

Perspectives on Regulation

Law 289; George Mason University School of Law; Fall 2009
Prof. Jeffrey Eisenach – 202-448-9029 – jeisenach@empiris.com

Description

This course introduces students to regulatory institutions and the law and economics of regulatory policy and institutions. With this foundation, students will examine current or proposed regulations and the costs, benefits, and incentives they create.

Grades

Each student will be required to write two research papers. Each paper will constitute 40% of the final grade. The remaining 20% of the grade will be based on class attendance and participation.

- Paper I: Economic analysis of government regulation traditionally has been based on neoclassical theories of consumer preferences and decision making. Recently, this approach has been challenged based on theories associated with behavioral economics, which suggest consumers are not always economically “rational.” In a 20-page, double-spaced paper, discuss the implications of behavioral economics for the economic analysis of government regulation. **Due October 28.**
- Paper II: Your firm has been retained to file comments on behalf of a client in a major regulatory proceeding currently underway at a Federal regulatory agency. Prepare a 15-20 page, double-spaced filing presenting the primary economic/policy arguments for (or against) the proposed regulatory action. Topic proposals due **November 4** (by email); papers due **December 2.**

Text and Other Materials

Students should purchase Thomas McCraw, *Prophets of Regulation* (Cambridge, MA: Belknap Press, 1984). Other materials will be provided online at the TWEN website for the course or are available through JSTORS. Materials marked with an asterisk (“*”) are “recommended.” The remainder should be considered “required.”

Course Outline and Readings

Week 1 (August 26): Class Introduction and Overview

Week 2 (September 2): The Progressive Movement and the Roots of Modern Regulation

- McCraw, pp. 1-142
- Frederick W. Taylor, *The Principles of Scientific Management* (New York: Harper & Brothers Publishers, 1911), (Chapter 1, pp. 5-29) (available online at <http://books.google.com/books?id=5ek4cYPdndYC&pg=PA30&dq=%22principles+of+scientific+management%22+1911#PPA9,M1>)

Week 3 (September 9): Roots of Modern Regulation, Continued

- McCraw, pp. 143-221.

- Ronald C. Moe, Reorganizing the Executive Branch in the Twentieth Century: Landmark Commissions (Washington, DC: Congressional Research Service, March 19, 1992).*
- Arthur M. Schlesinger, Jr., The Coming of the New Deal (Boston: Houghton Mifflin Company, 1958), (Chapter 11, pp. 179-194).*
- Joan Hoff Wilson, Herbert Hoover: Forgotten Progressive (Boston: Little, Brown & Company, 1975) (Chapter 4, pp. 79-121).*

Week 4 (September 16): Law and Economics of Regulation

- Sam Peltzman, "Toward a General Theory of Regulation," *Journal of Law and Economics* 19 (August 1976), 211.
- Richard A. Posner, "'Theories of Economic Regulation,'" *Bell Journal of Economics & Management Science* 5 (1974), 155.
- George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics & Management Science* 2 (1971), 3-21.
- Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies and Theft," *Western Economic Journal* (1967), 224-232.
- James Q. Wilson, *Bureaucracy* (New York: Basic Books, 1989), Chs. 5, 9.*

Week 5 (September 23): Economic Regulation

- Harold Demsetz, "Why Regulate Utilities?" *Journal of Law and Economics* 11;1 (April 1968), 55-65.
- Charles H. Fine & John M. de Figueiredo, "Can We Avoid Repeating the Mistakes of the Past in Telecommunications Regulatory Reform?" 5 (MIT Communications Futures Program, Working Paper No. 2005-001, 2005) (Available online at http://cfc.convio.net/documents/Telecoms_MIT_final.pdf)

Week 6 (September 30): Economic Regulation (Continued)

- Harold Demsetz, "Why Regulate Utilities?" *Journal of Law and Economics* 11;1 (April 1968), 55-65.
- Charles H. Fine & John M. de Figueiredo, "Can We Avoid Repeating the Mistakes of the Past in Telecommunications Regulatory Reform?" 5 (MIT Communications Futures Program, Working Paper No. 2005-001, 2005) (Available online at http://cfc.convio.net/documents/Telecoms_MIT_final.pdf)

Week 7 (October 8): Social Regulation – Externalities and Public Goods

- Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics* (October 1960)
- Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (2008)*

Week 8 (October 14): The Role of the Office of Information and Regulatory Affairs

- OMB Circular A-4
- Susan Dudley, *Primer on Regulation* (December 2005) (available at http://www.mercatus.org/uploadedFiles/Mercatus/Publications/20060510_Primer_on_Regulation_Dudley_Dec_2005_Final_as_Posted.pdf)

- Mark Seidenfeld, "A Big Picture Approach to Presidential Influence on Agency Decision-Making," 80 Iowa L. Rev. 1 (1994-95).*

Week 9 (October 21): The Economics of Global Warming

- Readings TBA

Week 10 (October 28): Federal Communications Commission I: The 1996 Telecom Act and Its Implementation

- Federal Communications Commission, *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, FCC 04-290 (February 4, 2005).*
- Federal Communications Commission, *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking*, FCC 05-150 (September 23, 2005).*
- *U.S. TELECOM ASS'N v. F.C.C.* (359 F.3d 554 (D.C. Cir. 2004))
- Jerry A. Hausman and Gregory J. Sidak, "A Consumer-Welfare Approach to the Mandatory Unbundling of Telecommunications Networks" *Yale Law Journal* 109; 3, (December 1999) 417-505 (Available at SSRN: <http://ssrn.com/abstract=205670>)*
- Howard A. Shelanski, "Adjusting Regulation to Competition: Toward a New Model for U.S. Telecommunications Policy," 24 *Yale Journal on Regulation* 55-105 (Winter 2007) (available online at www.law.berkeley.edu/institutes/bclt/pubs/shelanski/Shelanski_TelecomReg&Competition_FINAL.pdf)

Week 11 (November 4): Federal Communications Commission II: "Net Neutrality"

- Robert W. Hahn, Robert E. Litan and Hal J. Singer, "The Economics of 'Wireless Net Neutrality'" (April 2007). AEI-Brookings Joint Center Working Paper No. RP07-10 (Available at <http://ssrn.com/abstract=983111>)
- Gregory J. Sidak, "A Consumer-Welfare Approach to Network Neutrality Regulation of the Internet," *Journal of Competition Law and Economics* 2; 3, pp., (September 2006), 349-474 (Available at <http://ssrn.com/abstract=928582>)*
- Tim Wu, "Network Neutrality, Broadband Discrimination," *Journal of Telecommunications and High Technology Law* 2 (2003), 141. (Available at <http://ssrn.com/abstract=388863>)
- Tim Wu, "Wireless Net Neutrality: Cellular Carterfone on Mobile Networks," New America Foundation Wireless Future Program Working Paper No. 17, Feb. 2007 (Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=962027&high=%20net%20neutrality)
- Federal Trade Commission, *Broadband Connectivity and Competition Policy*, FTC Staff Report, June 2007 (available online at www.ftc.gov/reports/broadband/v070000report.pdf)*

Week 12 (November 11): ICANN – Governing the Internet

- Readings TBA

Week 13 (November 18): The Federal Trade Commission

- Federal Trade Commission, *Fulfilling the Original Vision: The FTC at 90* (April 2004) (available at <http://www.ftc.gov/os/2004/04/040402abafinal.pdf>)
- George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *The Quarterly Journal of Economics* 84;3 (Aug. 1970), 488-500.

- Howard Beales, Richard Craswell and Steven C. Salop, “The Efficient Regulation of Consumer Information,” *Journal of Law and Economics* 24 (December 1981) 491-539.

Week 14 (November 25): No Class/Thanksgiving Break

Week 15 (December 2): Review and Discussion

- McCraw, 300-310