



# **Whose Injustice?**

## **Relevant Inequalities for Regulatory Analysis and How We Should Address Them**

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# What should distributive or equity analysis pay attention to?

- Two Premises:
  - Primary tasks of the regulatory analyst/decision maker are present/choose among alternative strategies for reducing risks and harms, and to improve societal well-being *with respect to a certain set of activities* (e.g. food processing) or *a specific domain* (air quality).
  - Societal well-being includes considerations of equity or fairness as well as economic utility.
- Together, these two premises imply that some inequities are of *first importance* for regulatory analysis and decision making and others are of lesser relevance in the specific regulatory context.
- “Whose injustice?” means “Who ‘owns’ the problem?” as well as “Who suffers unfairly?”



# Outline

- Distinguish *fair processes* and *fair outcomes*
- Identify the most salient distributive consequences of a particular regulatory intervention
- Locate responsibility for rectifying unequal burdens and benefits of risk regulations
- Address distributive impacts of risk regulation discursively
- Create opportunities for public engagement at the appropriate level, and pair modes of engagement with the appropriate venue



# Purpose of Distributional Analyses

- What can we expect a distributional analysis to accomplish?
- Is the analysis the last word on distributive impacts—or the beginning of a conversation?
- The selection of population subgroups for comparative analysis of impacts anticipates what is relevant for justice; it presumes some kind of disproportionality in benefits and/or burdens



# Fair Regulatory Processes

- Modes of public engagement
  - Notice and comment
  - Public hearings
  - Participatory workshops
  - Advisory committees
  - Citizen juries
- Benefits and limitations of public engagement in regulatory context
  - Time consuming/expensive
  - Raises expectations without delivering
  - Subject to capture by powerful interest groups
  - Gives voice and recognition to underrepresented groups
  - Raises awareness of need/potential for remediation
  - Surface new solutions because of greater diversity and local knowledge



# Importance of Procedural Fairness

- Important not only because we might not be able to agree upon substantive fairness, but we know that we won't be able to achieve it
- In this case, giving voice; raising awareness of what to look out for in terms of inequitable impacts, whether localized or with respect to a dispersed disadvantaged group, may be the most that can be accomplished within the regulatory context
- Engaging the public may be most effective at a local level—if impacts are largely site-specific



# Fair Regulatory Outcomes

- Is the regulatory agency ethically obligated to address all inequities of regulatory benefits and burdens?
- What characteristics of unequal outcomes are salient in the context of the regulatory action?
- Are some inequities revealed by regulatory analysis better suited to upstream solutions?



# Ex: Fossil Fuel Emissions Standards

- Relevant population subgroups for equity analysis
  - Sensitive to health risks (children, elderly, persons with lung/cardiovascular disease)
  - Geographically isolated/concentrated exposure
  - Income classes (differential incidence of both benefits and costs)
  - Socially disadvantaged; racial and ethnic minorities: at risk in multiple ways



# Fossil Fuel Emissions Standards

## (cont'd)

- Is the regressivity of the price effect and employment impact of pollution abatement commensurable with the incidence of the intervention's health benefits?
- If not, there is no reason to try to quantify distributive impacts through equity weighting
- Nonetheless, still important to document the distributive impacts of the economic fallout of the regulation



# Responsibility for Fair Outcomes

- Distributive impacts should be addressed at the appropriate level, with the appropriate policy instrument—regulatory analysis can call attention to inequities that are likely to be outside the purview of the regulating agency to redress
- Concentrated, persistent disadvantage may require redress through both broader (e.g., income policy) and more focused (local participatory decision-making) strategies



# Addressing Distributive Impacts Qualitatively

- The assumption that quantified impacts are more compelling than narrative treatment is unwarranted
- Equity weighting is less transparent and likely to be treated with suspicion
- By *not* quantifying distributive impacts as part of BCA or CEA, the quantified analysis is less likely to be taken to be the final word—it is one piece of information among others



# The Role of Public Engagement

- Engage at the right stage
  - Is “empowered participatory governance”—concrete, specific solutions, developed in an inclusive, deliberative process—realistic for federal rulemaking?
  - If it isn’t, that doesn’t mean it is not an important objective in another (possibly local) context
- Implementation, monitoring, and evaluation of risk abatement offer important opportunities for involving disadvantaged and excluded groups in rectifying historical inequities