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AGENCIES, FUNCTIONS AND ACTIONS: THE CONCEPTUAL QUAGMIRE IN REGULATORY POLICY THEORY AND PRACTICE

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I. LIFE IN A QUAGMIRE

Today's regulatory system is quite different from what it was in the not too distant past. Within the past half century substantive constitutional restrictions on regulation have all but disappeared.(Gellhorn and Byse, 1974: 58-108; Claude, 1975: 128-131) During that same period there has been a constant flow of structural and procedural reforms which have changed the face and operations of most regulatory agencies.(Committee on Governmental Affairs, 1977/78; Freedman, 1978) In addition, we recently passed through a "regulatory boom" period that saw not only an increase in the number of regulatory agencies and activities, but also a significant shift in the functional scope of regulatory actions.(Lilley and Miller, 1977; Dubnick and Walker, 1979; also Leone, 1977 and Weaver, 1978 for explanations of these trends.)

What is puzzling about these changes is that they have tended to generate greater demand for still more changes. In the process we have learned that regulatory policy issues are not easily resolved, and that there are no simple solutions for the complex problems plaguing government regulation.(Wilson, 1980: Chapter 10) Government regulation is a multidimensional phenomenon simultaneously used to treat public problems while creating dilemmas of its own making. Such a complicated situation is difficult enough to describe, let alone resolve. Thus, there is a tendency among analysts to focus attention on narrowly defined dimensions of the regulatory policy system and to highlight specific problems associated with that arena. Not surprisingly, regulatory reform proposals have been predisposed toward very specific adjustments in statutory, structural, or procedural variables.

Nor is it surprising that such proposals have met with limited success. Changing the appointments process, reorganizing agency structures, increasing staff resources, forcing improvements in the analytic capabilities of decision-makers, clarifying statutory mandates, and many related suggestions have been adopted in a variety of policymaking contexts, and in most instances the overall result has not met expectations. The failures of these reforms may, of course, be attributed to the unsolvability of regulatory policy problems. Such a pessimistic view is partly to blame for our increasing reliance on the ultimate "simple" solution -- deregulation.

A slightly more optimistic perspective would accept the fact that regulation is a complex phenomenon and begin by dealing with that situation. Effective reforms will depend, therefore, on two preconditions being met: first, a reasonably broad consensus among relevant parties concerning the objectives of regulatory reform; and second, a workable understanding of the regulatory policy system which is to be reformed.(Thompson, 1967: 134-135) The first precondition must emerge from the political arena; the second, however, should be developed through the systematic study of regulatory policies and the social interactions associated with them.

Policy analysts can be and have been involved in achieving both preconditions. They have been a constant presence in the debate over regulatory reform objectives from the outset of that issue earlier this century.(McCraw, 1975 and 1980) They have also generated a substantial body of literature on the legal, political, and economic dimensions of regulatory policy systems, thus providing a basis for informed reform proposals.(Gellhorn and Byse, 1974; Bernstein, 1955; and Kahn, 1970) More recently there have been attempts to integrate this work within comprehensive theoretical frameworks.(Mitnick, 1980) Yet, in spite of all this groundbreaking work, we seem no closer to understanding regulatory policy or how we wish to use it than we were at the end of the 19th century.

Central to our limited understanding of government regulation is the conceptual confusion that has characterized recent regulatory policy analysis. We have been continually adding to our knowledge of regulation, but have not made any significant advances in our capacity to apply that knowledge to the problematic circumstances of regulatory policy. Regulatory reform proposals are more often the product of untested assumptions than the result of systematic analysis and research, and this situation is in part a reflection of our inability to clearly articulate regulatory policy problems.

To state the problem metaphorically, we are bogged-down in a conceptual quagmire from which we must extricate ourselves if we are to establish a relevant and useful regulatory policy analysis. This is not a call for still another "theory of regulation," for heaven knows we have enough of those. It is a call for an explication of the regulatory policy arena, its parameters, its problems, and what we know about all of these. To do this, however, we must return to the conceptual roots of the task and ascertain just what we mean by the term "regulation."

II. DEFINITIONS-IN-USE

In one sense, it is easy to understand why the American public has been so concerned about regulation in recent years. Economic conditions have changed dramatically during the 1970s, and it has been relatively easy to link government regulation to those changes as either a cause or major obstacle to improvements. Regulatory policy has become increasingly expensive in terms of both administrative and compliance costs. It has also had considerable impact on levels of investment and productivity. But while a growing awareness of these "facts" have generated more demands for reform, they have not produced any greater certainty about what causes the problems the reforms are intended to resolve.

Regulatory reform proposals, like other policies, are built on causal hypotheses about the relationship between government activities and the reaction of targeted populations. "Whether stated explicitly or not," note Pressman and Wildavsky, "policies point to a chain of causation between initial conditions and future consequences."(Pressman and Wildavsky, 1979: xxi) Policy proposals calling for the reform of government imply a relationship between certain conditions of governing and some undesirable (or less desirable) conditions. In the case of today's regulatory reform proposals, it is implied that the current regulatory policy system is to some extent the cause of the adverse economic conditions now plaguing American society.

The uniqueness and irony of this situation becomes obvious when it is placed in historical context. Regulation's current high status on the public agenda is not new, but the perspective we have of it is. In the past, regulatory policy had been perceived (by "mainsteam" analysts) as a necessary policy solution rather than a problem in its own right.(Fainsod and Gordon, 1941; cf. Friedman, 1962) Even in previous calls for reform, regulatory policy was regarded as a means to improve problematic conditions and not as a principal cause. Those earlier proposals viewed the regulatory policy system as a useful tool in need of repair, fine tuning, or even broader application. The problems reforms were to address were the equity, efficiency, and effectiveness of the regulatory policy system. Today's major reform proposals view regulation as a fundamental part of the American economy. They too are intended to bring about change in the regulatory policy system, but not with the intention of repairing or tuning a tool that has worn down through inappropriate application or overuse. Instead, they see their mission as the correction and revitalization of an economic order which has turned sour due to a heavy reliance on methods of government intervention. Thus, by changing the regulatory policy system one is supposedly reshaping the American economy.(MacAvoy, 1979; Weidenbaum, 1979; U.S. Department of Commerce, 1979)

This recent shift in perspective is one source of the conceptual confusion that permeates regulatory policy analysis. Regulatory reforms of the past were relatively clear in defining the issues their proposals would address: the lack of agency accountability, the low quality of appointments to decision-making positions, the underrepresentation of certain interests before regulatory bodies, the ambiguities of legislative mandates, etc.. The issues were so specifc that it was unnecessary for either analysts or policymakers to contemplate <u>regulation as a generic policy phenomenon</u>. Under these conditions, it is not surprising that the concept of regulation failed to take on any detailed or consistent form. On the contrary, the term took on a number of meanings due to its loose usage in a variety of contexts. Thus, when analysts and policymakers became aware of regulation as a possible public policy problem, they unsystematically adopted that version of the term which attracted their attention or best suited their immediate purposes. This was the fateful first step into the quagmire.

As one surveys the various ways regulation has been explicitly or implicitly defined, five types emerge. These are not formal definitions in the dictionary sense, but "definitions-in-use" that become evident when one examines the way the concept of regulation has been handled in a variety of contexts. First, regulation is what government does. As offered at the outset of a special report for the U.S. Senate Committee on Governmental Affairs, this usage regards regulation as any government activity which "provides benefits and imposes restrictions. . . ," thus giving a regulatory dimension to almost all things governments do.(Committee on Governmental Affairs, 1977/78: Vol. I, v) A somewhat more focused definition presented in a Congressional Budget Office study views government regulation as those activities "which somehow affect the operations of private industry or the lives of private citizens." In the words of that same study, "Such a definition would result in the identification of most federal activities as regulatory."(Quoted in Mitnick, 1980: 1)

The value of these definitions is questionable at best. In both the Senate and CBO studies cited above, the staff analysts had to develop definitions which were more "manageable" or "workable". Even among policymakers this approach is of very limited utility for it provides no obvious or useful "handle" for bringing about changes in the regulatory policy system. If regulation is everything, then effectively it may be nothing.

Where these definitions might prove useful is in the rhetoric of policy debates or political campaigns. As with other terms frequently used in political contexts, regulation can carry positive or negative connotations which can be used to either arouse or acquiesce an audience.(Edelman, 1964) When identified with the public control of undesirable behavior, regulation does imply a positive government response and therefore can be used to stimulate or satisfy the need for (or acceptance of) a proposal or candidate. If, however, public controls are themselves perceived as undesirable, then the rhetoric surrounding regulation will generate or reinforce many negative associations. In either case, regulation can become synonymous with all government activities and be used as a key word in political campaigns. Therefore, it is not surprising to hear a call for getting "government off the backs of the people" associated with suggestions that we must "deregulate" major sectors of the American economy. Under such conditions the identification of regulation with government policy in general has proven valuable for the politician who uses it and the analyst who seeks insight into the regulatory policy agenda setting process. Nevertheless, this definition is not very useful for understanding much else about the regulatory policy system or how to change it.

A second definition views regulation as what government does to some special target population. Here the focus is on the entity to be regulated, for in this definition the regulated subject provides the criterion for what regulation is. The logic of the approach is rather simple. Through a variety of rationales, certain sectors of society are determined to be so important (or unique) that their structure or behavior must be influenced for the public good. Legalistic rationales would describe these entities as "peculiarly and sufficiently 'clothed' or 'affected with a public interest'. . . ."(Kahn, 1970: 3) Economists would discuss them in terms of inherently decreasing cost industries (natural monopolies), businesses with production processes or products that generate undesirable externalities (polluters), certain entities which provide basic (prerequisite) services or products for the rest of the economy ("infrastructure" industries), and so on.(Pegrum, 1949: Chpater I; Kahn, 1970: 11-12) In any case, once this unique status is achieved, these segments of society become subject to government interventions ranging from special tax breaks and subsidies to complete control through nationalization. Any and all of these government approaches often take on the title of "regulation," although the term is usually used to describe government activities beyond mere subsidies and short of nationalization. Thus, under this definition what matters is not <u>what</u> government does, but <u>who</u> they do it to. There are no specific characteristics of the regulatory policy system itself attached to this idea of regulation.

That poses a problem for analysts and policymakers seeking to study or reform the regulatory policy system, for like the previous definition it offers no handle to use in either endeavor. Even more critical is the debatable nature of the rationales for determining if an entity should be "regulated." Both the legalistic and economic justifications for giving such special status to an industry or other social entity have been challenged(Steiner, 1977; Nelson, 1966); and even where accepted, questions have been raised regarding the need for and wisdom of government intervention.(Friedman, 1962: Chapter VIII)

In spite of these and other problems, this definition still plays a role in discussions about the regulatory policy system. In the political arena, one still hears the rhetoric of "affected with the public interest" as justification for creating, maintaining, or expanding government regulation in a variety of areas. Thus, as with the first definition, it is relevant for the analyst examining how and why regulatory policy issues reach the public agenda. For those interested in the regulatory policy system per se, however, it is of limited value for it fails to differentiate regulation from other forms of government intervention.

A third definition holds that regulation is what "regulators" do. For a variety of reasons, certain government bodies become known as "regulatory agencies," and what these entities do -- regardless of the types of actions or target populations involved -- becomes government regulation. While they may be called regulatory because of the functions or actions they perform (see the "function" and "action" definitions below), these agencies may also carry that title for other, less rational reasons.

For example, the term "regulatory" may have been applied during the policy formulation and legitimation phases which eventually led to the agency's establishment, and as a result the label "stuck." To understand how this happens, we must again take note of the rhetorical uses of regulation cited above. In a period or situation when direct and forceful government intervention is deemed desirable, the idea of regulating carries considerable symbolic weight. To label a proposed agency regulatory would therefore enhance its chances for passage. The resulting statute may even include provisions that could lead to the performance of regulatory functions or actions if strictly administered. However, effective implementation is not necessarily guaranteed. "Tangible resources and benefits," argues Murray Edelman, "are frequently not distributed to unorganized political group interests as promised in regulatory statutes and the propaganda attending their enactment."(Edelman, 1964: 23) When this occurs "the deprived groups often display little tendency to protest or to assert their awareness of deprivation."

> The fervent display of public wrath, or enthusiasm, in the course of the initial legislative attack on forces seen as threatening 'the little man'is a common American spectacle. It is about as predictable as the subsequent lapse of the same fervor.(Edelman, 1964: 24-25)

While Edelman applies this generalization to many federal regulatory agencies, it is more applicable to some than to others. The Shipping Act of 1916 is a prime example, for while the rhetoric of its passage and statutory provisions are pro-shipper, it proved to be the foundation for a Federal Maritime Commission that (in its various historical forms) has been an effective supporter and non-regulator of carrier interests.(Cf. Mansfield, 1980)

A related reason for calling certain agencies "regulatory" is that while they may not perform regulatory functions or actions today, they did so initially but have since changed. This phenomenon has been described in "life cycle theories" of regulatory agencies presented by Bernstein and others.(Bernstein, 1955; Downs, 1967; also Plumlee and Meier, 1978 and Mitnick, 1980: 44-78) According to these models of agency development, the regulatory body typically begins life as an active and strident enforcer of its regulatory mandates, but for a variety of reasons (e.g., ambiguities in the mandate, reduced public support, strong organized opposition from the regulated interest) it becomes more passive and apathetic with age. Unless a crisis or scandal intervenes, the agency eventually becomes "captured" by regulated interests or so ineffective that its impact can be discounted. Nevertheless, the regulatory powers which characterized its youth may endure in the abstract, thus resulting in the use of the label "regulatory" to describe the agency.

Still another (but perhaps the weakest) reason for an agency to be called regulatory in spite of its actual responsibilities or activities has to do with its structure. Regardless of whether the multimember "commission" form was initially an "historical accident" or a rationally developed alternative to hierarchical bureaus (cf. Bernstein, 1955 and Committee on Governmental Affairs, 1977/78: Vol. V, 26-32; also Mitnick, 1980: 27-34), this type of agency structure is so frequently associated with government regulation that the distinction between the two is often blurred. The Congressional tendency to use the "independent" commission form "was. . .encouraged by the success of the Interstate Commerce Commission, which enjoyed widespread respect in its first decades of existence." That tendency was further enhanced by a desire to establish agency forms that could stand "apart from the rest of the government in general, and from the White House in particular."(Committee on Governmental Affairs, 1977/78: Vol. V, 30; also see Seidman, 1980: 252-256) But the independent regulatory commission was not the only type of multimember body established by Congress. Early examples included a board of tea-tasting experts established at the turn of the century to recommend standards of tea purity to the Secretary of the Treasury. A more significant example was the formal creation of the Tariff Commission in 1916 which studied and monitored tariff laws, advised Congress on tariff policies, and recommended changes in U.S. trade policy to both the President and Congress.(Noll 1971: 60-62; Bauer, Pool, and Dexter, 1972) While neither body actually made regulatory decisions or implemented regulatory policies, analysts would be inclined to include them as regulatory agencies given their structural resemblence to independent regulatory commissions and their indirect association with regulation. In some cases, this association may have the effect of a self-fulfilling prophesy. For example, the Tariff Commission (now called the International Trade Commission) has been given substantially more authority in recent years, although its recommendations must still meet with the approval of the President and, at times, Congress.

A more significant (although arguable) example is the National Labor Relations Board (NLRB). Roger Noll has noted the uniqueness of the NLRB as a "regulatory commission" which is more a "referee" than a resolver of conflicts.

> The NLRB does not make decisions in lieu of a market; rather it defines the rules that the parties to a dispute must abide by and determines what constitutes fair behavior by each party. If the NLRB were like other agencies, it would be required to decide the terms of the final bargain between labor and management.(Noll, 1971: 50)

Assuming that we accept this view of regulation as government decision-making "in lieu of a market" (and, as we see below, this is but one alternative among many possible views) it could be argued that the NLRB is usually regarded as a regulatory body in spite of the fact that it does not technically carry out or impose regulatory decisions; that is, it is regulatory in form and reputation only. The same can be said for a variety of other commissions at the national and sub-national level that enforce "rules of the game" instead of making primary decisions.

In summary, an agency can be called "regulatory" whether or not it performs regulatory functions or actions. The point here is that once that label is attached to an agency, regulation tends to become whatever that agency does.

The major difficulties with these "agency" definitions lies in the risk that those who consciously or unconsciously use it are likely to commit Type I and/or Type II errors. For instance, by defining regulation as what so-called regulatory agencies do, one may overlook the regulatory functions or actions undertaken by non-regulatory bodies. This problem may plague practitioners as well as analysts. "The Department of Agriculture is literally swamped with regulatory functions," states James Bonnen; but many "of these are not even conceived of as . . . regulatory by those who execute them."(Noll, 1971: 72-73) The institutional idea of regulation has such a tight hold on the perceptions of many analysts and policymakers that it may blind them to the reality of regulatory policy functions or actions.

At the same time, there are examples of functions and actions performed by those agencies which might be regarded as regulatory even though they could not live up to more substantive and technical definitions of the term. The EPA, for instance, undertakes research into the health and ecological effects of pollutants, and while these investigations may have little or no direct or immediate impact on regulatory functions or actions, they are still usually analyzed as if they were regulatory policy activities.(Marcus, 1980: 110-111) A contrasting example is found in the work of the National Bureau of Standards (NBS). The NBS is not often regarded as a regulator; it has a greater reputation for the technical and research services it provides for the private sector. Nevertheless, NBS performs many regulatory functions through its constitutional, statutory, and contractual standard-setting authority.(See Dubnick and Walker, 1979) The difficulty analysts and others may have in making these distinctions is attributable in large part to the frequent use of the agency definition of regulation.

In spite of these significant drawbacks, the agency definition has proven quite useful. Its primary virtue is that is simplifies analytic and policymaking tasks by providing concrete focal points for discussion and change. Using institutional parameters to designate what is or is not regulatory, one is not only able to specify what constitutes regulatory policy (what institutional actors do) but one can also focus on key agency variables (e.g., structures, procedures, personnel) when investigating the causes and conditions of regulatory policy failure. In short, the agency definition provides what the previously discussed usages do not: "handles" which can be operationalized, scrutinized, and changed when necessary. Thus it is not a view of regulation that we can easily dismiss.

The third definition-in-use relevant to both analysts and policymakers views <u>regulation as the performance of "regulatory" functions</u>. The key here is, of course, how one defines a regulatory function. In an early attempt, Harold D. Koontz provided a descriptive list of "control"-oriented government activities: public service industry controls, controls over extractive industries, controls over labor-management relations, controls over financial institutions, etc..(Koontz, 1942) Marver H. Bernstein offered a similar list, although his stresses the programmatic nature of government regulation: competition programs to promote the effectiveness of the marketplace, public utility programs where competititon is perceived to be inappropriate, financial programs to protect basic fiduciary relationships, etc..(Bernstein, 1961) Still another approach reflects the long-standing association of regulation with the control of public utilities and the idea that regulation entails price-setting, the awarding of franchises, the prescription of service obligations and standards, and so on.(Kahn, 1970: 3; and Noll, 1971: Chapter 3)

Two attempts to develop analytically relevant concepts of regulatory policy deserve special note for the insights they give us about the functional definition. Theodore J. Lowi has noted the differences between three types of policy arenas: distributive, redistributive, and regulatory. Basic to those differences was the quality of resources at stake in the policymaking process. In the distributive arena those resources are easily "disaggregated and dispensed unit by small unit." In the redistributive arena, the resource-derived benefits and costs of policy decisions are allocated among broad categories of social classes. In the regulatory arena, however, the resources in question are desired by two or more narrowly defined interests but cannot be satisfactorily disaggregated and distributed among them. The result is a confrontation between those competing groups as they fight for a favorable policy decision. In this context, regulatory functions are those which government undertakes to settle zero-sum disputes among contending special interests.(Lowi, 1964 and 1972; also Ripley and Franklin, 1980; for critique see Dubnick, 1979)

Barry M. Mitnick's attempt to develop a definition of regulation provides perhaps the most useful delineation of what constitutes a regulatory function. In his detailed explication of the term, Mitnick explores various meanings of regulation and builds toward the idea that it is a "process consisting of the intentional restriction of a subject's choice of activity, by an entity not directly party to or involved in the activity."(Mitnick, 1980: 9) What is interesting about this and the other functional definitions is that they deemphasize the questions of <u>who</u> regulates and <u>how</u> they go about their tasks while emphasizing the <u>consequences</u>.

In fact, in its purest form the functional definition would be even less qualified than Mitnick offers in his version. For example, to note that regulation is a "process" implies that it is a policy only when being implemented. There are circumstances, however, when regulations restrict the choices of target populations by merely being "on the books." The knowledge that there exist weights and measures standards is sufficient in most cases to produce compliance in relevant target populations. Except for a few, relatively minor and very infrequent cases, NBS and other weights and measures regulators do not have to enforce their standards. There does not have to be a constant process of policy implementation. In other words, regulatory functions continue to be carried out after the initial regulating process has "ceased" or become sporadic. The legitimacy of some regulations is so high that they become internalized in the operations of targeted populations.

Mitnick's other qualification -- that regulation is done "by an entity not directly party to or involved in that activity" -- is also unnecessary in a purely functional definition of regulation. Government regulation is sometimes formulated or implemented through public agencies with memberships that include individuals from the ranks of the target populations. This is most often the case with professional and occupational licensing boards at the state level. There are also instances when private sector entities are formally sanctioned by governments to carry out regulatory functions even though those entities are composed of members from the target population. For example, a substantial amount of the regulation of various stock, bond, and commodity markets is done by the governing boards of the various exchanges under authority granted either by statute or through decisions of the Securities and Exchange Commission, the Commodity Futures Trading Commission, or other relevant national and state agencies. When taken into account, all this would lead us to a clearer statement of what government regulation is in functional terms: the intentional restriction of a target population's choices by a government or its sanctioned agent.

The utility of these functional definitions is a mixture of both possibilities and limitations. On the one hand, they allow analysts and policymakers to focus attention on the consequences of many government activities. The consequences become more significant than the institutional forms and actors which undertake the regulatory functions. Among other things, this facilitates the comparative assessment of regulatory policies and helps point out both the strengths and weaknesses of many government programs. On the other hand, since they tend not to include specifics about what agencies or actions are involved in carrying out regulatory functions, these definitions do not provide the analyst or policymaker with the handles that are needed for policy studies or reform. Nevertheless, these definitions have been put to considerable use in recent years. Among analysts, economists have become nearly fixated on the consequences of regulatory policy; while among policymakers, there has been an evident shift in perspective from agency-based to functional-based views as debates over regulatory policy focus more and more upon the impacts of regulation rather than the effectiveness or efficiency of instituional forms.(See McCraw, 1980)

Perhaps the most obvious definition-in-use views regulation as the performance of "regulatory" policy actions. As intentional behaviors by government officials (or their sanctioned agents), policy actions constitute the most basic operational.form a policy can take. It is at this level of analysis that regulatory agencies do their "thing" and regulatory functions are carried out, although in neither instance is any particular form of policy action involved (see below). And it is at this level that the true and distinguishing nature of regulation -- its direct reliance on coercivenss (see Neiman, 1980) -- becomes central to the concept.

There have been explicit attempts to define regulation in policy action terms. One approach, used by George I. Balch and John A. Gardiner, views regulation as one of several "strategies" used to change target population behavior. As an alternative to information (providing knowledge), facilitation (making the desired behavior easier to undertake), and incentive (relying on market and pricing mechanisms) strategies, regulation "requires" individuals to do something "under threat of penalties such as fines or imprisonment.(Balch, 1980: 45; also Gardiner and Balch, 1980)

Another policy action definition was the focus of a set of papers recently issued by the Canadian Institute for Research on Public Policy.

In an attempt to distinguish regulation from other types of policies (e.g. "moral suasion," expenditures, taxation, public ownership), the co-authors of the opening chapter in that collection draw attention to the primary role of rules and commands in regulatory policy. They regard regulation "as the imposition of rules by a government, backed by the use of penalties, that are intended specifically to modify the . . . behaviour of individuals and firms in the private sector."(Priest, Stanbury, and Thompson, 1980)

Still another version of an action definition [presented by the author in an earlier work (Dubnick, 1979)] offers a delineation of regulation based on three characteristics: the target population involved; the "operational lever" used in the action; and the extent to which that population is directly approached. As illustrated in the Figure 1 matrix, the target population can be either (a) specified individuals or firms; (b) "sectors" of the social or economic systems (e.g., the elderly or the passenger airline industry); or (c) all members of society (who are usually regulated through criminal law). The operational levers are those characteristics of the target population which policy actions can effect. The examples provided in Figure 1 (size, structure, resources, risk/liability, behavior/norms of behavior) cover a broad range of such characteristics for most relevant populations. Finally, the actions taken can be either direct or indirect.

[FIGURE 1 HERE]

Given these dimensions, Figure 1 reflects the great variety of policy action options available to policymakers. Within this context, regulation can be defined as policy actions by governments (or their sanctioned

Level of social activity:

Operational levers:	Individual entities		Societal sectors		Members of society	
	Direct	Indirect	Direct	Indirect	Direct	Indirect
Size						
Structure						
Resources						
Risk/ liability						
Behavior/ norms	X		X		X	

FIGURE 1

A Typology of Government Policy Actions

agents) which intentionally and directly proscribe or prescribe the behavior (or behavioral norms) of individual, sectoral, or societal populations.

With varying degress of specificity, all three versions of policy action definitions provide analysts and policymakers with a concept that can be used to study or change government regulation. But this utility is obtained at a cost, for this view is so narrow and specific that it excludes significant dimensions of regulatory policy while highlighting some of the more mundane and unimportant examples of government regulation. As a policy action, regulation is applicable to both administrative and substantive rules handed down by government agencies. Administrative regulations can be found in even the least regulative of government programs, and while some of these may have important substantive implications (e.g. the 55 m.p.h. speed limit requirement for states receiving federal highway funds), many more are merely intended to facilitate or improve agency operations. Taken in its purest form, the policy action definition fails to make a clear distinction between administrative and substantive regulation. To do so would mean developing a much more elaborate and awkward policy action concept.

However, even assuming that such a clear distinction can be made, the taking of substantive regulatory actions need not necessarily be equated with regulatory policy. Regulatory actions can be used to fulfill non-regulatory function by either regulatory or non-regulatory agencies. As a set of regulatory actions, the Internal Revenue Code is used to perform revenue-raising functions. On the other side of that coin, there are many advocates for using revenue-raising actions to perform such regulatory functions as pollution control.(See Committee on Environment and Public Works, 1977) In short, even this most basic definition of regulation poses major problems for regulatory policy analysts and decision-makers. Yet, it too cannot be dismissed for these reasons when one considers just how much influence this perspective has had.

Taken together, these five definitions-in-use constitute the conceptual quagmire of regulatory policy analysis and reform. Of the five, the three that have been most enticing and troublesome are those focused on agencies, functions, and actions. In the next section the role these definitions have played in regulatory policy "theories" will be explored with a view toward demonstrating the adverse impacts that have resulted from the lack of a clear explication of the regulation concept.

III. TOO MANY THEORIES SPOIL THE EXPLANATION

Ideally, theories of public policy are supposed to explain government activities and, if one is fortunate, offer guidance for improving future policy undertakings. Realistically, they often provide forums for narrowly defined perspectives as well as informed conjectures and rationalizations. This is particularly the case in the study of regulatory policy where inattention to the concept of regulation has produced a proliferation of "theories" characterized by disciplinary parochialism, a lack of comprehensiveness, and an inability to usefully explicate the problems that trouble regulatory policy today.

The depth of the problem regulatory policy analysts have created for themselves becomes clearer when we consider what theories of government regulation attempt to explain. <u>There is no single or comprehensive theory of regulation; rather, there are multiple theories of regulatory agencies,</u>

regulatory functions, and regulatory actions. This is due, in part, to the lack of a single definition of regulation around which a unified theory could be constructed. But it is also due to the willingness of analysts to accept -- often without any consideration of their limitations or alternatives -- one of the more circumscribed definitions-in-use. This would not be problematic if those same analysts would take the initiative to admit to the narrowness of their perspectives or attempt to integrate their constructs with other dimensions of regulatory policy phenomena. But with a few notable (though not necessarily successful) exceptions (Mitnick, 1980; also Schmid, 1978), this has not been the case.

The situation is made more complex by the fact that the concerns of regulatory policy analysts would not necessarily emerge as a unified whole even if a single definition or integrated perspective were to gain wide acceptance. The interests of policy theorists have ranged from attempted explanations of regulatory policy origins (why the agency/function/action came into existence) and operations (determinants of how an agency conducts its business, implements its functions, or selects and administers its actions) to concerns focused on policy performance (what conditions brought about the consequences of the regulatory agencies/functions/actions). Thus, each bias inherent in adoptions of specific definitions-in-use is reinforced by the specialized concerns of particular analysts. While the resulting diversity is significant, it is the impact of differences related to the various definitions of regulation that is central to the present paper.

The focus of this section will be on the various theories used by analysts to explain the origin of government regulation. It is assumed that the same impacts would be evident if we were to focus on theories of regulatory policy operations or performance. The intention is to demonstrate how the conceptual confusion surrounding regulatory policy has influenced the development of theories of regulation. There is no interest in questioning the relative value or importance of any theory. Rather, we are seeking to show how the lack of a single, comprehensive, consensual definition of regulation has influenced extant theories of regulation both individually and as they related (or fail to relate) to each other.

Theories of regulatory policy origins have taken a variety of forms. Many of the best known can be categorized into four groups: socio-historical, legal-historical, political, and economic.

Socio-historical theories: Analysts who rely on socio-historical theories regard regulation as the product of an on-going social development process. Their work can be summarized in terms of three general models: economic history, administrative complexity, and social modernization.

The "economic history" model has taken a variety of forms (derived from Mitnick, 1980: 34-44), but in essence it sees public policy toward business changing through different stages in America's economic history. There are usually four stages associated with this model of development. The first is typically called "promotional" and represents a period when government sought to facilitate and protect the growth of infant industries. The second stage is usually termed "competitive,"for government issues fewer protective controls and instead takes actions to expand competition by facilitating market entry and growth. In a third stage, governments deal with the "monopolies and trusts" which emerged from the cut-throat competitiveness of the previous era. The fourth period is often labelled "coordination/planning" by analysts and reflects government policies intended to coordinate and provide stability for the system of large corporate entities that provide strategic and essential products and services for the modern American economy. (A possible fifth stage, perhaps appropriately termed the "social control" period, might be added to this model to account for the relatively recent emergence of policies intended to deal with adverse externalities created by our corporate economy.)

The "administrative complexity" model (derived from Mitnick, 1980: 27-34) holds that as the tasks of governing become more complicated and specialized, public officials tend to delegate more authority and create agents to accomplish policy objectives. The time when governments could carry out regulatory policy through common law, direct statutory mandates, or the control of franchise awards has long passed. Economic, political, and social developments have stimulated demands for coherent and consistent (yet flexible) regulation formulated and implemented by knowledgeable and objective experts who have the time and resources to handle ever more difficult cases and issues. The result is that government regulation emerges over time as a distinctive government activity carried out by specialized agents who are empowered to monitor, enforce, and ultimately make regulatory policy.

The "social modernization" model is closely related to the other developmental constructs, but in this case it is the growing interdependence among social units which is central to the explanation. In the face of technological and scientific advances and the "democratization of wants," modern society has developed a highly interdependent social structure reflected in both increasing operating scales and the systematic differentiation of organizational tasks.(See Leone, 1977; Reagan, 1963: Chapter 8; and Beer, 1973: 54) In the face of these developments "large, complex networks of interdependent action arise. . ." (Beer, 1973: 56) not only in the economy but in the public sector as well. This modernization process thus produces ever more complex relationships, and these in turn demand more effective forms of control and coordination. Centralization occurs through both government assuming more responsibilities in dealing with economic imperfections and changing social priorities (what Beer calls "primary centralization) and the increasing nationalization of those tasks (Beer's "secondary centralization).(See Dubnick and Gitelson, 1981) Regulation emerges within this context as an instrument of centralization -- that is, as a <u>means</u> for performing the tasks of governing a modern society.

These three socio-historical models for explaining the origins of government regulation seem, at first glance, to be quite similar in logic if not in form. Each provides an implicit or explicit view of regulation as the product of a developmental process that is moving from simple to complex economic/administrative/social situations. Yet behind such similarities is a crucial difference, for while each model is an acceptable attempt to develop an "origin" theory of regulation, each views regulation in a different way. The economic history model explains the emergence of regulatory functions; the administrative complexity model explains the origins of regulatory agencies; while the social modernization model explains the increasing reliance on regulatory actions. The point is that none of these models explains a generic phenonmena we call regulation. We might rely on the economic history model to explain why and which regulatory functions are performed by American government today, but knowing that does not explain the existence of regulatory agencies or the development of common regulatory actions. Nor does the administrative complexity model help us understand why regulatory functions are undertaken or regulatory actions are utilized. Finally, regardless of how valueable the social modernization model might prove in explaining the increasing reliance on regulatory actions, it does little to explicitly explain the origins of regulatory agencies or functions.

Legal-historical models: A variation of socio-historical explanations suffers from the same fault. Legal-historical models see the origins of today's regulatory policies primarily through the development of constitutional doctrines and legal standards. Three prominent models in this genre include those centered on the delegation of authority, standards of "publicness," and standards of statutory clarity.

The "delegation of authority" model (derived from Gellhorn and Byse, 1974: 58-108) takes as its theme the historical movement from a strict judicial interpretation of the delegation doctrine (i.e., the legislature cannot delegate its law-making authority to another body) to a much looser construction. The series of cases and judicial standards upon which this model is based is summarized in Figure 2. The strictest rule ("contingency") allows Congress to delgate authority to specified agents only where all relevant contingencies for action are explicitly stated and followed. This was followed by the "primary standards" and "intelligible principle" rules which gave Congress the power to allow its agents to "fill in" the necessary details of a legislative act is reasonably clear standards are provided. Finally, under the "rule of reason" approach, the

Strictness of Delegation Doctrine Rule	Judicial Standard	Relevant Cases
High	The "contingency rule"	The Bug Aurora (1813) Field v. Clark (1892)
	"Primary standards" rule	Butterfield v. Stanahan (1904) U.S. v. Grimaud (1911)
	"Intelligible principle" rule	Hampton v. U.S. (1928)
	"Rule of reason"	U.S. v. Carolene Products (1938) Yakus v. U.S. (1944) Lichter v. U.S. (1944)
Low		

Figure 2

courts defer to Congress' wishes on delegation of authority with the constraints imposed by the due process of law. Historically, the movement from "contingency" to the "rule of reason" has meant more regulatory authority since the legislative branch finds it easier to create and delegate authority to agents to carry out its various tasks. Thus, this model is basically one which explains the origin and growth of regulatory agencies rather than regulatory policy in any more generic sense.

[FIGURE 2 HERE]

The "standards of publicness" model (derived from Kahn, 1970: 3-8) also relies on the historical emergence of a body of judicially interpreted law. Central to this model is the legal justification for regulating a target population, i.e. its being "affected" or "clothed" with the public interest. Prior to the passage of the 14th Amendment (and with the exception of cases dealing with the interstate commerce and contract clauses of the Constitution), there were few challenges to the ability of state and local governments to declare an activity or population to be so affected with the public interest as to be subject to government intervention. With the passage of the 14th Amendment, however, challenges emerged based on the doctrine that "No State shall. . .deprive any person of life, liberty, or property, without due process of law." Beginning with Munn v. Illinois (1877) (which upheld the right of state governments to declare acts and populations to be clothed with the public interest) the courts began to demand substantive justification for imposing regulatory constraints. It was not until Nebbia v. New York (1934) that the judicial limits imposed on legislative judgments in this area were essentially lifted. Again, the historical development of a legal doctrine is regarded as a "cause," and in this case the greater the judicial restraint shown by the courts vis-a-vis legislative determination of "publicness," the more regulation will be used. Even more significant from our perspective, this model explains the origin of regulatory functions undertaken by governments and is otherwise inappropriate in explaining why regulatory agents exist or regulatory actions are performed.

The third legal-historical model holds that regulatory policy increases with the ambiguity of statutes and other legislative mandates. The greater that ambiguity, the more discretion provided for implementing bureaucracies; the greater that discretion, the more uncertainties implementors must contend with; and the greater those uncertainties, the more likely it is that government officials will respond with more rules and regulations. Theodore J. Lowi (1979: Chapter 5) places this basic model in historical context by noting how "<u>modern law has become a series of instructions to administrators rather than a series of commands to citizens</u>."(Lowi, 1979: 106, emphasis in original) How those administrators have reacted is to convert (through bargaining with their clientele group or target population) each unqiue and unclear situation that arises under their discretionary authority into a new rule that can be applied whenever that situation emerges again. The result is more government intervention -- that is, regulation. Thus we have another explanation of government regulation, this one concerned with the origin of regulatory actions.

<u>Political models</u>: The narrowness of regulatory theories is also evident in the various political models that are frequently applied to explain the origins of regulatory policy. The most typical and traditional of these is found in the "group theory" model which sees regulation as the

result of political compromise among competing interests within the context of set of "legitimate" rules and institutions. The compromise that is ultimately reached reflects a temporary solution that completely satisfies none of the interests while being sufficient to partially satisfy all of them. "The pattern of evolving [economic] policy," state Fainsod and Gordon, "reflects the interplay of. . .[business, labor, and agricultural] interests, their strength and weakness, their skill in accommodation, and their ability to capitalize on such resources as they have at their disposal."(Fainsod and Gordon, 1941: 21; also Dimock, 1961: Chapter 2; and Truman, 1971: Chapter 11)

One of the factors in the traditional group theory model leading to compromise is the political party system. In recent modifications of that theory, the weakening of partisan forces in the American political system is taken into account with some analysts stressing the increasing importance of "social movements" and "single-issue" politics.(Sabatier, 1975 and McCraw, 1980) Still another variation involves a model which views the legislative policymaking arena as a "political market" where votes on public policies are for sale to those who can supply campaign-relevant resources for legislators who seek re-election. Given that market, those with the greatest resources will seek enactment of laws to protect their interests through the regulation of their surroundings. The resulting laws typically end up protecting major corporate producers since they are the most likely to have access to the greatest resources.(Stigler, 1975: Chapter 8; also Posner, 1971 and Peltzman, 1976; see Mitnick, 1980: 111-120 for an overview of this approach)

As different as the group theory, social movement, and producer protection models might seem, they have in common the purpose of explaining why the regulatory functions of government come into existence. In each instance political forces or circumstances stimulate policymaker interest in protecting, promoting, or controlling the choices available to a given target population.

Political explanations of regulatory agencies rely on different models, the most often cited being Murray Edelman's "symbolic politics" construct. According to Edelman, regulation takes the form of agencies developed to "create and sustain an impression that induces acquiescence of the public in the face of private tactics that might otherwise be expected to produce resentment, protest, and resistance."(Edelman, 1964: 56) Thus, regulatory policy emerges in the form of an administrative agency intended to appease public demands for action.

The political explanation of the origins of regulatory policy actions is exemplified in Charles O. Jones' concept of "speculative augmentation."(Jones, 1974) In his analysis of the 1970 Clean Air Act Amendments, Jones notes the politically charged atmosphere in which a strong public demand for action was accompanied by a relatively low understanding of the environemtnal problems involved or the potential solutions. The reaction was not only an escalation of the demands made upon the target populations of the Amendments, but also a greater specificity in those demands (i.e., they were more detailed in their mandates for polluters and instructions for government officials).

<u>Economic models</u>: Compared to the models examined thus far, economic explanations seem to offer the most unified approach. In their various

forms they reflect common roots in the simple market model. Yet, even in the face of this common base, the models that are used to explain government regulation are not concerned with the same phenomenon. There are variations of the simple model to explain the origin of regulatory agencies, regulatory functions, and regulation actions -- but none to explain some generic phenomenon called regulation.

One interesting twist to these economic models is that each is two-sided. The principle factor in all the economic models of regulation is the imperfection of the market. The market is logically an efficient allocation mechanism for scarce resources to be used in the production and distribution of goods and services. Market efficiency, however, depends on the existence of several conditions: e.g., perfect competition, complete information and mobility for all participants, increasing marginal costs for the production and consumption of goods and services, the complete absence of product externalities, etc..(On the simple market model, see Haveman, 1976: Chapters 2-3) Given the impossibility of achieving these conditions in real world situations, public policies (including regulation) are used where possible. According to some analysts, those policies are used to improve market efficiency by promoting or artificially creating the necessary conditions. This will be termed the "public-interest" view because it is assumed that a more efficient market is in the public interest. Other analysts view public policies as a means by which private firms seeking to secure or enhance their position in the marketplace can take advantage of real world imperfections to achieve their profit-maximizing ends. This we will call the "self-interest" perspective. These two views are reflected in the three types of economic models described here.

The first type explains government regulation by noting how market imperfections lead to the creation of "third party" intervenors. Thus, what is explained is the existence of regulatory agencies. From the "public-interest" perspective, this third party intervention is justified on a number of grounds (e.g., natural monopolies, the importance of a single industry for the entire economy, the lack of competition in an industrial sector).(Kahn, 1970: 11-12) Given these conditions, regulation is undertaken as "the explicit replacement of competition with governmental orders as the principal institutional device for assuring good performance." That is, regulation is the substitution of an agency's judgment for that of the marketplace.

> The regulatory agency determines specifically who shall be permitted to serve; and when it licenses more than one supplier, it typically imposes rigid limitations on their freedom to compete. So the two prime requirements of competition as the governing market institution -- freedom of entry and independence of action -- are deliberately replaced. Instead the government determines price, quality and conditions of service, and imposes an obligation to serve.(Kahn, 1970: 20)

The same model from the "self-interest" viewpoint sees the development of government regulation as a rational means for dominant participants in a competitive economy to obtain and retain an effective cartel-like control over the marketplace. Collusion among competitors is not only illegal -- it is often ineffective as well due to the temptation for individual firms to take advantage of the voluntariness of the agreeement. By giving that collusion the sanction of law and recruiting the state as an enforcer of cartel agreements, the dominant parties in a sector are able to effectively control the market.(See Stigler, 1975; also Olson, 1971) Again, regulation in this sense means that agency mechanisms replace market controls.

On a more general level, some economic theories attempt to explain the reasons for government functions which are regulatory. The "public-interest" versions of these explanations carrried considerble prescriptive weight for the first half of this centuiry. In 1915, Harvard economist Thomas Nixon Carver noted "that under the competitive system, properly safeguarded," the market and human self-interest will "do many things which result in good to society." However, he was quick to state that

> it is a mistake to assume that this beneficent order of nature exists, or can possibly exist, in the absence of very careful and strict government supervision and interference. Government and government alone prevents competition from lapsing into the brutal struggle for existence, where self-interest leads to uneconomic as well as economic -- to destructive as well as productive activity on the part of the individual. . . .<u>[U]nder proper governmental interference and control</u>, men are led as by an invisible hand to promote the public interest while trying to promote their own.(Quoted in Anderson, 1962: 27)

In a later expression of this model, Dudley F. Pegrum notes that regulation "arises in the first instance from the necessity of giving legal sanction to private property rights and of providing for redress against infringement of them"(Pegrum, 1949: 8) Thus, this broad functional explanation of regulation would have the topic encompass the most basic of civil and criminal laws relating to relationships among individuals. But Pegrum states that regulation "is also a means whereby public authority endeavors to curb abuses arising from imperfections in the market."(Pegrum, 1949: 9) The stress once again is on the fact that regulation does something to restrict the choces of a target population. Exactly who does (the agency) or what is done (the action) is not central to the model as so structured.

The "self-interest" version of this explanation of regulation is primarily the result of neo-Marxist and "revisionist" historian analyses (Kolko, 1963 and 1965), although it has a number of advocates among contemporary Chicago School economists such as George Stigler. The model holds that problems leading to the creation of government regulation are not found in the lack of competition in the imperfect market, but in the instability generated for those who hold strategically strong positions in an already highly competitive sector of the economy. Using the political power their strategic resources provides for them (cf. the "producer protection" political model), these dominant firms press for legislation that will stabilize their portion of the market by eliminating the possibility of undesirable (from their perspective) consequences that can arise from cut-throat competition. The end result is regulation in the function sense -- that is, government policies that restrict the choices of specific populations (current or potential competitors in a given market) using a variety of means (e.g., entry restrictions, production quotas, subsidies or tax breaks tied to market shares, etc.)that are implemented through a variety of mechanisms (e.g., a regulatory commisssion, a presidential order, the Internal Revenue Service, etc.).

The origins of regulatory actions is also a reflection of market imperfections from the perspective of some economic theorists. At this level, however, it is not the inability of the market to perform desirable functions or the need for intervening third parties which is stressed; rather, it is the more immediate failure of market arrangements that generates specific regulatory action responses. One version of this model begins with the assumption that markets operate within the context of institutionalized social relations in the form of "property rights." The interdependencies created by the operation of the market within the context of these rights can be satisfactory to participants for a period of time, but can also be disturbed when technological innovation, externalities, or the intentional manipulation of those arrangements (by those seeking to take advantage of their relative position in the institutional scheme) emerges. In such cases, a change in those property rights relations can be brought about through adjustments -- often in the form of regulatory actions -- in the rules that govern those relationships. That action can be explained as either an attempt to reassert a "public-interest" arrangement or one that reflects attempts to give advantage to some specific, narrowly defined interest.(See Schmid, 1978 for an in-depth explication of this "institutionalist" model)

Another, less complex model holds that regulatory actions are simple collective responses to the fact that certain desirable goods and services cannot be given a market price.(Arrow, 1974: Chapter 1) A third model explains the proliferation of regulatory policy actions as the product of a "tar baby effect" occuring when government first tries to manipulate or control specific parts of a firm or market.(McKie, 1970: 9) While these models have not been fully explicated in "public-" or "self-interest" terms, the logic of economic theories and market imperfection can easily be used to do just that.

The point to be stressed here is that economic theories of regulatory policy origins must be seen for what they are: not theories of the origins of government regulation, but theories explaining the origins of regulatory agencies, functions, or actions. It is the narrowly focused definition-in-use that an analyst begins with which determines whether the economic model (public or self-interest versions) will be applied to agency, function, or action phenomena. As we have seen, the same holds true for other theoretical approaches, and it is likely to hold true for explanations of regulatory policy implementation and outcomes.

IV. THE ISSUE DIMENSION

The pervasiveness of these definitions-in-use is as evident in the policymaking arena as it is among policy analysts. Regulatory policy issues are not distinctive issues when examined in light of the agency/function/action definitions. Regulatory reform, for example, often focuses on the need to make changes in the location, authority, form, and operating methods of administrative agencies, as well as their relationship to other institutions.(E.g., American Bar Assocation, 1979; MacAvoy, 1979, and Weidenbaum, 1979) At other times reform proposals have zeroed in on whether government actions should be facilitative or mandating, based on specifications or performance, or built on incentives or directives.(E.g., Committee on Environment and Public Works, 1977; Mitnick, 1980) Even more fundamental have been questions of whether government should actually be performing choice restricting functions, and if so, for what purpose (moral? social? economic?).(E.g., Friedman, 1962; Stigler, 1975)

Even the most general reform proposal, deregulation, raises the question of whether one is advocating the elimination of a government agency, function, or action. Thus, Colorado's original Sunset Laws terminated agencies but not their functions. While the 1978 Airline Deregulation Act will eventually lead to the termination of the CAB, it first eliminated their functions. In addition, many of the proposals made for the reform of OSHA and EPA do not deal with their existence or their functions, but rather with the types of actions they take.

Putting the issues of government regulation within the institutional context of the American political system adds further to the confusion, for in this highly fragmented system we've tended to distribute jurisdiction over each type of issue to different institutions. While each policy is an exception to the rule, the way in which regulation is handled today can be exemplified by two major pieces of legislation: the Economic Stabilization Act of 1970 and the Emergency Petroleum Allocation Act of 1973. In both instances the decision to undertake regulatory functions was Congressional while issues dealing with agency authority, form, etc. were left to discretion of the chief executive. In both instances, however, choices regarding the actions to be taken to fulfill the regulatory functions of government were left almost completely to members of those agencies the president authorized as "regulators." Thus, to analyze the politics of wage and price controls or oil price and supply regulation one would have to deal with different issues at different levels in different institutional arenas.

V. IMPLICATIONS AND ANALYTIC CHOICES

As should be evident from this attempt to explicate the problems of regulatory policy analysis, quagmires are as dangerous and awkward for those attempting to traverse and explore them as they are for those bogged down in them. The point of this exploration was from the outset to find out why regulatory policy analysts were not getting anywhere except in each other's way. Central to this endeavor was the thesis that the problem lies in how analysts and policymakers have explicitly and implicitly defined their topic. What emerges from that effort is the fact that students of regulation lack an agreed upon, singularly comprehensive and useful definition of regulation. Instead, we seem to be organized into groups which use a common term -- regulation -- to describe different things. In the face of that intellectual disorganization, it is little wonder that we have not been able to develop a clear and consistent understanding of government regulation that could be used to change as well as investigate regulatory policy in the United States.

The essential implication is that, in the absence of a generic definition of regulation, analysts (and, indirectly, policymakers) must somehow learn to live with the fact that they do not study regulatory policy but rather agencies that are called regulatory, functions that are intended to have choice restricting consequences, and actions that are direct proscriptions or prescriptions of a target population's behavior or behavioral norms. There are three obvious ways of dealing with the quagmire we find ourselves in. One is to continue our search for that elusive definition of government regulation to which we can ground a theory that will highlight the uniqueness of regulatory policy as a public sector endeavor. The search for comprehensive definitions and theories continues, and several of the papers being delivered at this symposium provide evidence that it may be worth the effort. My own view, however, is that these attempts are likely to prove fruitless. All past efforts have led down the same three roads toward agencies, functions, and actions. Those that have attempted to be all inclusive have just made the task of analysis that much more difficult and involved.

A second approach would be to accept the divisions created by the primary definitions-in-use and to treat each as having created a distinctive and possibly related set of topics. Under this approach a work like Wilson's recent collection of essays (1980) would be titled "The Politics of Regulatory Agencies" rather than The Politics of Regulation and Mitnick's comprehensive work (1980) would be "The Political Economy of Regulatory Functions" instead of The Political Economy of Regulation. In this way analysts would be able to explore the development and implications of regulation from the perspective of the agency, function, or action "cores." Three analytic and policy concerns would be identifiable, where now they are hidden under the umbrella of so-called "regulation." The result would be more than intellectually honest -- it would also enhance the field of regulatory policy analysis by making previously obscured questions and relationships more explicit.

There is a third and perhaps more realistic approach. Whether or not there really is some phenomenon that can be analytically distinguished as "regulation," there is no doubt that somethings called regulation have become salient issues on our policy agendas. It is possible to convert those "regulatory policy issues" into explicit statements of policy problems, and as a result translate them into their agency/function/action form. Thus, the issues surrounding OSHA would be redefined into agency problems (Should OSHA retain the stringent criteria it now uses in determining appropriate levels of safety?), function problems (Should government specify the specific risks an employee should take, or should that be left to the unencumbered labor market?), or action problems (Should OSHA provide design specifications for safe factory equipment, or should it rely on safety performance standards which employers must meet in any way they wish?). These are analyzable questions which, if approached reasonably, can lead to useful answers. This problem-based approach might not result in any new or grand theories of regulation, but it will put what we know about government regulation -- or, more appropriately, what we know about public policy in general -- to use in solving those problems that have made regulation such an issue over the past decade.

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