

Rethinking Reflexive Law for the Information Age

“Regulation” – Image by Rob Stemple <http://www.flickr.com/photos/26881907@N05/>

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Environmental Law in the 'Information Age'

- * Reflexive and Informational Regulation
- * Third generation 'new governance' approaches
 - * Process-based
 - * Systems-based
 - * Management-based

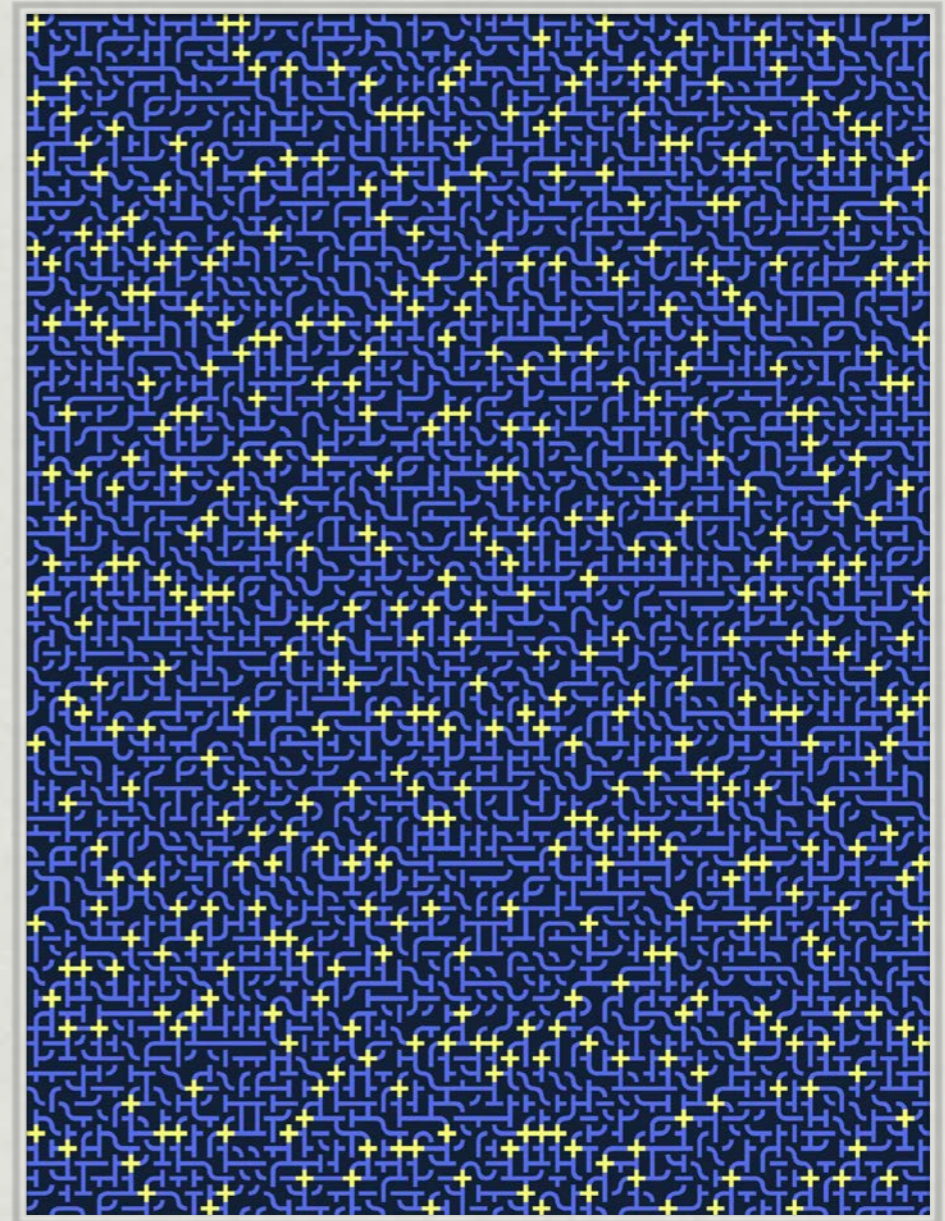
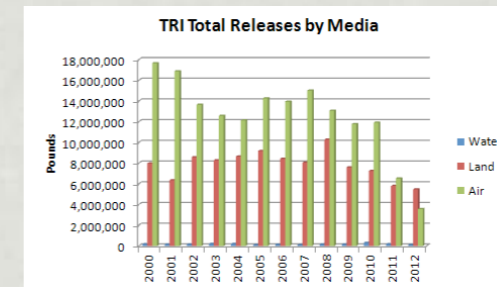


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Informational Regulation

- ✱ Mandatory reporting and disclosure, e.g. Toxics Release Inventory
- ✱ Voluntary disclosure, e.g. FAIRTRADE, Forest Stewardship Council labels
- ✱ Fence-line monitoring, e.g. 'Bucket brigades'
- ✱ Product labelling

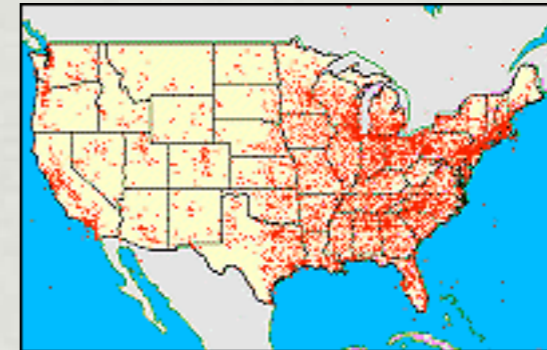


Reflexive Regulation

- * Environmental Impact Assessment
 - * e.g. NEPA
- * Voluntary approaches
 - * e.g. codes of practice
- * Eco-Management and Audit Schemes (EMAS)

Examples of Regulation by Disclosure

- * Toxics Release Inventory
- * Proposition 65 (California)
- * Pollution and Transfer Registries
 - * e.g. European Pollutant Emission Register (prtr.ec.europa.eu)



WARNING

DETECTABLE AMOUNTS OF CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM MAY BE FOUND IN AND AROUND THIS FACILITY.
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5



Possibilities of Regulation by Disclosure

- * Focuses management attention
- * Reduces transaction costs for outsiders
- * Significant external pressure
 - * ... from customers, shareholders, financial institutions ...
- * Benchmarks performance and facilitates feedback loops

Criticisms of Regulation by Disclosure

- * Theory over substance
- * Procedure over substance
- * Misleading for consumers
- * Cannot guarantee particular outcomes

Practical Difficulties with Regulation by Disclosure

- * Replicating the problems of command-and-control?
- * System can be 'gamed'
- * Unpredictable results
- * Excessive costs

Practical Difficulties with Regulation by Disclosure

- * Limited understanding of sustainability
- * Intractable individual habits
- * Privacy and confidentiality
- * Muddying the rule of law

Avoiding Technological Determinism

- * Is there really an 'Information Revolution'?
- * Power does not disappear
- * ICT opens new opportunities and challenges
- * Information and power become intertwined

Improving Disclosure-Based Schemes

- * Use as part of hybrid strategy
- * Be aware of limitations in information
- * Follow good institutional design
- * Standardize results

Design Principles

- * Match disclosure to risk
- * Design for accuracy
- * Recognize disclosure as a continuum
- * Construct dynamic systems that can incorporate feedback
- * Increase use, accuracy, and scope
- * 'Everyone else is doing it'

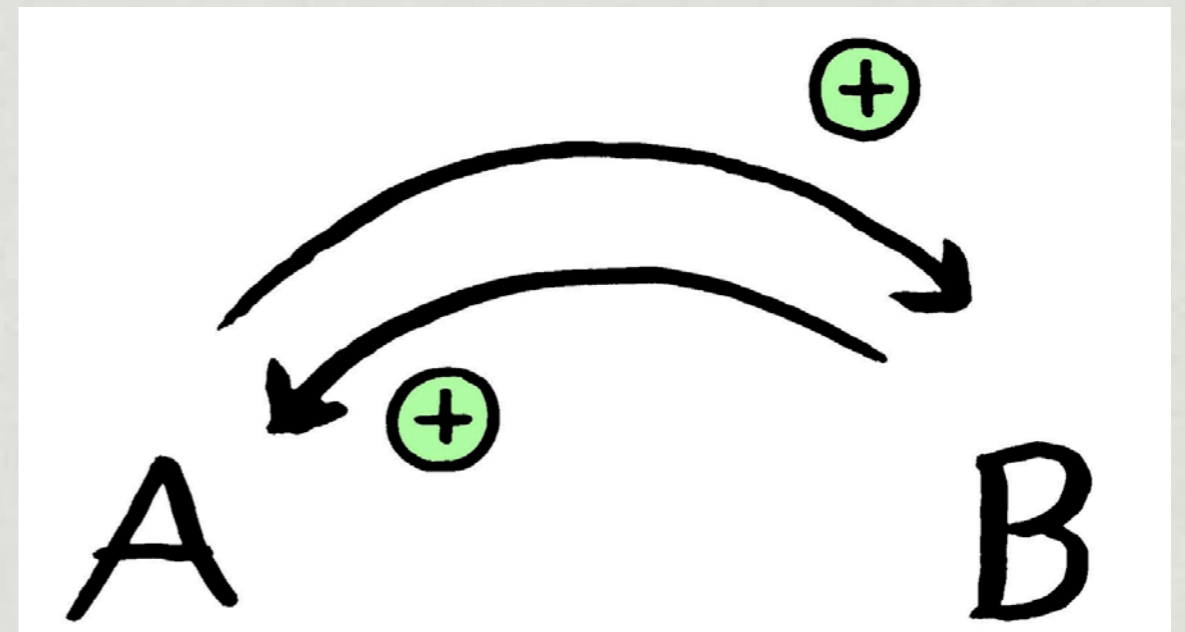


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Questions?

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