The U.S Regulatory System
The Philosophical and Political Basis

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Agenda

- Philosophical underpinnings of US regulatory policy & process
- Changing role of regulation in the US
- Case studies of regulatory change
  - Economic regulation
  - Social regulation
- US regulatory process & policy today
- Stories!
  - OIRA Administrator
  - Interaction between WH, Agencies, Congress, Courts
Establish Justice,

Insure domestic Tranquility,

Provide for the common defence,

Promote the general Welfare,

Secure the Blessings of Liberty to ourselves and our Posterity

The U.S. Constitution, September 17, 1787
Regulatory Philosophy

- “Justice”
  - Transparent & accountable
  - Administrative Procedure Act
  - Recourse for affected parties

- “General Welfare”
  - “Public interest” vs. special interest
  - Role of analysis to define “public interest”

- “Blessings of Liberty”
  - Value freedom & diversity
  - Role for market forces
  - Non¬-enumerated powers left to States & People
Key Constitutional Concepts

- Police power
  - Restrict individual rights and property rights
  - To protect general security, health, safety, morals, welfare
- Federalism
  - Police power belongs to states
  - Zoning & property regulation
- Commerce clause
  - “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"
Three Branches of the U.S. Government

- Legislative
  - Make laws

- Executive
  - Execute laws

- Judicial
  - Adjudicate laws

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### Regulatory Development

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<th>EU</th>
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<td>Legislative Branch issues &amp; President signs legislation</td>
<td>European Commission proposes legislation</td>
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<td>Executive Branch implements regulation</td>
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  - Impact Analysis  
  - Inter-service consultation  
  - Stakeholder consultation |
|  
  - Regulatory analysis  
  - Executive oversight  
  - Public comment | European Council & Parliament amend |
| Judicial Branch hears appeals |  
  - Additional impact analysis possible |

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Achieving Policy Goals

- Taxation & subsequent spending
  - Fiscal budget
  - Appropriations

- Legislation & regulation
  - Police power
  - “Off-budget”
  - Benefits and costs less transparent

- OMB’s role
  - Budget
  - Regulation
  - Management
  - Legislation
Response to concerns over “delegation” of legislative authority to Executive branch

Agency can only act within limits set by statutes

Agency must follow specified procedures

Agency actions must be
  ◦ Reasonable (supported by record)
  ◦ Not arbitrary and capricious
  ◦ Not an abuse of discretion
1970s – 1980s: Period of regulatory change
Budgetary Costs of Federal Regulation Adjusted for Inflation

Source: Weidenbaum Center, Washington University and the Regulatory Studies Center, the George Washington University. Derived from the *Budget of the United States Government* and related documents, various fiscal years.
Staffing of Federal Regulatory Agencies

Source: Weidenbaum Center, Washington University and the Regulatory Studies Center, the George Washington University. Derived from the *Budget of the United States Government* and related documents, various fiscal years.
Economic Regulation

- Justified by
  - Natural monopoly
  - “Destructive competition”

- Generally controls:
  - Price (max or min)
  - Quantity
  - Service Quality
  - Number of firms

- Often industry-specific/Independent agency
  - Airlines (CAB)
  - Rails (ICC)
  - Telecommunications (FCC)
Effects of Economic Regulation

- Goal – mimic competitive market prices
- Hard to get regulated price right
  - Prices > competitive levels reduces consumption
  - Prices < competitive levels creates shortages
- Cost–of–service regulation inflates costs
- Regulation stifles innovation & entrepreneurship
- Encourages “rent–seeking”
  - Regulation transfers wealth
  - “Dead–weight losses”
Despite opposition from vested interests:
  - Airlines
  - Interstate trucking
  - Telecomm
  - Oil & gas

Outcomes generally a success
  - Lower prices for consumers
  - Increased choices
  - Service quality & customer preference better aligned
  - Innovation & real social gains (some unanticipated)
Stages of Deregulation

- Academic research
  - Evaluate existing policies
  - Identify problems
  - Propose alternatives

- Advise political process
  - President, Congress, Courts
  - CWPS, CAB, OMB, CEA

- Policy promotion
  - Gain political support
  - Collaboration between analysts & lobbyists
  - Communication & selling
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Source: Weidenbaum Center, Washington University and the Regulatory Studies Center, the George Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.
Social Regulation

- Health, safety, environment
- Across industries
  - Environmental Protection Agency
  - Dept of Transportation
  - Occupational Safety & Health Administration
- Different justification
  - Externalities
  - Inadequate (asymmetric) information
- Regulatory reform vs. deregulation
  - “Smarter” or “Better” regulation
U.S. Regulatory Process

- Authorizing legislation
- Unified Agenda
- Draft proposal
- Executive review
  - SBREFA
  - OIRA
- Public comment

- Revisions
- OIRA review
- Final rule published
- Congressional review (CRA)
- Judicial review (lawsuits)
Understanding Regulatory Impacts

**US – Regulatory impact analysis**

- Economically significant rules
- Issuing agency has primary responsibility
- OIRA reviews & coordinates
- Net benefits focus
  - Identify need
  - Examine alternatives
  - Understand consequences (benefits & costs)

**EU – Impact assessment**

- Most important & far reaching rules
- Lead DG has primary responsibility
  - Inter-service Steering Board
- Impact Assessment Board reviews
- Consider 3 types of effects
  - Economic
  - Social
  - Environmental

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Will the regulation do more good than harm?

- Need for regulation (market failure)?
- Federal role?
- Alternatives?
- Costs, effectiveness, benefits?
- Quality of supporting information?
- Distributional effects?
Issues & Challenges

- International regulatory coordination
- E-government
  - Transparency
  - Engage public
- Regulatory analysis
  - Resistance to analysis
  - Intergenerational & global issues
  - Behavioral research