

Toward A New Theory of Regulation: A Research Agenda for the Future

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As the global economy confronts its worst downturn since the Great Depression, and America begins to undertake some of the most ambitious policy initiatives since the New Deal, the country is urgently in need of fresh ideas about economic regulation. The financial crisis has shaken many core assumptions of the prevailing academic view of regulation, while popular attitudes towards government are shifting as well. Abundant evidence from polling data and the discussions surrounding the 2008 election suggest that a great many Americans want to see new approaches for addressing the nation's most pressing challenges. The deregulatory mindset that most influenced American policy-makers over the last three decades seems to have given way to a new openness about the role of government in the market. What we need now are compelling conceptual frameworks for fashioning public policy that can encourage innovation while maintaining long term financial stability, optimize both economic growth and shared prosperity, and strike sensible and cooperative balances between public and private governance.

The necessity for such innovative thinking motivated the conference that in turn gave rise to the essays in this volume. In February of 2008, as the true significance of the subprime crisis was just becoming visible, over fifty scholars and policymakers met for several days to begin the work of fashioning a new research agenda on regulation and the economic role of the state. Participants considered how to craft a more complete intellectual framework for regulatory design and decision-making, one that recognizes the explanatory power of rational self-interest as a determinant of economic and political behavior, while acknowledging the limits of the prevailing rational actor model.

Cognizant that intensifying critiques of the conventional wisdom had yet to solidify into a coherent alternative, we structured the conference to encourage debate about the most important open questions regarding regulatory policy making. We additionally sought to prompt cross-fertilization between academic disciplines, bringing a variety of perspectives to bear on the most constructive roles of government and markets.

Our focus on identifying key questions that deserve attention was also motivated by a larger conviction – the belief that raising the right questions is central to scientific progress. In this vein, we borrowed from an institutional strategy developed by the medical pioneer Dr. Judah Folkman. In the main conference room of his laboratory, Dr. Folkman kept a special whiteboard on which he recorded the most important unanswered questions in the fields of vascular biology and cancer research. These were the questions that, if answered, had the potential to transform the practice of

medicine and the lives of literally millions of patients. At weekly lab meetings, Dr. Folkman always encouraged – and sometimes implored – the dozens of scientists who worked with him to take up these big questions and to try to answer them, rather than focus solely on smaller questions that were safer but far less significant. Dr. Folkman’s original question about whether (and how) tumors stimulated blood vessel growth ended up transforming scientific understanding of cancer and vascular biology, leading to new treatments (such as the cancer drug Avastin) and the promise of many more in the years ahead. Over the years, questions on the Folkman whiteboard launched wide-ranging research that eventually generated new treatments and potential treatments for diseases ranging from cancer to macular degeneration (which causes blindness) and even heart disease.

While our focus is on social rather than medical conditions, we have adopted the research whiteboard as a strategy for identifying and disseminating fundamental – and potentially transformative – questions in our fields of study. Accordingly, in the months after the February 2008 conference, and with additional help and input from participants, we developed a “whiteboard” of twenty-four questions, which capture (and condense) the much larger number of questions raised during the various conference sessions. The “whiteboard” questions, organized under four broad headings and several subheadings, are as follows:

I. MODELS OF ECONOMIC AND POLITICAL BEHAVIOR

Behavioral Research

1. How accurately does the standard rational actor model characterize economic and political behavior, both by individuals and by institutions?
2. What findings from behavioral economics, psychology, and cognitive science have the greatest relevance/implications for the study and practice of regulation?

General Interest vs. Particular Interests

3. What are the conditions under which regulatory policy serves the general interest (“common good”) rather than narrow but influential special interests?
4. How influential is “capture theory” in the social sciences today, and where is it most/least influential?

II. ASSESSING REGULATORY OUTCOMES

Patterns of Success and Failure

5. What characteristics or dynamics, if any, cut across cases of “successful” or “unsuccessful” regulation, either domestically or internationally?
6. What conditions enable effective regulatory institutions – whether public, quasi-public, or private – to remain so over time, warding off the tendency to become complacent or inflexible in the face of changing circumstances?
7. What relationships exist between types/modes/ strategies of regulation, on the one hand, and broader distributional outcomes on the other?

Public Opinion

8. Is it true that Americans tend to hate the idea of regulation, but greatly value specific regulatory policies and agencies (FDA, SEC, EPA, etc.)? If so, how do we explain this tension?
9. What types of regulatory purposes do Americans regard as most/least important? How do these views compare with other countries’ experiences, and why?
10. What factors most determine the public credibility of a regulatory agency or strategy?

Techniques of Assessment

11. How can we best ascertain the effectiveness of particular regulatory policies, agencies, or broader regulatory strategies? To what extent can sophisticated cost-benefit analysis lead to fair assessments of the impact of regulatory policies by public agencies, in the short, medium, and long terms?
12. In light of the growing reliance on mechanisms of private government, how can governments and other parties, such as NGOs, effectively monitor and evaluate self-regulation?

III. INFORMATION FLOWS AND REGULATORY POLITICS

Patterns of Regulatory Decision-making

13. How do individual lawmakers and regulators make decisions? Specifically: what motivates them, where do they get their information, how do they process it, and how do they decide which problems most require regulatory action? [Could ethnographic research be fruitfully employed to help address these questions?]

Role of Media, Crises/Scandals, and Social Movements

14. How does media coverage – and the networked public sphere – shape regulatory/political decision making? How, if at all, does the current dynamic in America differ from that in previous generations, or from the situation in other countries?

15. What is/has been the role of crisis/scandal in prompting regulatory action or influencing regulatory choices?

16. How important have social movements been in creating political environments conducive to the adoption of major regulatory initiatives, and in shaping the details of particular regulatory reforms?

Political Processes

17. What do we know, and what do we most need to know, about the role of political processes (veto points, formal and informal information flows, etc) in aiding, forestalling or channeling regulation?

18. How have prevailing rhetorical narratives about the broadest purposes of government, in different eras and societies, facilitated, blocked, or otherwise shaped regulatory policy?

Regulatory Arbitrage and Competition

19. Under what conditions do competitive dynamics across jurisdictions drive a regulatory “race to the bottom,” or conversely, a “race to the top?”

20. How big of a problem is regulatory arbitrage? To what extent does it limit, or even eliminate, regulatory discretion?

IV. REGULATORY STRATEGY AND DESIGN

21. What would a full taxonomy of regulatory strategies/ methods (e.g., information disclosure, regulatory taxation, command and control, self-regulation) look like? In what contexts do these various approaches typically work well or poorly?

22. What is known, from within and outside the American context, about how best to improve or rebuild the capabilities of a regulatory agency?

23. What characteristics of a regulatory agency, either in the U.S. or elsewhere, render it most/least vulnerable to “capture” by narrow interest groups, both at its inception and over time?

24. How can the architects of regulatory institutions take advantage of inclinations toward social cooperation as well as more individualistic incentive structures?

Our hope is that this volume will spark sustained academic engagement with these questions and with the broad agenda of new research on regulation and regulatory decision-making that inform them. Many of the questions suggest new directions and new opportunities for existing fields. Increased engagement with the regulatory state in the field of anthropology, for example, would greatly illuminate central questions of group behavior and institutional culture, within industries and even regulatory agencies. Similarly, behavioral researchers in economics and psychology could continue to deepen our understanding of individual decision-making in a regulatory setting, in part by considering the significance of organizational culture as a context for individual action. For their part, historians can bring their skills to bear on the evolution of the modern regulatory state, at once drawing on the conceptual insights of other disciplines, and testing the salience of social science models against the historical record. Within every social science discipline, more attention to instances of regulatory success, rather than just failure, should yield a clearer understanding of best practices in regulatory design, offering means of improving the very legal and political structures in which regulatory decision making occurs. Mainstream economics, which has perhaps provided the most influential perspectives on regulation, could seek to synthesize budding research across all of these domains into new models of regulation and regulatory formation.

Our focus on big questions, we realize, cuts against some powerful trends within academic life. Though the movement towards increased specialization within the academy has ushered in an era of unprecedented refinement and rigor, the phenomenon has been a double-edged sword. Career advancement in the academy has increasingly required that scholars delve deeply into confined

topics, so that they can demonstrate full command of a particular domain of knowledge. Too often, scholars choose research topics based not so much on how important they might be, but on how tractable they are and how likely they are to provide a foundation for a successful academic career. Such pressures also lead scholars to shy away from producing synthetic overviews that reframe a field's core contributions and make those contributions more visible and accessible to non-specialists. As a result, scholarly endeavors at times falter into narrowness, with conceptual sophistication trailing off into jargon and rigorous modeling descending into idealized worldviews.

We contend that a new boldness in the scope of social scientific engagement is both possible and more necessary than ever. Decades of research on global climate change has led to a powerful consensus on the urgency of the problem, moving policy reform from the margins to the mainstream. Earlier in the century, the “scientific” work on the hierarchical intelligence of the races, so long buttressing policies of segregation and eugenics, was systematically dismantled by Franz Boas and a small but highly influential cohort in the social sciences – work that furnished one pillar of the landmark *Brown v. Board* decision. Ultimately, first-rate academic research has the potential to shape the intellectual climate in which policy-making occurs, in many ways redrawing the very boundaries of the politically possible.

The unraveling of America's financial system, and the long process of reconstruction ahead, will require sacrifice and newfound exertion in a great many walks of American life. It is a critical moment for academics, and particularly social scientists, to rededicate themselves to the foundational purposes of scholarly work – the dual commitments to the scientific spirit of inquiry and the principle of framing research with a concern for the public good. It is a time when economists, sociologists, political scientists, historians, anthropologists, and legal scholars should strive to touch upon common grounds of their disciplines and forge new collaborations. It is a time to reach outwards, towards audiences beyond traditional scholarly boundaries. These include the public, which is so urgently awaiting answers, and the legislators and government officials who must grapple with our many complicated and vexing socioeconomic dilemmas.

The current financial crisis presents an opportunity to rethink old assumptions about economic and governmental institutions, to pursue the implications of new insights about economic behavior and social motivation, and to pay far greater attention to the contexts and strategies that have generated both governmental success and failure. We may well stand at a unique historical moment with regard not only to regulatory policy, but to America's place in the world, to the structuring of economic systems, and to the relationships between the nation-state and international mechanisms of governance.

We are convinced that developing a more comprehensive view of the economic role of the state, a view equal to the many challenges we confront, will require scholars – especially younger scholars – to continue pushing disciplinary boundaries and creating connections between seemingly disparate perspectives or approaches. Questions of regulatory policy are now central to our future economic health, and the answers from various methods and disciplines will be equally critical in forging new approaches to political economy. The essays that comprise this volume and the research questions – or “whiteboard” – to which they gave rise are meant ultimately as guideposts, pointing researchers in a host of promising new directions. Amid such turbulent times, and with the stakes so high, American social scientists can make a profound contribution and a profound difference.