

# Regulatory Reform Reconsidered

*Edited by*

**Gregory A. Daneke  
and David J. Lemak**



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## About the Book and Editors

Bringing together a broad group of leading scholars, government officials, and corporate representatives, this book provides a critical analysis of recent regulatory reform efforts. The contributors focus on social and environmental regulation as they evaluate problems of costly and ineffective regulatory measures. They argue that, although some programs have been made more cost efficient, performance has not improved, and they offer alternatives for increasing effectiveness. The authors also analyze case studies to explore specific reform alternatives, and most conclude that successful reform is generally brought about by improving the cooperative relationship among business, government, and the public.

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# CONTENTS

Preface.....	ix
Acknowledgments .....	xi

## PART I OVERVIEW

Introduction .....	1
1. Whatever Happened to the C.A.B.? The Theory and Practice of Economic Regulation, <i>David J. Lemak</i> .....	3
2. Regulation, Productivity, and the Reagan Administration's Regulatory Reform Program, <i>Christopher DeMuth</i> .....	21
3. Social Regulation: A Swing of the Pendulum, <i>David J. Lemak</i> .....	39

## PART II PROBLEMS

Introduction .....	55
4. Presidential Power Over the Regulatory Process, <i>Susan J. Tolchin and Martin Tolchin</i> .....	57
5. Reassessing Attempts to Reform Environmental Regulation, <i>Gregory A. Daneke</i> .....	83
6. Tipping the Lid on Pandora's Box: Decentralization and Deregulation, <i>A. Janell Anderson</i> .....	97

## **PART III PROSPECTS**

Introduction .....	113
7. Can Voluntary Efforts Replace Regulation? <i>Gerald L. Barkdoll</i> .....	115
8. Pollution Prevention Pays, <i>David M. Benforado and Mike Koenigsberger</i> .....	127
9. Regulations and Public/Private Sector Interactions, <i>Charles L. Kennedy</i> .....	137
About the Authors.....	151

# Preface

Bringing together a broad group of leading scholars, government officials, and corporate representatives, this book provides a critical analysis of recent regulatory efforts. With particular emphasis on social and environmental regulation, the authors evaluate performance problems from both efficiency and effectiveness perspectives. Private sector efforts designed to alleviate environmental and consumer safety problems are also discussed. Finally, in addition to these unique insights, this volume provides a substantial contribution to reform thinking by exploring a number of specific alternatives through actual cases. The results of these studies highlight the importance of establishing a more cooperative relationship between business, government and the public at large.

Completion of this project would not have been possible without the dedicated efforts of many individuals. First, we would like to thank all of the contributors for their patience and perseverance throughout the preparation and revision stages of this manuscript. Second, we are deeply indebted to Mr. Mark Moore whose technical expertise made the timely completion of this volume possible. Finally, many thanks to Sally Lemak who probably knows this book better than any of us, since she typed every word.

*Gregory A. Daneke  
David J. Lemak*



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# **PART I**

## **OVERVIEW**

### **INTRODUCTION**

Debates over regulatory reform are among the most heated in both the practitioner and academic literature. The pros and cons of deregulation have been addressed by representatives of business, Congress, the White House, regulatory agencies and consumer groups, to mention but a few. Within academia, the controversy has attracted the attention of scholars and researchers from many diverse disciplines such as economics, political science, public administration, sociology, management, finance and law. This introductory section contains three papers which reflect this wide diversity of approaches to discussions of regulatory reform. While not completely comprehensive in terms of addressing all issues raised by each of the above mentioned disciplines, they do present a wide range of perspectives emanating from both practical experience and scholarly research.

The opening article by David J. Lemak focuses on "traditional" or economic regulation, providing a historical perspective which traces the theoretical underpinnings and actual practices of the older regulatory agencies. Rationales for, and explanations of regulatory behavior emanating from economics, political science, and public administration are reviewed and critiqued. The apparent anomaly of deregulation efforts initiated by the Nixon/Ford administrations, brought to fruition during the Carter years, and then seemingly stalled under Reagan is explored in depth. A new "ideological theory" of regulation is developed to provide a conceptual framework which is consistent with the events of the past fifteen years. Even though Lemak concentrates on economic regulation, the conceptual issues and theoretical perspectives are equally relevant to controversies surrounding proposed reforms in social regulation.

Christopher DeMuth, former Staff Director of the President's Commission on Regulatory Relief discusses the underlying causes of regulatory failure as well as the problems inherent in attempts to measure the effects of regulation on national productivity. The second portion of his

paper starts with an explanation of the rationale for Executive Order 12291, the cornerstone of the Reagan administration's regulatory reform program. DeMuth then details six specific policies developed to implement EO 12291 and improve regulatory agency performance. All in all, this article presents a comprehensive summary of the why's and how's of current efforts at regulatory reform.

The last article in this section is a critical review of the evolution of social regulatory agencies by David J. Lemak. The history and rationales for the "new" regulation are traced from the early days of the Food and Drug Administration to the flurry of legislative activity in the 1970s. The performance of three major agencies, EPA, OSHA and NHTSA, is assessed in terms of social benefits and economic costs. Proposals for reform and examples of innovative solutions to social problems are examined. Lemak concludes that many of these reforms may hold some promise for improving public welfare in the short run, but long term gains cannot be accomplished by procedural/process oriented changes in the absence of more substantial structural changes.

# Chapter 1

## **WHATEVER HAPPENED TO THE C.A.B.?** The Theory and Practice of Economic Regulation

David J. Lemak

Typically, any description of the history and evolution of the regulatory process in the United States begins with *Munn vs. Illinois* in 1877 and proceeds neatly to the Interstate Commerce Act of 1887. Then the story usually goes something like this. The public distrust of both big business and big government led, quite logically, to the creation of an independent regulatory commission, the Interstate Commerce Commission, composed of apolitical experts who would use fair, judicial-like procedures to restrain unethical behavior in the private sector and protect the public interest. Unfortunately, the history, development and behavior of our regulatory agencies appears to be considerably more complex, clouded and illogical than textbooks would have us believe. Indeed, the very existence of the independent regulatory commission appears to be more the result of happenstance than of the manifestation of logical analysis by the Congress or executive branch:

The first commission - the Interstate Commerce Commission (ICC) - was originally part of the Department of the Interior: however, friction between the senator who guided the legislation establishing the ICC and the Harrison administration, combined with the desire of the Secretary of the Interior to avoid responsibility for the ICC led to its redefinition as an independent agency. The ICC's first chairman, a respected jurist, was responsible for establishing the formal procedures of the ICC, and the Congress did not attempt to interfere (Noll, 1971, p. 33).

History goes on to tell us that from these humble beginnings, regulatory activity grew in three rather distinct "waves," with the ICC being the harbinger of the first era in response to the concentration of economic power in the private sector. The second flurry of regulatory activity occurred during the Great Depression as government sought to curb the evils of destructive competition by assuming the role of cartel manager in various and sundry forms - the National Recovery Administration, the Civil