The fourth principle is consistent rules. Our country was founded on the concept of equality. No person, of course, is above the law. There are no special rules for special people. We want fair, even-handed treatment for all. When I went to the FDA I vowed there would be no selective enforcement of any kind. We would rule across the board.

But unfortunately, no government agency can be totally equitable. The police may see only one person going through a red light and miss others. There are only 500 inspectors to go through all the food plants in the entire United States. The FDA will take some carcinogens off the market, like sassafras tea, and leave others—such as pepper. When FDA does ban one, like saccharin, Congress may turn around and put it right back on the market, for no discernible reason other than that people say we want that one back. We leave cigarettes and tobacco on the market, but ban a host of other far less dangerous things. We demand that all the ingredients on our foods be labeled and do not pay any attention when Congress exempts the declaration of color added to ice cream and cheese. Our regulatory law is thus a maze of irreconcilable inconsistencies. It is difficult for the government, or the public, or the regulated industries to understand them, and this breeds distrust and suspicion of government.

It is a constant fight in the government to avoid this kind of situation. I think there will always be such inconsistencies. We must simply learn to keep them to a minimum.

The fifth and last principle is expeditious decisions. "Justice delayed is justice denied." Personal and business decisions depend every day upon expeditious handling of government decisions. But it seldom occurs. Why? Because of the prior four principles. Risk decisions are inherently difficult. They cannot be made overnight. They cannot be made easily. In my four years in the government I never saw a risk assessment that provided adequate data upon which to base a regulatory decision that had to be made anyway. It is beyond our current capability, whether we are talking about diethylstilbestrol, saccharin, recombinant DNA, or other current issues.

How can you have lengthy procedures that will guarantee the participation of everyone in this country without delay? Detailed explanations are necessary, as are cross-examination and all of the other trappings of proper procedure. And finally, the requirement of consistency adds to the regulatory burden. The regulator cannot just make a decision, he has to reconcile it with everything that has gone before and might come after. The result is often years of delay as the government ponderously and methodically moves forward.

Each of these ethical principles is important in itself. Each one will have very staunch and important advocates. Taken together they are empirically inconsistent and contradictory. What our country must do in the near future is to come to grips with this fact and decide which of those principles must take priority over the others, because we cannot have all of them.

3 Regulation: A Substitute for Morality
by ALASDAIR MacINTYRE

I want to suggest that the kind of regulation which is concerned with the safety or the quality of goods and services is not itself an expression of any particular moral standpoint, but is rather a substitute for morality at just those points in our social fabric where we no longer possess adequate moral resources. I take it to be a very important substitute and the only substitute which we have. Therefore in the end my argument will conclude in favor of certain kinds of regulation. But I start from a very different standpoint from that of Mr. Hutt, whose remarks emphasized the inconsistency of the principles which seem to underlie all good deal of legislation and regulation. I believe that these inconsistencies are no accident.

In all our thinking about and living in a political society we embrace two systematically inconsistent ways of thinking and living. On the one hand we think of political society in terms of a series of communities—family, workplace, school, the hospital, the local neighborhood—within which we pursue those human goods which are only available to us through common life and action and through which we learn—or at least can learn—that there is no good for me that is not also a good for the community. We discover and identify ourselves in the context of making and remaking various forms of human community. From this point of view we think of the goals of morality as positive. We do indeed need negative rules in order to set limits to what is intolerable behavior in our common life, but we envisage political and moral life predominantly in terms of the positive pursuit of goods for man. Yet at the same time we are also habituated to thinking of human society as an arena in which individuals and groups with rival and competing desires and goals pursue their own private aims and
self-satisfactions in such a way that each needs to be protected from the other. We have no systematic way of reconciling these competing standpoints.

Each of these ways of thinking has deep roots in our political culture: the first in the eighteenth-century ideal of a republican people, a people inspired by a common regard for virtue and for community, an ideal which informs much of the founding documents; the second in the individualist vision of society as a device for the protection of individuals, of society as a collection of strangers, each of whom wishes to protect himself or herself and his or her property from government and from each other. Both of these ways of thinking are continuously regenerated in our politics. The first is renewed by the continuous experience of trying to initiate and reinitiate communication and cooperation within the family, the school, and the workplace. The second is renewed by the continual pressures upon us in the marketplace where people provide objects for consumption and act as instruments to satisfy the appetites of others. This deep incoherence seems to be at the heart of our political life and consequently of our thinking about regulation.

Let us approach the question of regulation indirectly by examining the ways in which we think about the law. From the standpoint that envisages the goal of political society as the creation and maintenance of communities, we do indeed need a system of public law, but only as a system of last resort. There are indeed actions so intolerable that the community cannot permit them to be done without invoking public sanction. Individuals who thus transgress must be identified as answerable for their actions before they can be brought back into the life of the community. Here the law is the last resort. In a good community it will be enforced as naturally resonate.

Unfortunately, there are harmful consequences deriving from this systematic cultural inconsistency in our thinking about the law. When law is thought of in the first way, the primary reason for supporting and identifying with the law is that the law is part of the life of the community to which we belong. If you like, in terms of eighteenth-century republicanism the motive for obeying law is civil virtue. But when the law is thought of in the second way, as a device for the protection of one against another, then fear or self-interest become the dominant motives. We obey the law either because of what the law will do to us if we disobey it, or we obey the law from self-interest. Here I want to advance an empirical thesis, controversial but, so I believe, defensible by an historical analysis. It is that law tends to be effective only insofar and so long as a substantial portion of the community thinks of law in the first way, thinks of it in terms of an identification with the goods of the whole community. When the law is in good working order it is not unfairer to wolves than to men. For, of course, it is true that human beings are always capable of friendship and are always capable of behaving as wolves do in human legends. Each of these notions underlying attitudes to the law is one to which people in certain types of situations naturally resonate.

When there is continuous resort to the law, it is generally a sign that moral relations have to some large degree broken down. It is a sign that the motives which make us invoke the law are those of fear and self-interest. And when fear and self-interest have to be brought into play, law itself tends to be morally discredited.

From the competing view of society as the protector of individual interests, law is not a last resort at all. Law is the immediate sanction we invoke in order to protect ourselves from invasion by others. From this point of view law protects our persons and properties and is to be used on the one hand to protect what we have and are already, and on the other hand to be used as an instrument for redistribution and redress when only the state is available to meet the needs of the helpless. The first view depends on an understanding of human relationships as species of friendship when they are in good order. The second takes seriously Plautus’s maxim, *homo homini lupus est*, man is a wolf to man; a maxim unfairer to wolves than to men. For, of course, it is true that human beings are always capable of friendship and are always capable of behaving as wolves do in human legends. Each of these notions underlying attitudes to the law is one to which people in certain types of situations naturally resonate.

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This is what has happened in our own society. It has happened because the law has too often been made the instrument of partisan, self-interested purposes. The conversion of law to the service of such purposes perhaps started in the last century with the use of the courts by the large capitalists to aggrandize by transforming the law of property in an individualistic direction. But it was continued in the strategy of reformers and liberals who then tried to make the courts instruments for their purposes. (This is why the question of the political composition of the Supreme Court became important.) Now there is what appears from the liberal standpoint to be a conservative reaction. I do not think it in any coherent sense conservative at all, but rather a reaction by a variety of groups to the period in which liberals used the law as an instrument of political change in favor of themselves and their clients. Such a reaction is sometimes expressed by campaigns for a variety of constitutional amendments, and it is sometimes expressed by attacks upon regulation.

What then are we to say of regulation? When we are concerned with those regulations that deal with the quality and safety of goods and services, we ought to be clear that we need regulation only because human nature is gravely defective when embodied in the modern corporation—regulation, remember, applies primarily to the activities of corporations and only secondarily to the activities of individuals; for corporate America does all that it can to ensure that responsibility is never brought home to individuals.

Let me spell that out. It has been suggested (in one way by Milton Friedman, in other ways by others) that we should abandon a good deal of present law and almost, perhaps all, regulation, and leave individuals free to deal with each other in the delivery of goods and services as market mechanisms permit. Those who may be wronged by what happens will be able to sue in court—to bring civil actions against those who have caused them harm or danger. It is very important to notice that there are two things wrong with this model. One is that those who Milton Friedman proposes should take civil action would often in fact be dead. And those who are not dead will very often have been injured in a way for which no compensation is other than symbolically adequate. Think of the thalidomide case. The recent book on thalidomide, *Suffer the Children*, provides the evidence. What Grünenthal Chemie in Germany and what the Distillers Corporation in Britain were willing to do, as the developers and the licensees for thalidomide, shows very clearly that large corporations are collectively quite willing to undertake courses of action that individuals in the corporation would be deeply shocked by if it was proposed that they as individuals should do what the corpo-

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