

Reviving Regulation

Alfred Marcus

Department of Strategic Management and Organization

University of Minnesota

Minneapolis, MN 55455

USA¹

For most of us engaged in research on business sustainability, there is a partisan element. We are not engaged in pure objective, academic scholarship. We want corporations to be more sustainable. We want to find the levers that will bring about this result.

This pursuit is problematic for many reasons. To start with, what do we mean by sustainability? The term itself is problematic. It is ambiguous and hard to define. Even if we could define and measure it, I am certain that what we would find is many shades of gray. There are no sustainable companies and no unsustainable companies just companies that rank higher or lower on various dimensions of sustainability.

But this is not the issue upon which I want to dwell. Assume for a moment that there are attributes or groups of attributes that we can call more rather than less sustainable. The issue is what are the levers that bring companies closer to this condition.

The broad classes of levers fit into a number of simple categories. There is the (i) profit motive itself, (ii) corporate values, and (iii) government regulation. What I want to argue is that government regulation has to be considered the primary lever, because the profit motive and corporate values are unreliable.

Why are the profit motive and corporate values unreliable? Simply because the purpose of business is not to protect nature, to preserve natural resources, to assure public health, to bring about social justice, or to assist in the economic development of regions and nations badly in need of development. Business has a more restricted purpose. The corporation exists to maximize returns to shareholders. To do so, it must have goods or services customers are willing to buy. It must treat its employees with respect and fairly. It must assemble a coalition of supportive stakeholders that are willing to contribute to the goals it is pursuing because of the incentives that the corporation provides in return. It also must act ethically and morally. Therefore, it needs values; and it also must obey the law. Here is where regulation comes in. The corporation must act according to the rules of the game promulgated by government.

Sustainability is a public goal, not a private one. It is a goal that emanates from public authorities. It receives its sanction from them. It receives its sanction from the broader public that public officials allegedly represent. It is enforced

by the rule of law. These laws in democratic societies are supposed to represent the will of the citizenry. Citizens, not corporations, have an interest in sustainability.

The corporation becomes sustainable because of regulation. This puts an enormous burden on regulation. However, I maintain that it is not just any government regulation that brings corporations closer to sustainability, but a very particular kind. We are currently very far from it.

I believe that we are at a point where regulation has to be revived, but not the kind of regulation we have seen so far. The regulation we have seen so far is too piecemeal, it uses the wrong tools, and it misses some of the most important problems. My argument does not mean that the regulation that we currently have is not without value and that it has not served useful ends. There are two problems. One is recognizing what type of regulation we do need. The second is with the transition. How do we move from the current regulatory regime to a different one?

I would argue in favor of a different type of regulation. If we go back in history to about 1970, it would be easy to say that the U.S. had the most advanced regulatory apparatus in place for protecting the environment of any nation. Landmark laws had just been passed or were in the process of being passed to protect the air, the water, soil, and so on from industrial pollutants. New regulations affecting such industries as electric power plants, petrochemical processes, cement factories, and motor vehicles were being put in place at a rapid pace.

Undoubtedly, these regulations have done much good. To give but one example, by the criteria established in 1970, the air in California on the whole is in better shape than it was when this legislation was passed. Yet the number of automobiles in use and the amount that they are driven has vastly increased.

The problem is that today the issue is not so much what pollutants come out of the tailpipe of a car as the fuel that is used, the type of engine that converts that fuel into energy, the national security issues associated with the use of that fuel, the damage to the global climate that using that fuel causes, and the overall options that people have for assuring their right to mobility in a safe, non-damaging manner.

None of these issues were envisioned by the original legislation or incorporated into it. The transportation methods on

which we rely are a comprehensive problem involving many different kinds of externalities — if we wish to rely on the technical economic term — but under current regulation we treat these externalities in a piecemeal way, if at all.

This is not good public policy. We need an overall accounting of these externalities and a comparison of the different types of externalities associated with different transportation options. Then, we need the imposition of charges or taxes that correspond to these externalities so that we can appropriately encourage private businesses to help us adjust to a different world where there is an expanded set of transportation choices.

I believe that the right incentives coming from a revived regulatory system would unleash the technological ingenuity of corporations to help solve these problems. Provide businesses with opportunities that are in the public interest and they will do what it takes to move in this direction. With the right incentives in place the corporation will become more sustainable, and with these incentives in place we will move toward a more sustainable society.

But we are very far from this ideal and one of the main reasons is fear of the unknown. We are concerned that should we abandon the current system, which has served us fairly well in achieving its limited goals, that we might get something worse in return. This fear — while it has legitimate merit — stands in the way of progress.

So the kind of movement we make from the current system, the experiments we try in reforming the U.S. regulatory system are very small and limited. Even if they were to succeed, by their very nature, we would not see much gain. They are nowhere near the scope of what is really needed.

I don't see an easy way out of this trap. Perhaps, a crisis of some kind is necessary. Still higher gas prices, a noticeable increase in global temperatures accompanied by a greater number of natural catastrophes, further declines in the availability of oil because of global insecurity — it is not hard to build a plausible scenario where issue builds upon issue and creates a crisis that forces public officials to act.

The Kyoto accord, however imperfect, was a good start. At its base it had an economic foundation. Its formulators relied on a logic of incentives. The accord called upon the use of emissions trading. The use of this system could have had far reaching impacts in many areas had it been implemented. But Kyoto did not go far enough. The energy system upon which we rely does not just impact global warming. It is a more comprehensive problem than that. Kyoto did not recognize or respond to these broader issues. It still was piecemeal, however important and necessary.

Still, it was a good start. It may be useful when additional crises occur in world energy consumption and we are compelled to move toward greater conservation for reasons of

both scarcity and environmental damage. This solution that is looking for its problem will have its problem.

For there to be real change, people must perceive the problem as being real. Otherwise, there is no transition. Hopefully, when the perception of the problem is real and tangible we still will have time to adjust. It will not be too late.

Until this happens, there are partial, uneven, and imperfect initiatives emanating from the European Union (EU) that start to tie issues together, use the right tools, and address some of the most important problems. I just don't think the Europeans can show leadership by themselves. There has to be a grand coalition of the willing that includes the United States and developing nations like India and China.

Important issues that the EU has addressed that the U.S. has not touched like genetically modified food have been addressed in a biased manner, which lacks scientific validity. The way the EU has dealt with these issues does not have credibility given the need the world will have to feed a rapidly growing population.

So, I am calling for a revival of regulation at a global level in which all nations participate. I am looking for regulation based on economic calculations and incentives. I am seeking regulation that tackles problems holistically. This type is sorely needed to bring about business sustainability.

Good regulation is necessary if corporations are to constructively move toward sustainability. They will not do it on their own out of pure benevolence.

As scholars, it is incumbent upon us to help design this regulation. We must figure out what works, how, why, and under what circumstances. The private sector will not do it alone, so a regulatory revival of this nature is necessary.

Endnote

1. Author to whom correspondence should be directed:
E-mail: amarcus@csom.umn.edu