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THE VALUE DEBATE IN REGULATION

By R. Liora Salter*

I. INTRODUCTION

The focus of this paper is the value debate that occurs in the regulatory forum. Three assumptions are made. First, that regulation constitutes a forum where interests are negotiated, in other words, an arena of politics. Second, many of the interest groups in the regulatory forum are also active in other areas of political life. Third, the regulatory debate, like any political debate, involves an exchange of ideas, information and proposals all of which are grounded in the theoretical orientation and value perspective, however ill-defined, of its participants.

Given the similarity between regulatory and political debate in general terms, a similarity in their value debates might be expected. Positions taken by participants should be comparable to what they are in other political arenas. Their stance on any issue in regulation should be predictable, if one can identify the patterns of interest and influence that are involved.

This is not the case. In Canada, the regulatory debate is not like others. Certainly, participants approach issues from their general understanding of social dynamics, but apparently oppositional groups unite on some issues while established, deeply-rooted political coalitions fall apart. The theoretical, ideological and value differences so easily recognized in other political arenas, the polarities of left and right for example, are not as apparent in the regulatory debate. It is difficult to predict the position that a group will take on a specific issue as precarious alliances develop among those who might otherwise hold sharply divergent views. These coalitions prove to be more than tactical.

Consequently, a conventional analysis of the value debate in regulation will not suffice. For example, an interest group analysis is useful but limited when traditional political divisions and conflicts do not hold in the regulatory arena. If all political debate is infused with value conflicts, the specificity of regulation will be blurred by a relatively simple identification of the values in conflict. Actively affected industry groups will represent their interests in the regulatory arena as they do elsewhere. Given their relative political dominance, they are likely to be influential, as they are elsewhere; even to the point that one could claim that regulatory agencies are “captured” by the industries they regulate. Industry groups will tend to share few of the value perspectives of advocate groups. Yet in a regulatory debate these groups may find themselves on unpredictable sides of the issues and in alliances with those whom they normally oppose in political debate.

If analysis of the politics of regulation will not suffice to account for the unusual contours of the regulatory debate, and if an identification of the value-

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conflict provides few additional insights, a different approach is necessary. This paper concentrates on the nature of the regulatory debate as a debate. The approach will be from the discipline of communication studies. The case study will be communication regulation because that case illustrates clearly the confounding issues and alliances that develop in any regulatory debate.

A few points are necessary to understand the approach and the case study. It is worth noting some of the precepts upon which any sociological analysis of a value debate are based.

A. The Sociological Approach

First, what is a value debate? It includes any debate about policies affecting rights or beliefs. The debate about the state's right to regulate is a value debate. The debate about the place of religious stations in the Canadian broadcasting system includes a value discussion. Any debate over the apportionment of restrictions or rewards as a result of regulatory decisions includes a value component. An increase in rates, for example, may price a telecommunication service beyond the reach of some sectors of the community or industry. Assuming that the increase could be justified on economic grounds, the decision to grant or refuse it involves value choices. A decision calling for a cross-subsidy involves the same considerations.

Sociologists go beyond merely identifying value debates and argue that any debate, discussion, study or analysis involves a value component. The point is most evident with respect to political debates, including regulation. Political orientations, based to some extent on value choices, temper the responses actors make to the agency and even to the evidence presented. The process of selection involved in any description of reality, any choice of research problem, any synthesis of information is affected by value considerations. Values determine what will be considered worthy of attention and shape the choice of approach and methodology used. The economist who in seeking methodological rigour relegates many features of the environment to the category of "externalities" is making as many value choices, sociologists would argue, as the anthropologist presenting evidence on the native way of life.

Identification of the value debate is often simple. The deregulation debate in the United States, where state intervention in the economy is highly contentious, focuses on the tension between state and individual rights and is clearly a value debate. In Canada, and specifically in communication regulation, the value debate is much more difficult to identify. State intervention is, and has been since Confederation, a central fact of political life. Regulation is one option for a government also engaged in extensive public ownership and industrial development projects. As a result, the issues in communication regulation, such as "user pay" or "public access", are viewed differently in Canada, and the value debate inherent in any discussion of these issues is less likely to be evident.

The sociological approach of viewing all debate as inherently value-imbued permits us to go beyond debates that are easily identified as value based. By concentrating on the problems chosen as significant by the actors, the information presented and the methodologies used, the sociological ap-
The Value Debate in Regulation provides clues to what might otherwise be obscured. It focuses on the underlying factors that make regulatory debate, as a value debate, unusual.

Second, a sociological law is that things perceived as real are real in their consequences. In other words, if actors in a regulatory debate believe they represent the public interest (as most do), that belief, however tenuous its claim to veracity, cannot be discounted in an analysis of the debate. An absolute standard against which all values or beliefs can be measured is unobtainable. This does not suggest that most sociologists would argue that all values are simply relative or that they are committed to a value-free social science. Simply, from a sociological point of view, values and value systems are rooted in the cultures and experiences of those who hold them. Most sociologists today would argue that a value-free social science (and even natural science) is impossible. Thus, the emphasis, even for those who believe a separation of normative and positive science is possible, is on why people hold the beliefs they do and why those beliefs are so resistant to change.

Third, although values are individually developed and held, they are socially derived and social in their consequences. The concept of "free individual choice" is meaningless, not because it is false but because it cannot, without further elaboration, encompass the complexity of individual or moral decision-making. Individuals do make moral choices and marketplace decisions, but always within the social constraints, experiences and groups to which they owe allegiance. Their choices are socially determined even as they are made by freely acting individuals. Neither in theory nor in practice can the social and the individual be fully disentangled.

Finally, all value systems have three points of reference in common no matter how different their values may be. All value systems have a standard against which ideas and actions can be measured. They all involve some concept of resource allocation, that is, the distribution of rewards. And they are all grounded in a specific understanding of the relationship between the social world and the individuals who make it up. The debate in regulation is no exception. All participants touch base with a standard, a measure of what is a fair and proper outcome of a regulatory decision. All participants have a concept of resource allocation, how it should happen and how goods should be distributed. And all have some understanding, however implicit, of the relationship between the individual and the social good.

As Gouldner notes in comparing sociology to Marxist approaches:

In human society, there is no inevitable law and no structuring that automatically brings anything into existence; there is also no voluntaristic freedom that ensures the success of heroic efforts. We had best assume that there are limits on what may be achieved in any situation. Yet these do not depend only on what is "in" that situation but vary also with how persons define it and what they bring to it. The indeterminacy of this condition is acute. We really do not and cannot know just how limiting a structure is, or how strong the will to overcome it is, without pitting each against the other. There is an irreducible indeterminacy here. Neither strength of will nor of structure may be known apart from grappling with one another.

B. Communication Studies

The approach of communication studies requires more explication as communication is a new discipline. A communication analysis examines actors and how they derive meaning from their interpretation of the messages they receive and the context within which they operate. Sometimes a communication analysis will centre on the information being exchanged, exploring, for example, themes and biases in media, texts or government reports. Sometimes the emphasis is on the context within which the exchange takes place and the purpose of the research is to determine how the context shapes the communication.

An assumption is made of an underlying coherence in the way actors perceive a situation and use their perceptions to shape understanding and action. All actors operate with a "logic", although seldom would such a logic be fully logical in the technical sense of the word. Actions, beliefs, statements and explanations make sense to those who put them into practice. The task of communication studies is to determine what that "sense" is.

Any analysis of values fits easily into a communication analysis, since values are necessarily embedded in the logic of actors. In decoding any discussion, and certainly the regulatory debate, value perspectives are as important as theoretical orientations in determining the logics involved and their impact on both the nature of the debate and the resolution of its issues.

The term "decode" is used because the logic of any participant's contribution is never made fully explicit. Actors may be conscious of factors that motivate their actions, yet their most careful account is necessarily incomplete since all action is grounded in assumptions and routines that are not usually recognized or acknowledged. All communication is biased. Statements may reflect assumptions so deeply embedded in the language, culture, class and experiences of those who make them that they seem "natural" and self-evident. Routine practices shape what government officials, corporate executives and advocate group members do as much as any decision. They seem "natural", and defensible. The decision to concentrate on specific issues in a regulatory forum is seldom taken explicitly. Items omitted from the agenda may be as important as those discussed, but the decision to confine debate within certain parameters is more often a product of convention than negotiation.

Conflict about what should be considered relevant or the worthiness of certain routines and practices in regulation brings some of the biases and assumptions to light. In fact, it usually takes conflict, an unusual event or a highly analytical approach to make explicit what is usually taken as natural.

Analyzing the logics in a debate is difficult, however, because several kinds of logic may be involved and participants in the debate may shift from one kind of logic to another without indicating or understanding the resulting

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shift in their argument. Three distinct modes of logic are used in the regulatory debate. Each represents a different approach to information and argument. The three forms of logic are "theoretical", "ideological", and "symbolic".3

Theoretical logic is most common in academic circles. It represents synthetic analysis grounded in research. Of necessity, the complexities and contradictions observed are included in the account of reality offered. Theoretical debate attempts to be comprehensive and responsive to change on the basis of observation. Theories of regulation, or of the economy, may differ (and certainly what constitutes an appropriate theoretical approach is a matter of some debate) but all theoretical work aims at being both open-ended and systematic. One can argue prescriptively on the basis of theory, as do Rawls, Gouldner and Posner.4 Policy analysis and theoretical work are not necessarily inconsistent since values are embedded in a logic in any case.5 Even those who argue that value-free social or economic science can exist often combine theoretical work with openly prescriptive accounts, albeit by attempting to keep the two visibly separate. Not all academics are oriented to theoretical analysis, of course, nor do academics have a monopoly on this mode of discourse.

Ideology, unlike theory, has a tight and explicit coherence. An ideological account imposes an explanatory grid on information (beliefs, values and data) rendering all aspects of reality consistent with a clear picture of what is, and should be, occurring. Complexities in the analysis disappear as a result. Contradictions and conflicting data are relegated to other spheres of discussion, often under the guise of making the argument logical. The prescriptive elements, which may have been implicit in a theoretical account, stand out as imperatives against a background of description.

The difference between theoretical and ideological discussion is not the openly prescriptive aspect of much ideological work but the fact that ideology operates with a closed system logic. All aspects of reality are accounted for within the tight explanatory grid offered. This closed system characteristic gives ideological accounts, even when they focus on empirical data, the char-

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3 Others have drawn a distinction between the theoretical and ideological levels of analysis (see Laclau, Politics and Ideology in Marxist Theory: Capitalism, Fascism, Populism (London: New Left Books, 1977)), but the distinction being drawn here is somewhat different than what Laclau intends. Laclau proposes two levels of discourse, each responsive to different pressures and constraints; I am suggesting two modes of discourse, often used in conjunction in the same discussion or debate, each involving a different use of information, logic, and analysis.

Edelman also uses the term "symbolic" in conjunction with political debate (see Edelman, Political Language: Words that Succeed and Policies that Fail (New York: Academic Press, 1977)). Again, my use differs, in this case because my emphasis is on the nature of the debate itself.


5 Most sociologists today would accept the contention that theory and prescriptive analysis are tightly connected. The current dispute in the discipline revolves around the question of whether this connection is inevitable, avoidable in small measure, or desirable.
acter of religion or faith. In shifting from a theoretical to an ideological logic, both the analysis and prescriptions are clarified, making for their easy assimilation. Ideological arguments appear more convincing because they are more easily understood and offer more definitive answers than theoretical accounts. Yet, the descriptive and analytical power of the analysis resulting from the transformation of theoretical insights into ideological accounts is less complete. Moreover, the linkage between theory and ideology is masked because crucial assumptions are left unstated in the search for consistency and clarity.

Although symbolic logic may have both theoretical and empirical referents, it is a distinct category. Two processes are involved in the creation of a symbolic logic. The first may be called highlighting. Symbolic logic lifts particular elements from theory, from ideological discussion, or from descriptive accounts of reality, and treats them as significant in and of themselves. The second process is analogical reasoning, the creation of a model to represent reality from the elements so abstracted.

Theoretical or ideological discussion involves both highlighting and analogical reasoning. But in symbolic logic the abstracted concepts are treated as real in themselves. The theoretical or empirical referent is neither given nor evident. “Supply and demand”, “norms”, the “market” or “class” are considered as if they represent a directly observable phenomenon, rather than analytical constructs. In symbolic logic these terms stand on their own without an account of the complexities of the reality from which they were drawn or an appreciation of the contextual factors that give meaning to the picture they purport to describe. The linkage between the symbols, theory, and reality is assumed, not drawn.

All these modes of logic are included in the regulatory debate, but because of the constraints placed upon participants in regulation, the symbolic and ideological logics often appear to have the most appeal. Few participants have the time or command the resources that theoretical work demands. If expert witnesses argue on the basis of theory, they risk making their ideas inaccessible to those who make regulatory decisions under pressure of time, routine and limited resources.

Most often, in fact, regulatory debate is ideological. The effectiveness of an argument is tied to its clarity and consistency. Because it is ideological, however, it lacks empirical sophistication and often analysis may be presented in an abbreviated form. As ideological argument assumes a closed system logic, new information, contradictory findings or innovative means of conflict-resolution are usually precluded.

Sometimes regulatory debate is characterized primarily by symbolic logic. Words and catch-phrases take the place of discussion or debate. The phrases become the primary means of reconstructing reality to facilitate certain policy-oriented conclusions. “Progress”, for example, is counterposed

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against "a human environment". Each word or phrase replaces a longer analysis that is not articulated. The links to assessment or research are blurred; the theoretical framework that might give depth to the concepts being used is obscured. Advocates of various causes and interests trade terminology, often clouded in legalisms, across the hearing floor, each hoping to catch the imagination of the agency.

Two points require emphasis. The regulatory debate is characterized by all three kinds of logic and actors shift among them. The shift may be tactical or it may conceal a lack of data or research. Sometimes it is unconscious. Second, the significance in the shift from theoretical to ideological, or from ideological to symbolic logic is what gets left out in the transition. The nature of the missing links helps to explain the unusual coalitions and conflicts that develop.

C. Communication Regulation

Finally, some background on the case study will be useful. Communication regulation is a case ripe for analysis. In Canada, it includes both telecommunication and media regulation and may soon include some aspects of the new technologies as well. There is a single agency, the Canadian Radio-television and Telecommunications Commission (CRTC), and several statutes.

There are two distinct mandates for regulation: an exclusively social one in broadcasting and a traditional economic one in telecommunications. But new technologies increasingly blur the distinction between broadcasting and telecommunications. The agency operates in an evolving economic environment, with rapidly changing technologies. At the same time there is a tension between the regulatory authority and the departments to which it reports.

The agency is relatively new (it was established in 1968 and gained jurisdiction over telecommunications only in 1975), and while few in Canada would predict full deregulation in communications, questions have been raised about the role of a regulatory agency. Given the Canadian history of agencies being disbanded and then recreated in a new form, it would not be surprising if the CRTC were folded into a new commission, with a retooled mandate and approach at some time in the future.


8 The conflict between agencies and the Ministries to which they report is common. Some analysis of it can be found in Phidd and Doern, The Politics and Management of Canadian Economic Policy (Toronto: Macmillan of Canada, 1978).

9 The CRTC was created under the Broadcasting Act, S.C. 1967-68, c. 25, s. 5. It gained jurisdiction over telecommunications when it was reconstituted under the Canadian Radio-Television and Telecommunications Commission Act, S.C. 1974-75, c. 49, s. 14.


11 A non-systematic view suggests that Canadian agencies are disbanded or remanded about once every decade.
The CRTC, unlike other agencies, has only a social and cultural mandate in broadcasting. It does set rates and grant licences, but its mandating broadcast legislation makes no reference to the economics of the industry. These more traditional regulatory activities are used to implement the socio-cultural goals of the legislation.

The CRTC is known for its innovative procedures in broadcasting regulation, so it is not surprising that one major dilemma originated in a procedural debate. The agency's innovative practice, while stopping short of funding for intervenors, provides for an informal hearing process that encourages participation and debate on a broad range of social questions.

When the CRTC was given jurisdiction over telecommunications in 1975, it inherited some very formal procedures and two restrictive mandates. Regulation in telecommunications conforms to traditional regulatory theory. The agency protects a public interest, statutorily defined as ensuring just and reasonable rates and access to service without discrimination. The government has considered the regulated companies as natural monopolies, and, therefore, has attempted to stimulate forces that resemble competitive pressures. The focus is on economic regulation.

Even within the framework of telecommunications regulations, however, the CRTC sought a more informal procedure. According to one Commissioner at the time, the hope was to match broadcast and telecommunication regulation to the greatest degree possible, given the different mandates. Dispensing entirely with procedural formality was impossible, but the CRTC's draft telecommunication procedures, released for debate in 1976, went further than anyone anticipated. The formality of the process and the rights of participants before the agency were altered. It also instituted hearings that resemble rule-making hearings in American agencies, that is, regional and issue hearings for the general discussion of social and policy questions.

No doubt the agency expected opposition from the regulated telecommunications industry but support from the public advocate groups for the decreased formality and scope of regulatory discussion. Surprisingly, the majority of public intervenors pressed for more formal procedural safeguards. How had an uneasy alliance between some of the public advocate groups and the industry developed? Why was one public advocate group pressing for increased public access and discussion while others, also in the name of public participation, sought formality in procedure and restrictions on the range of debate?

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12 The goals of the Broadcasting Act, R.S.C. 1970, c. B-11, include “national unity” and the strengthening and enriching of the social, cultural, and economic fabric of Canada (s. 2). The Act lays out the manner in which the CRTC is to function with respect to these goals and nowhere emphasizes those functions that we now associate with economic regulation.


15 Interview notes with Harry J. Boyle, March 1976.
The question cannot be answered without examining the theoretical foundations of the advocates' positions. The point of agreement among these groups was related to the role intervenors may play in stimulating competitive pressures in the market. The point of disagreement, it appears, centred on concepts of the regulatory process itself.

For some public advocates, regulation constituted a political marketplace in its own right. The concept of the political marketplace was, as Trebilcock later put it, a process of collective decision-making involving "an intricate set of interactions among voters, politicians, bureaucrats, interest groups and the media in which competing claims for favourable politics are brokered."^{16} Public policy-making, he has suggested, "is not at all a technocratic consensus based exercise but a value laden conflict ridden process of intergroup mediation."^{17} From this perspective, regulatory agencies are one of many forums within which negotiation takes place. In the case of agencies, partly because of their apparent insulation from the political process, the political and economic marketplaces are interwoven.

From this view, it is logical to argue that the consumer/voter must be represented, even if that representation might demand some form of cross-subsidy. Advocates argue that consumers will not act in economic regulation to simulate pressures of competition without measures being taken to overcome barriers to their participation. Similarly, consumer representation, if necessary in the political marketplace to ensure a full and fair discussion of values and interests, might also have to be supported.

For other public advocates at the time, the view that all political life should be seen as a marketplace of values and interests posed problems. Such a perspective either reduced all social and cultural values to factors comparable to property interests or it failed to take into account any other form of political involvement than that tied to direct interests. Public interest, at worst, was synonymous with economic interests; at best, it was seen as the result of interest negotiations among competing groups of individuals. For these advocates, public interest was misconstrued as simply the aggregate interests of those who engaged in the negotiations. Such a view of public interest begged the question. How could it encompass culture, national or regional identity, community or the goal of supporting a diversity of information? For those public advocates who supported the new informal procedures, a concept of "collective good" was required, however difficult it might be to put into practice.^{18} They sought social, not economic, regulation. And while they equated public interest with "collective good", and did not assume that governments or their agencies would necessarily provide it, the goal of procedural reform in their view was to facilitate the determination of the collective

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^{17} Id.

good. The debate before the agency was itself critical, for it was out of a full and participatory debate that an adequate concept of what constituted a "collective good", the public interest, might properly be determined.

In fact, the conflict in this case was not simply between groups of public intervenors. The CRTC has a mandate, in broadcasting, that does measure collective good, in terms of national unity, quality of life, culture, experience and relationships. One might argue that such questions had no place in telecommunications but it is not surprising that an agency would attempt to harmonize, to the greatest extent possible, its socio-cultural and economic mandates. One might also argue, as indeed some have done in the American context, that qualitative values and indirect interests have no place in a regulatory forum. Their inclusion in broadcast regulation could not be regarded as illegitimate if legislation demanding it was passed with the unanimous consent of Parliament. Whether such a framework for regulation was workable or not, the right of Parliament to set it must go unchallenged.

Nor would the CRTC have felt that its inclusion of social questions in a strictly economic telecommunications mandate went contrary to Canadian political tradition. Other agencies, with a mandate similar to the CRTC's telecommunications legislation, are explicitly directed to serve the "national interest". In one case where Cabinet overturned the decision of the CRTC in telecommunications, it did so because the CRTC decision, although well within its regulatory mandate, was "not in the national interest". As well, the government department to which the CRTC reports has conducted numerous studies, many of which conclude with a recommendation that social questions be considered in the development of new telecommunications technologies. The satellite corporation, Telesat, which is regulated as telecommunications, was established with explicitly social goals. Therefore, the CRTC's inclusion of social and policy discussions was not surprising.

But locating the genesis of the conflict does not explain the coalitions that formed on procedural reform. Another illustration of the problem would be helpful. The Telecommunication Workers Union recently sought help to appear before the CRTC on competition issues. Surprisingly, they considered their natural allies in the fight to be the British Columbia Telephone Company (B.C. Tel.) with which they had had demonstrably bad labour relations, and their opponent to be an agency smitten with the idea of competition. As

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19 Broadcasting Act, R.S.C. 1970, c. B-11, s. 3(b).
22 E.g., McNulty, Other Voices in Broadcasting: The Evolution of New Forms of Local Programming in Canada (Ottawa: Dep't. of Comm., 1979); Lum and Ho, Concluding Report Rural Communications Program (Ottawa: Dep't. of Comm., 1981); Can., Dep't. of Comm., Special Program of Cultural Initiatives (Ottawa: Min. of Supply and Services, 1980); Hudson, The Northern Pilot Project: an Evaluation, prepared for the D.O.C. (Ottawa: Dep't. of Comm., 1974).
anyone who participates in the regulatory arena knows, polarities of left and right break down in this context. What is it about regulation and the regulatory debate that causes this to happen?

II. FIRST ANSWERS

It was suggested above that much debate within the regulatory arena employs symbolic logic. The terms “user pay” and “deregulation” are part of a symbolic logic. They may have theoretical referents, but they are often used within the regulatory debate without reference to the theories, or even to the empirical data, in which they may be grounded. “State intervention” is a problematic concept when severed from an analysis of the economy, since few would argue that the state should withdraw completely from all aspects of economic life. “Consumer representation”, “public participation” and “economy” are all often used in symbolic logics.

When used as part of a symbolic logic each of these terms represents an element of a fuller theoretical analysis, but one that is abstracted from that analysis and discussed without reference to the theoretical or descriptive sphere within which their use is logically justified. Because these terms are abstractions (symbols) and because major gaps exist in their logical derivation, it is possible for actors to reintegrate them into an analytical framework or a description of reality matching their own. This reintegration takes place on an individual level, that is, in the consciousness of actors independent of each other. Within the fuller ideological or theoretical logics that actors bring to the regulatory debate, these symbolic terms take on shades of meaning that are different for each of the participants. When they do, they can be used as a medium of exchange in the formation of coalitions and conflicts.

Not all symbols are conducive to adoption by various oppositional groups. As symbols are integrated in a logic (a coherent structure of argument and belief) that seeks to reconstruct reality in a particular image, some symbols are more conducive to manifold use and interpretation. The concept “user pay” is less likely to have multiple interpretative possibilities than that of “deregulation”. “State intervention” and “public interest”, however, are easily conducive to being used within different theoretical or ideological logics.

One might argue that this process of reintegrating symbols into profoundly different descriptive or theoretical analyses is simply tactical or even cynical, since the highly visible nature of regulatory debate demands a tactical orientation on the part of any successful actor. Yet neither cynicism nor tactics are necessary for this process to occur. It can be that those who are unconscious of the tactical significance of finding agreement on the symbols do so anyway. They may be acting in good faith. Not all coalitions are tactically advantageous, and not all agreements are composed in a clear, mutual assessment of the advantages. When traditional political alliances fail to materialize, the tactical loss may be greater than the net gain from any new coalition. And some of these conflicts and coalitions are genuinely surprising to everyone involved.

It is important to keep in mind that there are large incentives for functioning primarily, or even solely, at the level of the symbolic. For the actors
themselves, symbolic logic is persuasive. For the agency, operating in the context of a public hearing, symbolic logics are effective. For the media, the constituent interest groups and the general public, the use of symbols and symbolic logic makes possible a simplification of complex issues, and an easy identification of political positions in a confusing debate. It may be that the contradictions remain because the actors in the regulatory arena feel no need or pressure to remove them. Tracing the missing links from symbolic logic back to theory may well be counterproductive for those actually involved in the debate.

Is it worth trying to trace the missing links for our purpose, which is the identification of the value debate in regulation? Could a reconstruction of the theoretical debate in the regulatory arena aid in understanding the unusual political coalitions and conflicts that develop there? Given the difficulty of identifying values-in-conflict in the Canadian case, it makes sense to try. It would demand, however, not only reconstruction of the possible theoretical debate in regulation but also, as was noted in the introduction, some attention to the methodology and approach being taken by the actors.

A cautionary note. Because actors argue without reference to theory, it is easy to err in reconstructing their theoretical debate. Any attempt to account for coalitions by reference to an apparent similarity in radically different theoretical orientations may turn out to be superficial or illusory. To argue, for example, that there is some deep-rooted theoretical congruence between left and right in order to account for coalitions in the regulatory debate would stretch the point. Nonetheless, it may be possible to locate some points of convergence in some very different theoretical orientations.

The starting point for any reconstruction of the theoretical debate must be with the actors themselves. What is of interest is the theoretical approach informing their use of symbolic logic. How then to categorize these theoretical orientations, given that it is we, not the actors, who do the labelling? The categories used must be clear enough to penetrate the real differences, yet general enough to permit a wide range of views within any orientation.

The theoretical orientations can be categorized as "classical", "rationalist" and "critical". They are comparable to Macpherson's "liberal", "liberal-democratic" and "non-liberal democratic". Macpherson's typology is appropriate as it was developed to aid in the identification of the underlying value debate in the discussion of democracy, an objective that roughly parallels that of this paper. As for Macpherson, the purpose here is to trace value orientations through their theoretical lineage, over time and in a dynamic way. Macpherson's terminology has been changed where terms like "liberal" and "democratic" are themselves value-laden and subject to multiple interpretation.

Following Macpherson, then, "classical" retains none of its specificity from current economic theory. It is a broad term encompassing monetarists, adherents to marginalism or utilitarianism (even revised marginalism) and in

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practice most who would consider themselves conservative in orientation. As the term is used here, classical actors in the regulatory arena operate loosely within the spirit of classical liberalism.

Adherents to rationalism, in contrast, more closely align themselves with what Macpherson calls liberal democratic theory. Rationalists add the democratic urge to liberalism. They pose a critique for liberal theorists; a critique based on recognition of the institutional features of markets and social organization. They are called "rationalist" here because they view human nature primarily in terms of its potential for rationality but, unlike the classical actors, they usually see rationality as extending beyond interest maximization.

The term "critical" includes Marxists and non-Marxists. Critical actors reject the tenets and methodological predispositions of both liberalism and liberal-democracy. Human nature is not just interest maximizing; nor is it simply tied to man's inherent potential for rationality. Human nature is, above all, social. It is fashioned in the production of the means of subsistence and in the attendant social relations.

III. CONVERGENCE AND CONFLICT IN THE REGULATORY ARENA

Having identified some possible theoretical orientations, let us turn to the debate itself. It is argued here that two concepts of regulation are used interchangeably, or fused into one, in the regulatory debate. Determining what is meant by "regulation" is the first step in locating the positions of classical, critical and rationalist actors. Some surprising points of possible convergence between the actors emerge.

In some cases, when "regulation" is used, it means state involvement in activities integral to the character and functioning of the economy. "Integral" is the key word here. An assumption is often made that an economy has its own character, an identifiable dynamic or deep structure. State actions, from this perspective, constitute an intervention in that dynamic, potentially altering the character of the economy. They facilitate, compensate for, or block the inner mechanisms of the economy itself. The common expressions "tinkering with the economy" and "let the market decide" are examples from this perspective.

Regulation, then, is simply one form of state action. State action is an interference, for better or for worse, in the dynamic of the economy. The state acts to shape the environment and in doing so influences the economy. It supports firms faltering under pressures of competition or new technologies. It provides risk capital and social programmes to compensate for the negative fallout of economic actions. When the state action is regulatory, the state is involved in those actions that indirectly affect the dynamic of the economy. Actions that indirectly affect the economy include creating barriers to the entry of new firms or mediating intra-industry conflict or competition. They might involve determining the role for public capital in a private economy or recognizing the "legitimacy" of monopoly in some sectors of the economy and providing some compensatory measures. The assumption is made that state action is extraordinary, made necessary by distortion in the economy or pressures having little or no direct economic justification.
Second, "regulation" can also be used as a synonym for rules, the actual directives issued by the agency in fulfilling its mandate. Because the regulated industries, as well as others, need to know the rules of the game and seek a role in constructing them, regulation may be sought by industry to bring order out of chaos. From this perspective, the debate about "regulation" concerns how many and which rules, not the state's right to regulate.

If one views regulation as a synonym for rules, those rules may be tactical or have strategic significance. As tactics, specific regulations further specific ends. Those ends may be the resolution of conflicts or the protection of the public from the health and safety effects of economic actions. The ends may be to simplify the licensing process in order to further economic development or to complicate it to ensure that the regulated industry is responsive to social and political factors. The goal may be to eliminate competitors or to encourage them. The rules provide a currency, enabling bargains to be made. These bargains determine who will be allowed to do what, occasionally to whom, and at what cost.

If the rules, or regulations, are simply tactical, then anyone may join the fight to ensure that regulations put in place correspond to their interests. Even those who decry all state intervention may seek rules matched to those regulatory goals they consider unavoidable in the context of an imperfect economic system.

There are some, however, who also see regulation as strategic. Rejecting the assumption of a deep structure to the economy, they focus only on the negotiations between interests that shape all aspects of economic, social and political life. The regulatory agency is a forum for the negotiation of interests; regulations themselves represent the bargains struck among the interested parties. As such, what emerges as regulation is of critical importance. Regulation and policy merge because policies are often set only through regulation and because regulation determines the practical effect of policies.

The unlikely coalition of right and left is centered in these different concepts of the term "regulation". Both classical and critical actors begin from the assumption that the economy has a deep structure, or inner dynamic. For both, regulation is a form of state action constituting an intervention in that dynamic and potentially altering the nature or character of the economy itself. That intervention may be viewed positively or negatively by either classical or critical actors. It may be viewed as inevitable or unavoidable given the distortions of, or produced by, the economy itself. In the "deregulation" debate, however, both critical and classical actors are talking about the same thing.

The breakdown of the traditional alliance between liberals and the left, between critical and rationalist actors, is also centered here. As noted above, not all actors are prepared to view regulation simply as a forum for the negotiation of interests, however widely defined. The rationalists' emphasis on the strategic importance of the negotiations of regulation as rule-making clashes with the view that the economy has its own dynamic. The rationalists' emphasis on interest-in-negotiation runs counter to the critical actor's view of human nature as intrinsically social. We come back to the original problem of
this paper; the rationalists saw the relatively informal telecommunication hearing procedures as imposing some limitation on the rights of interested parties to a full and fair negotiation. They sought more formal procedures because they believed only those procedures could guarantee access of all parties to the negotiation. The critical actors, on the other hand, refused to believe that the only purpose of regulation was a negotiation of interests; for them, an informal debate was more likely to produce a working definition of the public interest.

IV. THE VALUE DEBATE IN REGULATION

If regulation is viewed as rule-making and seen as tactical, the value debate is easy to identify. Regulations regarding value-laden issues, such as religious broadcasting, allow certain people to engage in activities for the benefit of some segments of the community. The decisions about which regulations will be adopted, what activity will be allowed, reflect value choices; their proponents muster as much tactical sense as they can. Sometimes, tactics demand coalitions with those whose political or value orientation is different; these alliances are to be expected.

What is surprising are the coalitions that have no obvious tactical significance, such as coalitions on an issue like "deregulation". These coalitions appear to reflect an agreement on values among those whose political and value orientations differ sharply. It is suggested that the agreement is not about values per se. The intuitive understanding of what is going on in the regulatory arena is not at odds with reality. Those who argue for deregulation from "free enterprise" theory have not suddenly found sympathy for Marxists who may also see deregulation positively.

Rather, these coalitions are based in a shared view of how values are, and can be, derived.24 What is actually congruent in the theoretical orientation

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of these different actors is a view of the derivation of values, used in resource allocation. Returning to the different definitions of "regulation" current in the regulatory debate, those who see regulation as rule-making in a strategic sense, and as a form of negotiation of interests, will take a different view of how public good can and should be determined than those who view the economy as having an inner dynamic, and state action as an intervention in that dynamic.

It was earlier stated that all value systems have three points of reference in common. These points of reference—a concept of a standard, a concept of resource allocation, and a view of the relationship between the individual and society—act as a schema in demonstrating how different definitions of "regulation" make surprising coalitions possible.

**DERIVATION OF VALUES**

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<tr>
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<th>classical</th>
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<td>social is coercive of individuals</td>
<td>social and individual mutually determinant (and coercive)</td>
<td>individuals in relationship constitute system</td>
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In filling in the boxes, points of possible convergence in radically different theoretical orientations become clear.

If, for example, both critical and classical actors begin with the assumption of a deep structure to the economy, a deep structure shaped by but also fundamentally determinant of social goods, then standards are seen by both as endemic. Public good is derived as a by-product of economic relations, given the possibilities inherent in human nature. Human nature, in turn, necessarily has a specific content; it generates the deep structure that produces social goods. Morality, ethics, human consciousness of values may all be conceived as reflecting individual choice (or praxis), but morality, for both critical and classical actors, is grounded in human nature as it is manifest in economic (or class) relations. Public good is a given in a system of choices (or praxis) and...

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25 Terminology used in this section is from a classical perspective; parallel terms more appropriate to a critical perspective are in parentheses.
economic (or class) relations, even if individual actors in that system are relatively free to act as individuals in making moral choices (constituting their political praxis).

From the perspective that the economy has an inner dynamic, resource allocation can be seen also as a creation of the deep structuring of the regulative dynamics of the economy. Rewards, and indeed their just or unjust distribution, are a by-product of the regulative mechanisms (market or class relations). From the perspective of both critical and classical actors, negotiation of interests (or class conflict) is the instrument, and not the source, of resource allocation. As both classical and critical actors also view the regulatory process tactically, resource allocation may simply be a product of the rules negotiated or of measures taken (and bargained for tactically) to compensate for regulative or rule-making actions.

Finally, for both classical and critical actors, individual action (human praxis) is important, but individual actions, taken separately, do not determine the deep structure of the economy. Only in aggregate (or through class relationships and struggle) do individual actions compose society. The social, then, is theoretically separable from the individuals who make it up. The social, or aggregate, choice (or composite praxis and relations) coerces the individual. It structures a reality within which individual choice (or praxis) takes place. This framework may not be recognized by the actors within it. Individuals make choices as if their actions were not shaped by or determinant of the market (or people are in class relationships but not necessarily members of a class). Yet in the view of critical and classical actors, the resulting structure of the market (or class relationships) limits the choices available.

The rationalist view is quite different. For the rationalist, human nature lacks specificity of content. Instead, it is comprised of the potential for creative, rational and ethical action or thought. Thus, locating the basis of a standard poses difficulties. It is barely given in the nature of individuals and it cannot be found in some deep structuring of the economy based on human nature.

Where do standards come from for the rationalist? They may simply be the product of assumptions. Actions that result in harm to people or property are wrong. They may be derived from the rationalists' view of human nature; anything that constrains the human potential for rationality is wrongful. They may also be derived from the study of human behaviour itself. Because individuals cannot be viewed separately from the society in which they live, those who are in a position to understand social or psychological constraints should play a role in determining standards. Psychologists, from the rationalists' perspective, can play a role by contributing an analysis of motivation; socio-biologists by examining the limitations of human nature; economists by reviewing marketplace behaviour; and sociologists by studying organizational behaviour. These professionals indicate what is socially, thus individually, possible for

28 See Daniels, supra note 24 and Rawls, supra note 4.
humans to achieve, thereby establishing the parameters of human potential in society.

Resource allocation, for the rationalist, is a product of negotiations in the first instance. Fair and just distribution of social goods can be indicated only with reference to the assumed or externally derived standard and the process of negotiation through which it is derived. The process itself must be fair and fully participatory. It determines whether the social good will be realized, and indeed, whether the human potential for creative, rational and ethical action can be fulfilled.

In rejecting the idea of a deep structure, the rationalist sees the social as compositive, as an integration of the actions, values, interests and ideas of individuals. This integration takes place through institutions, which formalize the relations of interdependence. Embedded in the concept of social as compositive is an assumption of a consensual basis of society and its institutions. This consensus does not preclude conflict relations, either within institutions or between them. Rather, it is formed by the mutuality of values and interests crystallized in any institution, by members' participation in a process of conflict and, often, by their agreement to participate in a process of conflict resolution. At the core of the rationalist view is the concept of interdependence.

For the rationalist, then, social institutions are not something coercive of individuals, although they do constrain behaviour and options for individual action. Social institutions, that is, society, are created in the continuing direct participation of the individuals who comprise them and reflect both mutuality and conflict in interests, predispositions and values. Social institutions coerce their participants only in the sense that any relations necessarily shape and constrain the actions and consciousness of those involved in them.

Society, when conceived in terms of the interdependence of individuals and institutions that make it up, is a system. The economy is a subsystem (and indeed in some senses also a social institution) within it. Two points follow. Firstly, a sociology of institutions is a necessary, although by no means sufficient, part of understanding the dynamics involved in the economy.27 Secondly, utilitarianism, which takes as its unit of analysis individuals rather than relationships in a system, will no longer suffice to explain economic behaviour although it may still account for some individual actions.

The regulatory arena is seen by the rationalist not simply as an arena of action, but also as a social institution in its own right. As such it is connected to and interdependent with the economy, the political process and other institutions within society. The relations played out through regulation (that is, in the regulatory arena and through rules) not only shape the regulation as a social institution, they feed back into the system relationships of the

The Value Debate in Regulation

The different views of “regulation” have been used as a means of explaining why coalitions are possible between critical and classical actors. They also indicate why rationalists, who traditionally form alliances with critical actors in political debate, fail to do so in regulation. The picture is, of course, more complex. Sometimes rationalist and classical actors work closely together; sometimes the traditional coalition between liberals and the left emerge also in regulation. Given the argument thus far, how does this happen?

If the rationalist argues that what constitutes public good (national unity, Canadian culture, regional identity) is self-evident, that is, requires no explicit derivation beyond that fashioned in the political process or in the minds of individuals, he is brought potentially close to the critical actor, since the vision of what is good may be shared even though its derivation is not. Even if the rationalist argues that social institutions generate morality in the mutuality of interests of their members, they may find common ground with the critical actors. The substance of that morality, what constitutes a basis for consensus, may be identical for the critical actor and the rationalist even if their views of institutions are not.

What distinguishes the rationalist from the classical actor, on the other hand, is, in part, a recognition of the institutional features of markets and social organizations. Those institutional features can, however, be described simply in terms of the aggregate actions of their participants. When they are, and to the extent that the human potential for rationality includes interest-maximization as a central component, the rationalist and classical actor find points of theoretical convergence. The systems approach does not necessarily preclude a view of society as a marketplace if the marketplace is itself viewed as a social system. Thus, alliances between classical and rationalist actors are also possible.

Before proceeding in the final section of this paper to show how these convergences and conflicts are played out in communication regulation, it is necessary to consider one more point. What separates classical, rationalist and critical approaches (as attributed to actors in regulation) is not just differences in theoretical orientation but also deep-rooted methodological disputes. To put it simply, points of conflict are possible, even when theoretical convergence occurs, because of disputes about how research translates into theory.

It is not startling to suggest that classical actors hold to an empiricist methodology, at least implicitly. The study of society, and the economy, is the study of its elements which are variables in creating effects. The “invisible hand” is, in practice, only the demonstrable effect of equally demonstrable choices and actions taken by individuals. Economic factors, such as supply and demand, may, as Marxists and others point out, be reified, but they too are the demonstrable effects of demonstrable actions. The relation posed between the social and the individual, and indeed between theory and research, is mechanical in the sense of a machine and its working parts. Nothing is mediated or transformed in the transition from one level to another.
For the rationalists, holding to a functionalist, or systems, approach, the object of study is the relationships between actors and institutions. Relationships are not, themselves, demonstrable as they can only be studied in terms of the inputs and outputs they presuppose or generate. Relationships mediate the demonstrable actions of individuals and the social institutions of which they are a part; they give action its significance. Thus, the process of mediation is central to the study, even if it cannot be studied directly but must be imputed from demonstrable actions and effects.

Critical actors usually reject functionalism although drawing from it insights about the nature of relationships. What they reject is functionalism's inherent bias towards system equilibrium and its reliance on consent as the basis of social institutions. Equilibrium may exist, and consent may be given, but an analysis that focuses on equilibrium or consent ignores the inherently unstable nature of both. It disguises the endogenous dynamics creating change within social institutions and systems. A systems analysis can illustrate relationships; it is seldom causal in orientation.

If the theoretical effort is to locate causal dynamics, as critical actors suggest it should be, and if the theories produced are to be explanatory, then linkage between the study of demonstrable actions and effects and the relationships giving them significance cannot simply be imputed. What is demanded, critical actors might suggest, is a transformative analysis: the use of the demonstrable as a basis for developing an explanatory analysis, one revealing the hidden dynamics and making comprehensible the forces which, although invisible to actors, nonetheless shape their actions. The explanation must, of course, relate back to the demonstrable, the actual and potential development of social institutions and historical relationships. For the critical methodologist, the link between theory and research must be present, but the linkage is neither direct nor simply imputed.

This methodological debate is important in understanding the value debate in regulation, since it affects the way that information is brought into and used within the regulatory arena by different actors. It can be said that classical actors present the world as they have studied it. It is inevitably a familiar, even persuasive, view to all actors in the regulatory tribunal, since all can clearly see themselves acting in it.

Rationalists often argue for an understanding of the relationships and institutional realities that frame action, pointing out the effects caused by these imputed relationships. They call for "structural solutions" to problems in regulation.

28 The idea of transformative analysis comes originally from Hegel but is most often applied to Marx's methodology by those who consider Marx's approach to be Hegelian. At the core of a transformative approach is the contention that outward appearance and "the essence of things" seldom coincide; thus an explanation or analysis productively draws from descriptive work (and relates back to it) but seeks to go beyond description to reveal the internal structuring or dynamics of what is being described. For an excellent exposition of the concept of transformative methodology, see Pilling, supra note 24, at 21-22, 82-83.
Critical actors, on the other hand, hope to influence the debate through the persuasive power of their explanatory framework; evidence submitted provides illustrations of how well the framework explains what is happening. Often the prescriptions advocated by the critical actor are directed to the creation of a policy framework within which regulations might best be developed. “Best” in this case means both most effectively and most ethically, given the value stance of the critical actor.

V. COMMUNICATION REGULATION: A CASE STUDY

As noted above, regulatory debate is seldom theoretical but more often ideological and symbolic. Before examining the ideological and symbolic logics, it would be helpful to illustrate just how the issues, coalitions and conflicts get played out in the case of communication regulation. A list of some current issues should suffice:

1. In telecommunications, debate rages on the scope and justification for natural monopoly, sparked by companies offering new services that interconnect with the established common carriers. The debate itself takes a form similar to its American counterpart. What is interesting in the Canadian case is the obvious reluctance of the federal government to match the CRTC's concern for competition, given that the new companies involved fit well within an “industrial strategy” centred on encouraging new growth industries in high technology fields.

2. As this debate is played out in British Columbia, the Telecommunications Workers Union supports the carriers' claim to legitimate monopoly, arguing that only a large company with a monopoly can sustain Canadian economic development. The union and the carrier have been known in the past for their poor labour-management relations.

3. Yet, some of the people working with the union have intervened before the CRTC on the question of acquisitions proposed by one of the larger cable companies, suggesting that the consolidated unit is not in the public interest and potentially monopolistic. They suggest that the merger will be counterproductive of effective regulation.

4. The cable company’s argument in this case, and indeed in others, is based on the need for large corporate units to compete with the monopolistic common carriers to promote innovation in telecommunication technologies.

5. Meanwhile, in broadcasting, officials from the federal Department of Communications have argued for a free access, free flow of information policy in Canada, given the new communication resources generated by innovation in the industry. Yet the government as a whole seems committed instead to a revision of the Broadcasting Act that leaves intact the social and cultural provisions of the current legislation, provisions that could not be met under a free flow policy.

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6. Advocates stress the need for the social mandate, but may also argue for free flow of information. They seek to protect Canadian culture through the broadcasting system yet, as detailed above, also urge procedural guarantees less appropriate to discussion of social questions or cultural protection.

7. FM broadcasters are currently engaged in a deregulation campaign, but broadcasters have been the strongest supporters of the regulatory protection the agency provides for their markets. FM broadcasters in particular have benefitted from the segmented market created through regulation.

8. In the current constitutional debate in Canada, communication regulation looms large. It is clear to all that provincial regulation of communications would lead to a more traditional economic regulatory supervision of the industry. Yet the same people who argue for provincial or regional control of regulation do so in the name of increasing the capacity of the broadcasting system to respond to regional cultures, that is, social concerns.

The list goes on. Those who attack a general application of a “user pay” approach as destroying the system of universal service built up in this century actually support “user pay” with reference to other telecommunications services, or more significantly, as a means of facilitating the goals of the Broadcasting Act in a new service such as pay television. In the name of “diversity of information” Canada may either get or reject religious broadcasting stations (the matter is currently under consideration). In the name of “participation”, northerners may gain access to southern originated television or block the incursion of that same programming in the same communities. The contradictions are manifold, but the actors assume their positions are based in a coherent approach and their actions are taken in good faith.

VI. THE VALUE DEBATE IN COMMUNICATION REGULATION

Using the example of communication regulation, how do the coalitions and conflicts get played out in practice? Here, the issue being discussed determines what position various actors will take in relation to each other. A list of the current “issues” will suffice to illustrate the process.

A. Deregulation

To talk of “deregulation” for both classical and critical actors in communication regulation is to speak simultaneously at two levels. At the level of deep structure, the regulative impact of regulations and economic action, deregulation means giving the inherently regulative dynamics of the economy
full play. For very different reasons, the idea can be attractive to both critical and classical actors. But no one in Canada is calling for total deregulation in communications; even for classical actors, the consequences are seen to be too great.

At the level of tactics, deregulation may free the cable industry from red tape; explode the mythologies that lie behind the public interest debate; expose communication monopolies and their protective support structure; and, finally, open up the economy to innovation in new communication services. Again, for different reasons, the idea is attractive to both classical and critical actors.

Deregulation could pose no such attractions for the rationalist, however much the resulting increase in competitive opportunity might match his values. What deregulation would do, necessarily, is constrict opportunities for the negotiation of public goods or reduce the scope and power of agencies to enforce whatever bargains had been reached. Deregulation, from the perspective of the rationalists, also means eliminating a most visible and publicly accessible forum for negotiation. It would entail leaving the negotiation to continue behind closed doors of the Department of Communications (federal or provincial) or Cabinet, and without procedural guarantees or rights of access for all participants who have interests.

B. Public Interest

For the rationalist, "public interest" is tied to these guarantees of fair process and access and to the high visibility of the negotiation within regulatory arenas. Public interest, here, is almost synonymous with procedural reform, establishing the right of parties to participate regardless of their direct, that is, pecuniary, interest in what is a negotiation of political, economic and social goods. Public interest is linked to freedom of information, which is necessary in part to permit fair negotiations, but also to ensure the visibility of the relationships between actors in the negotiations. As these relationships are often disguised by their participants, freedom of information makes it possible for more people to locate (and perhaps participate in) the debate and the negotiation.

For the classical actor, "public interest" is simply aggregate interest, again a product of the regulatory dynamic of the system. Measures that alter the way in which the dynamic of the economy operates (or should operate) may be taken in the name of the public interest. They are, at best, insignificant, or at least compensatory for distortions in the regulative mechanisms of the economy itself. For the classical actor, a problem remains; how can one justify these interventions, even when the goal of intervention is compensatory? Why should there be compensation? The classical actor cannot easily accept any external derivation of the social good. Thus, caught in the contradictions produced by advocating compensatory measures, classical actors usually support the continued protection of what they call natural monopolies in communication industries.

For the critical actor, "public interest", like all explanatory concepts, is a transformative term. "Public interest" is what emerges from the debate
about “the public interest” itself, and from the explanatory power of the analysis developed through that debate. The broader the scope of CRTC debate and the more explicit the agency's social mandate, the more likely a fully explanatory and justifiable “public interest” will emerge. The critical actor might find an easy alliance with the rationalist; after all, increasing access to information exposes mythologies about the regulative dynamics of the economy and thus makes a critical explanation more persuasive to the agency or the public. The alliance between critical and rationalist actors breaks down when the price on freedom of information is greater than on procedural formality and legalism. These are more appropriate to economic regulation than social debate.

C. Participation

“Participation” follows from the working definitions of “public interest”. From the classical actors' point of view, restricting participation to those with direct interests makes sense as the best regulatory actions facilitate the regulative dynamics of the economy. Those with direct, that is, property, interests are more likely to facilitate, not obfuscate, the derivation of “public interest”. Others, like the various small advocate groups who create a noisy presence in communication regulation, are seen to have no legitimate role.

If, however, the emphasis is on the negotiation of interests, as it is in the rationalist's view, then effective participation is key. To be effective, participants must be informed or expert. But since more than economic goods are being negotiated, any group or individual is legitimately a participant, albeit not necessarily effective in the debate.

To those operating from a critical perspective, “participation” means open access to any and all members of the public in the hope of generating a wide ranging social debate to fashion the “public interest”.

D. User Pay

“User pay” similarly reflects the working concepts of “public interest”. For classical actors, its attraction is obvious since its application allows demand to be matched to price and use of service. For critical actors, “user pay” can have two meanings. If, as is often argued, corporate users currently pay less than the full cost of the telecommunication services they use, then “user pay” would mean holding these major users to account for the full costs of the production of their profits. On the other hand, “user pay” systems potentially spell the end of a system of determining the price of a service on a universal basis. It probably also means placing undue burdens on those least able to afford them, northerners for example. The critical actor, then, is caught in a dilemma and is potentially both an ally and an opponent of the classical actor.

For the rationalist, the concept “user pay” requires redefinition. At best, “user pay” will permit a full accounting for and fair assignment of the costs of production. At worst, the shift to user pay represents simply a renegotiation of interests, potentially but not necessarily involving a backsliding of social value. Alliances with critical or classical actors are tactical.
E. Natural Monopoly

For classical and critical actors, natural monopolies in communication industries are indeed natural, albeit for different reasons. But from the perspective of the rationalist, they are simply the creation of social institutions, particularly regulation itself. The claim to "natural" being discounted, the rationalists debate whether the value of competition outweighs the benefits of large corporate units in the Canadian context. For rationalists who share with classical actors a strong belief in the beneficial effects of competition (the CRTC, the Restrictive Trade Practices Commission), monopoly is almost always counterproductive of social good in the economic system within which it develops. For those with a concept of public good derived outside the marketplace, for example, those believing in economic nationalism or measures promoting a strong Canadian entrepreneurial class capable of competing in world markets, monopoly may be a necessary evil, an instrument of beneficial policies although not valued in its own right.

F. Concentration of Ownership

Concentration of ownership is not the same thing as monopoly; this is crucial for the rationalist. The rationalist may argue that monopoly, like tariffs, is necessary to achieve public goods like economic development. Concentration of ownership, on the other hand, inevitably makes regulatory supervision and enforcement more difficult. For the rationalist, it can seldom be justified. For example, the CRTC decision on a possible merger between Telesat (the Canadian satellite company that holds a monopoly on orbital satellite facilities in Canada) and the TransCanada Telephone System (a consortium of all telephone companies in Canada) reflected the agency's (and rationalist intervenors') concern for the deleterious effects of concentration of ownership. The CRTC rejected the application for merger. But neither the CRTC nor any rationalist intervenors argued (at the time) for an end to Telesat's monopoly status. The rationalist bias inherent in the decision of the CRTC (and the views of such intervenors as the Director of the Bureau of Competition) was not shared by the Department of Communications which argued that limiting competition and even regulatory supervision was necessary "in the national interest".

Since classical actors see a substantive difference between issues raised by monopoly and by concentration of ownership, although neither is viewed as necessarily counterproductive to the public interest, the alliance between some rationalists and the classical actors is possible and has indeed occurred.

G. Free Flow of Information

Classical actors, in this case including the Department of Communications, whose interest in classical approaches is evident, argue directly for "the free flow of information". Information, here, is viewed as a commodity; the

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33 Telesat Canada, Proposed Agreement with Trans-Canada Telephone System, Telecommunications Decision CRTC 77-10 (August 24, 1977).
regulative dynamics of the marketplace provide the greatest, or at least the most defensible, social good.

Critical actors recoil at the view of information simply as commodity (although its commoditization may be recognized\textsuperscript{34}), and hasten to point out the social and cultural implications of the free flow policies. The rationalists are caught in a dilemma. If, as many rationalists argue, information is crucial in realizing the creative, rational and ethical potential in humans, and if information is central in a fair negotiation of interests, then any measure that blocks access to information is either ill advised or wrong. If, on the other hand, treating information as a commodity violates an assumed public good (for example, cultural or national sovereignty), then free flow must be opposed. And if Parliament, as the prime legitimate forum for the negotiation of public goods, has declared social and cultural values to be paramount in broadcasting, then restricting free flow of information may be necessary to achieve these goals. There are no clear answers for the rationalist.

Since neither classical nor critical actors share the dilemma, they provide few possible resolutions and little guidance in the debate. The decision about religious broadcasting stations, and even to some extent northern communications policy, is stalled here. The likelihood of a clear resolution, or at least one acceptable to rationalists, is small. It is more likely that contradictory decisions and policies will be adopted.

H. Due Process

Finally to the question of procedures that started the path of argument in this paper. For classical actors, the agency is a court-like instrument for the resolution of disputes between parties with direct interests. Like a court, it requires a formal procedure (thus the alliance with the rationalists on procedures), including due process. The rationalists would enlarge the scope of negotiation and the range of parties involved, but, given the nature of regulation as a process of "intergroup mediation", conflict ridden and value laden mediation at that, due process is seen primarily as a guarantee that the rules of the game will be enforced. Due process, for rationalists, extends rights to all with an interest in what is being negotiated. The political actor is the consumer of public goods negotiated. Methods appropriate for ensuring consumer representation in economic regulation may well be applicable in other kinds of negotiations as well.

If, however, within the rationalist view, the members of the public are viewed as consumers of public (not just economic) goods, then the consumer's, that is, the public's, claim to legitimacy is based in the representativeness of their participation. Representativeness is usually determined by reference to the number of people whose interests are being aggregated, or at least to claims by consumers that they reflect public opinion. Thus, cultural groups representing small numbers and no sizeable amount of public sentiment may have little import in the negotiation even when the mandate of the agency is

\textsuperscript{34} Warskett, "The Information Economy in Late Capitalism," in Salter, \textit{supra} note 2, at 178.
cultural. Certainly, measures supporting their participation are not advocated by rationalists with as much force as measures supporting consumer representation. Advocates for consumer representation, for example, seldom address the problem of funding in broadcast hearings.\(^\text{36}\)

For the critical actor, public good equates with collective, not aggregate, good. Anyone, no matter how few he represents, may legitimately argue a point of view on what constitutes collective good. The power of the explanatory framework in matching both socially held (in the case of broadcast regulation, explicitly social) goals and empirical realities determines the worth of the opinions offered. Very occasionally, what is seen as a collective good by the critical actor may converge with the view of an aggregate good presented by the classical or rationalist actor. Here is where surprises occur.

VII. CONCLUSION

In sum, then, the convergences and conflicts, coalitions and arguments in the regulatory arena make sense, even beginning from the assumption of good will and coherence in the logic of the actors. These convergences and conflicts can be sustained because they take place within a regulatory debate, in which symbolic and ideological modes of "logic" predominate. The radical differences in theoretical orientation can remain submerged as long as large disincentives exist for making the linkages between symbols, ideology and theory explicit. The fact that regulatory debate is oral, public, and highly conducive to strategic or even manipulative use, supports the use of symbolic and ideological logics, even if the account of reality is impoverished as a result.

If, however, ideological and symbolic logics operate as closed systems, potential for new resolutions of problems in regulation is constricted by the nature of the regulatory debate. Innovative responses to problems in regulation and the integration of new information are foreclosed by the closed system character of the debate. The confusion resulting from the surprising coalition and conflicts in the regulatory debate has some advantages then. It opens up the debate to compromise and innovation otherwise precluded by the use of symbolic and ideological "logics" in the regulatory debate.

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\(^{35}\) See, e.g., the excellent analysis by Kane (Consumers and the Regulators: Intervention in the Federal Regulatory Process (Montreal: Inst. for Research on Pub. Pol'y, 1980)), which nonetheless fails to address seriously the problem of the lack of funding for intervenors in broadcast hearings.