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**Public Engagement and Transparency in Regulation:
A Field Guide to Regulatory Excellence**

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Executive Summary

Regulators are increasingly called upon to do more to engage the public and make more of their activities open to the public. These calls stem from the reality that regulatory decisions are not merely technical decisions; more often than not, these decisions necessitate the weighing of values, a task that even expert regulators do not have a privileged position in a democracy to undertake. But if regulators are called upon to act transparently and consult with the public when making decisions, how exactly should they do so? What constitute best practices in public engagement and transparency for regulators? This research paper presents a comprehensive and balanced analysis of the public engagement and transparency options available to regulators, explaining what researchers have found about how these options work in practice. It is intended as a field guide of sorts to regulators seeking to achieve excellence in public engagement and transparency.

Those who advocate incorporating greater public engagement and transparency in regulatory processes advance two overarching reasons for doing so. The first reason is that public engagement and transparency can facilitate constructive information sharing that helps the regulator learn in ways that result in better regulatory decisions. The second reason is that public engagement and transparency enhance the democratic legitimacy of regulatory decisions and organizations. Of course, these reasons are sometimes counterbalanced by potential drawbacks that have been associated with greater public engagement and transparency, including the risk of regulatory capture, inexpert decision-making, administrative costs, and various unintended consequences. Whether the advantages outweigh these disadvantages is, at least in part, an empirical question. Making sure the advantages do outweigh the disadvantages is the practical challenge that all regulators face.

To meet this challenge, regulators can choose from a variety of options for *how* they actually institute public engagement and transparency. These options can be distinguished based on who the regulator selects or invites to participate, what are the primary modes of communication and decision-making, and how much responsibility or influence do participants have over regulatory action. Regulators make tradeoffs along these dimensions when they design their formal mechanisms of engagement and transparency. For instance, public comment periods are designed to maximize the inclusiveness of participation by remaining formally open to all comers, but they also typically sacrifice some interactivity in the engagement in doing so. The growing use of digital methods of public engagement and transparency—e.g., the Internet and social media—is changing the tradeoff functions of many “analog” methods, showing some meaningful promise in enhancing the benefits of public engagement and transparency.

It is ultimately not enough for regulators to pick blindly from a menu of options. Ideally regulators should make these choices with the benefit of information about how, when, and why different kinds of institutions, methods, and practices deliver the most benefits at the least cost. The growing empirical literature on public engagement and transparency provides some answers to these kinds of questions. Specifically, the literature indicates that:

- Methods of public engagement can enhance the legitimacy of regulatory action when regulators give the public a voice, show respect for participants, and give comprehensible reasons for choices made. They can also enhance the legitimacy of regulatory action when they proactively address imbalances in participatory voice.
- Methods of public engagement do appear to result often in significant learning, both by the general public and by the regulator itself, but that learning unfortunately does not always translate into changed action by the regulator.
- Methods of transparency have had limited demonstrated success in increasing public and regulatory learning, but regulators are rapidly developing new approaches, such as the use of social media and open data policies, that hold some promise for generating greater learning by both regulators and the public.
- Methods of transparency have a complex relationship with levels of trust in the regulator. Overall the research suggests that greater transparency increases trust, but cultural factors, policy context, and the nature of the questions involved still play an important role that affects the perceived legitimacy of the regulator.

Overall, existing research suggests that there are no fixed formulas for success, as the results of public engagement and transparency depend not just on the intrinsic characteristics of the methods used but also on external and internal factors that shape the context in which regulators act.

Although the available empirical evidence makes plain that there is no magic bullet when it comes to designing public engagement and providing transparency, regulators can benefit by keeping in mind five key principles that derive from the research on participation and transparency:

- Regulators can maximize the benefits and minimize the costs of public engagement and transparency if they make efforts to extend these practices to the earliest stages of their decision-making, including the priority-setting stage.
- Regulators can enhance the public's perception of their legitimacy by actively listening to the public's voice, showing respect, and providing reasons for their actions.
- Regulators should be attentive to disparities in participation, and always strive toward a diversity of viewpoints and experience.
- Regulators should be purpose-driven in choosing from among the options available to them, seeking to find the option that best suits those purposes and fits the context in which they will be applied.

- Regulators should seek to learn from their use of public engagement and transparency, investing in evaluation of their practices so as to facilitate an ongoing project of pragmatic experimentalism.

The fast-moving nature of public opinion, the explosion of digital developments in engagement and open government, and the often value-laden judgments that must be made in the face of public conflict counsel in favor of regulators thinking carefully about the techniques of public engagement and transparency that they deploy.

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Today, nearly every aspect of regulatory activity is subject to intense public scrutiny and debate. Many ostensibly technical decisions have become sites of conflict as citizens advocate for policies that advance their interests and question the scientific and economic justifications for regulatory decisions (Kahan et al. 2011; Jasanoff 2011). The emergence of the Internet and social media and the proliferation of citizen groups have accelerated this trend (Herz 2013; Mickoleit 2014; Lee & Kwak 2012). Virtually all sectors—government, private industry, and advocacy organizations of all kinds—are calling on regulators for ever-greater public engagement and transparency (OECD 2009; Goldstein & Dyson 2013).

How should regulators respond to these demands? What constitute best practices in public engagement and transparency for regulators? Many policymakers, analysts, experts, and advocates are considering just these questions (OECD 2009). An “Open Government Partnership” has begun to advocate for a radically enhanced role for the public in regulatory governance (Lee & Kwak 2012). But with a dizzying array of options available and substantial questions about what works—including skeptical questions about what all of this public engagement and transparency is supposed to accomplish—establishing exemplary public engagement and transparency policies and practices can be a daunting task.

This paper provides a comprehensive and balanced summary of the public engagement and transparency options that are available to regulators and what the research literature says about how these options work in practice—a field guide of sorts. We begin in Part I with an analysis of the rationales for transparency and public participation in regulatory decisionmaking. In Part II, we describe a spectrum of approaches that regulators have developed for engaging with the public and sharing information about their activities.¹ In Part III, we review the empirical literature about how these approaches have in practice contributed to learning and legitimacy. We end, in Part IV, with some general principles to guide the implementation of effective public engagement and transparency strategies.

¹ By “public engagement,” we mean the involvement of citizens, large and small businesses, trade associations, nongovernmental organizations, aboriginal groups, and other interested individuals and organizations existing in civil society in the development, implementation, and enforcement of regulatory policy. By “transparency” we mean the ability of the public to access information held by regulators, and the willingness of regulators to articulate their decisions, rationales, and findings clearly (Coglianese et al. 2008, 2). While conceptually distinct, public engagement and transparency are inextricably linked. Transparency is a prerequisite for meaningful public engagement. Information about a regulatory organization’s plans, actions, and impacts is the basis for effective public intervention in regulatory decision-making (Welch 2012).

I. Rationales for Public Engagement and Transparency in Regulation

Scholars have offered many claims about the benefits of public engagement and transparency (see, e.g., Rossi 1997; OECD 2009). The majority of these potential benefits fall under two broad headings:

1. *Facilitation of constructive information sharing, and, hence, organizational and public learning*
2. *Enhancement of the legitimacy of regulatory decisions and organizations*

A regulatory organization's capacity for learning and its legitimacy to act on the public's behalf are fundamental to its effectiveness (e.g., Alemanno 2014; Freeman & Langbein 2000; Neshkova & Guo 2011). A preview of the arguments that scholars have offered on behalf of these claims can be found in Tables 1 and 2. We summarize the major rationales offered by scholars in the discussion that follows.

Table 1. Learning Benefits of Public Engagement and Transparency

- Allows regulators to access the public's dispersed knowledge to improve decisionmaking (Coglianese 2007; Noveck 2009; Sunstein 2006)
- Educates the public (Beierle & Cayford 2002)
- Improves regulatory oversight and enforcement capacity (McCubbins & Schwartz 1984)
- Reveals public preferences and values (Fishkin 2009; Beierle & Cayford 2002)

Table 2. Legitimacy Benefits of Public Engagement and Transparency

- Imparts feelings of fairness (Lind 2015; Lind & Tyler 1988) and trust in the regulator (Beierle & Cayford 2002)
- Fosters informed deliberation (Seidenfeld 1992; Guttman & Thompson 2004) and can result in consensus (Beierle & Cayford 2002; Susskind & Cruikshank 1987)
- Fights corruption and promotes accountability of government (Kosack & Fung 2014; Pina et al. 2007)
- Gives voices to marginalized or excluded interests (Barnes et al. 2003)

A. Learning Benefits

Public engagement and transparency have the potential to create new opportunities for learning by allowing regulators to access information that is privately held, inform the public, and create mechanisms to understand public values.

1. Filling Gaps in Regulators' and Public Knowledge

The authority of regulatory organizations is based, to large degree, on their expertise—their deep knowledge of complex subjects (Rossi 1997). But regulators are not all-knowing. They may have little idea about special cases, such as the costs a regulation might impose on an industry with few members. They may lack information about local conditions—how a regulated activity might impact a sensitive ecology or population. They may not understand how those subject to a regulation will interpret and respond to it (Moffitt 2014). By engaging with the public, regulators can access “dispersed knowledge” (Coglianese 2007; Sunstein 2006; Biber & Brosi 2010)—the insights and understanding of people who collectively hold a broader set of experiences and perspectives. With the benefit of dispersed knowledge, regulators can generate a fuller range of policy options and reduce the likelihood of faulty decisions and judgments (Fiorino 1990:227). By sharing proposals with the public, they can test their acceptability and adjust their plans to accord with public views (Irvin & Stansbury 2004).

Public engagement and transparency have the potential to help regulators implement and enforce regulations. By providing opportunities for members of the public to express their views and listening to public concerns, regulators can learn in advance what aspects of a rule are likely to cause difficulty and resistance and where monitoring and enforcement programs may need to focus (Kerwin & Furlong 2011:169). A well-informed citizenry can provide additional eyes, ears, and noses to detect regulatory infractions, supplementing the manpower of understaffed regulatory organizations and their political overseers (West 2004; McCubbins et al. 1987).

Public engagement and transparency have the potential to increase public learning, in addition to regulators' (Neshkova & Guo 2011). These approaches may deepen citizens' understanding of the issues under debate. In addition, members of the public who engage with regulators may become more sensitive to the tradeoffs regulators must make and the complexity of their job responsibilities (Ho & Coates 2006). They may learn how better to articulate their views and listen to the views of others (Reich 1985; Seidenfeld 1992; Pateman 1970; Barber 1984; Guttman & Thompson 2002).

2. Helping Regulators Understand the Public's Values

Most regulatory decisions cannot be made purely on the basis of scientific assessment (Coglianese & Marchant 2004). Questions about economic efficiency almost always play a role (Sunstein 2002; Adler & Posner 2006). Regulatory decisions often require value judgments about how much different impacts matter (Kahan et al. 2011). Engaging with the public, many argue, allows regulators to understand public values—the benefits the public considers most important, the costs they are least willing to bear, and how they believe costs and benefits should be distributed (Beierle & Cayford 2002). Without mechanisms in place for effective public

engagement, regulators may be unaware of the values implicit in their decisions or assume that their values are universally shared, thereby setting themselves up to walk into a mine field of unanticipated problems (Fiorino 1990:227; Ebbesson 2008:687).

B. Legitimacy Benefits

A second major reason offered for employing public engagement and transparency strategies is the possibility for enhancement of the legitimacy of regulatory organizations and their actions. Legitimacy has two facets: procedural and substantive (Parkinson 2003). Public engagement and transparency have the potential to contribute to both.

1. Strengthening Procedural Legitimacy

Public engagement and transparency may improve the public's perception of the legitimacy and fairness of regulatory processes. This may happen, scholars claim, by allowing and encouraging individuals and groups to deliberate about regulatory matters (Reich 1985; Fiorino 1989; Seidenfeld 1992). Deliberation is defined as “dialogue based in reason” (Rossi 1997:205; Bohman 2009:28). If public engagement facilitates meaningful, fair, and reasoned deliberative engagement—a commitment to the “value of mutual respect” (Guttman & Thompson 2004:7)—legitimacy may follow. Scholars maintain that people who have a voice in regulatory processes, and information to track regulators' plans, programs, activities, and budgets, are more likely to believe that regulatory organizations act on their behalf (Sunstein 2006:10). They are also more likely to accept that regulatory decisions are fair, regardless of outcome (Lind 2015; Lind & Tyler 1988). According to some, fair deliberation can “breed citizenship” (Rossi 1997:188)—a sense of civic responsibility and “affirmation of belonging” (Shklar 1991).

By establishing a fair and open process, and conducting business in the light of public scrutiny, regulators can make themselves accountable to the public (Heald 2006). By revealing their actions and performance, members of the public can see for themselves if regulators are doing their jobs and making progress toward publicly endorsed goals, or engaging in questionable practices. Openness established through public engagement and transparency may foster legitimacy and trust in those running regulatory agencies and the institutions of government generally (Hood 2006).

Public engagement and transparency policies can open the door to individuals and organizations traditionally left out of regulatory decisions. When regulators include minority perspectives in decisionmaking, their decisions may be more influential than those made through closed or one-sided processes (Karty 2005). The decisions that result from open processes may be more stable and less subject to challenge (Lee 2014).

2. Strengthening Substantive Legitimacy

In addition to strengthening perceptions of fairness, public engagement and transparency may produce changed attitudes among participants and even regulators, in some cases resulting in win-win alternatives and even consensus (Ebbesson 2008:687; Langbein & Kerwin 2000;

Susskind & Cruikshank 1987; Seidenfeld 1992; Harter 1982). Deliberation conducted by a regulator can reveal common interests and defuse conflict by altering the sentiments of public stakeholders through persuasion (Bohman 2009; Estlund 2009). Members of the public and regulators may go beyond previously held conceptions of self-interest (Rossi 1997:206).

C. Potential Pitfalls of Public Engagement and Transparency

These theoretical benefits of public engagement and transparency are clearly significant. Of course, they are also counter-balanced with some potential limitations and possible disadvantages. Public engagement and transparency may contribute to inferior regulatory outcomes as well as burdensome or ineffectual regulatory processes. We summarize these disadvantages in Table 3.

1. Inexpert Decisionmaking and Regulatory Capture

Public engagement and transparency may put pressure on regulators to give particular perspectives or sets of facts more prominence than they deserve (Kerwin & Furlong 2011:167-68; Gormley & Balla 2004). Scholars refer to pathologies of participatory bias as “regulatory capture,” particularly when regulated industry exercises undue influence over regulatory decision-making (Carpenter & Moss 2014). In siting or permitting decisions, public engagement and transparency may increase the opportunities for a vocal minority to demonstrate what some have called “persistent selfishness” (Irvin & Stansbury 2004). Regulators have long lamented the “Not-In-My-Back-Yard” syndrome (Rabe 1994). Regulators may face pressure to cater to those with the strongest voices. Powerful interests may willingly obfuscate issues or overwhelm processes with information in order to maximize personal or group goals (Wagner 2010; Michaels 2008).

2. Diminished Trust

If regulators mislead members of the public into believing they will implement their recommendations or reveal unflattering information, their efforts can backfire and build resentments (Irvin & Stansbury 2004; Grimmelikhuijsen et al. 2013; Masuda et al. 2008), even reducing public trust and approval of the government (Hibbing et al. 1995; Coglianese 2009).

Table 3: Potential Disadvantages to Regulatory Organizations from Public Engagement and Transparency

- Inexpert decisionmaking and domination by entrenched interests (regulatory capture) (Neshkova & Guo 2015; McGarity & Wagner 2008; Carpenter & Moss 2014)
- Diminished trust (Irvin & Stansbury 2004; Grimmelikhuijsen et al. 2013; Masuda et al. 2008)
- Increased cost and protracted decision processes (Rossi 1997)
- Unintended consequences (Scalia 1982; Coglianese et al. 2004; Coglianese 2009)

Just as citizens view as fair those regulatory processes that take their views into account, they view as unfair those from which they feel effectively excluded or those which are merely a show (Lind 2015; Leung et al. 2007; Arnstein 1969; Masuda et al. 2008).

3. Administrative Cost

Convening public hearings and advisory committees, and collecting, analyzing, and responding to public comments, requires regulators' time and attention and imposes additional costs if facilitators and rapporteurs are involved (Irvin & Stansbury 2004:8). These processes might also result in delays in decisionmaking, which may increase the costs, and decrease the benefits, of regulation (Rossi 1997; Irving & Stansbury 2004:7). For instance, developing and maintaining databases of information may require investments in new technologies and hiring new personnel. Increased transparency may likewise lead to unintentional sharing of confidential information, which may impose costs on business (Coglianese 2009; Kilgore 2004).

4. Unintended Consequences

Regulators who open themselves up to public scrutiny may strategically avoid controversy in a way that might be detrimental to fully-informed decisionmaking (Scalia 1982; Coglianese 2009). Because much regulatory work involves soliciting information from those subject to regulation—information that could easily become public—it may hinder regulators' ability to maintain productive information-sharing relationships (Coglianese et al. 2004).

Public engagement and transparency have the potential to deliver great value to regulators—providing critical information, aligning decisions with public values, strengthening regulators' roles as legitimate representatives of the public interest, and fostering opportunities for collaborative problem-solving. But, if not executed with care, these approaches can reduce the effectiveness of regulatory organizations and undermine their legitimacy. Parts II and III of this paper, therefore, lay out the array of public engagement and transparency activities available to regulators and what researchers claim these activities accomplish.

II: Public Engagement and Transparency Methods, Institutions, and Practices

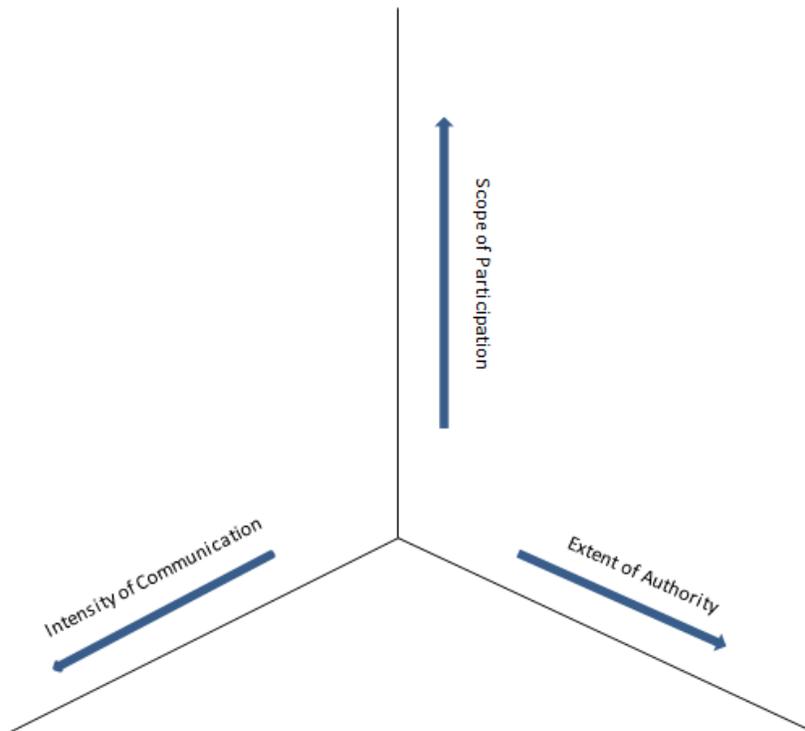
“Public engagement” includes a large number of activities, from comment periods to advisory groups to deliberative polls. Likewise, “transparency” encompasses a range of functions for regulators, from responding to requests for information to releasing troves of government-collected data. In this part, we outline a “full menu of design choices” from which regulators may choose as they design public engagement and transparency approaches (Fung 2015:1). Archon Fung's (2006) model of a “democracy cube” captures the main dimensions of choice (especially for methods of public engagement), which we pose as three questions:

1. *Who is selected to participate?* Is the scope broad and inclusive, narrow and limited, or somewhere in between?
2. *What are the primary modes of communication and decisionmaking?* Is communication intensely interactive, involving a large amount of back and forth and deliberation, a simple exchange, or mostly one-way—from regulator to the public or vice versa?

3. *How much responsibility or influence do participants have over regulatory actions? Is the regulator prepared to share a measure of authority with members of the public, or does it maintain all such responsibility?*

Each of these questions yields continua: from greater to lesser inclusivity; from greater to lesser intensity of communication; and from greater to lesser authority (Fung 2006). We reproduce the democracy cube in Figure 1.

Figure 1: The Democracy Cube



Source: Fung 2006.

We group all of these activities into two broad classes: “analog” methods, distinguished by face-to-face communication, in-person meetings, and written comments, and “digital” methods that are computer-based information and communication technologies (ICTs).

A. Menu of Analog Methods of Public Engagement

Analog, or paper and in-person, methods of public engagement include public comment periods, public hearings, polling and surveys, and a range of collaborative and deliberative fora.

1. Public Comment Periods

Public comment periods provide regulatory organizations with a relatively simple means of generating input on regulatory proposals, sometimes on a truly massive scale (Mendelson 2012). Typically in this procedure, regulatory organizations publish the text of a proposed action and call for written comments. Regulators then review the comments and sometimes will respond to salient comments (Kerwin & Furlong 2010). Because of openness to all comers, the relatively low cost of participation—the cost of a stamp, or even less if submitted online (see below on “e-rulemaking”)—and the lack of geographic constraints on participation, comment solicitations are in theory the broadest and most inclusive form of participatory mechanism available to regulatory organizations (Fung 2006). But partly because of the inclusivity of the mechanism, interaction is typically limited to a regulator informing the public of its proposal, taking comments, and reporting back on its ultimate decision. There is little if any opportunity for members of the public and regulators to develop preferences together or bargain (Balla & Dudley 2014).

2. Public Hearings

Public hearings are public meetings set up by government bodies in a concrete physical location. Public hearings are in principle as open to all comers as public comment periods, but limitations of time and physical space may deter participation among all those but the most interested. At the same time, public hearings may admit of more interactivity and dialogue than most public comment periods if they are treated that way by the convener. A public hearing can be held for a variety of purposes, including dispersing information to the public, obtaining public input in a more familiar and concrete manner than comment periods (Furlong & Kerwin 2005:363), and “building consensus” among the public (McComas et al. 2010:123). Public hearings are considered the “dominant form” of public engagement around the world (Fung 2015:2): such hearings reportedly number in the thousands every year at the local, state, and federal levels in the United States alone (McComas et al. 2010:122).

3. Polling and Surveys

Some regulators can solicit broad-based, “raw” public sentiment through standard polling techniques (Fishkin 2009; Rose & Frewer 2000:8). While scope may be somewhat narrower than comment periods or public hearings since representative samples are often used (Fishkin 2009), polls and surveys can provide a snapshot of public sentiment on clearly defined regulatory

questions. These forms of public engagement tend to provide less in the way of new expert knowledge—something that comment periods and public hearings are designed to provide (Kerwin & Furlong 2010)—because surveys and polls usually limit public responses to just a few words.

4. Collaborative and Deliberative Fora

If a more interactive deliberation is desired, regulators may make use of alternative methods that lessen inclusivity but promise greater opportunity for collaboration and discussion (Ansell & Gash 2008; Harter 1982). Advisory committees, citizen panels/juries, deliberative polling exercises, and negotiated rulemaking are examples of structured, dialogic techniques (Brown 2006; Fishkin 2009; Fishkin & Luskin 2005). These options, to varying degrees, allow regulators to facilitate an interactive, informed discussion by providing information on the problem to be solved, moderating the interaction, and enhancing certain marginalized perspectives. Box 1 describes strategies regulators can take to include marginalized perspectives in collaborative and deliberative fora, which by their nature are limited to a small number of participants.

Box 1: Special Problems in Collaborative and Deliberative Fora: Standing to Participate

A key consideration when choosing specific collaborative or deliberative institutional forms is how participants will be selected. Participation will usually have to be restricted to ensure a healthy discussion occurs. But if participation is limited to a subset of the population, it is possible that excluded groups will call into question the legitimacy of the endeavor by arguing that the forum is biased (Young 1990; Barnes et al. 2003). For instance, citizen panels and “consultations” can become mired in debates about who has “standing” to participate (Zillman et al. 2002:2). Generally, a group or individual has clear standing if they will be directly affected by regulatory decision making, such as when a landowner’s property interest will be affected by a proposed drilling permit. But others making their case for inclusion may have a stake in more diffuse public goods, such as the cleanliness of the air or the integrity of tribal lands. To address this difficulty, regulators may want proactively to identify and seek out particular classes or groups to include in discussions. In Canada, the Consultation Act of 1982 requires that regulatory organizations work with First Nations and other Aboriginal peoples on issues likely to affect them (Fidler 2010). It may also help regulators to articulate standards of balance (e.g., the panel might have equal numbers of representatives from industry and public groups) and afford excluded groups the right to challenge the balance in the institution. In the United States, the composition of advisory bodies can be challenged in court if “fair” balance is not achieved (Walters 2012; Karty 2005; Croley & Funk 1997).

Because such options involve a narrower scope of participation, they also permit regulators to tailor the institution according to the desired level of authority or power of the participants to affect ultimate government action (Ryfe 2005:60-62).

a. Expert Advisory Committees

One version of these less inclusive forms also involves a specific kind of inclusiveness, focusing on the deployment and use of technical expertise (Fung 2006). Regulatory organizations may institute expert advisory committees when they seek targeted advice from a highly technical discipline or industry sector, such as medicine or environmental science (Moffitt 2014; Lavertu & Weimer 2011). Drawing on such expertise in the regulatory process may be beneficial, particularly if agencies are limited in their own capacity to develop internal expertise and otherwise dependent on outside expert communities (Lavertu et al. 2012). In fact, repeated solicitation of expert advice may make it worthwhile for regulatory agencies to create “standing committees” that offer a chance for repeated consultation (Croley & Funk 1997). Often, regulatory organizations are either required to or may voluntarily incorporate non-expert perspectives, such as that provided by industry, labor, or consumer representatives (Walters 2012; Karty 2005), recognizing that even highly technical policy problems involve value choices (Guttman & Thompson 2004).

b. Citizen Panels/Juries

When expert opinion solicitation is not the primary goal, as when regulatory organizations are more interested in drawing out lay public sentiment and encouraging a broad-based, public deliberation, they may rely on a panoply of options for convening interactive dialogues with members of the lay public. First, regulatory organizations can simply provide a venue and logistical support for discussion groups consisting of a self-selected group of participants (Fishkin 2009:21). Discussion groups can either be established to take place at a particular time and in a particular space or, increasingly, in a virtual space (Farina et al. 2011; Lukensmeyer & Torres 2006; Macintosh 2003). Second, regulatory organizations can formalize deliberating citizen bodies. In “citizen juries,” “citizen panels,” “focus groups,” and the like, the regulator recruits a limited number of ordinary citizens and provides them with carefully balanced background materials (and sometimes expert presentations) to deepen their understanding of the main policy positions on the issue (Elstub 2014; Fishkin 2009:21; Rose & Frewer 2005:9). For instance, citizen juries, used widely in Europe and Australia, bring together 12 to 25 participants selected through randomly stratified sampling for several days to discuss an issue and develop a recommendation. These deliberating bodies often seek consensus, as is the case with “consensus conferences” in Denmark (Noveck 2009:152).

c. Deliberative Polling

Alternatively, regulators may use “deliberative polls” if their aim is to approximate a representative sample of the entire population (Fishkin 2009). In deliberative polling, participants are generally randomly recruited, travel to a central location, and often spend several days in information sessions and breakout group discussions with the aim of producing a group recommendation based on “enlightened” public preferences.

d. Negotiated Rulemaking

In negotiated rulemaking, disputants in a regulatory problem (including the agency itself) are brought to the table to negotiate the text of a consensus-based regulatory proposal (Harter 1982; Langbein & Kerwin 2000; Funk 1997). Under the Negotiated Rulemaking Act in the United States, a neutral facilitator or mediator oversees the negotiations (Lubbers 2012:153). Advocates of negotiated rulemaking contend that this process makes implementation of resulting rules easier and reduces the chances of litigation (Lubbers 2012:151). While consensual “agreements” are usually the goal, in the United States the regulator is typically not bound to follow the consensus at all (Coglianese 1997).

B. Digital Methods of Public Engagement

The widespread proliferation of information and communication technologies (ICTs) in the last two decades has the potential to increase the inclusivity of public engagement by lowering the costs of participation to ordinary citizens in remote locations (Shane 2004). These new technologies also offer the possibility of providing new ways to conduct mass interactive discussion among many users (Noveck 2009:35).

1. E-Rulemaking, Old and New

A first wave of innovation responded to the capabilities provided by the “Web 1.0”—that is, the use of the Internet primarily to facilitate public interaction with a few established content providers in static interfaces. Applied to regulation, the Internet first inspired a movement towards e-rulemaking (i.e., the use of websites to facilitate public participation traditionally relegated to paper or in-person communications) (Beierle 2003; Brandon & Carlitz 2002; Jones 2009). U.S. agencies have developed online docket management systems in meeting the requirements of the E-Government Act of 2002, and a common portal—*Regulations.gov*—provides a place for interested parties to submit comments, read other comments, and review public documents related to a proposed action (Shulman 2006; Jones 2009; Lubbers 2012:197-99).

As the web writ large has evolved into a new model—a “Web 2.0” model associated with “interaction, collaboration, non-static web sites, use of social media, and creation of user-generated content” (Herz 2013:2-3)—so too have strategies to deploy the capabilities of the web to make public engagement more dialogic and collaborative. Some regulatory organizations have explored ways to use Web 2.0 ideas and technologies to foster interactivity and discussion in the existing e-rulemaking framework. For instance, pilot projects like the Cornell e-Rulemaking Initiative’s “RegRoom” sponsor-moderated online discussions about certain rulemakings in an effort to educate participants and enhance the quality and quantity of participation in subsequent comments (Farina et al. 2011). Some believe a model for developing a more collaborative and deliberative e-rulemaking system may be found in the European Commission’s *Your Voice in Government* web interface, which requires interest groups to register before submitting comments, employs a code of conduct, and proactively seeks comment

from interest groups that are likely to provide useful information to the Commission (Jones 2009:1274-82).

Regulators have also begun to digitize administrative processes and forms of engagement earlier in the regulatory process. Around the world, “e-petitions,” “e-referenda,” and electronic citizen juries have been deployed at all stages of the regulatory process (Macintosh 2004:box 2), all of which give the public more of an opportunity to regularly interface with government decision makers at the priority-setting stage of the regulatory process. For instance, the Obama Administration’s innovative *We the People* site allows interested individuals to submit informal petitions for government action; and if a petition receives enough electronic signatures of support, there is a promise of further action.²

2. Online Dialogues

Regulatory organizations have experimented with mass online dialogues in an effort to combine the interactive benefits of collaborative or deliberative fora with the inclusive benefits of more open systems of public engagement, such as public comment periods. For instance, a “National Dialogue on Public Involvement in EPA Decisions” conducted by the U.S. Environmental Protection Agency (U.S. EPA) used a message board format to facilitate comment threads that allowed for more interactive discussion than would be possible in traditional or even first-generation e-rulemaking models (Beierle 2002). These innovations follow a large-scale push in recent years to move deliberative institutions—which had traditionally been, of necessity, limited geographically and constrained by scale—to the mass level using online platforms (Price 2006; Ackerman & Fishkin 2005). Mega-dialogues, such as Canada’s “National Gas Dialogue,” which involved bringing about 300 people together for dialogues in eight different cities, might prove too costly to employ on a regular basis. The hope is that online deliberation will create a setting that is “complementary and analogous to face-to-face participation, but that deliver[s] unique benefits when carried out online” (Lukensmeyer & Torres 2006:34).

A host of software platforms exist to allow this kind of digital deliberative involvement (Coglianese 2006:960). Likewise, firms around the world are developing their own approaches for managing online deliberation, ranging from synchronous to asynchronous formats (that is, from real-time interaction to iterative, piecemeal interaction) and from more to less authority to literally write proposed legislation or regulatory text (Lukensmeyer & Torres 2006:tbl. 7). These methods have been employed in a variety of contexts, including “e-Consultations” on pension disability plans in Canada, on aboriginal engagement Western Australia, on strategic planning for education in California, and on Freedom of Information Act policies in Germany (Lukensmeyer & Torres 2006:tbl. 7; Macintosh 2003:51).

3. Tools for Autonomous Online Collaboration

Individuals and groups in civil society are increasingly able to organize and collaborate on their own—although often with the encouragement or even support of formal government

² <https://petitions.whitehouse.gov/>

institutions—on regulatory issues using Web 2.0 capabilities, such as social media (Linders 2012). Web 2.0 technologies can facilitate a kind of shared governance, it is argued, because they are adept at “connecting diverse skills, as well as diverse viewpoints, to public policy” (Noveck 2009:39). Box 2 describes how regulators are using this new approach.

C. Analog Methods of Transparency

The origin of the interest in transparency can be traced to an interest in combating corruption and ensuring public accountability (Fung et al. 2007:5; Hood 2006). As former U.S. Supreme Court Justice Louis Brandeis put it, “Sunlight is said to be the best disinfectant” (Brandeis 1913). A number of long-standing “analog” practices are well-suited to this disinfecting mission.

1. Right to Know Policies

Governments have long committed themselves to a core policy of disclosure—at least in reaction to specific requests—with respect to information possessed by regulators. The “Right to Know” or “Right to Information” conception of transparency has an established footing as a component of good government and public accountability, increasingly spreading across the globe to developing nations (Florini 2007; Ubaldi 2013:4; Kosack & Fung 2014:67). In the United States, the Freedom of Information Act (FOIA) is the paradigmatic example of a “Right to Know,” or disclosure, law (Coglianese et al. 2008:5). Under FOIA, there is generally a presumption of disclosure upon request unless a regulatory organization can show that the request falls within one of several specific exemptions (Holder 2009; but see Ashcroft 2001). Many similar freedom of information (FOI) and right to information laws followed the United States’ lead: whereas in 1990 only 14 countries had such laws, by 2013 “some 94 countries had FOI/RTI laws in force” (Kosack & Fung 2014:67).

Box 2: The Special Potential of Social Media for Collaborative Governance

Social media is an important part of collaborative democracy developments, as regulators are learning how to “mine” ideas from surrogate deliberations conducted among the public via social media (Mickoleit 2014:4; Linders 2012). Agencies in the United States are already “embracing social media with remarkable enthusiasm” (Herz 2013:15). A recent report from the OECD on social media explains that in certain countries in Europe, regulatory organizations are finding ways to “crowd-source” social media to help set the regulatory agenda and make decisions (Mickoleit 2014:4). Social media has the potential to “engage stakeholders who have heretofore been on the sidelines, tap into the dispersed knowledge of the public, bring new voices to the table, and democratize the process” (Herz 2013:28). Regulatory organizations are beginning to use “ideation tools” to streamline the process of distilling massive social media input into usable information about public preferences (Herz 2013:42-45). In the United States, President Obama’s Open Government Initiative has encouraged agencies to use “blogs, wikis, and social networks, as a means of...conducting virtual public meetings” (Sunstein 2010).

Sometimes regulatory organizations opt for proactive disclosure (for instance, where certain requests are likely to be repeated) (Holder 2009), but these mechanisms more generally require action by the public to initiate disclosure, and then the information is only released to that party (Shkabatur 2012:89).

2. Open Meeting Policies

An important corollary method of transparency is open meeting requirements. Many regulatory organizations are subject to some kind of open meeting law, which generally requires that important meetings be open to public observation. Again, the U.S. Government in the Sunshine Act of 1976 is a paradigmatic example (Thomas 1985). Other similar laws cover other forms of public engagement. For instance, the Federal Advisory Committee Act of 1974 requires that advisory committee meetings be open to the public (Karty 2005; Croley & Funk 1997).

3. Whistleblower Protection Policies

Whistleblower protections for informants within government are often a necessary complement to these traditional transparency laws (Coglianese et al. 2008:15). Whistleblowers can help ensure that a government's decision not to share information is based on legitimate reasons (e.g., the need to protect confidential information) and not on mere expediency for the regulatory organization or some other nefarious motive.

D. Digital Methods of Transparency and Open Government

Just as ongoing developments in the world of Web 2.0 are transforming public engagement methods, they are beginning to change how transparency is conceived and delivered, as well as the very purposes it is supposed to serve.

1. Moving Analog Methods of Transparency Online and Enhancing Proactive Information Release

Greater technological development has facilitated a dramatic expansion of the scope of analog transparency methods, and has allowed for an important shift toward *proactive* transparency that goes well beyond the traditional approach to what might be called “fishbowl transparency” or “open book government”—a kind of transparency which makes many or most governmental transactions public (Coglianese 2009:537; Dunleavy & Margetts 2010; Jaeger & Bertot 2010; Bertot et al. 2010). Regulators continue to work with FOI laws to “streamline” the FOIA request process and aim for greater proactive release of relevant information through online portals such as *Data.gov* and other agency websites (Coglianese et al. 2008). The change to digital transparency has also included wide-ranging efforts to disseminate information about agency activities in a more interactive way using highly functional web sites (Coglianese 2012), mobile “apps” (Sandoval-Almazan et al. 2012), and social media presences on sites like Facebook and Twitter (Jaeger & Bertot 2010:372).

2. Open Information in Service of Collaboration

A defining feature in this new approach to transparency is its emphasis on encouraging the proactive release of information to facilitate the *public's* capacity to solve policy problems (Noveck 2009; Goldstein & Dyson 2013; Linders 2012; OECD 2009). There has been a proliferation of open government data policies and portals across the globe in recent years (Ubaldi 2013). This approach can be illustrated in the regulatory context in the Obama Administration's "Open Government Initiative," or "Government 2.0 Initiative," which seeks to expand the level of transparency, public participation, and collaboration in government-public relationships (Coglianese 2009; Jones 2009:1262; Harrison et al. 2012:1-2). The Open Government Initiative requires regulatory organizations in the United States to "publish information online in an open format that can be retrieved, downloaded, indexed, and searched by commonly used web search applications," take steps to "improve the quality of government information available to the public," and "create and institutionalize a culture of open government" (Orszag 2009; Harrison et al. 2012:84).

In addition, regulatory organizations must develop strategic action plans for transparency that will assemble "inventories" of "high-value information" and "foster[] the public's use of this information" (Orszag 2009). The U.S. Government alone has made approximately 390,000 datasets available on *Data.gov* (Sandoval-Almazan et al. 2012:30; Shkabatur 2012:80). Several other countries—including the United Kingdom, Canada, and Australia—have followed suit, developing their own plans for open government (Harrison et al. 2012). A new multi-national Open Government Partnership has begun the process of developing country-specific action plans for incorporating many of the basic features of the U.S. Open Government Initiative in other nations (Harrison et al. 2012).³

In practice, open government data policies have catered to segments of the public with the capacity to make sense of what might otherwise look like a flood of useless information (Lassinanti et al. 2014). While much of the data released may not be useful to an average citizen, it may be meaningful to those with specialized training.

III: Evidence of Learning and Legitimacy in Public Engagement and Transparency Methods

In this section, we summarize key research findings about the degree to which public engagement and transparency approaches achieve their promise with regard to the two major rationales offered on their behalf—i.e., that they promote learning and legitimacy—and the conditions under which they appear to work best. Overall, the empirical literature suggests that the methods described in Part 2 can and often do contribute to public learning and regulatory legitimacy, but there are no clear formulas for success. Results depend not just on the intrinsic characteristics of the engagement method, but on the external and internal factors that shape the context in which regulators make and implement policy (Rowe & Frewer 2000; Beierle & Cayford 2002). These include, among other things:

³http://www.opengovpartnership.org/sites/default/files/attachments/OGP_actionplan_guide%20FINAL_0.pdf

- The regulator’s motivations for seeking public input in the first place;
- The resources available;
- The level of conflict that exists with respect to a particular issue and the degree to which it has become the subject of partisan political debate; and
- The regulator’s openness to listening and the value they place on information gathered through the process.

A. Regulators’ Learning from Broadly Inclusive Engagement Methods: Comment Periods

Few empirical studies on this subject attempt to measure learning directly (Kerwin & Langbein 1995; Fishkin 2009; Moffitt 2014). A much larger number of studies examine regulators’ *responsiveness* to public input: i.e., the degree to which public input changes regulators’ decisions (Halvorsen 2006; Adams 2004; Alkadry 2003; Cole & Caputo 1984; Checkoway 1981; Lando 2003; Lawrence et al. 1997; Lukensmeyer & Boyd 2004; Marinetto 2003; Golden 1998; Balla 1998; Nixon et al. 2002; Yackee 2005; Cuéllar 2005; Yackee & Yackee 2006; Shapiro 2007; Shapiro 2013). Regulatory responsiveness may indicate that the regulator has listened to the public’s views and incorporated them into their decisions.⁴

Numerous studies have examined regulators’ responsiveness to public comments received in rules proposed by U.S. federal agencies (Golden 1998; Balla 1998; Nixon et al. 2002; Yackee 2005; Cuéllar 2005; Yackee & Yackee 2006; Shapiro 2007; Shapiro 2013). Studies range from case studies of agency responses to one or several rules to broader investigations of responses to comments received in hundreds of rulemakings across numerous agencies.

Golden (1998) analyzed regulators’ responses to comments received in 11 rules proposed by 3 U.S. federal agencies. She found that most of the changes regulators made in response to comments were “minimal” things such as “definitional changes, changes in deadlines, and changes to procedural issues such as record-keeping requirements” (Golden 1998:259). Regulators were responsive to comments that pointed to language in a draft rule that were clear or imposed unnecessary inconvenience upon those who had to comply. In one case, when all seven commenters raised the same objection, regulators abandoned a proposed rule altogether (Golden 1998:259). Shapiro (2007), examining a larger dataset of more than 900 U. S. federal regulations, found that agencies made changes in response to comments nearly half the time. In another study, this time of 12 rules with a high level of economic impact, Shapiro (2013) found that regulators made changes in response to 42 percent of the arguments raised by commenters. Most of the changes were to clarify a draft rule’s language and intent.

Other studies have found regulators making more substantial changes in response to comments received. Yackee (2005) examined the impact of comments on 40 proposed rules she considered “typical” of the day-to-day work of federal regulators in the United States. She found that regulators modified proposals in response to comments in 90 of 183 cases (49%) and made “large” changes to 11 rules (Yackee 2005:111). Yackee (2005:105) attributed regulators’ responsiveness to the fact that comments “provide a new source of information and expertise”

⁴ Of course, regulators’ responsiveness may also reflect the power of the individuals and groups who submit them (Yackee & Yackee 2006; Carpenter & Moss 2014).

for regulators. Regulators were also responsive to suggestions for changes when there was a high degree of consistency among commenters (Yackee 2005). In an analysis of regulations developed by three U.S. federal agencies, Cuéllar (2005:417, 498) found that regulators made “substantial modifications” in response to comments received, particularly those she considered “sophisticated”— that showed legal knowledge, were logically reasoned, and included empirical evidence to back up claims. Participants themselves consistently report high levels of perceived efficacy in commenting (Yackee 2014; Furlong & Kerwin 2005).

Research suggests that regulators are much less responsive to public input obtained through public hearings. Numerous studies from the United States suggest that regulators often ignore or misinterpret public perspectives shared at hearings and meetings, perhaps because of the difficulty of orally communicating sophisticated input (Halvorsen 2006; Adams 2004; Alkadry 2003; Cole & Caputo 1984; Checkoway 1981; Lando 2003; Lawrence et al. 1997; Lukensmeyer & Boyd 2004; Marinetto 2003).

B. Public Learning from Broadly Inclusive Engagement Methods: Comment Periods and Public Hearings

Comment periods can provide learning opportunities for those outside government, in addition to regulators. When questioned about what they learned from participating in rulemaking, members of the public in the United States reported that they developed a deeper understanding of the rule itself, the law, and the regulatory organization promulgating the rule (Kerwin & Langbein 1995). Comment periods also served to alert interest groups and other members of the public to regulators’ plans, sometimes motivating them to seek help from elected officials to exert political pressure to advance their interests (West 2004).

Evidence suggests that public hearings and community meetings can be important mechanisms for public learning. While many members of the public maintain that their input at public meetings does not make a difference in decisions (Halvorsen 2006, McComas 2003), meetings of this sort may allow them to gather information about government plans affecting their community (Fung 2006). McComas et al. (2006) studied citizen motivations for participating in public meetings to discuss cancer rates. The most common reason cited for attending was “to get information from authorities” (60%), followed by “concern about risk” (36%) (McComas et al. 2006:683). Another study that investigated citizens’ reasons for participating in a public meeting about local landfills, found that 77 percent attended to hear officials’ explanations about landfill operations (McComas 2003). Most people show up not to express their viewpoint, but to observe interaction among regulators, public officials, and representatives of advocacy groups and absorb information that is relevant to them (Fung 2006).

C. Joint Learning from Collaborative Methods: Expert Advisory Committees, Citizen Panels, Deliberative Polling, and Negotiated Rulemaking

Research suggests that more interactive engagement methods may have a special role in promoting learning among both regulators and the public. In a meta-analysis of hundreds of case studies of public engagement, Beierle & Cayford (2002:38) found that “[h]igh performers are characterized by their use of more-intensive mechanisms for involving the public (such as

negotiations and mediations).” These findings are echoed in a number of institution-specific studies discussed below.

1. Expert Advisory Panels

Several in-depth studies have examined the role of expert advisory committees in policy making in the United States and Europe (Moffitt 2010; Moffitt 2014; Carpenter 2004; Carpenter 2010). Results from these investigations suggest that advisory committees can provide a platform for both informing internal regulatory decisions (Moffitt 2010; Moffitt 2014; Lavertu & Weimer 2011; Lavertu et al. 2012) as well as dispersing regulators’ knowledge to the public (Moffitt 2010; Moffitt 2014). Moffitt’s (2014:28) extensive study of advisory committees in pharmaceutical regulation in the United States found that pharmaceuticals that had been the subject of advisory committee reviews were significantly less likely to cause post-market safety problems. Observing hundreds of hours of advisory committee meetings, Moffitt concluded that this approach allowed regulators to gather detailed information about how regulations work in practice. This intensive engagement method allowed regulators and those subject to regulation to “create new knowledge” about how policy would shape practice that neither would be able to access working independently, resulting in more effective safety regulation (Moffitt 2014:236). In another study, Moffitt (2010) found that regulators tend to seek advice from expert advisory committees on high-risk tasks. In addition to learning, advisory committees help regulators share the risk of policy failure (Moffitt 2010).

2. Citizen Panels/Juries

Research suggests that often citizen panels’ recommendations have little impact on public policy (Crosby & Nethercut 2005; Elstub 2014). One study examined the use of citizen panels to generate policies to control non-point sources of water pollution in Minnesota. Policy makers agreed at the outset to give “serious attention” to citizen panel recommendations (Crosby et al. 1986:177). In the end, however, most of the panel’s recommendations were not adopted. Another study looked at the role of a citizen panel in transportation planning in Colorado. The citizen panel advised the municipal transportation advisory committee (TAC) responsible for developing the region’s master plan. Over the course of one year, 147 citizens participated in interviews and surveys, each providing an average of seven hours of participation (Kathlene & Martin 1991). Recommendations the TAC included in the master plan were mostly ones the citizen panel had endorsed; only 8 percent of policies were recommendations the citizen panel had rejected (Kathlene & Martin 1991). Citizen panels may be best suited for developing recommendations in new policy areas “where community opinion and policy direction have yet to be officially defined” (Kathlene & Martin 1991:61). Regulators should also consider that citizen panels and juries are costly: by one estimate, the cost of running a citizen jury ranges from approximately US \$24,000 to US \$45,000 (Elstub 2014:167).

3. Deliberative Polls

Deliberative polls have been used to inform and assess the public’s views on issues such as Britain’s role in the European Union, United States foreign policy, and whether Australia should become a republic (Fishkin & Luskin 2005). Research suggests that participants’ views

often change over the course of the deliberation (Fishkin & Luskin 2005). As participants explore the issue in depth, they discover that “the positions they initially held were not where they really wanted to be” (Fishkin & Luskin 2005:293). In many instances, researchers have documented significant gains—from 10 to 73 percent—in participants’ knowledge about the issue being deliberated (Fishkin & Luskin 2005:291).

Learning may even be possible in situations of deep suspicion and conflict (Fishkin 2009). Deliberative polls have been used to inform and assess public opinion concerning the role of indigenous people in Australian history, the treatment of the Roma in Bulgaria, and education policy for Protestants and Catholics in Northern Ireland (Fishkin 2009). In each case, conveners were able to recruit a representative sample of the population—including appropriate numbers from majority and minority groups—and foster “conscientious participation and equal consideration” (Fishkin 2007:161). Still, the costs of deliberative polling can be significant—by one estimate, the cost of a deliberative poll is approximately US \$300,000 (Elstub 2014:169).

Some scholars question the learning benefits of deliberation. Rodriguez & McCubbins (2006) used experimental techniques to assess the role of deliberative sessions in fostering learning among participants. They found that deliberation made it difficult for people to determine who was most knowledgeable and trustworthy. As a result, the people in these experiments chose outcomes that reduced, rather than enhanced, their welfare (Rodriguez & McCubbins 2006).

4. Negotiated Rulemaking

Some evidence suggests that negotiated rulemaking may also set the stage for collaborative learning. Participants in early negotiated rulemaking activities in the United States report that they learned about the “technical or scientific aspects” of a proposed rule, the “issues associated” with it, the “positions” of other parties, and “reasons why these positions were taken” (Freeman & Langbein 2000:88; Beierle & Cayford 2002). Negotiated rulemaking has had limited success in the United States, despite the enactment of the Negotiated Rulemaking Act of 1996. Not all negotiations end with a consensus (ACUS 1990), and even when a consensus results, the agency is not bound to follow that consensus after public comment (Coglianese 1997). Additional costs to the U.S. EPA for its first seven negotiated rulemakings alone were over \$650,000 (Coglianese 1997). Most importantly, this method has been ineffective in avoiding judicial review (Coglianese 1997; Coglianese & Allen 2003)—one of the main reasons advocates offered in favor of adopting the procedure.

D. Contributions of Public Engagement to Legitimacy

Over the past several decades, researchers have studied the factors that contribute to the legitimacy of regulatory organizations. A chief factor is the public’s assessment of a regulatory organization’s fairness, particularly its *procedural* fairness. By procedural fairness we mean public perceptions about fair or unfair treatment.⁵ A large and growing body of research

⁵ Procedural fairness is distinct from distributional fairness, which refers to the just and equitable distribution of material outcomes from regulatory decisions.

suggests that perceptions of fair or unfair treatment are some of the strongest factors influencing public assessments of a regulatory organization's legitimacy (Lind et al. 1993; Mazerolle et al. 2012; Tyler 1990; Tyler 2011; Lind 2015). A second important factor is the degree to which participation is balanced and includes people with diverse perspectives and backgrounds. Public engagement is often viewed as inequitable and illegitimate without balance and broad inclusion (Karty 2005; Walters 2012; OECD 2009:ch. 3).

1. Fairness

Research on fairness cuts across the different engagement approaches and addresses the ways that regulatory organizations interact with the public more generally. Research suggests that the public bases its assessments of fairness on several factors:

- First, citizens want regulators to give them “voice”—to provide them with opportunities to express their views and listen to them (Lind 2015:28). Giving citizens a voice does not mean that regulators relinquish control over decisionmaking. It does require, however, that regulators show that they have taken citizen views into account—that they have “processed” citizen voices (Lind 2015:29).
- Second, the public wants respectful treatment. The politeness of a regulator's language and tone and the consideration the regulator shows in the location and timing of public meetings all play a role in public assessments of the degree to which regulators value their participation (Lind 2015).
- Third, the public wants regulators to explain the reasons for their actions. By providing full and comprehensible explanations, officials send the message that they value the perspectives and information that the public has to offer (Lind 2015). Moreover, it is possible that, by actually articulating clear reasons for the action taken, regulators may even persuade members that a decision is substantively desirable (Seidenfeld 1992; Seidenfeld 2013).

Research shows that when people perceive that regulators have treated them fairly—have listened to them, respected them, and explained their actions—they are less likely to challenge their decisions in courts, more likely to reach settlements, and more likely to be loyal to and trust decision-makers (Lind 2015:18). A study of public meetings held by 27 U.S. federal government agencies over a 10-year period found that agencies that held more public meetings faced fewer challenges in court (Lee 2014:397). By design, deliberative approaches include many of the features of procedural justice that enhance public perceptions of fairness. Often, discussions are facilitated by moderators who have been trained in fostering mutual respect, encouraging quiet people to speak up and talkative people to listen more. Participants are urged to articulate arguments and give due consideration to others' arguments. Public hearings and deliberative approaches that attend carefully to procedural fairness may be among the most effective methods for enhancing regulatory legitimacy.

Deliberative processes do not always reduce litigiousness, however. A detailed study of negotiated rules promulgated by the U.S. EPA found that rules subjected to this form of deliberation were more often litigated than rules developed through the conventional comment

process (Coglianese 1997). Negotiated rulemaking may heighten conflict if regulators inadvertently leave key parties out of the process or fail to meet the terms of the agreement, or if participants have different understanding of the meaning of consensus. The deliberation associated with negotiation may itself contribute to conflict by encouraging participants to focus on the aspects of the rule they do not like, thereby raising expectations that agreement over every issue is possible (Coglianese 1997:1325).

When regulators engage with groups of citizens organized around a particular interest, the benefits of procedural fairness appear to be smaller compared to when they engage with citizens concerned about their individual interest. Leung et al. (2007) conducted experiments to explore the significance of procedural fairness in disputes concerning cultural and political differences. In each experiment, people focused more on how the outcome of a dispute impacted their group than on the degree to which they were listened to and treated with respect (Leung et al. 2007). Of course, fair deliberative procedures can themselves foster some feeling of inclusion by opening the door to groups and organizations, such as Aboriginal and other minority groups, who may be traditionally left out of regulatory decision making. But groups engaged in long-standing conflicts are less likely to focus on procedural fairness than individuals, and are more likely to focus steadfastly on outcomes that advance their material self-interest (Leung et al. 2007).

2. Balance

An important challenge for regulators is achieving an appropriate mix of participants, as imbalances could affect the perceived legitimacy or impartiality of the regulator.

Imbalances are likely to result as a matter of course in broadly inclusive fora. Historically, business interests have played a disproportionately large role in comment periods and expert advisory committees (see, e.g., Karty 2004; Petracca 1986; Coglianese 1994; Yackee & Yackee 2006; Kirilenko et al. 2014). For instance, in a study of more than 1,500 comments filed in response to U.S. EPA proposed rules, corporations and business interests contributed 60 percent of comments, while individual members of the public contributed just 6 percent (Coglianese 2006). Lack of balance is also a problem for e-rulemaking. Those who participate electronically tend to be more affluent and educated (Reddick 2011; Balla 2012). Evidence of disproportionate *influence* for business is mixed. A study of comments submitted to the U.S. Securities and Exchange Commission found that business-affiliated groups had no stronger influence than others (Nixon et al. 2002). A review of public engagement in a U.S. EPA pesticide rule found that regulators largely ignored the comments from business interests (Magat et al. 1986; Kraft & Kamieniecki 2007).

Although public hearings are in theory open to anyone, research indicates that those who attend are not usually representative of the general population: they tend to be “older, whiter, more affluent, more educated, and more likely to be male than the citizens within their community” (Halvorsen 2006:153). Those who participate may have certain personalities and lifestyles. They tend to be “curious, fearful, and available” (McComas et al. 2006:690). They are more likely to be angry, and tend to be more risk averse (Halvorsen 2006)—characteristics that do not necessarily make them well suited to help regulators anticipate and address policy

challenges. Some of these persistent patterns may reflect different incentives members of the public have for taking the time and effort to engage in public policy. Those who have much to lose have substantial incentives to attend public meetings and express their views (Wilson 1980).

Lack of balance has been shown to undermine the effectiveness of advisory committees: committees with diverse participation are better able to understand the policy problems regulators are seeking to address, anticipate issues that are likely to arise in implementation, and identify innovative solutions (Karty 2004). Karty (2004:430-32) reviewed responses to a survey that the U.S. General Accounting Office distributed to 900 members of federal advisory committees concerning committee composition and effectiveness. He found that balance in “interests as well as viewpoints” enhance both the quality of advice as well as its credibility (Karty 2004:430).

Usually, those who develop and use deliberative approaches design them to include a diverse mix of participants. They may select participants through random sampling, sometimes stratifying the sample to include characteristics of interest such as participants’ level of income, education, or age (Croley & Funk 1997). Of course, those who are selected are free to choose whether to join the deliberation (Elstub 2014). Some evidence suggests that those who do participate fit the same general profile of people who engage in classic participatory approaches—they tend to be better-educated, wealthier, and more comfortable expressing their views (Jacobs et al. 2009). Nebl et al. (2013) challenge this conclusion. These researchers conducted two surveys—the first of citizens’ attitudes about participating in a hypothetical deliberation, and the second testing their actual participation in an online deliberation with their member of the U.S. House of Representatives. They found a great willingness to deliberate, especially among those typically left out of public engagement processes (Nebl et al. 2010:571).

That said, some research suggests that, instead of helping each participant develop his or her knowledge and opinions, deliberation may polarize participants’ perspectives (Mendelberg 2002). Schkade et al. (2006) organized deliberative sessions in two Colorado communities to test how intensive discussions shaped policy preferences. They found that in both cities deliberation resulted in “ideological amplification—an amplification of preexisting tendencies” (Schkade et al. 2006: 3). Views became more homogenous and less diverse. These authors caution that if a group’s preexisting tendency is biased, a deliberative process could result in a socially disadvantageous result (Schkade et al. 2006: 15-16).

E. Contributions of Transparency Approaches to Learning

By establishing pathways for citizens to participate in regulatory decisions, opening portals to share vast troves of information regulatory organizations routinely collect, and releasing information about government performance, transparency has the potential to create important opportunities for learning. In addition to describing developments in this rapidly advancing area, researchers are testing these relationships through case studies, surveys, and experimental techniques. Evidence suggests that in some respects transparency is failing to achieve purported benefits, but in other ways it appears to be succeeding in novel, unanticipated ways.

The results from the first generation of transparency initiatives, geared to facilitating public participation in regulatory decisionmaking, have been modest so far. Despite its promise, deploying electronic technologies to enhance public opportunities to participate in rulemaking has not yielded what many hoped it would. As one commentator put it, “while the *mechanics* of...rulemaking have changed, and very much for the better, the *nature* of the process remains essentially what it was before the move online” (Herz 2013:8). The quantity, nature, and quality of public comment on regulatory proposals have not changed much in the United States with the advent of first-generation e-rulemaking (Balla & Daniels 2007; Coglianese 2006; Krawiec 2013). Projects such as Regulation Room at Cornell University, which have studied the impact of rulemaking through electronic interfaces on the number and quality of public comments, have found activity to fall well below expectations (Farina et al. 2011; Coglianese 2006). Few if any government videos, blogs, or Twitter feeds about rulemaking have captured the public’s attention sufficiently to inspire individuals to share it with others (Herz 2013:35).

Many regulatory organizations now maintain a presence on Facebook, Twitter, YouTube, and other social media (Herz 2013, Mickoleit 2014). Some government social media have sizeable followings: @Number10Gov reaches 4.2 percent of the population in the United Kingdom, and @WhiteHouse reaches 1.6 percent of the U.S. population (Mickoleit 2014:17), and some of the benefits of social media are beginning to emerge. Some governments are using social media to gather information about the public’s policy priorities (Mickoleit 2014). Examples abound of advocacy groups using social media to put issues on the agenda of regulatory organizations, and some governments have found ways to channel these initiatives to set priorities for policymaking. The Latvian parliament, for example, has created an online platform where citizens can add proposals to the legislative agenda (Mickoleit 2014:29).

Governments are finding that social media may be particularly useful for improving the responsiveness and efficiency of their services (Herz 2013; Mickoleit 2014). For example, the Open311 system in the United States allows members of the public to report lapses in government services and check the status of service requests online. The government of Chile uses its official Facebook and Twitter accounts to learn about public service needs and direct its citizens to appropriate departments and resources (Mickoleit 2014:40).

A new generation of open data is creating the potential for previously unimagined opportunities for learning. As Noveck (2009:43) explains, “the Internet makes it possible to design methods for soliciting better expertise sooner from private citizens”. This potential is being realized through the peer-to-patent system in the United States (Noveck 2009) and a host of municipal initiatives (Goldstein & Dyson 2013). The evidence is mostly positive, especially from consumers of the government data, but it is also mostly driven by case studies.

F. Contributions of Transparency Approaches to Legitimacy

In addition to fostering new learning, transparency has the potential to strengthen public perceptions about the legitimacy and fairness of government. By sharing information, regulators allow the public to observe their activities and hold them to account. They send the message that they value the public’s voice in regulatory decisions. Is this potential being achieved in practice?

Table 4. Public Engagement Methods: Characteristics and Contributions to Learning and Legitimacy

	Inclusive ← → Exclusive	Interactive ← → Static	Shared Authority ← → Retained Authority	Evidence of Learning	Evidence of Balance
Public Comment Periods	<i>Very Inclusive (Formally Open)</i>	<i>Generally Static (Unless Structured Response Period)</i>	<i>Retained Authority</i>	Considerable evidence of regulators' learning (Golden 1998; Shulman 2007, 2013; Yackee 2005)	Business interests predominate (Petracca 1986; Coglianesi 1994; Yackee & Yackee 2006)
Public Hearings	<i>Very Inclusive (Formally Open)</i>	<i>Less Static (Depends on Convener Style)</i>	<i>Retained Authority</i>	Little evidence of regulators' learning (Halvorsen 2006; Adams 2004)	Educated, affluent, and dissatisfied tend to predominate (Halvorsen 2006; McComas et al. 2006)
Expert Advisory Committees	<i>Least Inclusive (Experts Only)</i>	<i>Very Interactive</i>	<i>Generally Retained Authority</i>	Considerable evidence of regulator and public learning (Moffitt 2010, 2014)	Business interests predominate (Karty 2004)
Citizen Panels/Juries & Discussion Groups	<i>Moderately Inclusive (Representative Balancing)</i>	<i>Very Interactive</i>	<i>Generally Retained Authority</i>	Some evidence of public learning, but recommendations carry little weight (Crosby & Nethercut 2005; Elstub 2014)	Selection process intended to achieve balance (Croley & Funk 1997)
Deliberative Polling	<i>Moderately Inclusive (Population Sampling)</i>	<i>Very Interactive</i>	<i>Generally Retained Authority</i>	Considerable evidence of public learning (Fishkin & Luskin 2005; Fishkin 2009)	Balance through random sampling (Fishkin & Luskin 2005; Fishkin 2009)
Negotiated Rulemaking	<i>Less Inclusive (Representative Balancing)</i>	<i>Very Interactive</i>	<i>Often Shared Authority</i>	Evidence of public learning (Freeman & Langbein 2000; Beierle & Cayford 2002)	Selection process intended to achieve balance (Coglianese 1997)

The relationship between transparency and public perceptions of the trustworthiness and legitimacy of government is complex (Hood 2006). Auger (2014) used experimental survey methods to show that greater degrees of organizational reputation for transparency and actual transparency in communication were associated with generally higher levels of trust in the organization among respondents.

Other research suggests that the relationship between transparency and legitimacy may be somewhat culturally dependent. In cultures where public confidence in government is high and regulators hold an elevated place in social hierarchies such that citizens generally accept regulators' authority, transparency policies can lead people to question regulators' competence

(Grimmelikhuijsen et al. 2013:583). In such contexts, “citizens interpret information afforded to those through transparency policies as evidence that their government is not as omniscient as they previously thought” (Grimmelikhuijsen et al. 2013:583).

Public perceptions about the appropriateness of transparency may also depend on the policy context (de Fine Licht 2014). For policies concerning difficult tradeoffs, for example between safety and cost, transparency did little to improve public perceptions of legitimacy. For policies concerning more routine policy matters, transparency had a positive effect. The effectiveness of transparency may be partially driven by cultural factors that are difficult to account for, and which certainly do not allow for a one-size-fits-all approach (Grimmelikhuijsen & Meijer 2014; Grimmelikhuijsen et al. 2013).

We summarize the characteristics of the major public engagement methods (including the tradeoffs on the major dimensions of design choice) and their contributions to learning and legitimacy in Table 4.

IV: Considerations for Implementing Effective Public Engagement and Transparency Strategies

Public engagement and transparency hold promise for strengthening the effectiveness of regulatory organizations. In this Part, we provide basic considerations and insights that may help regulators develop strategies that maximize the potential of these important policy tools.

Principle #1: Engage and Inform the Public Early and Often

Perhaps it goes without saying, but the benefits of learning and legitimacy that public engagement and transparency impart on the regulatory process are not likely to materialize if regulators only resort to them *after* critical decisions have been made. Interactions between regulators and the public are much more meaningful if they occur early in the process, perhaps as early as the priority-setting, or agenda-setting, stage. On the learning side, regulators that engage the public and disclose relevant information at this early stage can expect that they will receive more actionable information from the public, both in terms of the actual task of priority-setting as well as later on in the process, as participants will likely be galvanized to continue participating, learning, and contributing once they are involved. On the legitimacy side, citizens and groups are more likely to accept a process in which they feel they have a potentially effective voice (Lind 2015), and the opportunities for shaping the discussion are generally much greater the earlier in the process the public is brought in. Indeed, in light of these benefits, there has been a worldwide call to give citizens “equal standing...in setting the agenda, proposing policy options and shaping the policy dialogue” (OECD 2001:12; Macintosh 2004:30).

Most the time, regulators use the tools of public engagement and transparency only after making critical decisions about agendas and alternatives. We have come across very few examples of regulatory organizations making any kind of commitment to public engagement at the earliest stages of the policymaking process, except recently. The practice of “after the fact” public engagement has in fact begun to change with the advent of advanced comment periods (Carlitz & Gunn 2002), the proliferation of advisory groups subject to open meeting

requirements (Moffitt 2014), and experimentation with tools such as the “We the People” petitioning in the United States⁶ and e-petitioning in Scotland (Macintosh 2003:55-56). While these tools are still infrequently used and, as of yet, have not produced much in the way of empirical evidence, regulators would do well to consider using existing methods of engagement and ICTs to push the first point of engagement earlier in the process.

Principle #2: Practice Procedural Fairness & Neutrality in Every Public Interaction

Regulatory organizations that invest in procedural fairness and neutrality enjoy greater public trust and support (see Lind 2015 and discussion in Part III). Regulatory organizations can show the public that they are fair by listening to the public’s voice, showing respect, and providing reasons for their actions. These steps, while easy to understand intuitively, are more difficult to put into practice. They depend on “issues of style and nuances of behavior” that regulators may have trouble grasping and integrating into everyday interactions with the public (Lind 2015:8). But steps to establish procedural fairness are clearly needed. Research discussed in Part III points to a widespread public perception that regulators generally ignore or misinterpret input provided in one of the most accessible methods of public engagement (i.e., public hearings). That finding suggests that regulators are missing important opportunities to learn from the public and establish the legitimacy of their organizations. To address this need, many regulatory organizations are establishing training programs to help staff members learn the techniques of listening, respectful conduct, and providing explanations (Lind 2015). Training in the techniques of procedural fairness could help to enhance the effectiveness of many of the methods described in this review (Lind 2015). The benefits of procedural fairness extend beyond formal engagement methods discussed here. Integrating procedural fairness into *all* interactions with the public, from fielding inquiries over the telephone to conducting a site visit during compliance inspection, could strengthen the legitimacy of regulatory organizations significantly (Lind 2015).

Principle #3: Strive toward Diversity of Viewpoints and Experience

Regulators learn most when they have the opportunity to listen to the full range of perspectives on the issues that concern them (OECD 2009). A challenge running throughout the literature is how best to design public engagement so as to include a diversity and balance of points of view (Fishkin & Luskin 2005; Fund 2006; Golden 1998; Karty 2005; Moffitt 2014). To the extent that regulatory organizations opt for more narrow forms of public engagement such as expert advisory committees and deliberative fora, they need to recognize that gatekeeping decisions—such as standing to participate in consultation or sit on an advisory panel—can carry great significance for legitimacy and equity. Rather than rely on common and somewhat artificial categories of interests, such as “industry,” “consumer,” or “expert” groups, regulators should, to the extent possible, learn about the depth and nature of conflict around the policy area and recruit participants who reflect the actual interests at stake or are traditionally underrepresented (OECD 2009). A failure to do this could lead to a misbalanced or unrepresentative cross-section of the concerned public and risk de-legitimizing the deliberation (Crosby et al. 1986:171-72), especially if the regulator does not offer a more formally neutral,

⁶ <https://petitions.whitehouse.gov/>.

open opportunity for groups that are not included to comment on the proceedings. It is also for this reason that narrower, more deliberative approaches may be particularly appropriate at the earlier stages of policy development and agenda-setting, as there could be opportunities to involve the broader, more diffuse public in less deliberative fashion later on in the process.

Principle #4: Choose Methods that Fit the Purpose

In designing a public engagement strategy, regulators should understand the tradeoffs between the different approaches and the contexts in which each is most likely to be effective. Broadly inclusive methods such as comment periods can help regulators understand how proposed rules will impact those who must comply (Golden 1998; Yackee 2005). Only rarely is this approach effective for understanding the concerns of individual citizens and others far removed—in terms of physical distance, occupation, or interest—from the inner workings of government. Public hearings can be a way for regulators to share information with citizens, but those who show up tend not to represent the public at large in terms of demographic characteristics or opinions.

Intensive, deliberative approaches such as expert advisory groups, citizen panels and juries, and deliberative polls can offer significant value to regulators, especially when regulators may otherwise not understand how those subject to their rules will interpret and act upon them. Deliberative approaches can also move participants' viewpoints towards something approximating a general "public interest" as they are exposed to more information and are forced to confront and cooperate with opposing interests (Fishkin & Luskin 2005). With these approaches, regulators have greater control over who participates and how discussions are structured.

To the extent that a policy decision is marked by pervasive and fundamental conflict, regulatory organizations may decide that there are risks of engaging opposing groups in a small, intensely deliberative process such as a consultation, advisory committee, or citizen panels—risks like alienating "losing" groups when a final decision is made, thereby exacerbating conflict (Leung et al. 2007; Mansbridge 1983; Mendelberg 2002). In these kinds of cases, regulators may want to err on the side of broad forms of participation, such as public comment periods or public hearings that allow conflict to come out unadulterated. And even where the regulatory organization decides that deliberative mechanisms are appropriate, they should be cognizant that pervasive conflict may lie just beneath the surface of discussions. Their role may be proactively to engage or prop up marginalized perspectives in the discussion wherever possible, avoiding domination by more powerful perspectives.

Regulators should be aware that the choice of method is itself a signal to the public about its intentions, and renegeing on an implicit promise to delegate responsibility to the public can make public engagement strategies backfire, leading to diminished legitimacy. For instance, negotiated rulemaking was promoted as a way to give interests more power and authority to develop a consensus among themselves, but because the regulators ultimately retained—and sometimes used—the authority to change the terms of the negotiated deal in later stages of the rulemaking, this method failed to stem the tide of litigation, substantially reduce regulatory conflict, or save regulators time (Coglianese 1997). If regulators are sincere about sharing some decision-making authority, they might be more inclined to employ more narrow forms of public

participation, such as negotiations, advisory committees, citizen juries or panels, consultations, and the like. If they are not, more arms-length methods with a broader scope, such as public comment periods or hearings, may be more appropriate.

The bottom line is that there is no one-size--fits-all approach to public engagement and transparency. Regulators should be prepared to understand the tradeoffs and their goals, and maximize the value delivered by choosing well-tailored mechanisms.

Principle #5: Embrace an Ethic of Pragmatic Experimentalism and Evaluation

Regulators often confront a highly uncertain public environment. For instance, regulators will often not know the extent of public dissatisfaction (or the potential of the public to aid in acting on the regulator's mandate) without engaging the public in preliminary fashion. Regulators should experiment with a variety of methods, institutions, and processes to engage and inform the public, but do so in a way that allows them to draw valid inferences about what works and what does not work to strengthen their effectiveness. Regulators should take experimental learning seriously by incorporating a concrete strategy for evaluation of specific institutions and processes (Ubaldi 2013; OECD 2014). Regulators should collect data, measure inputs, outputs, and outcomes, and seek to understand the causal impact their efforts have on positive outcomes, whether measured in terms of increased legitimacy, better policy outcomes, or something else (OECD 2014). If regulators commit to that process, they will ultimately save resources and maximize the benefits of public engagement and transparency.

Conclusion

In this review, we have emphasized what we and others consider two primary potential benefits of public engagement and transparency—opportunities for increased learning for regulators and the public and increased legitimacy of regulatory decisions and organizations. Public engagement and transparency have the potential to fill gaps in regulators' understanding about the nature and extent of problems, reveal public preferences and values, and improve regulatory oversight and decisionmaking (OECD 2009). Public engagement and transparency may even prevent regulators from relying too heavily on technical and scientific approaches to the exclusion of normative assessments. Equally important, public engagement and transparency have the potential to encourage “dialogue based in reason” (Rossi 1997:205) and bolster the public's perception of the fairness of regulatory decisions (Lind 2015). But these approaches come with potential pitfalls. If used inexpertly, public engagement and transparency can precipitate inept decisionmaking that conceals the underlying reasons for conflict, give certain interests undue influence (Carpenter & Moss 2014), drive up costs and delays (Rossi 1997), and undermine, rather than bolster, perceptions that decisions are fair (Mansbridge & Martin 2013).

Seeking to reap the potential benefits of public engagement and transparency, and avoid potential disadvantages, regulatory organizations have developed a wide array of public engagement methods. These methods vary in scope of participation, intensity of communication, and extent of authority that regulators share with the public. Comment periods and public hearings and meetings offer the widest scope and are the most inclusive. Advisory committees, citizen juries and panels, negotiated rulemakings, and deliberative polling offer greater intensity

of communication, but generally have a narrower scope in terms of numbers of participants. Sometimes regulators bestow a degree of authority on deliberative, intensive methods. Regulators also have wide choice with respect to the design of transparency approaches, releasing information broadly or to a narrower subset of the population. Recently, many governments have released huge amounts of data, and non-governmental organizations have joined with government in creating a collaborative commons to share and interpret this information. These emerging transparency approaches are too new to describe fully. They offer new possibilities to expand the scope of inclusiveness, intensity, and authority of engagement in the future.

Empirical research suggests that public engagement and transparency may contribute to the learning and legitimacy of regulatory organizations. Comment periods can help to inform regulatory decisions by providing regulators with access to new information and expertise. Researchers have been able to identify some changes that regulators have made in response to comments, suggesting that regulators may be learning from the information commenters provide. In many cases, however, changes are “minimal,” which we interpret to mean that learning has also been minimal. While members of the public may gain some information by commenting on proposed rules and attending public hearings, research suggests that they learn more from more exclusive, intensive approaches such as deliberative polls. Advisory committees and other collaborative fora may offer greater potential for joint learning, especially when activities focus on areas where regulators and members of the public depend on each other to understand how policy shapes practice. Public engagement can bolster the perceived fairness of organizations when regulators take care to listen to citizen voices, treat them with respect, and explain the reasons for their decisions. But these benefits do not always hold—fair treatment appears to have little positive impact on the way that groups view the legitimacy of regulatory organizations. Many engagement approaches are hampered by imbalanced participation and domination by more affluent, educated, and influential individuals and organizations—imbalance that undermines their legitimacy. The track record of transparency initiatives’ contributions to learning and legitimacy is similarly mixed. The impact of new open government approaches will likely require years or decades to understand, but initial assessments suggest that these approaches offer promise.

This review leads us to offer five principles for regulatory organizations seeking to design and implement public engagement and transparency approaches that can maximize their learning and legitimacy:

- Engage the public early and often, before important decisions are made
- Practice procedural fairness and neutrality in every public encounter
- Strive toward diversity of viewpoints and experience
- Choose methods that fit the purpose
- Embrace an ethic of pragmatic experimentalism and evaluation

These approaches will help strengthen the learning and legitimacy—and ultimately the effectiveness—of regulatory organizations.

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