation that represents the broad goals and priorities of society in ways that are easily observable and that reflect the intent of the governing body that authorized the regulation.

Thinking Behind the Possibility:

Citizens and businesses sometimes feel that regulation goes too far in areas of little impact. Some regulatory agencies are overburdened with outdated and obscure missions.

Regulation sometimes goes against society’s understandings of its goals and intent, with regulation taking on a life of its own or regulation for regulation’s sake.

This possibility addresses these concerns through a regulatory approach meets the primary objectives of the public and follows the intent of the authorizing body. Regulation is re-envisioned as more of a continuum, with transitions, “sunsets”, and “sunrises” used as “smoothing devices”.

This possibility emphasizes society’s goals and evaluates progress toward them. It looks to the broad consensus that might be found on many matters of health and safety.

This possibility looks to the market to work where it can, but is not adverse to market intervention to prevent great harm. It encourages citizens and decision-makers to review results so that goals may be adjusted as seems appropriate.

The intended regulatory system is clear, purposeful, and results-oriented.

Possible Approaches to the Possibility:

Prioritize Regulation

- Elevate health, safety, and economic security as goals
- Act to prevent and correct abuses of power
- Adjust governance of business and financial institutions

Streamline Regulation

- Use minimal regulation to accomplish goals
- Deregulate where goals not served
- Emphasize timeliness and short duration of interventions

Restructure Regulation

- Match regulation to appropriate economic and governmental level and scale
- Move resources to areas of most pressing needs
- Use outside resources for specialized missions or temporary needs

Possible Consequences of the Possibility:

- Greater capacity for change
- Closer relationship of regulation expressions of societal will and governing body intent
- Better understanding of the societal interests in regulation

EXPAND CITIZEN POWER OVER REGULATION

Regulation and citizen participation need not be mutually exclusive. Some areas of regulation lend themselves to high degrees of citizen involvement and direct roles. Almost all areas of regulation could provide for more citizen participation in the regulatory process.

Do you believe that regulation often tends to “shut out” citizens through an atmosphere of complexity and a reverence for technical expertise? Have you wondered how much of this atmosphere is designed by regulated special interests to accomplish those exclusionary results? Do you think it might be worthwhile to ask questions about which areas of regulation might lend themselves to direct citizen involvement?

This possibility adopts the view that regulation in a democracy should involve citizens where possible. The possibility allows that this will be easier and more effective in some areas than others. But the possibility includes the idea of active exploration and development of improved citizen participation in government regulation. It includes an understanding of the concept of delegation that underpins the exercise of regulatory power, but asks the question of whether citizens have given too broad a grant of powers.

Within the possibility’s concept of expanded citizen power is also the accompanying component of expanded citizen responsibility. The vision expressed here is one of a proactive and assertive citizenry, interacting directly within regulatory environments, with less mediating influence of elected and appointed officials. It is also hoped that the initial applications of this possibility will create demand for more engagement and heightened expectations about citizen empowerment in regulation.

Fitting to Circumstances. This possibility recognizes that there are many citizen participation methods that may be useful in regulation. Selection of the most useful methods will be partly a matter of fitting to regulatory scale and function, also a matter of citizen preference and priorities. In some cases very direct means like citizen juries, referenda, and deliberative polling might be used. In other cases, devices like citizen representatives, direct election of regulators, citizen assemblies and participatory budgeting might be used.

The primary vision here is one of enlarged citizen roles in setting regulatory direction and overseeing regulatory operations.

The vision expressed here is one of a proactive and assertive citizenry, interacting directly within regulatory environments, with less mediating influence of elected and appointed officials.

Other Perspectives. But even if you feel that citizens should have more power in and over regulation, you may feel that the challenges of matching the processes to the particular circumstances represent a big hurdle.

You may foresee years of pilot projects and trial and error, with hard to measure results. You may wonder if citizen empowerment in regulation is too much of a moving target, with fickleness and political winds constantly shifting what citizens are willing to engage. You may wonder if the citizen “work” in regulation will fall to the handful of “regulars” who sustain much of our civic activity.

The issue of whether they—the citizens—will come “if we build it” may seem like an open one and subject to many variables.

Outline of the Possibility: Support and encourage citizens to assume larger roles in and greater responsibility for government regulation.

Thinking Behind the Possibility:

Some aspects of regulation developed out of concern about “swings” in popular opinion.

Some early advocates of regulation thought some matters too complex for elected officials, much less citizens.

While some regulatory matters are less suited to democratic participation than others, this possibility allows that many areas of regulation are well-suited to citizen involvement and that many other areas may benefit from at least some participatory considerations.

This possibility envisions adoption of a variety of enlarged citizen roles in government regulation, in ways that go beyond lip service or tokenism.

The possibility foresees greater citizen involvement in charting the direction for regulation and in overseeing regulatory operations. This might even include citizen roles in rule-making, enforcement, and performance review.

Improved accountability, greater legitimacy, improved responsiveness, and healthier democratic practices are the goals of this possibility.

Possible Approaches to the Possibility:

Protection of Participation

- Recognition of individual rights of participation and representation
- Enforceable protections of those rights
- Oversight of rights by ombudspersons

Tools for Participation

- Integrated regulatory clearinghouses (websites, forums, reference libraries, and data bases)
- Redesign of regulatory participation in easy access networks
- Adult education on how to interact with regulatory agencies

Opportunities for Participation

- Citizen representatives on regulatory bodies
- Direct “town hall” regulation
- Direct election of regulators

Possible Consequences of the Possibility:

- Improved interest in regulated sectors and more attention to outcomes
- Greater acceptance of decisions and higher compliance
- Improved development of participatory methods

NON-GOVERNMENTAL DEMOCRATIC ALTERNATIVES TO REGULATION

We could allow some groups to use democratic forms of self-regulation where they show the capacity to do so and where the general public interest is not at risk. This type of non-governmental regulation would structure and govern internal group conduct and grant responsibility and power to stakeholders.

Is it possible that some functions currently handled through government regulation might be performed by non-governmental organizations without compromising the public interest? Do we have any historical or current models of non-governmental regulation to look to? What can we realistically expect of non-governmental regulation? What sorts of ground rules would we look to so that “alternatives” did not result in an “anything goes” atmosphere?

This possibility flows from the belief that governmental regulation is not the sole way to achieve the outcomes expected by society. The “public interest” aspect of regulation may be achieved by delegation of authority to private organizations within frameworks of democratic self-regulation. Self-regulation of this type would be structured around protection of public and stakeholder interests. It would rely heavily on peer review and ethics watchdogs to point out deficiencies and spur corrections.

The possibility would apply the lessons learned from the historical models of guilds and chartered trade groups that were authorized to self-regulate in the days before civil service and an extensive public sector. It would also look to contemporary workable models like professional society’s and cooperatives that are given wide latitude to regulate their internal affairs.

The possibility recognizes that not all functions performed by governmental regulation could be converted to such an approach. But the possibility does assume that there is public benefit in transferring some regulatory responsibilities from governmental to non-governmental organizations. The presumed benefits are in both the saving of scarce public resources and in placing responsibility in the hands of those most affected by outcomes and who have the most to lose from mismanagement and improper conduct.

The possibility also envisions a wider concept of “stakeholder” with this non-governmental sphere. It could include stockholders, communities, and employees. This wider vision would be implemented through chartering and other business organization methods that set the parameters of organization conduct, provide standards for governance, and remedies for improper conduct and failure of self-regulation.

The presumed benefits of non-governmental regulation are in the saving of public resources and in giving responsibility to those who have the most to lose.

Other Perspectives. But even if there is some appeal to getting government out of some areas of regulation, you might wonder about the “failsafe” or “default” positions for non-governmental alternatives gone bad. You may wonder what sorts of governmental oversight might still be necessary to pick up the pieces if self-regulation proves inadequate. You may feel that this approach needs a corps of trustees or receivers as a back-up.

Outline of the Possibility: Develop and implement alternatives to top-down regulation outside of government to reward groups capable of self-regulation and to encourage the direct participation of those affected by self-regulation outcomes.

Thinking Behind the Possibility:

Governmental regulation may be misapplied or overreach where group self-governance and participatory means might better meet society’s objectives.

While we rely on government for much regulation, we intuitively understand the influence of community bonds and values in human conduct.

This possibility looks to further develop the many democratic, cooperative, partnership models that serve business and civil society and use them in place of traditional regulation where useful.

The possibility would also “embed” these approaches in the structures of businesses and professions. Government would not be in the business of day-to-day oversight of these alternatives, but may find it useful to periodically review practice and performance to assess whether the alternatives are operating as anticipated.

The goal of this possibility is to create greater senses of connection, urgency, efficiency, and civic responsibility in self-regulated areas by allowing those affected by decisions to act outside government to structure social and economic conduct.

Possible Approaches to the Possibility:

Shifts in Responsibility

- Rely on collective means (bonding, insurance, professional standards, certification, and accreditation)
- Provide stakeholders with standing to enforce the rules
- Build self-regulation directly into corporate charters

Shifts in Emphasis

- Self-regulation built around public interest tests
- Expanded view of stakeholders
- Impacts on shareholders, members, and communities given major weight

Shifts in Participation

- Direct member or shareholder governance
- Stakeholder representation on boards and governing bodies
- Replace practices of “management proxies” and other forms of deference

Possible Consequences of the Possibility:

- Strengthen citizens, labor, and communities
- Shift of cost to those who benefit from an activity
- Government role shifted from active intervention to monitoring self-regulation

ENCOURAGE ACCESS TO REGULATORY INFORMATION THROUGH OPENNESS AND TRANSPARENCY

Even highly effective regulatory agencies can prove difficult for citizens to access and understand. Our understanding of regulation in a democratic society should include open access, open process, and proactive citizen assistance.

Do you share the concern that regulation exists in a bureaucratic fog that obscures the “what”, “why”, and “who” of administrative action? Do you sense that key information about regulation is treated like the private domain of “experts” and that it is organized in ways that are not “user friendly”? Do citizens need more help in learning where to go for information and in understanding what that information means?

This possibility arises from the belief that we could and should do a better job in helping citizens make sense of the general regulatory environment and the specifics of particular regulatory operations.

The possibility comes down on the side of open regulatory processes. Citizens should be in a position to attend proceedings, obtain documents, and file complaints and appeals. Those who help them should be protected—whether regulatory personnel or employees of regulated interests—from retaliation.

The possibility relies on an environment of open access. It depends on bringing regulation out of the centralized halls of government and into communities and workplaces. It also relies on use of all commonly available technologies and networks.

The possibility also depends on creating affirmative duties for regulators involving citizen assistance and education. It recognizes that learning must occur on several levels: process, subject matter, and participatory.

The possibility envisions an environment supportive of citizen “regulatory literacy”, where continuous improvements in asking questions, evaluating answers, and making choices can occur.

Regulation, under this possibility assumes more responsibility for the distribution of information and instruction about its meaning and significance. This responsibility has many implications for the public information functions of regulatory agencies and may benefit from approaches used by university extensions and other forms of adult education.

The possibility envisions an environment supportive of citizen ‘regulatory literacy’, where continuous improvements in asking questions, evaluating answers, and making choices can occur.

Other Concerns. But even if you are sympathetic toward openness and transparency, you may think that the core mission of some forms of regulation is at odds with this degree of access. You may worry that this possibility may become “just one more requirement” for regulators to check off as they sleep-walk through formalities.

You may wonder how such openness conflicts with the needs of proprietary information and the developmental needs of some research. Can business survive and thrive in such an environment?

You may worry that some regulatory subjects are just too complex for citizens to engage and that already slow regulation might be further slowed by the steep learning curves of citizens.

Outline of the Possibility: Help citizens navigate regulatory processes and agencies through openness and transparency that supports active participation, learning, and good government.

Thinking Behind the Possibility:

Citizens often find it difficult to obtain helpful information about regulation.

Some regulatory areas seem overly complex and purposely inaccessible. Problems with access tend to limit participation, economic development, and compliance.

Better access means not only availability of information, but also the ability to determine what that information means and how it might be used. Access is more than records, it includes expert analysis and help in navigating bureaucracies.

This possibility would create affirmative duties of regulators to help level the playing field for citizens so that both the overall regulatory process and the application of that process to particular cases is understandable.

This possibility envisions a regulatory approach that educates citizens about the social and economic issues at stake in regulation, including how change impacts regulatory needs and how regulation can drive change.

The primary goal is to enable citizens to make more informed choices on matters involving regulation.

Possible Approaches to the Possibility:

Open Process

- Affirmative disclosure requirements
- Clear appeal procedures for denials of access
- Whistleblower protections for regulatory and regulated staff
- Meaningful open meetings and open records laws

Open Access

- Interactive websites and open access data bases
- Clearly identified routes for getting questions answered
- Decentralized meetings and hearings in affected communities

Citizen Assistance and Learning

- Community outreach staff
- Clear agency responsibilities for communication and education
- Ombudspersons and citizen representatives to assist with disputes and questions

Possible Consequences of the Possibility:

- More meaningful interventions and contributions by citizens
- Reduction of citizen frustration and worry about “looking foolish”
- Easing of information overload and simplifying material to make it meaningful

CREATE NIMBLE REGULATORY APPROACHES

Regulation in some areas of social and economic relations needs to be flexible, timely, and geared to change. Regulation could be put at the service of a broad strategic vision that values innovation and dynamic action where appropriate.

Do you feel that following regulation is a bit like watching paint dry, a slow and almost invisible process that is hard for citizens to focus on for any length of time?

Do you suspect that regulation often stifles innovation and change, placing our society at a competitive disadvantage?

Does the mere mention of regulation suggest phrases like “behind the curve” and “fighting the last war”?

Does it occur to you that regulation need not always

The possibility embodies a vision of regulatory flexibility and discretion in times when it is necessary to move swiftly to address problems or head them off.

be plodding and robotic, but could encourage innovation and might actually be the engine of needed change at critical junctures?

This possibility flows from a belief that the pattern of regulation as a one-dimensional tool of government—that is locked into a glacial pace—is an incomplete and outmoded notion. Regulation can be used adroitly and surgically in times of crisis and, skillfully applied, can shape future events in anticipation of emerging needs and risks.

This possibility looks toward the development and support of approaches to regulation that are geared to the global economy and new technologies. It looks forward to regulation that not only keeps pace, but sometimes sets the pace when a breakthrough or shift is needed.

This possibility recognizes creativity as a force for social and economic development and looks to regulation that supports the creative sector. At the same time it recognizes a need for protections of citizens and restoration of stability in troubled circumstances.

The possibility embodies a vision of regulatory flexibility and discretion in times when it is necessary to move swiftly to address problems or head them off.

Regulation overall, in most of its common forms, might not need to change under this possibility. But in certain areas of regulation the paradigm shift would be quite dramatic. Regulators and regulated interests would need to re-think many traditional behaviors and practices.

Elected officials and citizens might also need to accept bolder and riskier behavior from regulators than they are accustomed to. In some areas this might mean slightly enlarged latitude. In other areas and fairly specific circumstances it might mean an almost military-style “commander in the field” approach of discretion to act, with accompanying strict accountability for results.

This approach to regulation is not for the faint-hearted. It would need to be accompanied by the acknowledgement that mistakes will be made on occasion. This type of regulation requires a very different type of regulator than we usually think of, with ability to think and decide under pressure of higher value than in traditional regulation. Elected chief executives will need to screen their regulatory appointees with more care and make sure that their strategic vision is served by those appointees.

Other Perspectives. You might worry that this possibility requires far more skill and judgment than we are accustomed to seeing in regulatory agencies. When working well, this possibility might approach artistry. Less skillful practitioners might destabilize markets and communities. You might suspect that the tools to predict and plan for possible events under this approach are too imprecise.

You may also feel that this high responsibility/high stress environment for regulators will lead to high turnover and instability in agencies operating in this fashion.

Outline of the Possibility:

Encourage the design and use of swift and strategic regulatory approaches that meet needs for innovation, flexibility, and change in a dynamic economy and society.

Thinking Behind the Possibility:

Rapid changes in the global economy and in developing technologies often make traditional regulation seem ineffective, with events unfolding faster than regulators are able to deal with them.

Regulation that seeks to slow the pace of change often causes innovative enterprise to flee regulated jurisdictions for totally unregulated jurisdictions, with major implications for development and safety.

Regulation comes to be seen as plodding and unthinking, with citizens frustrated with the inability of regulators to deal with change and creative sectors seeing regulators more as obstacles than allies.

This possibility allows that some areas of regulation could be reorganized with creativity and responsiveness in mind. The regulatory “toolkit” would enlarge to address more circumstances.

This possibility would look not only to how regulation can cope with change, but also how regulation may be used to support change and innovation.

The desired results are regulatory flexibility and skill to move strategically to protect the public and stabilize markets while encouraging the “cutting edge” of a dynamic society.

Possible Approaches to the Possibility:

Flexibility in Regulation

- Allow multiple responses to circumstances and tiered approaches in implementation
- Understand regulation as a series of responses to relationships and events
- Adjust to scale of markets and activities

Timeliness of Regulation

- “Right-on time” regulation
- Alignment with pace of particular regulated sector
- Capacity for regulatory “quick reaction forces” to deal with crisis

Change and Innovation in Regulation

- Strategic use of regulation to bring about needed change
- Incentives for innovations in regulated sectors
- “Open source” solutions to addressing regulatory needs

Possible Consequences of the Possibility:

- Greater range of the exercise of discretion by regulatory agencies
- Enlarged range of permissible responses by regulators to emergencies
- Hands-on learning by regulators about timeliness and “customized” regulation

CREATE AN INTERNATIONAL REGULATORY “ECO-SYSTEM”

Many transactions and problems defy national scale regulation. Environmental issues are examples of regulatory subjects that do not respect borders. Even illegal activity now takes place on scales beyond many nations. Existing frameworks should be revitalized and knit together in a network.

Do you sense that our traditional ways of dealing with regulatory issues no longer “fit” the scale of human movement and trade? Has regulation kept pace with globalization and our developing understanding of our interconnected world? When we understand such issues as global warming, human rights, and economic development in an international context is it reasonable to expect those issues to be addressed on the international scale? Are there models and experiences that tell us something about how to approach this scale?

This possibility looks to build off of existing international institutions and arrangements and “fill-in” the gaps in coverage and authority with an “eco-system” of global regulatory efforts. Such an eco-system would start through networking of regulators, stakeholders, and citizens groups at a high level.

This broad discussion would open a dialogue on scale and governance issues that could recognize barriers and problems in existing institutions and ad hoc arrangements. The discussion would seek out common cultural and political ground. It would also lead to identification and assessment of existing codes, agreements, and frameworks that might function more usefully through a networking system.

The possibility anticipates improvements in international regulatory enforcement capability through a process of gradual implementation rewards, incentives, and penalties. This could include re-configuration of regulatory mechanism to fit local conditions and re-negotiation of existing agreements to more clearly address human rights and the environment. This possibility might also include conflict resolution devices to ease transitions.

Future global regulation would look to bring about smoother integration of regulatory approaches on international issues. Regulators might first cooperate like police do through interpol, but would gradually develop more uniformity and reciprocity. This integrated system would work off of assumptions of elevation of standards in less developed nations, not a lowering of standards that harms conditions where they are already improved.

The vision of regulation put forth by this possibility is one global protections of “universal rights” and ecological integrity so that we all might survive and thrive. While it is a large scale vision, it is one that is reachable through a series of commitments and relationships that are familiar in experiences like the European Union.

Other perspectives. You might feel that this possibility takes regulation totally past the scale at which citizens may engage it. It might violate your very strong sensibilities about national sovereignty and local control.

You may feel that this possibility is too risky for developed nations and may require expensive subsidies and support from them to get anywhere near effective regulation in developing nations. On the other hand you may feel that developing nations – particularly those with authoritarian leanings and repressive cultures – might resist inclusion in such an eco-system.

You may feel that the results envisioned by this possibility can only occur slowly and naturally. A plan to achieve this ends may be less successful than the re-organizing forces of the global economy and technological change themselves.

It may also occur to you that this possibility requires a convergence of events and rethinking that arise mainly in crisis and in rebuilding out of the ashes.

Outline of the Possibility: Support an interdependent and interconnected global system of regulation based on social justice and environmental protection that recognizes complexity and opportunities for shifts to sustainable practices.

Thinking Behind the Possibility:

Many aspects of the emerging global economy seem to be beyond the effective reach of traditional national and local regulation.

Problems with national and regional regulatory mechanisms are often magnified at the international level and what international framework that exists is often narrowly focused and limited in effectiveness.

This possibility looks to re-organized and well-integrated international regulatory mechanisms to recognize and enforce the guiding principles already recognized by most nations.

The possibility recognizes the different developmental levels of nations and would provide assistance to raise standards and improve conditions.

The vision expressed here is an international system guided by human rights and sustainability protections that address issues of poverty, dislocation, and environmental degradation.

Possible Approaches to the Possibility:

Recognizing Important Principles

- Identify shared objectives
- Uphold previous commitments
- Build rule of law through respect for human rights, democratic participation, personal freedom, and ecological responsibility

Growing the Regulatory Eco-System

- Integrate regulatory systems where appropriate
- Design and implement new frameworks to fill in gaps
- Revitalize existing agreements that already address common ground (like UN Declaration of Human Rights)

Building the Regulatory Network

- Strengthen international institutions
- Provide start-up support in developing nations
- Incentives for participation and disincentives for non-compliance.

Possible Consequences of the Possibility:

- Greater sense of connection among people around principles, not nationalism
- Improved use of human and financial capital through fair distribution of resources
- Gradual isolation of oppressive regimes

An Open Invitation to Further Discussion & Interactivity

We hope that you will use this report to carry forward the discussion begun by our project panels.

We have developed a discussion process that may be helpful for groups interested in discussing the ideas presented in our reports or in discussing matters of public interest more generally. We have also developed facilitation and discussion guidebooks to assist in the planning and conduct of these discussions. These materials, as well copies of this and other Interactivity Foundation reports, may be downloaded from our website (listed below). You can also obtain additional printed copies of any of our publications (at no cost) by sending us a request that briefly indicates their intended use. See the contact information listed below.

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Finally, we welcome your comments, ideas, and other feedback about this report, its possibilities, any of our publications, or our discussion processes.

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Thank you! We look forward to the interactivity.

