Performance Principles for Regulators

Donald P. Moynihan
La Follette School of Public Affairs
University of Wisconsin-Madison

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In recent decades governments have tried to instill a culture of excellence in public services by turning to performance management techniques. This turn to performance-based approaches extends to regulation. Regulators have been encouraged to use performance metrics to move from inflexible command-and-control approaches toward less adversarial relationships with regulated entities based on shared goals.[1] But there is little empirical evidence on the success of performance-based regulation. What lessons can we learn for regulatory excellence from the broader governmental experience with performance management?

To develop such lessons requires first understanding how the public setting affects the prospects for excellence. This terrain is categorized by task complexity and constraints, but it remains possible to seek performance improvements even under such conditions. Performance management can help, if applied with an understanding of its possibilities and limitations.

Regulators can use performance management to pursue excellence by applying three broad categories of lessons: *first principles* – basic characteristics of performance management in the public sector that must be understood before they are applied; *precautionary principles* – how to ensure performance management doesn't do more harm than good; and, *positive performance principles* – design lessons to get the most from performance management.

Excellence Amidst Complexity and Constraints: Two Visions

At the broadest level, there are two alternative visions of how public organizations work, and both are relevant to the pursuit of regulatory excellence. The first describes public tasks as characterized by complexity and constraints, and for which regulation is a prime example. The second emphasizes excellence, but pays little heed to the practical difficulties that the public setting poses. Developing a vision of regulatory excellence is difficult enough, but the practical pursuit of regulatory excellence must also balance these competing visions.

In 1981, Herbert Kaufman, one of the preeminent social scientists of public organizations in the twentieth century, published the result of his efforts to understand what public leaders do. Kaufman had followed a handful of federal government leaders for a year, examining how they spent their time, what drove their agenda.[2] Public sector leaders, he determined, were defined by the constraints they must manage: hundreds or thousands of pages of written guidance, the habits and culture of employees, the agendas and needs of other actors, and surprising events, such as scandals or accidents. These constraints are not necessarily paralyzing, but must be considered in any effort to improve.

If anything, the context for public leadership has grown more demanding since Kaufman's time. The public expresses declining faith in governmental institutions and officials.[3] The news cycle has shortened, people can select into media that reinforces rather than challenges their beliefs, and social media forms a new mechanism by which rumors abound and citizens express discontent. The array of tasks that government is asked to regulate has become more

complex, and the failure to do so well has arguably become more consequential, as evidenced by the imperfect regulatory oversight that contributed to the Great Recession. Some democracies have become markedly more sclerotic than others because of regulatory capture by private interests.[4]

The growing complexity of the broader political environment in which regulators work mirrors the inherent complexity of the task they work on. The claim that regulation is a complex function occurs consistently throughout the papers written for the Penn Program on Regulation's Best-in-Class Regulator Initiative. But if the job of the regulator is indeed complex, it may simply be an extreme reflection of a general condition of complexity in public functions. In most democracies, as a practical matter, the services we reserve for the public sector are those that reflect multiple and usually competing values that societies care about, and for which we cannot easily measure outcomes. Elected officials and society at large typically expect public organizations to perform on several dimensions such as quantity, quality, efficiency, transparency, stakeholder satisfaction, and probity.[5]

Task complexity makes the pursuit and measurement of excellence more difficult for a variety of reasons.[6] First, tasks, or some aspects of tasks, may be difficult to measure well. As the esteemed management theorist Henry Mintzberg put it, "Many activities are in the public sector precisely because of measurement problems: If everything was so crystal clear and every benefit so easily attributable, those activities would have been in the private sector long ago."[7] The reality for public managers is that they oversee functions that may not be easily measured by one or a small number of performance items, but are imperfectly measured by a great number of items, some of which imply tradeoffs that may be inherent in the function (for example, serving an industry client well versus avoiding regulatory capture).

The potential for multiple and conflicting goals is furthered in public settings where regulators must respond to more than one political master, and these masters may have differing preferences on what constitutes the appropriate cost, nature, and quality of a service. The provision of some basic form of autonomy gives regulators some space in responding to many masters, but regulators still need to spend a great deal of time managing outwards: networking with stakeholders, reassuring elected officials, explaining themselves to the media.

The vision of constraints and complexity is counterbalanced by another vision, one of aggressive pursuit of excellence. A year after the publication of Kaufman's study of public managers, management gurus Tom Peters and Robert Waterman wrote *In Pursuit of Excellence,* which gave life to a genre of management bestsellers, including public sector variations, most notably David Osborne and Ted Gaebler's *Reinventing Government.* The *Pursuit of Excellence* genre is characterized by heroic leaders performing inspirational feats of change and success. It serves as a breathless counterpoint to Kaufman's vision of the constraints of public sector leadership, which reflected the political realities of a system of government that was designed to limit power rather than maximize performance.

The public manager asked to take on the pursuit of excellence may be cautious, and perhaps cynical. To be in government long enough is to have lived through wave after wave of

reform efforts aimed at improving performance. Each takes employee time and attention, but in the end may simply be removed and replaced by the newest method of the month.[8]

In such a context, a regulator might be forgiven for eschewing excellence, and opt for setting and beating a more modest set of expectations. John Graham and Paul Noe make a compelling argument for such an approach by identifying the complexity and constraints of the regulatory task.[9] By contrast, Dan Esty argues vigorously for regulatory excellence based on his experience in Connecticut, and fits in the *Pursuit of Excellence* vision.[10] The next section describes the primary mechanism that governments across the world have turned to in the pursuit of excellence, which is by introducing some sort of performance management system. [11] For such systems to be effective requires understanding and balancing these two visions of governance.

Performance Management: A Path to Excellence?

Performance management refers to "a system that generates performance information through strategic planning and performance measurement routines and that connects this information to decision venues, where, ideally, the information influences a range of possible decisions."[12]

In the United States, for example, performance management systems have taken different forms. At the federal level alone, there is government-wide legislation such as the Government Performance and Results Act of 1993 and the GPRA Modernization Act of 2010. Both require federal agencies and state and local recipients of federal funds to report and make use of performance data. Policy-specific changes, in areas such as welfare (the Personal Responsibility and Work Opportunity Act of 1996) and education (the No Child Left Behind Act of 2002 and the Race to the Top Initiative of 2009), further encourage the use of performance measures.

These broad policy changes overlay more specific practices, such as pay-for-performance, performance contracting, and the adoption of private sector approaches, such as Total Quality Management, Activity Based Costing, Six Sigma, and Lean. These techniques hold in common the idea of paying close attention to processes, and reengineering these processes for greater efficiency and better outcomes.

The alphabet soup of jargon and acronyms can seem dizzying to the public manager. Each promises to revolutionize governance, but the collective evidence of success in the public sector is not strong. Best-practice case stories can be found, and are repeated, but systematic studies of the impact of these approaches give little ground for optimism. For example, a meta-analysis of 49 empirical studies of performance reforms between 2000 and 2014 concluded that performance reforms generally have a small impact.[13] A study of US federal managers concluded that those exposed to Clinton and Bush-era performance reforms were no more likely to use performance data than managers who had not encountered these reforms.[14] Historical case-based studies are similarly discouraging.[15]

To be sure, performance management is attractive because it holds some symbolic value: politicians can tell citizens they are improving services by mandating performance techniques,

Table 1: A Dozen Principles for Performance Management

First Principles *tell us about nature of performance management*
1. Performance management can be a helpful tool, but does not eliminate complexity or constraints.
2. Performance data are socially constructed.
3. Performance data are used in different ways.
4. People approach performance data with a negativity bias.
Precautionary Principles *stop bad things from happening*
5. Every measure should have a purpose.
6. Do not attach high-powered incentives to goals you can only imperfectly measure.
7. Don't let performance management prevent you from managing what you can't measure**.**
Positive Principles *encourage purposeful use of performance data*
8. Communicating performance data is a form of storytelling.
9. Build your performance regime around learning.
10. Use data to engage in exploration and exploitation.
11. Build learning forums.
12. Encourage performance information use.

and public organizations can burnish their reputation for competence by pointing to the use of such techniques. [16] But can they really make a difference?

If performance management is a path to excellence, it is an uncertain one. It requires balancing the competing visions outlined above, understanding how the complexity and constraints of the public setting affect the implementation and efficacy of performance systems, while doggedly but realistically using performance management tools to provide value for citizens.

In the next sections, I lay out a series of principles for how to make use of performance management in a public setting. These principles, summarized in Table 1, are not hard and fast rules that are self-enforcing, but instead depend upon leadership craft that has a deep contextual knowledge of the policy areas. They are based on social science studies of public organizations that are pursuing excellence, but tempered by the realities that this pursuit occurs in a complex setting.

First Principles

These first principles are intended to convey basic insights about the nature and limits of performance management in a public setting.

Performance management can be a helpful tool, but does not eliminate complexity or constraints. Performance techniques do not magically turn public organizations into private ones. Performance management can partially deal with some classic problems associated with public organizations – for example, they can help to reduce goal ambiguity by clarifying which goals are most important – but they cannot change the inherent nature of the public context itself.

Performance data are socially constructed. Part of the appeal of performance management is the promise of objectivity and clarity, offering a bottom-line for the public sector. But for any moderately complex program, the creation and use of performance data reflects a series of choices. Regulators will have to make choices about what to define as a goal, what to measure, how to measure it, which measures to emphasize, and how to interpret the outcomes. Two reasonable people can look at a regulatory program and come to different conclusions about any of these choices. Such choices will be affected by preferences (conscious or unconscious) and power of those making the choice, and will in turn shape how others respond to the performance management system.

Performance data are used in different ways. It's difficult to definitively prove that a performance management system is actually improving performance on any particular policy outcome. The growing empirical study on performance management therefore focuses a good deal on the behavioral impacts on public employees.[17] How employees use performance data can tell us something about whether they are paying greater attention to performance issues.

There are four broad ways that performance data may be used.[18] The goal of performance management is to encourage *purposeful* use, where public managers use the data to innovate and improve outcomes. But public employees may respond in a *passive* fashion, doing just enough to satisfy reporting requirements without actually using data to make decisions. They may also use performance data for *political* ends, incorporating performance data into external advocacy to stakeholders. Finally, if the stakes are high enough, performance management may encourage a *perverse* response, where public employees use data in ways detrimental to the goals of the organization.

People approach performance data with a negativity bias. For most policy areas, members of the public care little about performance measures, and simply putting a great deal of data on a website that few will check does little to facilitate transparency. But one basic behavioral factor that alters how people process performance data is negativity bias.

Individuals are more responsive to losses than equivalent gains.[19] This has two implications. First, media coverage of negative performance, even if not representative, will gain more attention than evidence of generally positive performance. Second, when presented with performance data, the public, stakeholders, and elected officials will pay more attention to negative outcomes than positive ones.[20] The reality of negativity bias means that preventing bad things from happening is more important to maintaining a reputation for regulatory excellence than marginal improvements on a performance metric.

Precautionary Principles

Performance management systems intended to encourage excellence may sometimes make things worse. Such problems occur with enough frequency that performance perversity is not an unanticipated consequence, but a predictable, and therefore manageable, risk if some basic principles are observed.

Every performance measure should have a purpose. Performance management systems require the investment of administrative time and effort to capture performance data. It also takes cognitive effort for decisionmakers to process that data. A consistent pattern in public performance management is that more and more measures are added each year, and the transaction costs of maintaining the system increase. For example, the U.S. Environmental Protection Agency's regulation on heavy-duty diesel emissions layered excessive prescriptive requirements on how emissions testings needed to be undertaken rather than provide genuine simplicity for manufacturers.[21] In response, governments will sometimes undertake "stock-takes" to prune measures to a manageable level. Each measure should serve a clear purpose, and be of value to someone in the organization. If not, it may not be worth the effort invested in collecting it.

Do not attach high-powered incentives to goals you can only imperfectly measure. Governments that have pushed for greater performance in a variety of complex policy areas – most notably for welfare services, education, and health services – have inadvertently encouraged performance perversity, where organizational actors manipulate the performance regime through forms of gaming or outright cheating. For example, organizations may focus attention only on the subset of clients most likely to lead to reward, and ignore or systematically exclude others (creaming). For example, teachers may focus only on students near the passing grade for a test while neglecting other students.[22] Job trainers may fail to provide adequate help to candidates deemed less likely to receive offers.[23] Organizations may simply make-up performance data. In the area of education policy, for example, the link between performance measures and rewards has created incentives for cheating by teachers.[24]

Both the corruption of data and the corrupt use of data become more likely as performance incentives increase, following a patterned observed in 1976 by Donald Campbell. Campbell's Law states: "The more any quantitative social indicator is used for social decision-making, the more subject it will be to corruption pressures and the more apt it will be to distort and corrupt the social processes it is intended to monitor."[25]

Many who come to public service are motivated by an intrinsic interest in the work itself, or by a broader altruistic desire to help others via public work.[26] Strong performance incentives have another negative effect for complex tasks, which is to "crowd out" such non-extrinsic forms of motivation, as employees become attuned only to targets that provide extrinsic reward. Research from psychology and behavioral economics demonstrates the crowding out mechanism.[27] As intrinsic or altruistic motivations are eroded, so too are safeguards against performance perversity.

Don't let performance management prevent you from managing what you can't measure. Another form of performance perversity is myopia or goal displacement – following the old adage that what gets measured gets managed, the implication is that what is unmeasured is not managed.[28] This risk becomes all the greater when what matters is not easily measured. For regulators, in particular, managing poorly defined risks may be as important, if not more important, than well-understood processes. Risk management means preventing bad things from happening – if all goes well, there is little to report. But, negativity bias means that organizations face dramatic reputational costs when these risks are not attended and things go wrong.

Some performance indicators can help to manage risk, identifying outliers, incidents, or questionable data that might predict problems to come, and regulators should look for such measures. A positive example is the way in which aviation regulators have use sophisticated incident management reporting systems to diagnose potential problems and improve air traffic safety.[29]

Another way performance data can help to manage risk is to track measures that reflect tradeoffs between complex goals, e.g. between speed and quality of service. Performance systems that focus only on one of these values will likely maximize that value at the expense of the others.[30] In the context of regulation, one issue is customer service and satisfaction. Regulators still have a duty of care for the broader community, and in some cases this may come at the cost of making regulated parties unhappy. A balanced set of performance goals and metrics, which accounts for both an expectation of professional service to regulated organizations and responsiveness to broader public interest, forces regulators to consider how to make progress on both of these values, rather than increasing one at the expense of the other.

Performance data may also serve to underestimate risk. For example, in 2014 the Secretary of US Veteran's Affairs resigned after evidence that military veteran's hospitals were misreporting wait times. There was no evidence that the Secretary in question, Eric Shinseki, knew about or condoned what was occurring. But auditors had warned for a number of years that the wait times were suspicious, even as they were being used as a primary evaluation tool for regional health officials. In short, the signals were there, but were not responded to.

Where measures are helpful for managing risk, they should be used. But the pursuit of excellence with formal tools such as performance management should not divert attention to risk, or undercut the managerial qualities needed to manage it, such as imagination and tolerance for ambiguity.

Positive Principles

This section considers principles that can facilitate the use of performance data to actively improve regulatory excellence.

Communicating performance data is a form of storytelling. Most of us are not natural consumers of numbers. Performance data have to be explained, not just as a list of numbers or a graph, but as a narrative, and this need is greater in contentious policy settings where stakeholders may disagree on goals or question the impartiality of public actors.[31] Regulators operate in a political system, and performance data is a legitimate means by which they can communicate their independence and success in a contentious policy arena. It is not enough in a political environment to be an excellent regulator; excellence must be communicated.

Political uses of performance data can form part of an authentic account of the challenges regulators face, and how well they are doing. In particular, performance data are useful for explaining what is at stake – the nature of the task or challenge, and progress toward it. In the case of an unusual event, it can also provide a reminder of what overall performance looks like.

A reputation for high competence is a central element of building a broader reputation for excellence,[32] and performance data may provide evidence of competence. David Vogel's paper discussing the California Air Resources Board is evidence of a regulator able to develop and use its organizational reputation effectively.[33]

Some performance data are centered on internal management, and of little interest to the public. For communication purposes it is better to focus on salient data. For example, the US government website Performance.gov focuses on a small number of key metrics that are explained in depth. It may also make sense to partner with stakeholders to share performance data, as the public views performance data showing positive outcomes as more credible when it comes from sources other than the organization itself.[34]

Build your performance regime around learning. There are many potential goals for performance management. Some of them can co-exist – for example, the use of some data for external communication, and other data for internal management – but some goals may conflict with one another.

In particular, as performance management becomes geared toward accountability, and as accountability takes on a punitive dimension, it limits the potential for organizational learning.[35] As participants suspect that performance management will be used as a mechanism to belittle and punish them, they no longer treat it as a legitimate management tool worthy of their participation, but as something to be gamed and evaded.

Organizational learning should be the central management purpose of performance management for complex tasks, the means by which data are actually converted into intelligent action, and into excellence. Learning requires a willingness to observe and correct error. This depends on frank discussions about what is working or not.

Use data to engage in exploration and exploitation. Research on organizational learning points to two main ways organizations can learn: exploration and exploitation.[36] Exploitation involves taking accepted goals, and identifying how to reengineer processes to increase their efficiency. Exploration means searching for novel challenges, goals, and risks, and requires a broader organizational dialogue and a longer-term view. Regulatory excellence demands a balance between these two approaches.

Performance management techniques are most obviously useful for exploitation, since it involves identifying stable performance indicators, and the processes that produce them, and gradually improving those processes over time. Exploitation is the type of learning that reengineering techniques such as Lean facilitate.

Exploitation may be more effective if organizations prioritize certain goals at a given point in time. Given the possible range of processes and goals any moderately large and complex organization has, it is not possible to direct equal attention to all of them. Some goals may be more important, or have greater political salience, and naturally demand attention. Another strategy for prioritizing attention is to look for where there are performance-gaps: In what organizational processes is the gap between reasonable expectations about performance and

actual outcomes very large? If there are comparable units of government, identifying positive outliers facilitates pursuit of "best-in-class" performance.

Exploration is the more contentious approach. Exploration walks the line between political and administrative authority, since it defines what the role of the organization is. For example, the move of the US Food and Drug Administration into tobacco regulation, or the UK Food Standards Authority into food labeling, both expanded the role of regulators. Those who worry about unaccountable bureaucracies might worry about crusading regulators exploring their way into new regulations. On the other hand, regulators have some measure of independence because their task requires expertise and objectivity. This includes identifying appropriate levels of regulatory involvement given changes in risk to society.

Performance management can play a role in shaping exploration in a number of ways. A first step in a performance management system is goal-setting. This is the point at which organizations calibrate their understanding of their mission, and adjust it, based on evidence that includes data on new threats and opportunities. This is also an excellent stage to involve the public. For some public services, the public comprises customers who directly receive services; but for regulatory activities in particular, this is usually not the case. Those who receive such direct services are a relatively specific group not broadly representative of the public. While measures of customer satisfaction with the services they receive are valuable to improve processes, they do not represent the public interest broadly. Similarly, asking the broader public about perceived quality of public services has limited utility if they have not directly experienced these services. However, listening to the public via focus groups and surveys provides a mechanism by which citizens can discuss the values they care about, identify support for different goals, and respond to possible tradeoffs that are presented to them. Objective performance data can inform level of achievement on the values the public identifies as important.

Build learning forums. A classic error that governments have made with performance management is that they have established detailed and often burdensome routines to create and disseminate performance data, but have paid much less attention to creating routines to use data. Learning forums are structured routines that encourage actors to closely examine information, consider its significance, and decide how it will affect future action.

Taking time to discuss performance goals signals the organizational importance of these goals. However, the meaning of performance data is not always straightforward; even the answer to such basic questions as to whether performance is good or bad may be unclear. Learning forums are important because they provide a realm where performance data is interpreted and given shared meaning. More complex questions, such as "why is performance at this level?" or "what should we do next?" cannot be answered by looking at the data itself, but require deeper organizational insight and other types of knowledge that can be incorporated into learning forums.

Such routines are more successful when they include ground rules to structure dialogue, employ a non-confrontational approach to avoid defensive reactions, feature collegiality and equality among participants, include a diverse set of organizational actors responsible for

Table 2: Principles of Well-Run Learning Forum[37]

Meetings take place on a routine basis
Focus on important goals
Agency leaders are involved and seen as committed
Multiple level of employees facilitate learning and problem solving
Need appropriate and timely information
Need staff and technological capacity to analyze data
Quality data (reliable, accurate, valid, disaggregated to the right level, comparative) facilitates analysis
Follow-up on issues raised in prior meetings
Positive reinforcement
Constructive feedback
Reviews establish process of analysis

producing the outcomes under review, mix quantitative indicators of performance with experiential knowledge of process and work conditions that explain successes, failures, and the possibility of innovation.[38]

Learning forums are called different things – data-driven reviews or "stat" meetings. When the United States updated its federal performance system in 2010, it required that managers talk about key organizational goals on a quarterly basis. Although prior studies had shown that exposure to federal performance reforms had little positive effect on whether managers used performance data, a survey of federal employees found that those who were involved or aware of quarterly reviews about their programs were more likely to report using performance data. All learning forums are not created equal however. Among those involved in quarterly reviews, those who rated their learning forum as well-run, based on the attributes listed in table 2, were more likely to use performance data.[39]

Encourage performance information use. Learning forums are one technique to increase the purposeful use and the positive consequences of performance data. But learning forums depend upon other organizational factors to be successful, and these factors are themselves important to performance.

A variety of studies suggest that as managers have more *autonomy*, they become more likely to make use of data to improve performance.[40] Discretion allows them to exercise their expertise, and – especially relevant for regulators – shields them from client criticisms. At the same time, studies also show that policy contexts with *high stakeholder involvement* also increase the use of performance data.[41] How to make sense of this apparent contradiction between discretion and stakeholder involvement? One easy explanation is that the effect of stakeholders may primarily be on the use of performance data for communication purposes – that is, faced with a demanding audience, policymakers use performance data to tell their story. But more generally, highly engaged stakeholders serve to both increase the salience of goals and expectations for achievement above what an organization would do for itself.

Goal clarity is also associated with greater use of performance data. Goal clarity occurs when employees understand their mission and purpose clearly. In contexts where goals are clear, it is easier to discuss and evaluate objectives, making performance data more meaningful.[42]

Organizational culture increases performance information use in two ways. First, if there is a perception that the organization is generally supportive of learning and the performance system, performance information use increases.[43]There is also evidence that other traits matter: cultures that value innovation, flexibility, adaptability and growth (sometimes called developmental cultures) are associated with higher rates of performance information use.[44]

Leadership is one of the most consistent predictors of employee attention to performance. Leadership ability to articulate and communicate a vision of organizational goals – sometimes called transformational leadership – increases performance information use,[45] partly by improving other conditions to increase performance information use, such as goal clarity and organizational culture.[46] Leadership commitment to the performance system itself also matters. Employees observe how leaders allocate their time and scarce organizational resources, which are credible signals of leadership commitment that encourage employees to overcome a passive response.[47]

There is some limited evidence on how *individual motivation* matters to performance data. Demographic factors appear to matter relatively little, but there are two factors that organizations can focus on to increase performance information use. First, employees appear to be more committed to performance management to the extent they have participated in designing the system.[48] Such participation increases the perceived salience and legitimacy of the system. The second factor is public service motivation.[49] As individuals have higher interest in using work to help others, they become more likely to also use performance data.[50] In part, this reflects the fact that performance systems are costly for employees to implement, but the benefits generally are collective if they facilitate better public services. This insight returns us to the risks of high-powered incentives mentioned earlier: crowding out effects might undercut one mechanism to improve organizational performance. Public organizations should look for opportunities to use performance goals that "crowd in" public service motivation, by reminding employees of what's at stake with public goals, and how achieving such goals makes a tangible difference to important outcomes.

Conclusion

This chapter has drawn lessons from the broad application of performance management in government for the purpose of understanding better how to assess regulatory bodies. As of yet, there is little research on how well performance management can itself be used as a tool for governmental regulation of the private sector, although Coglianese has offered an excellent primer on this possibility.[51] Yet regardless of what types of regulatory instruments regulators decide use, their own organizational performance is a matter of great public concern. Performance management of regulatory agencies promises an appeal of simplicity – the promise that numbers can remove the fraught politics and difficulties of managing public organizations. But this appeal is more illusory than real: performance management may be useful, but the politics and complexities will remain.

One understandable temptation in the field of regulation is to believe that simply setting performance targets within an organization will set the wheels in motion for innovation and improvement. In some cases, that may be the case, but the lessons described here reflect the need for performance management itself to be managed, both to sustain an impetus for improvement and recognize risks associated with focusing on performance above all other values.

Although the application of performance management techniques to regulatory organizations offers great promise, it does not eliminate the inherent political complexity that comes with the task of regulation. For regulators, stakeholders play multiple roles: they may produce the good or service that must be regulated, or lobby government on the level and nature of regulation. For performance management as well, stakeholders can play a crucial role in helping to determine what are reasonable goals, and in creating and sharing innovations. From this perspective they should be included in performance management processes. But the socially constructed nature of performance also requires regulators to exercise due care to avoid capture in the setting of targets, and it necessitates validating the degree to which performance metrics are actually achieved by regulated entities. To the extent that performance management of regulatory institutions implies co-production of goals – both the regulator and the regulated entities will be judged by the same measures – it erodes the distance between the two parties, even as the regulator remains ultimately responsible for outcomes for the public.

To admit that the public setting is more complex and constrained is not to automatically accept that regulatory excellence is impossible, but to understand the demanding terrain in which public managers pursue excellence. Performance management techniques may help in achieving excellence, but only if applied astutely. The range of basic, precautionary and positive principles identified in this paper offer a useful starting point, alerting regulators as to the basic nature of performance management, warning them of the risks that it may pose to good governance, and directing them toward steps needed to facilitate better outcomes.

Notes

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Donald P. Moynihan
La Follette School of Public Affairs, University of Wisconsin-Madison

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Acknowledgments

About the Author

Donald Moynihan is Professor of Public Affairs and served as the Associate Director of the La Follette School from 2009-2012. His research examines the application of organization theory to public management issues such as performance, budgeting, homeland security, election administration, and employee behavior. He has presented his research to policymakers at the U.S. Office of Management and Budget, the World Bank, and the Organization for Economic Co-operation and Development. His book, *The Dynamics of Performance Management: Constructing Information and Reform*, was named best book by the Academy of Management's Public and Nonprofit Division and received the Herbert Simon award from the American Political Science Association. In 2014, Moynihan was awarded the Kershaw Award, which is provided every two years by Mathematica and the Association of Public Policy and Management. Journal articles Moynihan has authored have won awards from the Public and Nonprofit Division of the Academy of Management (2002), the American Review of Public Administration (2003), Public Administration Review (2007), and Public Administration (2013). On three occasions Moynihan has won the American Society for Public Administration Wholey Award for outstanding scholarship on performance in public and nonprofit organizations (2009, 2011, and 2013). He won the 2011 National Academy of Public Administration/Wilder School award for scholarship in social equity. Moynihan received the 2012 Distinguished Research Award from ASPA and the National Association of Schools of Public Affairs and Administration. Moynihan is former co-editor of *Journal of Public Administration Research and Theory* and *Public Administration Review*. He is president-elect of the Public Management Research Association. In 2011, he was elected to the National Academy of Public Administration. A native of Ireland, Moynihan completed his BA in public administration at the University of Limerick, and his master's and PhD in public administration from the Maxwell School of Citizenship and Public Affairs at Syracuse University.