

## **REGULATION AND GOVERNANCE**

Regulation describes an array of public policies explicitly designed to govern economic activity and its consequences at the level of the industry or firm. This course will begin with a discussion of competing theoretical frameworks for understanding regulation and regulatory politics. After these introductory matters, we will turn to an examination of the history of economic regulation and the new social regulation. The rise of regulation will be examined in historical context, with a focus on the way in which the policies fit into larger policy regimes and were shaped by political coalitions and the administrative capacities of the state. We will begin with Progressive Era regulations (antitrust and railroads), examine the regulatory changes of the New Deal (commercial and investment banking, agriculture, and labor). We will then turn to the rise of the new social regulation in the 1960s and 1970s (environmental protection and occupational safety and health) before examining the deregulatory and regulatory reform efforts that began in the past three decades).

The second part of the course will turn to the subject of governance. Whereas traditional regulation involved the implementation of policies to shape the behavior of economic actors, governance focuses on discovering innovating solutions to regulatory problems by engaging a much larger field of forces (e.g., trade associations, standard setting associations, supply chains, markets) in addition to using standard policy instruments. After considering the theoretical justification for conceiving of regulation through the lens of governance, we will explore the transformation of regulation into governance through case studies of the nuclear industry and the chemical industry, and an extended examination of environmental policy.

The third part of the course will turn to a contemporary issue: the credit crisis. Finance is one of the most highly regulated sectors of the economy, and the recent financial crisis is arguably one of the greatest failures of regulation in the history of the Republic. We will collectively explore the complex regulatory labyrinth within which financial institutions operate, the areas where activities have been largely unregulated, and the effects—both intended and unintended—of policy are past reforms. We will conclude with a discussion of competing responses to the financial crisis.

### **Assigned readings:**

Eisner, *Regulatory Politics in Transition*. (Johns Hopkins University Press, 2000).  
Fiorino, *The New Environmental Regulation*. (The MIT Press, 2006).

### **Composition of the Grade:**

Midterm exam:	30 percent
Finance memo:	10 percent
Research paper:	30 percent
Final Exam:	30 percent

#### **The Midterm Exam (30%)**

The midterm exam will be given on March 4<sup>th</sup>. It will cover all readings and lectures through February 25<sup>th</sup>. The exam will consist of short answer identifications and will provide ample opportunity for choice. If you have a learning disability that requires additional time for the exam, the Dean must provide documentation prior to the exam period.

#### **The Finance Memo (10%)**

Each student is required to write a memo of no more than 3 pages single-spaced on one of the questions on financial regulation posted on Blackboard (a sign-up sheet distributed in class to avoid duplication). These memos are due via email attachment (Microsoft Word) no later than April 13<sup>th</sup>. Memos will be placed on Blackboard as pdf files and will be available to all members of the class as reference materials for the third part of the course.

#### **The Research Paper (30%)**

The research paper must engage a topic of core relevance to the course. A list of preapproved research topics will be posted on Blackboard. Other topics should be approved through consultation with the professor. The paper must employ some subset of the works assigned in the course, in addition to research conducted primarily for the assignment.

The research paper requirement has two components: a research paper prospectus, due on or before April 1<sup>st</sup>, and a research paper not to exceed 20 pages in length, due by the end of the day on May 4<sup>th</sup>. Both components must be submitted via email attachment (Microsoft Word).

The prospectus is an invaluable tool for writing a research paper. It must contain an introduction that establishes the thesis, purpose, and relevance of the project to the course. The body of the prospectus should summarize the key elements of your research (i.e., how you will support your thesis, claims, hypothesis). In addition, there must be an annotated bibliography with at least 4 sources (journal articles, book chapters, or books) not assigned in the course.

The research paper should not exceed 20 pages. The best papers will effectively develop a thesis and an argument, support the thesis by exploring relevant research on the topic, and exhibit a broad competence of the subject matter.

### **The Final Exam**

The final will be a take home exam. The question will be distributed during the final weeks of the semester and will be due on or before the date assigned for the final exam by the registrar.

### **COURSE POLICIES**

It is an expectation of the course that students will attend class regularly and arrive before the beginning of the period. If you anticipate that you will not be able to arrive at class as scheduled, you should reconsider your decision to take this course. Likewise, if you anticipate that you will not be able to meet the due dates (e.g., you have commitments to be absent during key periods of the semester) you are urged to reconsider your decision to take this course.

Incompletes and extensions will be allowed only in cases of serious and verifiable emergencies (e.g., serious illness, family emergency).

It is assumed that all students will familiarize themselves with what constitutes plagiarism under University policy and will abide by the provisions of the Honor Code.

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### **CONTACTS**

My office hours (317 PAC) are as follows:

Monday	1-3
Tuesday	9-10

Meetings outside of these periods must be arranged by appointment.

### **Electronic Communications**

Email is my preferred mode of communication ([meisner@wesleyan.edu](mailto:meisner@wesleyan.edu)). All emails should have the course number GOVT 222 in the header for filtering purposes. I hope to reply to all emails at the end of business on the day received. Emails that ask questions or request information that may be beneficial to the class will be circulated via email, albeit with the name of the original correspondent removed.

## COURSE SCHEDULE

1/21 **Course Introduction**

1/26-28 **Theories of Regulation**

Reading:

Eisner, Worsham, and Ringquist, *Contemporary Regulatory Policy*, 2<sup>nd</sup> ed., chapter 1 (Blackboard)

Eisner, *Regulatory Politics in Transition*, chapter 1.

Mary O. Furner, "From "State Interference" to the "Return of the Market": The Rhetoric of Economic Regulation from the Old Gilded Age to the New." Paper from Tobin Project Conference on Governments and Markets: Toward a New Theory of Regulation (2008). Blackboard

### I. The Evolution of Regulatory Policy in the United States

2/2-4 **The Progressive Era and the Market Regime**

Reading:

Eisner, *Regulatory Politics in Transition*, chapters 2-3.

Harry N. Scheiber, "Regulation, Property Rights, and Definition of 'The Market': Law and the American Economy." *The Journal of Economic History*, 41, 1 (1981): 103-109. [Download](#)

Richard L. McCormick, "The Discovery That Business Corrupts Politics: A Reappraisal of the Origins of Progressivism." *The American Historical Review*, 86, 2 (1981): 247-274. [Download](#)

George Bittlingmayer, "Antitrust and Business Activity: The First Quarter Century." *The Business History Review*, 70, 3 (1996): 363-401. [Download](#)

*Recommended:* Maury Klein, "Competition and Regulation: The Railroad Model." *The Business History Review*, 64, 2 (1990): 311-325. [Download](#)

2/9-11 **The New Deal and the Associational Regime**

Reading:

Eisner, *Regulatory Politics in Transition*, chapters 4-5

Ellis W. Hawley, "Herbert Hoover, the Commerce Secretariat, and the Vision of an "Associative State," 1921-1928." *The Journal of American History*, 61, 1 (1974): 116-140. [Download](#)

Theda Skocpol and Kenneth Finegold , “State Capacity and Economic Intervention in the Early New Deal.” *Political Science Quarterly*, 97, 2 (1982), pp. 255-278. [Download](#)

*Recommended:* Gregory Hooks , “From an Autonomous to a Captured State Agency: The Decline of the New Deal in Agriculture.” *American Sociological Review*, 55, 1 (1990): 29-43. [Download](#)

Thomas K. McCraw, “With Consent of the Governed: SEC's Formative Years.” *Journal of Policy Analysis and Management*,. 1, 3. (1982): 346-370. [Download](#)

*Recommended:* James Burk, “The Origins of Federal Securities Regulation: A Case Study in the Social Control of Finance.” *Social Forces*, 63, 4 (1985): 1010-1029. [Download](#)

Michael Goldfield, “Worker Insurgency, Radical Organization, and New Deal Labor Legislation.” *The American Political Science Review*, 83, 4 (1989): 1257-1282. [Download](#)

*Recommended:* Theda Skocpol, Kenneth Finegold, and Michael Goldfield, “Explaining New Deal Labor Policy.” *The American Political Science Review*, 84, 4 (1990): 1297-1315. [Download](#)

## 2/16-18            **The Societal Regime and the New Social Regulation**

### Reading:

Eisner, *Regulatory Politics in Transition*, chapters 6-7

Anthony Downs, “Up and Down With Ecology: The ‘Issue-Attention Cycle’.” *The Public Interest*, 28 (1972), pp. 38-50. [Download](#)

R. Shep Melnick, “Strange Bedfellows Make Normal Politics: An Essay.” *Duke Environmental Law and Policy Forum*, 9, (1998): 75-94. [Download](#)

Bruce A. Ackerman and Richard B. Stewart, “Reforming Environmental Law.” *Stanford Law Review*, 37, 5 (1985): 1333-1365. [Download](#)

## 2/23-25            **Deregulation, Reform, and the Efficiency Regime**

### Reading:

Eisner, *Regulatory Politics in Transition*, chapter 8

Robert V. Percival, “Checks without Balance: Executive Office Oversight of the Environmental Protection Agency.” *Law and Contemporary Problems*, 54, 4 (1991):127-204. [Download](#)

W. Kip Viscusi , “Regulating the Regulators.” *The University of Chicago Law Review*, 63, 4 (1996): 1423-1461. [Download](#)

Frank Ackerman and Lisa Heinzerling, “Pricing the Priceless: Cost-Benefit Analysis of Health, Safety, and Environmental Protection.” Georgetown Environmental Law and Policy Institute (2002). [Download](#)

3/2                    **Summary , Part I**

3/4                    **Midterm Exam, in class**

## **II. Governance**

3/23-25                    **Theoretical Foundations**

Reading:

Marc Allen Eisner, “Markets in the Shadow of the State: An Appraisal of Deregulation and Implications for Future Research.” Paper from Tobin Project Conference on Governments and Markets: Toward a New Theory of Regulation (2008). Blackboard.

John L. Campbell and Leon N. Lindberg, “Property Rights and the Organization of Economic Activity by the State.” *American Sociological Review*, 55, 5 (1990): 634-647. [Download](#)

Neil Gunningham and Joseph Rees, “Industry Self-Regulation: An Institutional Perspective.” *Law & Policy*, 19, 4 (1997): 363-414. [Download](#)

Edward Balleisen, “The Prospects for Effective “Co-Regulation” in the United States: An Historian’s View from the Early Twenty-First Century.” An essay submitted to Cambridge University Press for the edited volume, *Government and Markets: Toward a New Theory of Economic Regulation* (2008). Blackboard.

Cary Coglianese and David Lazer. “Management-Based Regulation: Prescribing Private Management to Achieve Public Goals.” *Law & Society Review*, 37, 4 (2003): pp. 691-730. [Download](#)

3/30                    **Case Study: Nuclear Energy**

Reading:

Lee Clarke, “The Origins of Nuclear Power: A Case of Institutional Conflict.” *Social Problems*, 32, 5 (1985): 474-487. [Download](#)

F. R. Mynatt, “Nuclear Reactor Safety Research since Three Mile Island.” *Science*, 216, 4542 (1982):131-135. [Download](#)

James R. Temples, "The Nuclear Regulatory Commission and the Politics of Regulatory Reform: Since Three Mile Island." *Public Administration Review*, 42, 4 (1982): 355-362. [Download](#)

Jack N. Barkenbus, "Is Self-Regulation Possible?" *Journal of Policy Analysis and Management*, 2, 4 (1983): 576-588. [Download](#)

Todd R. La Porte and Craig W. Thomas, "Regulatory Compliance and the Ethos of Quality Enhancement: Surprises in Nuclear Power Plant Operations." *Journal of Public Administration Research and Theory: J-PART*, 5, 1 (1995): 109-137. [Download](#)

#### 4/1 **Case Study: Chemical Safety**

##### Reading:

I. Peterson, "After Bhopal: Tracing Causes and Effects." *Science News*, 127, 13 (1985): 196-197. [Download](#)

Gary E. R. Hook, "Responsible Care and Credibility." *Environmental Health Perspectives*, 104, 11 (1996): 1138-1139. [Download](#)

Joseph Rees, "Development of Communitarian Regulation in the Chemical Industry." *Law and Policy*, 19, 4 (1997): 477-528. [Download](#)

Andrew J. Hoffman, "Institutional Evolution and Change: Environmentalism and the U.S. Chemical Industry." *The Academy of Management Journal*, 42, N4 (1999): 351-371. [Download](#)

Andrew A. King and Michael J. Lenox, "Industry Self-Regulation without Sanctions: The Chemical Industry's Responsible Care Program." *The Academy of Management Journal*, 43, 4 (2000): 698-716. [Download](#)

Ernie Hood, "Lessons Learned? Chemical Plant Safety Since Bhopal." *Environmental Health Perspectives*, 112, 6 (2004): A353-A359. [Download](#)

#### 4/6-15 **The Transformation of Environmental Protection**

##### Reading:

Fiorino, *The New Environmental Protection* (entire)

Neil Gunningham and Darren Sinclair, "Integrative Regulation: A Principle-Based Approach to Environmental Policy." *Law & Social Inquiry*, 24, 4. (1999): 853-896. [Download](#)

Matthew Potoski and Aseem Prakash, "Green Clubs and Voluntary Governance: ISO 14001 and Firms' Regulatory Compliance." *American Journal of Political Science*, 49, 2. (2005): 235-248. [Download](#)

### **III. Diagnosing Regulatory Failure, Identifying Alternatives (4/20-29)**

During this section of the course, we will be working to understand the origins of the current financial crisis and examining alternatives. All memos are due via email attachment by 13 April. They will be posted on Blackboard for circulation and will be considered assigned readings.

There is a wealth of useful material on the origins and ramifications of the financial crisis (as well as the possible avenues for reform). Undoubtedly additional material will become available over the course of the semester.

#### **Overview of the causes of the crisis:**

##### Reading:

Martin Neil Baily, Robert E. Litan, and Matthew S. Johnson, "The Origins of the Financial Crisis." *Fixing Finance Series*, Paper 3. The Brookings Institution, November 2008. [Download](#)

Barry Eichengreen, "Anatomy of a Financial Crisis." September 18, 2008. [Download](#)

*Recommended:* Barry Eichengreen, "Thirteen Questions about the Subprime Crisis." Paper from Tobin Project Conference on Governments and Markets: Toward a New Theory of Regulation (2008). Blackboard (More complicated treatment)

A series of articles was published in the New York Times during the fall and winter of 2008. Read these in order; they tell a fascinating story.

Gretchen Morgenson, "Behind Insurer's Crisis, Blind Eye to a Web of Risk." *The New York Times*, September 27, 2008. [Download](#)

Joe Nocera, "As Credit Crisis Spiraled, Alarm Led to Action." *The New York Times*, October 1, 2008. [Download](#)

Stephen Labaton, "Agency's '04 Rule Let Banks Pile Up New Debt." *The New York Times*, October 2, 2008. [Download](#)

Charles Duhigg, "Pressured to Take More Risk, Fannie Reached Tipping Point." *The New York Times*, October 4, 2008. [Download](#)

Peter S. Goodman, "Taking Hard New Look at a Greenspan Legacy." *The New York Times*, October 8, 2008. [Download](#)

David Streitfeld and Gretchen Morgenson, "Building Flawed American Dreams."

*The New York Times*, October 18, 2008. [Download](#)

Joe Nocera and Edmund L. Andrews, “Struggling to Keep Up as the Crisis Raced On.” *The New York Times*, October 22, 2008. [Download](#)

Charles Duhigg and Carter Dougherty, “From Midwest to M.T.A., Pain From Global Gamble.” *The New York Times*, November 1, 2008. [Download](#)

Gretchen Morgenson, “How the Thundering Herd Faltered and Fell.” *The New York Times*, November 8, 2008. [Download](#)

Eric Lipton and Stephen Labaton, “Deregulator Looks Back, Unswayed.” *The New York Times*, November 16, 2008. [Download](#)

Eric Dash and Julie Creswell, “Citigroup Saw No Red Flags Even as It Made Bolder Bets.” *The New York Times*, November 22, 2008. [Download](#)

Gretchen Morgenson, “Debt Watchdogs: Tamed or Caught Napping?” *The New York Times*, December 6, 2008. [Download](#)

Eric Lipton and Raymond Hernandez, “A Champion of Wall Street Reaps Benefits.” *The New York Times*, December 13, 2008. [Download](#)

Louise Story, “On Wall Street, Bonuses, Not Profits, Were Real.” *The New York Times*, December 17, 2008. [Download](#)

Vikas Bajaj and David Leonhardt, “Tax Break May Have Helped Cause Housing Bubble.” *The New York Times*, December 18, 2008. [Download](#)

Jo Becker, Sheryl Gay Stolberg, and Stephen Labaton, “White House Philosophy Stoked Mortgage Bonfire.” *The New York Times*, December 20, 2008. [Download](#)

Michael Moss and Geraldine Fabrikant, “Once Trusted Mortgage Pioneers, Now Scrutinized .” *The New York Times*, December 24, 2008. [Download](#)

Mark Landler, “Chinese Savings Helped Inflate American Bubble.” *The New York Times*, December 26, 2008. [Download](#)

Peter S. Goodman and Gretchen Morgenson, “Saying Yes, WaMu Built Empire on Shaky Loans.” *The New York Times*, December 27, 2008. [Download](#)

There are a number of possible avenues for reform. Here is a representative sample. Additional proposals may be distributed over the course of the semester

#### Broad regulatory reform proposals

Christopher Cox, "Testimony Concerning the Role of Federal Regulators: Lessons from the Credit Crisis for the Future of Regulation." Christopher Cox, Chairman, U.S. Securities and Exchange Commission, Before the Committee on Oversight and Government Reform, United States House of Representatives, October 23, 2008. [Download](#)

Martin Neil Baily and Robert E. Litan, "A Brief Guide to Fixing Finance." *Fixing Finance Series*, Paper 1. The Brookings Institution, September 2008. [Download](#)

#### Market-based Reforms

Craig Pirrong, "The Clearing House Cure" and Dwight M. Jaffee "Reforming Freddie and Fannie." *Regulation*, 31, 4 (Winter 2008). [Download](#)

#### Consumer Protection Reforms

Elizabeth Warren, "Redesigning Regulation: A Case Study from the Consumer Credit Market." Paper from Tobin Project Conference on Governments and Markets: Toward a New Theory of Regulation (2008). Blackboard

#### International Regulation and Coordination

Barry Eichengreen, "The Global Credit Crisis as History." December 2008. [Download](#)

#### **5/4 Course Conclusion**