

# Public Accountability in Regulatory Governance

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**ABSTRACT.** Assessing public accountability to improve public service delivery, local governance, and development has been an increasing global concern. The discourse and practice of accountability has been integrated in many disciplines such as public administration, political science, organizational development, and environmental management. But while some studies focus on accountability assessment in specific areas of public management and related concerns, the current academic literature of accountability reveals the paucity of studies on accountability assessment models in regulatory governance. This paper presents a review of relevant literature on public accountability, regulation and regulatory governance; issues and concerns affecting regulatory governance; and assessment perspectives in regulatory governance that can be relevant in empirical studies assessing accountability systems and practices in regulatory governance. The review yields conceptualizations as well as approaches that call for a holistic appraisal of the regulatory governance structure and performance. It also gives a more meaningful, ethical, and responsible engagement of the State and other societal sectors in exacting accountability in regulatory governance. Nevertheless, the current literature could be enriched with public policy research and analysis involving assessments of accountability practices in regulatory governance particularly in the context of developing societies.

**Keywords:** *Public accountability, public service delivery, public policy management, regulation, regulatory governance*

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## INTRODUCTION

Accountability is an increasing global concern (Van Belle & Mayhew, 2016), and it has been studied and assessed in the health services (Loewenson, 2002; Brinkerhoff, 2004; Van Belle & Mayhew, 2016), interactive governance arrangements for adaptation to climate change (Mees et al., 2012), citizen participation in service delivery (World Bank, 2003; Centre for Economic and Social Policy Analysis, 2012), governance and political science (World Bank, 2003; Bovens et al., 2014), and development efforts (Newell & Bellour, 2002). While these studies focused on accountability assessment in specific areas of public management and governance, current theoretical and empirical studies on accountability as well as current accountability practices especially in developing countries have been sparse. Studies in regulatory governance in developing countries are found to be wanting (Sanvictores-Baylon, 2006). Hence, the relevance of accountability in public policy management, especially in the area of regulatory governance, needs to be reviewed.

Accountability as a concept has been observed to be ambiguous or confusing and needs to be further studied (Schedler, 1999). Public accountability is connected with policy and decision-making processes (Joss & Mohr, 2004), and as a specialized form of policy-making, it requires utmost administrative and technical judgement (Majone, 1994). Since public policy underlies all public administration decisions, which permeates all areas of government action, it behooves democratic governments and stakeholders in the private sector and civil society to conduct accountability assessments of regulatory policy management and governance and hold government officials and regulators for their actions. Such initiatives allow a democratic and transparent analysis of governance performance in the area of regulatory governance.

Furthermore, in a governance scenario, where a multiplicity of actors are involved in political decision-making and development, accountability mechanisms grounded in more ethical responsibilities and expectations are needed. Accountability measures are vital given the challenges to citizen participation, public welfare, environmental protection, food security, promotion of national sovereignty, and many other issues attendant to globalization, neoliberalism, and deregulation particularly in developing countries. Preventing corruption in government and ensuring that the benefits of development address the needs of the poor and marginalized in society heightens the need for accountability mechanisms in regulatory policy management.

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## **Problem Statement**

Given the importance of accountability in public administration (Mulgan, 1997) and the need for accountability mechanisms that ensure the public good and benefits of development for the poor and marginalized sectors of society, this paper reviews existing literature on accountability in the regulatory sector. The research is guided by the following questions: 1) What are the conceptualizations of regulatory governance and public accountability?; 2) What are the critical issues and concerns in the locus of regulatory governance, which need to be considered and addressed in assessing accountability in regulatory governance?; and 3) How can public accountability in regulatory governance be assessed?

This paper hopes to contribute to a better understanding of accountability in regulatory governance among students, practitioners, and other stakeholders in public administration particularly those engaged in the functions of regulatory governance. Such understanding can hopefully lead governance actors and stakeholders to seek improvements, reforms or innovations that can strengthen the public accountability system in regulatory governance. Moreover, knowledge of the theoretical underpinnings and assessment frameworks of accountability presented in the paper could assist public managers and regulators spread a culture of public accountability embedded in public service ethics and values.

## **METHODOLOGY**

In the literature survey, only peer-reviewed theoretical and empirical studies on public accountability and regulatory governance were chosen. Focus was given to academic literature since the paper sought to find conceptualizations of regulatory governance and accountability. However, results of empirical studies that yield concepts of public accountability, regulation, and regulatory governance and address the review questions were included. Surveys were also done on some of the current accountability assessment methods in regulatory policy management and governance. Special emphasis was given to accountability reviews in the Philippine regulatory context and some examples to operationalize some concepts were drawn from the Philippine experience. Studies were assessed using the interpretive approach through content analysis of the documents and reference materials used in the study.

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## DISCUSSION

### Conceptualizations of Regulatory Governance and Public Accountability

**Regulatory Governance.** There is difficulty of finding conceptual definitions of regulatory governance (Kjaer & Vetterlain, 2018), probably because the term is relatively new in the academic literature (Jordana et al., 2015). Hence, this research starts with a literature review that focuses on regulation and governance separately as a starting point for understanding regulatory governance.

The English Dictionary defines regulation as “rules and directives made and maintained by an authority”. Various definitions have been put forward by experts from various disciplines, but such plethora of ideas makes the concept of regulation vague and contested (Black, 2005; Levi-Faur, 2011). One of the earlier definitions of regulation was by Selznick (1985, p. 383) who looked at regulation as “the sustained and focused control exercised by a public authority over activities valued by the community.” However, Baldwin et al. (2010) observed that such seminal definition has been considered as highly problematic and contested given its lack of definitional clarity. They argued that there are three main conceptual perspectives on regulation: first, government legislations with corresponding mechanisms for monitoring and exacting compliance performed by specialized public sector organizations; second, state intervention in the economy; and third, systems of behavior modification whether purposive or not by various entities.

According to Black (2001), the first two classifications are “centered” analysis that focus on the dominant role of government and its entities in the regulation function, while the third perspective is “decentered” as it allows the participation of non-state actors in the process. Most of the concepts of regulation are state-centered and emphasize the formal, legalistic nature of regulation (Sanvictores-Baylon, 2006). They assume that only government has the capacity for command and control (Black, 2001). Such centered conceptions of regulations showed a formal, institutional, and legalistic orientation as they emphasize the roles of public institutions and authorities in creating and enforcing rules and regulations in the public interest (Minogue, 2001; Ogus, 2002). Regulation is therefore authoritative, rule-based, and involves compliance and accountability (Ogus, 2002; Levi-Faur, 2011).

Oriented in the “centered” perspective, Noll (1985) defines regulation as the means by which government exerts control over private economic decisions by assigning a particular government agency the task of creating rules using a quasi-judicial administrative process in order to constrain certain economic decisions by private entities. According to Noll, these agencies known as regulatory agencies are responsible for channeling the direction of private economic activities beneficial to the public. Furthermore, Noll said that regulators are able to influence net economic returns from a regulated industry by regulating or controlling product specifications, prices, and processes.

Since regulation is the means by which government controls the economy (Noll, 1985) as well as to correct market deficiencies (Ogus, 1994), regulators would thus be state actors or government agencies (Selznick, 1985). With regulation regarded as a form of policy intervention distinct from other forms (Lowi, 1985), then regulation must be a public sector activity. The regulatory agencies are usually part of the executive branch and exercise their statutory functions with oversight from the legislative branch (Voinea & Kranenburg, 2017). Such agencies are necessary not only for regulation but also for supervising institutions providing the services, especially utilities (Nunes et al., 2015).

Black (2002) looks at regulation as the purposive and continuous effort towards altering behavior based on a set criteria using standard-setting, information-gathering, and behavioral change. Moreover, Black states that the “centered” thinking has its failure in rules supported by sanctions or penalties that can be inappropriate, the inability of government to identify causes of problems and their solutions, the inadequate law enforcement, and the regulatees’ lack of motivation to comply with laws. For many years, regulations have been basically top-down, state-centered, and legalistic in orientation as well as in practice. However, such political behavior, which characterizes much of regulation in the 1960s to 1970s, has resulted in government inefficiencies (Talesh, 2016), which in turn, led to the adoption of neo-liberalism and the shift towards privatization and free market capitalism (Majone, 1997; Levi-Faur, 2005; Braithwaite et al., 2007).

The command-and-control regulatory model with its strict, ambiguous, and complex rules failed to obtain compliance as they became irrelevant in the face of technological and production innovations including reduction in manpower as a result of increasing industry competition (Lobel, 2012). In order to address such problems, the government shifted to “soft rules” in the form of standards and guidelines instead of prohibitions with strict sanctions (Djelic & Sahlin-Andersson, 2006). The state’s otherwise coercive behavior that has caused

adversarial relations and mistrust between government and industry has been replaced by collaborative and self-regulating measures that allowed firms to exercise their judgement in interpreting broad policy goals and mandates (Lobel, 2012). Firms were encouraged to engage in problem-solving, self-monitoring, self-checks, and training and continuing education (Lobel, 2012).

According to Black (2002), the “decentered” thinking is characterized by the following central elements: 1) complexity, which is essentially the dynamism and complexity of interactions between various societal actors and institutions with a diversity of goals, purposes, and powers; 2) fragmentation of knowledge such that no single actor such as government or industry possesses all the knowledge for solving complex and diverse problems, and fragmentation or dispersal of power and control between social actors and between actions and the state; 3) ungovernability or autonomy of actors to continue to act in their own way in the absence of intervention; 4) interdependence and interactions between social actors and government in the process of regulation, making regulation “co-produced”; and 5) the rejection of a clear distinction between public and private which implies that regulation happens in the absence of formal authority sanctions.

Furthermore, Baldwin et al., (2010) observed the development of three policy dynamics in regulation through the years. These include: first, the shift to market liberalization and privatization of state-owned enterprises to address problems of red tape and inefficiencies due to excessive bureaucratization; second, oversight or regulation not only in the market economy but also in public services as well as the inclusion of social and environmental objectives to the earlier social and economic objectives of regulatory agencies; and third, the introduction of “rational planning” tools into regulatory policy-making such as “regulatory impact assessments” and “cost–benefit analysis”.

Majone (1999) refers to regulation as “a distinctive mode of policy making” and “alternative mode of public control” (Majone, 1999, p. 1). Majone talks about a regulatory state as one which is heavily dependent on regulating agencies such as autonomous organizations and commissions, including judiciaries, tribunals, and other regulatory and adjective agencies in the public sector to which legislative and executive powers have been extensively delegated by government. Furthermore, he observes that the delegation of policy-making powers to such non-majoritarian institutions can cause problems with the rule of law and practice of accountability, and he suggests that such problems be addressed by strengthening public accountability mechanisms (Majone, 1999).

The purposes and goals of regulatory policies can be gleaned from the distinctions made between social and economic regulations. Social regulations are for the purpose of consumer and environmental protection and safety, and include information disclosure, mandatory standards, and licensing (Ogus, 2002). Economic ones are intended to address insufficient or unfair competition. (Ogus, 2002); correct market and state failures (Parker, 2002); and provide conditions for market efficiency (Minogue, 2001). Economic regulations also aim to promote competition (Parker, 2002; Minogue, 2001; Majone, 1999). Parker (2002) identifies the following main forms of economic regulation: rate-of-return or cost-of-service regulation, price-cap regulation, and sliding scale regulation. Furthermore, the increasing privatization efforts, which are part of the economic reforms in developing countries, prompt the need for new regulation policies that protect public interest and prevent regulatory capture from private enterprises (Cook & Minogue, 2002).

Under the “decentered” thinking, non-state actors or private organizations can also act as regulating agencies (Mitnick, 1980), and self-regulation by the industry can also be exercised (Black, 2002). Regulators are expected to exercise independence, objectivity, and autonomy in exercising their functions. As such, regulators should not have any direct involvement in the transactions which they are regulating (Noll, 1985; Mitnik, 1980), and independence and separation of organizations should be observed. More recent literature, however, emphasize the concept of “oversight” and “control” (Hood et al., 1999).

Regulation is a significant part of governance, but governance goes beyond mere regulation as it encompasses processes in creating rules and regulations (Talesh, 2016). Governance looks at the engagement of public and private sector organizations in political decision-making, development undertakings, and other public management functions for improving societal well-being (United Nations Development Program, 1997; Meuleman, 2008). The World Bank (1992, p. 9, 19) defines governance as “the exercise of political power to manage a nation’s affairs” and identifies the elements of good governance as follows: “participatory, sustainable, legitimate and acceptable to the people, transparent, promotes equity and equality, able to develop the resources and methods of governance, promotes gender balance, tolerates and accepts diverse perspectives, able to mobilize resources for social purposes, strengthens indigenous mechanisms, operates by rule of law, efficient and effective in the use of resources, engenders and commands respect and trust, accountable, able to define and take ownership of national solutions, enabling and facilitative, regulatory rather than controlling, able to deal with temporal issues, and service-oriented.”

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Rhodes (1996, pp. 653–659) provides various conceptions of governance: “governance as the minimal state characterized by the use of markets and quasi-markets to deliver ‘public’ services”; governance as corporate governance, which is referred to as the system by which organizations are directed and controlled and the exercise of transparency, integrity, and accountability in both public and private sector organizations; governance as the new public management with the introduction of private sector management methods such as market competition, citizen empowerment, performance outcomes, entrepreneurialism, and decentralization; governance as ‘good governance’: a ‘marriage of the new public management with liberal democracy’; governance as a socio-cybernetic system: interdependence among social-political-administrative actors; governance is the result of interactive social-political forms of governing; and governance as self-organizing networks: networks develop their own policies and mold their environments.”

The Worldwide Governance Indicators (WGI) of the World Bank assess the quality of governance of developing countries based on the assessments of its citizens, business sector, and experts using a set of governance indicators. The indicators include: “voice and accountability: reflects perceptions of the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media; government effectiveness: reflects perceptions of the quality of public services, the quality of the civil service, and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies; control of corruption: reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests; rule of law: reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular, the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence; regulatory quality: reflects perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development; political stability and absence of violence/terrorism: measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism” (WGI as cited in National Economic Development Authority, 2017).

Governance, as gleamed from the various conceptions of the term, finds complementation with the “decentered” view of regulation, which allows the participation of business and civil society along with

government in carrying out regulatory functions. Lobel (2012, p. 4) describes regulatory governance as consisting of the following: “1) increased participation of non-state actors; 2) public/private collaboration; 3) diversity and competition within the market; 4) decentralization; integration of policy domains; 5) non-coerciveness; 6) adaptability and constant learning; and 7) coordination.” As a new form of governance, regulatory governance veers away from the “decentered” or command-and-control type to that which involves various policy actors (Kjaer & Vetterlein, 2018). In a similar vein, Cariño (2002, p. 4) views regulatory governance “the whole system by which regulation and competition are managed to achieve societal goal.” It involves “a multiplicity of actors, rules, and processes to ensure goal attainment” (Cariño, 2002, p. 4).

The Organization for Economic and Co-operation Development (2011, p. 8) refers to regulatory governance as “grounded in the principles of democratic governance and engages a wider domain of players including the legislature, the judiciary, sub national and supra national levels of government and standard setting activities of the private sector.” A similar perspective is from Jordana et al. (2015, p. 1) who regard the study of regulatory governance as involving “an analysis of the politics of regulation in the globalization context, where different levels are often entrenched in the policy processes, while multiple actors, public and private, also play an increasing role in decision-making, having thus an impact on regulatory outcomes.” According to Phillips (2006, p. 24), regulatory governance is a “rule-based, technocratic, and juridical approach” that aims to shape the behavior of market actors.

Building on the strengths of the “centered,” command and control type of regulation and “decentered” regulation while overcoming their weaknesses, Ayres and Braithwaite (1992) introduced responsive regulation as a regulatory strategy. It is defined as “an attitude that enables the blossoming of a wide variety of regulatory approaches” and not “a clearly defined program or a set of prescriptions concerning the best way to regulate” (Ayres & Braithwaite, 1992, p. 5). Responsive regulation had the following strategies: “tit-for-tat enforcement, which involves enforcement pyramids; tripartism, which is empowering citizens’ associations to overcome the risk of capture and corruption in the traditional two-way interactions between government and regulated industry; enforced self-regulation requires firms to write their own sets of corporate rules, which are then publicly ratified and enforced; and partial-industry regulation, which seeks to gain leverage from the competitive conduct of an entire industry by regulating some, but not other firms” (Ayres & Braithwaite, 1992, as cited in van der Heijden, 2020, p. 3).

Some examples of reforms in Philippine regulatory governance in line with the “decentered” mode can be seen in the regulation of the electric power industry with the passage of the Electric Power Industry Reform Act of 2001; the transfer of regulatory powers of the national government to local governments under Republic Act 7160 or “The Philippine Local Government Code of 1991”; deregulation or liberalization of the Philippine telecommunication industry under the Republic Act 7925 or “The Public Telecommunications Policy Act of the Philippines”; and creation and privatization of the Metropolitan Waterworks and Sewerage System (MWSS) under Republic Act 6234. Other reforms include the creation of the Anti-Red Tape Authority with the passage of Republic Act 11032 or “The Ease of Doing Business and Efficient Government Service Delivery Act of 2018.” The Anti-Red Tape Authority, as the central oversight agency, aims to expedite the delivery of government services including business and non-business transactions with the government. Other trade liberalization efforts in the passage of the Retail Trade Liberalization Act and the General Banking Law of 2000. These legislations put more reliance on the role of the private sector in propelling the country’s economic growth.

The thinking and practice of regulations from the state-centric and “decentered” paradigms of regulatory governance to responsive regulatory strategies such as self-regulation and other regulatory governance reforms appear to be a function of the dynamic interaction of local environmental forces as well as international economic and political pressures that impinge on regulatory policymaking especially on developing countries. Empirical studies on the Philippine regulation experience indicate that the interplay of local economics and politics as well as foreign economic influence affect the directions of state policy (Villegas, 1983, as cited in Sanvictores-Baylon, 2006); and the political process and interplay of various societal factors affect regulatory policy (Agpalo, 1962, as cited in Sanvictores-Baylon, 2006).

**Public Accountability.** In recent years, the concept of accountability has been largely diffused to various disciplines, and its understanding and application are embedded in their disciplinary contexts and orientations (Van Belle & Mayhew, 2016). As a result, the definition, general nature, and mechanisms of accountability have become a contested arena among scholars and practitioners in recent years (Mulgan, 2000; Michael, 2005).

Historically and semantically, the word “accountability” is Anglo-Norman in origin and closely related to accounting (Bovens, 2007). It can be traced back to the reign of William I, who in 1085 required all the property holders in his realm to render a count of their possessions

for purposes of taxation as well as for exacting allegiance to the crown (Dubnick, 2002). Bovens (2007) explained that centuries later, having veered away from its relationship and origins with financial accounting, “accountability” has evolved to mean a reversal of relationships between the sovereign and the citizens with the latter now holding accountable the authorities. Accountability has become Anglo-American in its more contemporary sense (Mulgan, 2000; Dubnick, 2002) and complementary to the New Public Management by the Thatcher-government in the United Kingdom and Reinventing Government reforms initiated by the Clinton-Gore administration in the United States (Bovens, 2007). Furthermore, the term accountability has also been used interchangeably with responsibility (Mulgan, 2000; Preworski et al., 1999, as cited in Newell & Bellour, 2002), legitimacy (Bovens, 2007), transparency (Bovens, 2007; Mulgan, 2000); participation (Cornwall et al., 2000), good governance (Lockwood, 2010; Joss, 2010; United Nations Human Rights Office, 2012).

From its basic or core sense of holding others to account, Mulgan (2000, p. 555) identifies the following features of accountability: “it is external – account is being given to a person or body outside the person or body being held accountable; it involves social interaction and exchange – one side seeking answers and correction while the other side, being accountable, responds and submits to sanctions; and it implies right of authority – those calling to account are asserting their right of superior authority over those who are accountable, and includes the right to demand answers and impose sanctions.” In line with such thinking, accountability is seen as having two important dimensions: answerability, which requires public officials to render an account of their behavior and enforceability or enforcement, which involves punishment or sanctions for poor performance and violations in the exercise of their public functions (Schedler, 1999; Goetz & Jenkins, 2001). The use of sanctions and penalties for failures gives “teeth” to accountability (Brinkerhoff, 2004). Such constructions of accountability involves defining power relations between actors, i.e., those who have the power to demand or call for an account and those who are obligated to give an account for their action (Newell & Bellour, 2002).

In the expansion of the academic usage of accountability, Mulgan (2000) observes accountability to be assuming the following characteristics: 1) professional and personal accountability, which refers to the individual’s personal values, sense of responsibility, and concern for the public good; 2) control as involving institutions from government or civil society that check or constrain government power as well as

legal and constitutional constraints; 3) responsiveness, which refers to the extent governments proactively provide services to address citizen needs; and 4) dialogue, which involves open and public discussions and debates on matters of public interest between public officials and their constituents.

Jordana et al. (2015) drew distinctions between accountability relations in terms of upward, downward, and horizontal accountability. They explain that upward accountability refers to relations between citizens and representatives, or elected politicians vis-à-vis bureaucrats, whereas downward accountability is related to delivery organizations vis-à-vis consumers, or regulatory agencies vis-à-vis interests groups" (p. 6.) Horizontal accountability consists of inter-organizational relations, e.g., executive and the legislative or the judiciary and other autonomous agencies (Jordana et al., 2015).

In the arena of administrative accountability, Cariño (1993), described three different types of accountability, namely: 1) traditional accountability "focuses on the regularity of fiscal transactions and the faithful compliance as well as adherence to legal requirements and administrative policies"; 2) managerial accountability, which is concerned with "efficiency and economy in the use of public funds, property, manpower, and other resources" (Tantuico, 1982, as cited in Cariño, 1993, pp. 541–544); program accountability, which deals with "the results of government operations" and entails a comprehensive performance audit that focuses on financial and operational performance of an organization based on the 3Es (efficiency, effectiveness and efficacy), and 4) process accountability, which stresses on procedure and methods of operation.

Accountability is also seen in the context of political decision-making. Schedler (1999) refers to such conceptions of accountability in the context of the performance of public officials as political accountability. Schedler distinguishes among the following forms or types political accountability in its broad sense: political accountability, which refers to the appropriateness of policies and policymaking processes as well as qualifications of political actors; administrative accountability, which reviews the value and correctness of government actions; professional accountability, which looks at ethics of professionalism; financial accountability, which means strict, efficient and proper use of public finances; moral accountability that refers to observance of prescribed standards behavior; legal accountability, which is the monitoring of compliance with legislations; and constitutional accountability, which evaluates constitutionality of legal practices.

The various conceptualizations of public accountability reveal that public accountability is inextricably linked to the more traditional public administration thinking where government is regarded as having exclusive responsibility and accountability over public management functions and their outcomes. As such, public administrators are held accountable for their performance in the various functional areas of policy management, fiscal transactions, program implementation, and human resource management. Heads of agencies and local government executives are thus expected to render a comprehensive account of their individual and organizational performance vis-a-vis their stated functions to the general public.

However, in the context of democratic governance, traditional public management functions, including regulation that were the sole domain of government responsibility, are now widely shared to various government bodies as well as other institutional players. Hence, the problem of accountability has become increasingly challenging and requires participatory methods to widen engagement of qualified citizenry in the exercise of public accountability in regulatory governance.

### **Accountability Issues and Concerns in Regulatory Governance**

The practice of accountability in regulatory governance yields issues and concerns stemming from the political, economic, and administrative contexts in which regulation operates. These issues prompt the need for accountability mechanisms as well as methods for assessing overall accountability in the regulatory sector.

***Exacting Accountability among Regulating Bodies as well as Regulators of Regulating Bodies.*** In the Philippines, regulatory roles are performed by the three branches of government, with accountability centered on the executive branch. A number of other governmental institutions also perform regulatory functions: Cabinet-level departments such as the Department of Trade and Industry and other government agencies to regulate trade and commerce; Bangko Sentral ng Pilipinas, Securities and Exchange Commission, and the Philippine Deposit Insurance Corporation, and Office of the Insurance Commissioner to regulate the financial sector; and a host of other regulatory agencies to regulate water utilities as well as transportation and communication sectors (Cariño, 2006).

In order to ensure public accountability, independent constitutional bodies have been created such as the Commission on Audit, the Civil Service Commission, the Commission on Elections, and Commission on Human Rights, and the Ombudsman (Cariño, 2006). In compliance with the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act 6713), regulatory agencies just like other government organizations are mandated to exercise ethical conduct and promote the public interest in the performance of their duties.

Hood et al. (1999) observed that government needs to exercise accountability within its own ranks through its oversight functions over other government units and between levels of government. Majone (1999) calls for accountability mechanisms that can make regulatory bodies accountable to the political leadership, and finally, to the people. Accountability needs to be assessed in government bodies that are regulators themselves, e.g., judiciaries, tribunals, and other adjudicative agencies to which policymaking has been delegated to since such institutions, operate outside the legitimate policy-making process (Majone, 1999). Moreover, a significant issue in the exercise of accountability in regulation is the accountability of those responsible for regulating regulators (Hood et al., 1999).

***Ensuring Accountability in the Promotion of Trade and Investments.*** The spread of the global capitalist economy and Western hegemony, and the adoption of the neo-liberal philosophy of countries including the Philippines, have caused consequent changes in national political priorities and economic agenda in favor of business and the market. While the government provides for a conducive business climate for the growth of trade and investments and allows foreign investors in the country, there is always the need for greater accountability mechanisms to ensure the observance of a nationalistic policy in line with the Constitutional mandate to protect the country's economy and patrimony.

Moreover, the shifting state-market and civil society relationships allowing the participation of the private sector and civil society in traditional governmental domains prompt a review of accountability practices to ensure the protection and promotion of citizens' rights and welfare. The multiplicity of political actors with differing political and economic interests make the entire praxis of accountability challenging, and require new forms of accountability mechanisms (Sorenson & Torfing, 2005; Klijn & Skelcher, 2007).

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***Accountability Mechanisms to Prevent Corruption in Policy Transfers.*** There is also the need for accountability mechanisms in policy transfers. Regulation has been seen as an aspect of policy transfer which is predominant in developing countries (Minogue, 2004; Ogus, 2004, as cited in Sanvictores-Baylon, 2006) and promoted through global economic pressures, international assistance, and national initiatives (Minogue, 2004). This involves the transfer of regulatory policies from one policy culture to another. This is seen particularly in World Bank loan conditions imposed on borrower countries especially in the Third World. Policy transfers, which bring on governments of developing countries regulatory mechanisms and reform models without due consideration of their appropriateness and adaptability to local conditions (Minogue, 2001), also require mechanisms to determine accountability in these areas in order to protect public interest from the undue pressure of private interests. In policy transfers, regulatory reform practices being promoted to developing countries must be compatible with the local political culture that “mediate externally-derived economic and managerial reforms rather than being transformed by them” (Minogue, 2006, p. 234).

Stricter accountability assessments are also necessary to prevent state capture where private firms can shape regulatory processes to their own advantage through private payments (Hellman et al., 2000). On the other hand, public officials can use their power to exact undue economic rents or bribes from private firms, or simply exert their influence (Hellman et al., 2000). As such, strengthening accountability arrangements is the most important mechanism to avoid regulatory capture from the government and regulated organizations.

***Devolution of Regulatory Functions Require Stricter Accountability Measures.*** In certain developing countries such as the Philippines, regulatory functions have been devolved to local government units. The passage of the Philippine Local Government Code (Republic Act 7160) has provided a shift from certain regulatory powers and functions from the national government to local government units (LGUs) (Cariño, 2006). These include the enforcement of the following regulatory powers: reclassification of agricultural lands; enforcement of environmental laws; inspection of food products and quarantine; enforcement of national building code; operation of tricycles; processing and approval of subdivision plans; and establishment of cockpits and holding of cockfights. LGUs are also able to provide devolved services such as health, agriculture, social services, environment and natural resources, social services, and public works; and impose taxes on real property, give business licenses and permits, and collect business taxes.

Recognizing the significance of private investments in revenue generation and overall local economic development, Republic Act 7160 provides for the formulation of local economic and investment promotion opportunities to encourage the growth of private investments. However, Legaspi (2006) observed that regulatory governance at the local level needs to be exercised as provided for in the 1987 Constitution and Republic Act 7160. Given the various governance arrangements that allow LGUs to promote local trade and investments in their jurisdictions, LGUs need to be equipped with the competencies that complement their need for more power and authority to exercise their regulatory powers and functions (Legaspi, 2006). On the other hand, in certain cases, efforts to regulate local businesses through granting of business permits and licenses are still fraught with red tape and corruption forcing entrepreneurs to operate underground (Cariño, 2006).

### **Assessing Public Accountability in Regulatory Governance**

Ensuring reliability and efficiency in the public sector requires an accountability assessment system (Said et al., 2015). Accountability in practice has taken various forms and modalities. Elections are the most classic form of exacting accountability (Newell & Bellour, 2002; Geotz & Gaventa, 2001). Public hearings, popular protests, and participatory budgeting are considered also as the more traditional mechanisms of public accountability (Newell & Bellour, 2002).

Failures of conventional accountability such as secrecy in auditing and ineffective policy reviews have led to the creation of new accountability spaces initiated and participated in by citizen groups and the private sector that can provide stronger pressure for more vertical flows (government to citizenry) of information in giving an account of government performances (Newell & Bellour, 2002). However, such initiatives coming from marginalized groups can be constrained by lack of financial and technical resources (Newell & Bellour, 2002). Also, support for such groups cannot be expected where citizen audit initiatives threaten the power of government officials (Newell & Bellour, 2002).

According to Jordana et al. (2015), in assessing regulatory policies, focus is not on the expenditure of resources, but rather on the reasons behind the enactment of regulations and their consequences. Bovens et al. (2008) identified three accountability mechanisms, namely: democratic accountability, which requires the executive branch to render an account for their actions using the upward accountability mechanism; constitutional accountability, which is intended to prevent

government abuses using the horizontal mechanism or inter-institutional accountability; and the third mechanism, which involves learning since accountability is meant to extend learning curves of governments with downward mechanisms as the more dominant feature characterized by dialogues and interactions with various stakeholders.

Ogus (2002) stresses the importance of accountability in effective regulation and asserts that in assessing accountability practices in regulation, the values of transparency and accountability, which are regarded as central to an effective regulatory system, should guide the assessment process. He refers to them as “process values which assist in conferring legitimacy on the institution structure and prevent it from being diverted away from the public interest regulatory objectives” (Ogus, 2002, p. 6).

Loughlin (1986, as cited in Ogus, 2002) presents three forms of accountability in the regulatory system. These include the following: “financial accountability which calls for observance of financial management standards to minimize administrative costs; procedural accountability otherwise known as “due process” which is observance of fairness and impartiality such that there is “an appropriate framework for making rules and decisions that serve the public interest and for resisting the undue influence of private interests”; and substantive accountability that aims to ensure that the rules and decisions are “justifiable in terms of the public interest goals of the regulatory system” (Loughlin, 1986, as cited in Ogus, 2002, p. 8–9).

Van Belle & Mayhew’s (2016, pp. 8-9) meta-narrative review of the various concepts of accountability in the disciplines of political science and public administration, organizational political science, and public administration yield four main classifications of approaches to assessing accountability, namely:

- 1) The institutionalist approach – focuses on compliance with bureaucratic and formal procedures, laws, rules and regulations, laws, and policies. This involves community or stakeholder participation in monitoring and evaluation;
- 2) The rights-based approach – essentially involves compliance with legal procedures, and rests on the assumption that individual human rights form the basis for accountability. Furthermore, “citizens delegate power and author city and public sector institutions, which in turn, are accountable for the realization of citizens’ rights and entitlements”;

- 3) The individual choice approach – views accountability with clients as individual actors weighing the perceived advantage and cost of all options with regard service delivery such that in case the public organization fails to deliver, the client can exercise his/her power as client and exit the service; and
- 4) The collective action approach – accountability is seen as the product of individuals, organizations, and institutions in multiple accountability relationships such that actors can be account holders and accountors at the same time. Accountability is considered to be socially constructed and conducted through investigation and audits, ‘naming and shaming’ through the media, civil society protest, and dialogue between the organization and the public.

Accountability can take on vertical or external forms, which involve non-state actors to hold power holders to account, or a horizontal and internal means such as horizontal oversight, check and balance internal to the state (O'Donnel, 1999, as cited in Goetz & Gaventa, 2001). According to Goetz & Gaventa (2001), the most classic example of vertical accountability is election and supplemented by the free media and advocacy by civil society groups in between elections. The authors also identify the following forms of horizontal accountability:

- 1) Political accountability – ensured through the legislature, effective opposition, sufficient staff resources, well-functioning oversight committees, access to relevant information, and political parties organized and oriented to serve the national interest (Brademas, 1997, p. 6.);
- 2) Fiscal accountability – formal systems of auditing and financial accounting for the use of public resources;
- 3) Administrative accountability – a reporting system that links the bureaucracy with ministers and the legislature. Hierarchical reporting between bureaucracies assure internal accountability; and
- 4) Legal and constitutional accountability – ensured by the judiciary such that politicians and officials do not exceed their legal authority (Brademas, 1997, p. 7).

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The various accountability mechanisms as identified by Goetz and Gaventa (2001) are highly relevant as accountability metrics in regulatory governance. However, the authors observe “the low level of public confidence in the horizontal forms of accountability control alongside dissatisfaction with limitations in the effectiveness of vertical forms both in the exercise of electoral choice and the lack of representation of the interests of the poor in civil society associations” (Goetz & Gaventa, 2001, p. 7).

Transcending the horizontal and vertical institutional models as new forms of accountability mechanisms as well as other dimensions to the accountability assessment framework by various authors, Goetz & Gaventa (2001) advocate for a participatory dimension that allows active citizen engagement in the accountability assessment frameworks and processes. Such call for a more participative accountability practice in the regulatory process holds relevance in accountable regulatory practice these days.

Furthermore, Goetz & Gaventa (2001) recommend public hearings or participatory auditing to reveal possible anomalies in financial expenditures; participatory information-generation, e.g., civil society-initiated public opinion surveys to better inform policymakers of people’s needs, evaluation of public spending from the lenses of particular social groups, citizen juries to evaluate public policy, or the establishment of parallel services to show effective alternative approaches to service delivery. In public-private partnerships, there is a need for both quantitative and descriptive evaluations in financial accounting as well as public access to information particularly between public and private sector partners in accountability for public money utilized by the private sector.

In the Philippines, there are existing participatory systems which allow direct citizen participation in the exercise of public accountability in regulatory governance. These are 1) citizen referendum and recall against erring local government officials; 2) citizens’ access, by themselves or via media and civil society groups, for relief and remedies from the courts or quasi-judicial agencies, against actions of public officials; and 3) social mobilization activities of civil society organizations along the spectrum of public policy formulation, implementation, evaluation, and reform.

In the case of regulators, Black (2001) described procedures that can hold regulators (i.e., regulatory agencies and private entities to whom regulatory powers have been delegated to by public authorities) accountable for their actions. These are 1) *reason giving*, which is the

publication of criteria for decisions, alternatives being considered, and their likely results with relevant supporting data; 2) information disclosure of certain aspects of the decision-making; 3) hearings or inquiries; 4) *rules on rules*, which involve publication of proposed rules to solicit comments from concerned parties; 5) *structural handwriting*, which is concentration of responsibility and accountability either on one individual or a commission-like structure; 6) objectives and guidance set in legislation which regulators are required to follow; and 7) methodologies or standardized processes as a mechanism for exercising control (Black, 2001, pp. 340-343). Moreover, Black says that accountability should be exercised in the following: political domain (legislative and executive branches;) profession (self-regulation), and legal system (i.e., courts).

In terms of specific standards or criteria for examining regulatory governance, the Open Government Partnership (2015, p. 4) adopted a four-pronged commitment on regulatory governance in line with the values of transparency and citizen empowerment. Such commitments are co-produced with citizens, involved the following global indicators with their respective assessment questions as follows: accessing laws and regulations - does the private sector and general public have free and effective access to the entire (official) collection of reliably updated and complete national laws and regulations of a given jurisdiction?; transparency - do public officials issue timely public notice of proposed changes in regulations and publication of proposed texts for public review and comments?; public consultation - are minimum standards relating to how, when, and from whom policy-makers seek input on new or amended regulations before issuing final regulations?; and challenging regulations - can citizens challenge the legal validity of a regulation or regulatory provision? Can citizens challenge an action or decision of a regulator pursuant to a regulation? How?. Such indicators provide practical venues for assessing regulatory governance performance, and promote transparency, rule of law, and citizen engagement in the assessment process.

Table 1 presents a summary of the various concepts and approaches in accountability assessment in regulatory governance. It appears that such assessments involve various levels of compliance with organizational, managerial, legal, and technical requirements in regulatory governance and bear the following important implications on the efficiency and effectiveness of regulatory performance:

**Table 1**  
**Public accountability assessment concepts and approaches**

| Author(s)                                           | Concepts and Approaches                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Newell & Bellour (2002)                             | 1) Public hearings, 2) popular protests, and 3) participatory budgeting                                                                                                                                                                                                                                                                                                  |
| Bovens et al. (2008)                                | 1) Democratic accountability, 2) constitutional accountability, and 3) involves learning mechanism                                                                                                                                                                                                                                                                       |
| Ogus (2002)                                         | The values of transparency and accountability should guide the accountability review.                                                                                                                                                                                                                                                                                    |
| Loughlin (1986), as cited in Ogus (2002)            | 1) Financial accountability, 2) procedural accountability, and 3) substantive accountability                                                                                                                                                                                                                                                                             |
| Van Belle & Mayhew (2016)                           | 1) Institutional approach, 2) rights-based approach, 3) individual choice approach, and 4) collective approach                                                                                                                                                                                                                                                           |
| O'Donnel (1999), as cited in Goetz & Gaventa (2001) | Accountability can take on 1) vertical or external forms, which involve non-state actors to hold power holders to account, or 2) a horizontal and internal means such as horizontal oversight, check and balance internal to the state.                                                                                                                                  |
| Goetz & Gaventa (2001)                              | 1) Public hearings or participatory auditing; 2) participatory information-generation, e.g., civil society-initiated public opinion surveys, evaluation of public spending from the lenses of particular social groups, citizen juries to evaluate public policy, or the establishment of parallel services to show effective alternative approaches to service delivery |
| Black et al. (2001)                                 | 1) <i>Reason giving</i> , 2) information disclosure of certain aspects of the decision-making, 3) hearings or inquiries, 4) <i>rules on rules</i> / publication of proposed rules to solicit comments from concerned parties, 5) <i>structural handwriting</i> , 6) objectives and guidance set in legislation, and 7) methodologies or standardized processes           |
| Black et al. (2001)                                 | Accountability should be exercised on the following: 1) political domain (legislative and executive branches), 2) profession (self-regulation), and 3) legal system (i.e., courts).                                                                                                                                                                                      |
| Open Government Partnership (2015)                  | 1) Accessing laws and regulations, 2) transparency, 3) public consultation, and 4) challenging regulations                                                                                                                                                                                                                                                               |

First, the rigor of public accountability implies a comprehensive review of the management and organization systems of regulatory agencies in the public sector as well as private sector organizations to whom regulatory powers and responsibilities have been delegated to by state agencies. This is for the purpose of assessing the availability, relevance, adequacy, and functionality of structures, work processes, and procedures including delivery sub-systems, and institutional resources, i.e., manpower, finances, and technology necessary in carrying out their regulatory functions.

Second, regular conduct of accountability in regulatory responsibilities ensures substantial and regular compliance with legal and administrative mandates, financial and budgetary requirements, and even environmental protection as embodied in regulatory policies and other complementary rules and regulations. It keeps in check regulatory behavior and performance. However, accountability should not be reduced to a routine, bureaucratic exercise, but rather a meaningful and significant organizational resource that yields needed reforms in regulatory processes and performance.

Third, democratic and holistic public accountability review systems and approaches instill a sense of personal and organizational accountability among the regulators and their agencies. Accountability exercised in various domains leave no stone unturned as every aspect of the regulatory function is brought to light and performance gaps identified objectively and addressed appropriately.

Lastly, policy reviews, i.e., monitoring and evaluation of regulatory activities ought to be conducted by an independent and multi-sectoral committee or agency with representations coming from qualified members of the civil society such as the academe and non-government organizations. Except in cases where sensitive data and information require confidentiality, results of accountability assessments should be made accessible to the public consistent with the value and practice of transparency in good governance.

## **CONCLUSION AND RECOMMENDATIONS**

The literature on regulation, regulatory governance, and public accountability provided various constructions of regulation and accountability from the traditional, institution-oriented, and state-centric conceptualizations to the more contemporary perspectives

that emphasize the engagement of non-state actors in regulation and accountability in regulatory governance practice.

The literature also presented significant issues and concerns confronting policy management in the regulation sector that range from the undue influence of globalization and neo-liberalism on political and economic reforms in developing countries to problems of rent-seeking and regulatory capture; the challenge of private sector and civil society engagement in public accountability practices in the regulation; the devolution of regulatory functions to the local level especially in the case of the Philippine LGUs; the need to promote the public interest and welfare against private interests; and the need for accountability mechanisms grounded in the public service and governance values of transparency, honesty, rule of law, and citizen participation.

A review of the various assessment perspectives for ensuring accountability in regulatory governance showed evaluation models requiring a comprehensive appraisal of the regulatory governance structure and performance. Such models also call for a more meaningful and responsible participation of civil society and private sector in the practice of accountability in regulatory governance. The review yields some important lessons in public accountability in regulatory governance particularly in the context of Philippine regulatory policy management. These include the following:

- 1) Public accountability in regulatory governance should recognize the need for a healthy balance between the legalistic, government-centric, and coercive regulatory approach that ensures compliance with regulations through sanctions and penalties with the “decentered”, developmental, and participatory approaches that encourage active private sector and civic initiative and engagement in regulatory policy management and governance at both the national and local government levels.
- 2) Strengthening local development and legislative councils to act as effective regulators specially at their level in line with Section 16, Art. XIII of the Philippine Constitution, which provides for the participation of the people and their organizations at all levels of social, political, and economic decision-making.
- 3) Regulatory governance efforts to create a competitive landscape for the growth of lucrative trade and investments should be in accord with the Constitutional mandate to protect local industries and on the overall, the national economy and patrimony.

- 4) Public accountability cannot always be legislated as not all problems and concerns in regulatory governance and other areas of public administration can be resolved through rule-making and law enforcement. Spirituality as exercised in the ethical behavior of public managers and other relevant stakeholders is necessary in keeping public interest and welfare as the sole, motivating force in the politics of accountability and regulatory reform.

Finally, the current literature on regulatory governance could be enriched with public policy research and analysis including accountability assessments of accountability practices in the regulatory sector particularly in the context of developing societies. Scientific and impartial reviews of regulatory policy as well as reforms and innovations in existing policy can provide greater empirical understanding of accountability in regulatory governance. The extant academic and empirical literature on public accountability in regulatory governance can do well with studies on the regulation of regulators and in holding them responsible and accountable in the interest of public welfare.

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