



Briefing Memo for *Regulation as Social Justice* Conference

Regulation as Social Justice: Empowering People Through Public Protections

June 5, 2019, 9:00 a.m.

The George Washington University Law School

2000 H Street, NW

Washington, DC 20052

Introduction

The Center for Progressive Reform (CPR) organized *Regulation as Social Justice: Empowering People Through Public Protections* to serve as a wellspring for the development of a progressive vision for the future of U.S. regulatory policy. We thought it was important to bring together a diverse group of progressive advocates who are working to promote social justice for two reasons. First, we wanted to learn from your unique experiences about the challenges and opportunities the regulatory system presents for building a more just society. The variety of perspectives in turn would help to inform better solutions for reforming the regulatory system so it can do a better job of promoting social justice and addressing unmet community needs.

Second, and more broadly, we hope that this event will help build new connections and strengthen existing relationships among the members of the progressive community to reinforce the broader movement to build a more just society.

The goal of this memo is to stimulate participants' thinking about the major issues that will be addressed during the conference. In particular, we see the conference as addressing two broad issues:

1. How does the U.S. regulatory system fit into the broader progressive movement to promote social justice?
2. What reforms are necessary for rebuilding the U.S. regulatory system in a manner consistent with the progressive vision of society?

The Relationship Between the Regulatory System and Broader Problems with U.S. Governance and Economy

In general, progressives share the view that our governing institutions and economy are broken. The concentration of wealth and political power has enabled a select few to distort these institutions in such a way that they serve their interests at the expense of the vast majority of

Americans. The end result has been such problems as worsening inequality and accelerating environmental degradation, including the threat of climate change.

What role, if any, does the U.S. regulatory system have in contributing to the institutional and systemic forces that drive inequality, environmental degradation, and other major policy challenges that the United States faces? What role, if any, does the U.S. regulatory system play in countering those forces or alleviating their effects?

Our take: In its current form, the regulatory system already works to address some of the worst consequences of the excessive concentration of political and economic power, as well as of racism and other forms of institutionalized injustice. It is, however, subject to the same fundamental flaws that affect our economy and other governing institutions.

The Role of the Regulatory System in Promoting Social Justice

Traditional social safety net programs such as Medicaid and federal housing assistance are typically seen as the primary government vehicles for promoting social justice. They were intended to ensure that the poor and powerless are not simply cast off, left at the mercy of an economy built to serve the interests of the wealthy; and the vital services they provide, it was hoped, would empower individuals to participate in our economy more effectively and to achieve their full potential. This promise is, of course, largely unfulfilled. Progressives recognize that the strengthening of existing social safety net programs and the creation of new ones are key to achieving of a more justice society.

Can the U.S. regulatory system play a role in supporting traditional social safety net programs in promoting social justice? How well, if at all, does the U.S. regulatory system play this role now?

Our take: When functioning effectively, the regulatory system, by protecting against a variety of health, safety, environmental, and consumer hazards, averts the kinds of harms that can amplify institutionalized injustice. By themselves, regulations will not break down the sources of institutionalized injustice, but they can help provide stability and security for those individuals who are subject to such injustice, empowering them to participate in our economy and democracy more effectively. In contrast, the absence of effective regulations leaves too many at risk of being pushed over the edge into irrevocable poverty by preventable harms.

Moreover, many of the harms that protective regulations seek to avert are the kind that fall disproportionately on historically marginalized members of society, including people of color and low-income communities. For example, data confirm that people of color and low-income communities bear a disproportionate pollution burden, even though they contribute far less to the activities that generate such pollution. In this way, the absence of effective regulations results in harms that are regressive in effect; the presence of effective regulations can ameliorate or reverse those effects.

As noted above, progressives recognize that the concentration of political power is an underlying cause of many of our greatest social, economic, and environmental problems. Consequently, the

achievement of a progressive vision of society will require a genuine redistribution of power so democracy's playing field is less tilted in favor of the rich and powerful.

Can the U.S. regulatory system serve as a vehicle for redistributing political power, especially among historically marginalized members of our society? How well, if at all, does the U.S. regulatory system perform this function now?

Our take: Strengthening the regulatory system by enhancing meaningful public participation opportunities would shift more political power to ordinary Americans and break up the concentration of political power that corporate interests now enjoy over the presidency and Congress. The regulatory system includes several mechanisms for promoting public participation but in recent decades, corporate interests have succeeded in stunting or warping them to maintain their dominance over the regulatory system. The regulatory system can and should be strengthened by reforming these mechanisms and building new ones.

And while the voice of ordinary Americans is crucial to building a more just, inclusive regulatory system, so too is the role of experts and uncensored science. Regulatory decision-making is designed to be driven by objective, apolitical expertise. Importantly, the regulatory system includes several features for safeguarding the independence of its professional staff, including scientific integrity measures and civil service laws. Again, small-government ideologues and corporate interests have succeeded in corroding these mechanisms. The regulatory system can and should be strengthened by restoring them and building new ones.

Regulatory Reform Advocacy and the Broader Progressive Political Movement

For progressive advocates to succeed in achieving their vision of a just society, they will need to build a strong political movement capable of advancing their policy agenda through the legislative process.

What role, if any, can advocacy around the U.S. regulatory system play in building a broader progressive political movement?

Our take: Messaging around a modernized and strengthened regulatory system could both galvanize the disparate elements of the progressive community and provide an avenue for building support among non-progressives. While strengthening the regulatory system may not be the top priority of most progressive policy advocates, nearly all of us recognize its fundamental importance for achieving our respective policy goals. More broadly, supporters of a progressive vision of society recognize the need to develop greater public acceptance of a more energetic and responsive role for government. The regulatory system potentially offers a powerful vehicle for accomplishing a shift in the public discourse over the proper role of government in the United States.

One of the biggest obstacles that progressives face in pursuing their policy objectives is the broad and general distrust and disconnection that many Americans feel toward government. A communications strategy built around the regulatory system offers a

viable avenue for overcoming this obstacle. For example, the political communications literature indicates that the idea of “reclaiming government” resonates with Americans across the ideological spectrum. The regulatory system can readily be framed in these terms by highlighting its uniquely participatory nature and explaining how it can empower individuals to act as their own “agents of change,” by giving them a direct say in policy development and implementation

Reforms for a Progressive Regulatory System

Progressive advocates recognize that our governing institutions are broken, and our economy has been distorted to serve the wealthiest among us. They have offered valuable policy ideas for rebuilding our governing and economic institutions in line with a 21st century progressive vision of society – one that is committed to a collective and ongoing pursuit of justice, opportunity, and ecological integrity. These ideas include Medicare for All, the Black Lives Matter movement, and the Green New Deal, to name a few. Implementing these ideas will require building a progressive regulatory system – one that is dynamic, inclusive, and humane.

What kinds of reforms do you see as necessary for building a progressive regulatory system?

Our take: One broad category of reforms should focus on changing the dominant “narrative” about the role of government and of the regulatory system in our society. Because the government and the regulatory system will play a central role in the progressive vision of our society, progressive advocates must be ready to articulate and champion a positive vision of these institutions. This might include highlighting the role the regulatory system plays in ensuring that our economy operates consistently with our basic shared values.

A second broad category of reforms should focus on improving public participation opportunities. Public participation reforms could seek various ways to amplify the voice of ordinary Americans in the regulatory decision-making process. For example, Congress could create a federal Office of the Public Advocate, which would be charged with helping represent the public in the rulemaking process. Reformers could also seek to prevent corporate interests from effectively drowning out the voices of ordinary Americans by curbing the undue influence these entities enjoy in regulatory decision-making. This type of reform would include efforts to prevent the White House Office of Information and Regulatory Affairs (OIRA) from serving as a conduit for politicized interference in agency decision-making.

A third broad category of reforms should focus on making sure public policy is about the *public*. A progressive regulatory system would seek to ensure that its diagnoses of social and economic programs are grounded in the lived experience of ordinary Americans, giving special attention to the experience of disadvantaged communities. A progressive regulatory system should formally reject the so-called “free market” ideology that has shaped much of regulatory policymaking for the last several decades. Instead, it should become more attentive to concerns about the equitable distribution of economic and political power, as well as to the promotion of fundamentally non-market values, such as human dignity and fairness.

Conclusion

We are hopeful that *Regulation as Social Justice* will serve as a successful step toward building a progressive regulatory system that is capable of sustaining safeguards and administrative programs necessary for achieving a just society. The discussion of the issues outlined above will benefit greatly from the diverse experiences and knowledge that the conference participants are able to bring, providing invaluable input and ideas for developing future progressive regulatory reforms. We hope that participants find the conference informative, inspiring, and thought-provoking. We also hope that it provides conference participants with a unique opportunity for connecting with their fellow allies advocating for progressive change. We look forward to working with all of you toward the goal of realizing a progressive vision of society.