

REGULATION AND GOVERNANCE

Course Description: 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 half of the course will turn to a number of important topics. First, we will examine 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., various nongovernmental organizations, trade associations, standard setting associations, supply chains, markets) in addition to using standard policy instruments. Second, we will explore environmental regulation, an area in which technological standards and command-and-control models of regulation have been replaced or supplemented with a host of novel regulatory instruments and governance arrangements. Third, we will consider the financial collapse of 2008, arguably the greatest regulatory failure in US history. The course will conclude with a discussion of the future of regulation.

Readings: The course readings for GOVT 222 are available as electronic documents, through JSTOR, online, or on the Moodle course page. Some of the readings may change over the course of the semester, but all changes will be announced in advance. Since all of the readings are downloads, you should save the syllabus as an electronic document on your computer, so you can use the embedded hyperlinks.

Meeting Times: GOVT 222 meets Mondays and Wednesdays from 8:30 a.m. to 9:50 a.m. in PAC 004.

Composition of Grade:

Participation	10%
Analytical essays	30%
Midterm exam	30%
Final Exam	30%

Participation: It is expected that all students will arrive before the beginning of class and remain until the end of class (excessive absences will be noted). If you anticipate that you will not be able to arrive at class as scheduled, you should reconsider your decision to take this course. More importantly, it is expected that students will come to class having read and reflected on the assigned readings. Mastery of the course materials as demonstrated in class discussions and weekly postings on the Moodle forum/discussion board will be a central part of the participation component of the grade.

Analytical Essays: Participants in GOVT 222 will be required to submit a critical essay on three occasions responding to a question on the readings. The essays, not exceed 5 pages (12 pt font, double spaced), must be submitted as email attachments (Word or rtf formats). Grades will be based on exhibited mastery of material and quality of argumentation.

Exams: The midterm exam will be administered in class on March 2. The final will be administered at the date assigned by the registrar.

Students with Disabilities: It is the policy of Wesleyan University to provide reasonable accommodations to students with documented disabilities. Students, however, are responsible for registering with Disabilities Services, in addition to making requests known to me in a timely manner. If you require accommodations in this class, please make an appointment with me as soon as possible so that appropriate arrangements can be made. The procedures for registering with Disabilities Services can be found at <http://www.wesleyan.edu/deans/disability-students.html>.

Course Policies: Incompletes and extensions will be allowed only in cases of serious emergencies (e.g., serious illness, family emergency, verified through communication by your dean).

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.

Contacts: My office hours (317 PAC) are 9 a.m. – 12 p.m., Tuesdays.

Meetings outside of these periods must be arranged by appointment. Email is my preferred mode of communication (meisner@wesleyan.edu).

Course Schedule: Spring Semester 2011

1/24-26: Theories of Regulation and Regulatory Design

Readings:

Eisner, Worsham, and Ringquist, *Contemporary Regulatory Policy*, 2nd ed., chapter 1. Moodle

Garrett Hardin, "The Tragedy of the Commons." *Science*, 162, 3859 (1968): 1243-48. [Download](#).

Richard O. Zerbe Jr. and Howard E. McCurdy, "The Failure of Market Failure." *Journal of Policy Analysis and Management*, 18, 4 (1999): 558- 578. [Download](#)

George J. Stigler, "The Theory of Economic Regulation." *The Bell Journal of Economics and Management Science*, 2, 1 (1971): 3-21. [Download](#)

Randy T. Simmons, Ryan M. Yonk, and Diana W. Thomas, "Bootleggers, Baptists, and Political Entrepreneurs: Key Players in the Rational Game and Morality Play of Regulatory Politics." *The Independent Review*, 15, 3 (2011): 367–381. [Download](#).

Joseph Stiglitz, "Regulation and Failure." In *New Perspectives on Regulation*, ed. David Moss and John Cisternino. (Cambridge: The Tobin Project, 2009), pp. 11-24. [Download](#)

Neil Gunningham and Darren Sinclair, "Designing Smart Regulation." Moodle

Robert A. Kagan, "Adversarial Legalism and American Government." *Journal of Policy Analysis and Management*, 10, 3 (1991): 369-406. [Download](#)

Supplemental:

Ronald H. Coase, "The Problem of Social Costs." *Journal of Law and Economics*, 3 (1960): 1-44 [Download](#)

Richard R. Nelson, "Roles of Government in a Mixed Economy." *Journal of Policy Analysis and Management*, 6,4 (1987): 541-57. [Download](#)

Barry Bozeman, "Public-Value Failure: When Efficient Markets May Not Do." *Public Administration Review*, 62, 2 (2002): 145-61. [Download](#)

Brian J. Gerber and Paul Teske, "Regulatory Policymaking in the American

States: A Review of Theories and Evidence.” *Political Research Quarterly*, 53, 4 (2000): 849-86. [Download](#)

I. The Evolution of Regulatory Policy in the United States

1/31-2/2: The Progressive Era and the Birth of the Regulatory State

Reading:

Marc Allen Eisner, *Regulatory Politics in Transition*. (Baltimore: Johns Hopkins University Press, 1993) chapters 1-2. Moodle

Robert L. Rabin, “Federal Regulation in Historical Perspective.” *Stanford Law Review*, 38, 5 (1986):1189-1326. [Download](#). Read pp. 1189-1236.

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](#)

Frank Dobbin and Timothy J. Dowd, “The Market That Antitrust Built: Public Policy, Private Coercion, and Railroad Acquisitions, 1825 to 1922.” *American Sociological Review*, 65, 5 (2000): 631-657. [Download](#)

Supplemental:

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](#)

Eugene Nelson White, “The Political Economy of Banking Regulation, 1864-1933.” *The Journal of Economic History*, 42, 1 (1982): 33-40. [Download](#)

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

2/7-2/9: New Deal Regulation

Reading:

Eisner, *Regulatory Politics in Transition*, chapter 4. Moodle

Robert L. Rabin, "Federal Regulation in Historical Perspective." *Stanford Law Review*, 38, 5 (1986):1189-1326. [Download](#). Read pp. 1236-72.

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](#)

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

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

Supplemental:

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](#)

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](#)

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

2/14-2/16: The New Social Regulation

Reading:

Eisner, *Regulatory Politics in Transition*, chapter 6. Moodle

Robert L. Rabin, "Federal Regulation in Historical Perspective." *Stanford Law Review*, 38, 5 (1986):1189-1326. [Download](#). Read pp. 1272-1315.

David Vogel, "The Public-Interest Movement and the American Reform Tradition." *Political Science Quarterly*, 95, 4 (1980-1981): 607-627. [Download](#)

Andrew Szasz, "Industrial Resistance to Occupational Safety and Health Legislation: 1971-1981." *Social Problems*, 32, 2 (1984): 103-116. [Download](#)

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](#)

Supplemental:

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

Murray L. Weidenbaum, "The Changing Nature of Government Regulation of Business." *Journal of Post Keynesian Economics*, 2, 3 (1980): 345-357.
[Download](#)

2/21-2/23: Deregulation and Regulatory Reform

Reading:

Eisner, *Regulatory Politics in Transition*, chapter 8. Moodle

Richard H. K. Vietor, "Contrived Competition: Airline Regulation and Deregulation, 1925-1988." *The Business History Review*, 64, 1 (1990): 61-108.
[Download](#)

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](#)

2/28: Summa Part I

3/2: Midterm Exam in Class

BREAK

II. From Regulation to Governance

3/21-23 Self-regulation, co-regulation, and governance

Reading:

John Braithwaite, "Enforced Self-Regulation: A New Strategy for Corporate Crime Control." *Michigan Law Review*, 80, 7 (June 1982):1466-1507. [Download](#)

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

Michael J. Lennox and Jennifer Nash, "Industry Self-Regulation and Adverse Selection: A Comparison Across Four Trade Association Programs." *Business Strategy and the Environment*, 12 (2003): 343-356. [Download](#)

Ian Bartle and Peter Vass, "Self-Regulation within the Regulatory State: Towards a New Regulatory Paradigm?" *Public Administration*, 85, 4 (2007): 885–905. [Download](#)

Edward J. Balleisen and Marc Eisner, "The Promises and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose." In *New Perspectives on Regulation*, ed. David Moss and John Cisternino. (Cambridge: The Tobin Project, 2009), 127-50. [Download.](#)

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](#)

Supplemental:

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 Fligstein, "Markets as Politics: A Political-Cultural Approach to Market Institutions." *American Sociological Review*, Vol. 61, No. 4. (Aug., 1996), pp. 656-673. [Download](#)

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

3/28: Regulatory Capitalism

David Levi-Faur, "The Global Diffusion of Regulatory Capitalism." *Annals of the American Academy of Political and Social Science*, Vol. 598, The Rise of Regulatory Capitalism: The Global Diffusion of a New Order (2005): 12-32.

[Download](#)

Per-Olof Busch, Helge Jörgens, Kerstin Tews, "The Global Diffusion of Regulatory Instruments: The Making of a New International Environmental Regime." *Annals of the American Academy of Political and Social Science*, Vol. 598, The Rise of Regulatory Capitalism: The Global Diffusion of a New Order (2005): 146-67. [Download](#)

David Lazer, "Regulatory Capitalism as a Networked Order: The International System as an Informational Network." *Annals of the American Academy of Political and Social Science*, Vol. 598, The Rise of Regulatory Capitalism: The Global Diffusion of a New Order (2005): 52-66. [Download](#)

Supplemental:

Daniel W. Drezner, "Globalization and Policy Convergence." *International Studies Review*, 3,1 (2001): 53-78. [Download](#)

Claudio M. Radaelli, "The Puzzle of Regulatory Competition." *Journal of Public Policy*, 24, 1 (2004): 1-23. [Download](#)

Tim Bartley, "Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions." *The American Journal of Sociology*, 113, 2 (2007): 297-351. [Download](#)

Covadonga Meseguer, "What Role for Learning? The Diffusion of Privatisation in OECD and Latin American Countries." *Journal of Public Policy*, 24, 3 (2004): 299-325. [Download](#)

3/30: From Regulation to Governance: Nuclear Energy and Chemicals

Reading:

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

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](#)

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

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

Supplemental:

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

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

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

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

III. Case Studies

A. Environmental Protection

4/4: Overview of Environmental Protection Regulation

Readings:

Cary Coglianese, "Social Movements, Law, and Society: The Institutionalization of the Environmental Movement." *University of Pennsylvania Law Review*, 150, 1 (2001): 85-118. [Download](#)

Alfred A. Marcus, "EPA's Organizational Structure." *Law and Contemporary*

Problems, 54, 4 (1991): 5-40. [Download](#)

Robert W. Hahn, "Economic Prescriptions for Environmental Problems: How the Patient Followed the Doctor's Orders." *The Journal of Economic Perspectives*, 3, 2. (1989):95-114. [Download](#)

Environmental Protection Agency, *2008 Report on the Environment: Highlights of National Trends*. [Download](#)

Supplemental:

Marc Allen Eisner, *Governing the Environment: The Transformation of Environmental Protection* (Boulder: Lynne Rienner, 2007), chapters 2-4. Moodle

4/6: Reinventing Regulation and Regulatory Design

Readings:

Daniel J. Fiorino, "Environmental Policy As Learning: A New View of an Old Landscape." *Public Administration Review*, 61, 3 (2001): 322-334. [Download](#)

Bill Clinton and Al Gore, *Reinventing Environmental Regulation* (1995).
[Download](#)

Nicole Darnall and Joann Carmin, "Greener and Cleaner? The Signaling Accuracy of U.S. Voluntary Environmental Programs." *Policy Sciences*, 38, 2/3 (2005): 71-90. [Download](#)

Marc Allen Eisner, "Corporate Environmentalism, Regulatory Reform, and Industry Self-Regulation: Toward Genuine Regulatory Reinvention in the United States." *Governance*, 17, 2 (2004): 145-67. [Download](#)

Supplemental:

Ronald C. Moe, "The "Reinventing Government" Exercise: Misinterpreting the Problem, Misjudging the Consequences." *Public Administration Review*, 54, 2. (1994): 111-122. [Download](#)

Patrick Parenteau, "Anything Industry Wants: Environmental Policy Under Bush II" *Duke Environmental Law and Policy Forum*, 14 (2004): 363-405. [Download](#)

Madhu Khanna and William Rose Q. Anton, "Corporate Environmental Management: Regulatory and Market-Based Incentives." *Land Economics*, 78, 4 (2002),: 539-558. [Download](#)

Allen Blackman and Janice Mazurek, The Cost of Developing Site-Specific Environmental Regulations: Evidence from EPA's Project XL. Resources for the Future, Discussion Paper 99-35-REV (2000). [Download](#)

Shameek Konar and Mark A. Cohen, "Does the Market Value Environmental Performance?" *The Review of Economics and Statistics*, 83, 2 (2001): 281-289. [Download](#)

4/11: **Standards-Based Self-Regulation: ISO 14001**

Reading:

Neil Gunningham, Robert A. Kagan and Dorothy Thornton, "Social License and Environmental Protection: Why Businesses Go beyond Compliance." *Law & Social Inquiry*, 29, 2 (2004), pp. 307-341. [Download](#)

Matthew Potoski and Aseem Prakash, "Regulatory Convergence in Nongovernmental Regimes? Cross-National Adoption of ISO 14001 Certifications." *The Journal of Politics*, 66, 3 (2004): 885-905. [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](#)

Supplemental:

Matthew Potoski and Aseem Prakash, "The Regulation Dilemma: Cooperation and Conflict in Environmental Governance." *Public Administration Review*, 64, 2 (2004): 152-163. [Download](#)

Petra Christmann and Glen Taylor, "Globalization and the Environment: Determinants of Firm Self-Regulation in China." *Journal of International Business Studies*, 32, 3 (2001): 439-458. [Download](#)

4/13-18: **Ozone and Carbon: Domestic Constraints and the Global Commons**

Readings:

Peter M. Morrisette, "The Evolution of Policy Responses to Stratospheric Ozone Depletion." *Natural Resources Journal*, 29(1989): 793-820. [Download](#)

Guus J. M. Velders, Stephen O. Andersen, John S. Daniel, David W. Fahey and Mack McFarland, "The Importance of the Montreal Protocol in Protecting

Climate.” *Proceedings of the National Academy of Sciences of the United States of America*, 104, 12 (2007): 4814-19. [Download](#)

Glen Sussman, “The USA and Global Environmental Policy: Domestic Constraints on Effective Leadership.” *International Political Science Review / Revue internationale de science politique*, 25, 4 (2004): 349-369. [Download](#)

William D. Nordhaus, “After Kyoto: Alternative Mechanisms to Control Global Warming.” *The American Economic Review*, 96, 2 (2006): 31-34. [Download](#)

Government Accountability Office, *Climate Change: Expert Opinion on the Economics of Policy Options to Address Climate Change*. GAO-08-605 (May 2008). [Download](#)

Supplemental:

Bruce Yandle, Madhusudan Bhattarai, and Maya Vijayaraghavan, “Environmental Kuznets Curves: A Review of Findings, Methods, and Policy Implications.” *PERC Research Study 02-1* (2004) [Download](#)

Bruce Yandle, “Grasping For The Heavens: 3-D Property Rights and the Global Commons.” *Duke Environmental Law and Policy Forum*, 10 (1999): 13-44 [Download](#)

Matthew C. Nisbet and Teresa Myers, “Trends: Twenty Years of Public Opinion about Global Warming.” *The Public Opinion Quarterly*, 71, 3 (2007): 444-470. [Download](#)

David G. Victor, *Climate Change: Debating America's Policy Options*. Moodle

B. Financial Regulation and the Global Financial Crisis

4/20: Financial Regulation and Deregulation

Readings:

Robert Craig West, “The Evolution and Devolution of Bank Regulation in the United States.” *Journal of Economic Issues*, 17, 2 (1983): 361-367. [Download](#)

Thomas H. Hammond and Jack H. Knott, “The Deregulatory Snowball: Explaining Deregulation in the Financial Industry.” *The Journal of Politics*, 50, 1 (1988): 3-30. [Download](#)

Paul Peretz and Jean Reith Schroedel, “Financial Regulation in the United States:

Lessons from History.” *Public Administration Review*, 69, 4 (2009): 603-612.
[Download](#)

4/25-27: **The Financial Crisis: Beyond Failed Regulation**

Readings:

Roger D. Congleton, “On the Political Economy of the Financial Crisis and Bailout of 2008.” *Public Choice*, 140 (2009): 287-317. [Download](#)

Mark Carl Rom, “The Credit Rating Agencies and the Subprime Mess: Greedy, Ignorant, and Stressed?” *Public Administration Review*, 69, 4 (2009): 640-650.
[Download](#)

J. Kevin Corder, “The Federal Reserve System and the Credit Crisis.” *Public Administration Review*, 69, 4 (2009): 623-631. [Download](#)

Gary Gorton, “Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007.” Paper prepared for the Federal Reserve Bank of Atlanta’s 2009 Financial Markets Conference: Financial Innovation and Crisis, May 11-13, 2009.
[Download](#)

Douglas J. Elliott , “Some Thoughts on U.S. Financial Reforms.” Brookings Institution, December 1, 2010. [Download](#)

Fred Block, “Crisis and Renewal: The Outlines of a Twenty-First Century New Deal.” *Socio-Economic Review*, 9 (2011): 31–57. [Download](#)

IV. Conclusions

5/2: **The Future of Regulation and Governance The soft law, hard law divide**

Readings: TBA

5/4: **Course Conclusion**