

LAW 289-002: PERSPECTIVES ON REGULATION
George Mason University School of Law, Fall 2003
Professors: Jeffrey A. Eisenach and Randolph J. May

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COURSE SYLLABUS

Description: This course presents an historically grounded, institutionally focused perspective on the development of American regulatory institutions and the challenges they currently face. The first portion of the course is focused on historic context, with an emphasis on the underlying economic, technological and political forces that led to the creation of regulatory agencies such as the Interstate Commerce Commission. The second portion focuses on understanding the nature of bureaucratic institutions and the factors that influence the outcome of bureaucratic processes. The third portion of the course focuses, from a legal and policy perspective, on the changing role of regulatory agencies in relation to the legislative and judicial branches in the modern administrative state, and then examines some case studies in the area of communications regulation by the FCC to illustrate specific regulatory issues.

Grades: Grades will be based on two papers, plus class participation.

- **First-Half Paper (35 percent; due October 9):** Explain how some major regulatory (or related) policy change during the Progressive era (1870-1940) was related to the Industrial Revolution and Progressive thought. Examples: The Sherman Act; the ICC; Hoover's associationalism and the National Recovery Administration; Major labor legislation; etc. 10-12 pages, double-spaced (approx. 2,500-3,000 words).

Second-Half Paper (35 percent; due November 20): Write a 12-15 page, double-spaced paper on one of the following two topics: (A) Should Congress Reverse the FCC's Recent Decision to Relax the Agency's Media Ownership Restrictions? [See 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules, Report and Order and Notice of Proposed Rulemaking, MB Docket 02-277, released July 2, 2003] (B) Should the FCC Adopt New "Net Neutrality" Regulations Applicable to Broadband Networks? [See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities-Internet Over Cable Declaratory Ruling, CS Docket 02-52, released March 15, 2002; Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket 02-33, released February 15, 2002]

- **Class Participation (30 percent; regular attendance expected):** Participate actively in class discussions showing evidence of having completed and understood the assigned readings, being able to offer constructive criticism and creative application of principles to the issues at hand.

Texts:

Thomas K. McCraw, Prophets of Regulation (Cambridge: Harvard University, 1984)
 James Q. Wilson, Bureaucracy (New York: Basic Books, 1989)

I. The Ideological Underpinnings of the Regulatory State

- McCraw, Chapter 1 (pp. 1-56)
- Allan Bloom, "Jean-Jacques Rousseau," in Leo Strauss and Joseph Cropsey, eds., History of Political Philosophy (3rd ed.) (Chicago: The University of Chicago Press, 1987), pp. 559-580.
- Robert Goldwin, "John Locke," in Strauss and Cropsey, pp. 476-511.
- Garry Wills, Inventing America: Jefferson's Declaration of Independence (New York: Vintage Books, 1978), (Chapters 7-10, pp. 93-166).

II. The Progressive Movement, Taylorism and the New Deal

- McCraw, Chapters 2-4 (pp. 57-143)
- 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).
- Frederick W. Taylor, The Principles of Scientific Management (New York: Harper & Brothers Publishers, 1911), (Chapter 1, pp. 9-29).
- Joan Hoff Wilson, Herbert Hoover: Forgotten Progressive (Boston: Little, Brown & Company, 1975) (Chapter 4, pp. 79-121).

III. The Nature of Bureaucratic Government

- Wilson, Chapters 1-12

IV. Agency Discretion and Regulatory Initiatives—The Agencies, Courts, and Congress

- McGraw, Chapters 5 and 6
- Randolph J. May, "Science Before Separation of Powers," *Legal Times*, March 26, 2001
- Randolph J. May, "Finding the Right Words," *Legal Times*, July 1, 2002
- *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940)
- *National Broadcasting Co., Inc. v U.S.*, 319 U.S. 190 (1943)
- *FCC v. RCA Communications, Inc.* (1953)

V. Agency Discretion and Deregulatory Initiatives—The Agencies, Courts, and Congress

- McGraw, Chapter 7
- Randolph J. May, “Tug of Democracy,” *Legal Times*, July 9, 2001
- *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 9 (1983)
- *Chevron U.S. A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984)
- *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981)

VI. Regulation and Deregulation After the Telecommunications Act of 1996-Case Studies

- *Fox Television Stations Inc. v. FCC*, 280 F. 3d 1027 (D.C. Cir. 2002), rehearing granted, 293 F. 3d 537 (D.C. Cir. 2002)
- *Sinclair Broadcast Group, Inc. v. FCC*, 284 F. 3d 148 (D.C. Cir. 2002)
- 2002 Biennial Regulatory Review-Review of the Commission’s Broadcast Ownership Rules, MB Docket 02-277, released July 2, 2002 [paragraphs 1-128 only required]
- *United States Telecom Ass’n v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002)
- Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, released August 21, 2003 [paragraphs 1-34 only required]
- Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, GN Docket No. 00-185, released March 15, 2002 [paragraphs 1-30 and 72-95 only required]
- Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket 02-33, released February 15, 2002 [paragraphs 1-16 and 30-53]
- Randolph J. May, “Robed Revolutionaries,” *Legal Times*, May 6, 2002
- Randolph J. May, “Call Them Off,” *Legal Times*, June 4, 2001
- Randolph J. May, “Calling the Court,” *Legal Times*, October 8, 2001

VII. Old and New Regulatory Tools and Models Reconsidered

- McGraw, Chapter 8
- Cost-Benefit Analysis Colloquy- “Squaring the Vicious Circle” by Hon. Stephen F. Williams and “Is Cost-Benefit Analysis for Everyone?” Cass Sunstein
- Review and Questions

CLASS SCHEDULE

<i>August 21</i>	No class
<i>August 28</i>	Ideological Underpinnings of the Regulatory State (E)
<i>September 4</i>	Theories of Economic Regulation and the Administrative State; Discussion of two topics for second term paper (M)
<i>September 11</i>	The Progressive Movement, Taylorism and the New Deal (E)
<i>September 18</i>	Guest Lecture (E)
<i>September 25</i>	The Progressive Movement, Taylorism, and the New Deal (E)
<i>October 2</i>	The Nature of Bureaucratic Government (E)
<i>October 9</i>	The Nature of Bureaucratic Government (E)
<i>October 16</i>	The Nature of Bureaucratic Government (E)
<i>October 23</i>	Agency Discretion and Regulatory Initiatives-The Agencies, Courts, and Congress (M)
<i>October 30</i>	Agency Discretion and Deregulatory Initiatives-The Agencies, Courts, and Congress (M)
<i>November 6</i>	Guest Lecture (M)
<i>November 13</i>	Regulation and Deregulation After the Telecommunications Act of 1996-Case Studies (M)
<i>November 20</i>	Old and New Regulatory Tools and Models Reconsidered (M)