

RETHINKING REGULATION WORKING PAPER SERIES

*Organized by*

THE KENAN INSTITUTE FOR ETHICS at Duke University

# Historical Perspective and Better Regulatory Governance: An Agenda for Institutional Reform

Edward Balleisen\*

Elizabeth Brake \*\*

WORKING PAPER RR #2

OCTOBER 2012

\* Associate Professor of History, Duke University

\*\* Candidate, History Department, Duke University

*The Rethinking Regulation Paper Series provides a forum for faculty working across disciplines who are exploring issues of regulatory governance and dilemmas of regulatory design and policy to disseminate their research.*

# Historical Perspective and Better Regulatory Governance: An Agenda for Institutional Reform

**Edward J. Balleisen, Associate Professor of History, Duke University**

**Elizabeth K. Brake, Ph.D. Candidate, History Department, Duke University**

Submitted to the Duke Rethinking Regulation Working Paper Series and the Jerusalem Working Papers Series on Regulation and Governance; Forthcoming in *Regulation & Governance*

Edward J. Balleisen  
Associate Professor History  
Senior Fellow, Kenan Institute for Ethics  
243B Carr Building  
Duke University  
Durham, NC 27708-0719  
[eballeis@duke.edu](mailto:eballeis@duke.edu)  
Phone: [\(919\) 684-2699](tel:(919)684-2699)  
Fax: [\(919\) 681-7670](tel:(919)681-7670)

Elizabeth K. Brake  
Ph.D. Candidate, Department of History  
Box 90719  
Duke University  
Durham, NC 27708-0719  
[ekb6@duke.edu](mailto:ekb6@duke.edu)

**Abstract:** Compared to economics, sociology, political science, and law, the discipline of history has had a limited role in the wide-ranging efforts to reconsider strategies of regulatory governance, especially inside regulatory institutions. This article explores how more sustained historical perspective might improve regulatory decision-making. We first survey how a set of American regulatory agencies currently rely on historical research and analysis, whether for the purposes of public relations or as a means of supporting policy-making. We then consider how regulatory agencies might draw on history more self-consciously, more strategically, and to greater effect. Three areas stand out in this regard – the use of history to improve understanding of institutional culture; reliance on historical analysis to test the empirical plausibility of conceptual models that make assumptions about the likelihood of potential economic outcomes; and integration of historical research methods into program and policy evaluation.

**Keywords:** Historical Analysis; Regulatory Agencies; Institutional Culture; Policy Assessment; Institutional Design

# Historical Perspective and Better Regulatory Governance: An Agenda for Institutional Reform

## Introduction

In January 2011, President Barack Obama issued an executive order that requires federal agencies to engage in “retrospective” evaluations of regulatory policies, identifying regulations that no longer serve their purpose or that deserve modification. Obama elaborated on this new requirement in a May 2012 executive order, directing agencies to invite public participation in this process, chiefly by suggesting retrospective assessments that would “reduce regulatory burdens.” (Obama, 2011, 2012) This pair of executive orders signaled that regulatory agencies should take their pasts seriously. Rather than assume that longstanding rules continued to make sense, officials should subject them to searching historical scrutiny. Neither order, however, specified how agencies should identify the consequences of longstanding regulatory policies, nor how they should translate those consequences into benefit-cost analysis.

One might imagine that this new element of regulatory oversight would trigger the formation of interdisciplinary teams to carry out retrospective agency reviews, which would include members with expertise in historical research and analysis, alongside individuals with backgrounds in law, economics, and scientific risk assessment. Alternatively, one might envisage new external Historical Advisory Boards that would keep an eye on the impacts of an agency’s regulatory decision-making over the longer term. Such responses would be in keeping with recent trends in both the academy and the regulatory state. Over the past decade, interdisciplinarity has become a watchword for the study of regulatory governance in the North Atlantic world and made inroads into the workings of regulatory institutions.

Thus in America, the Tobin Project has created a network of social scientists interested in regulatory institutions, encouraging research that explains regulatory successes and considers strategies for minimizing regulatory capture, among other issues. (Balleisen & Moss 2010; Moss and Cisternino 2009; Carpenter & Moss forthcoming) The Penn Program on Regulation has spearheaded a variety of interdisciplinary research initiatives, including examinations of regulatory responses to crisis (Coglianese, forthcoming). And at Duke University’s Kenan Institute for Ethics, a new interdisciplinary working group, “Rethinking Regulation,” fosters research on how shifting risk perceptions shape regulatory policy and the implications of democratic participation for the regulatory process. Across the Atlantic, European political scientists, sociologists, and legal academics have created the Standing Group on Regulatory Governance, which seeks to facilitate similar research avenues.<sup>i</sup>

These academic projects are matched by interdisciplinary initiatives in the public sector. The United States Office of Information and Regulatory Affairs (OIRA) has widened its interdisciplinary capacities, especially by hiring scientific specialists in risk assessment. (Graham 2008) One prominent new regulatory agency, the United States Consumer Financial Protection Bureau (CFPB), has self-consciously

included diverse analytical perspectives as it created divisions and hired staff. In addition to lawyers and traditional economists, the CFPB's bureaucracy employs cognitive psychologists and behavioral economists who study decision-making by consumers, investors, and debtors.<sup>ii</sup>

Nonetheless, there are good reasons to question whether the Obama Administration's retrospective reviews will draw significantly on historians' distinctive skills and perspective. So far historians have served at best as junior partners in the recent interdisciplinary engagements with regulatory governance, especially within the regulatory state. The social science perspectives that inform regulatory decision-making remain heavily tilted toward economics and law, a tendency reinforced by the scores of economists and lawyers employed by regulatory agencies.

As historians of American regulatory institutions, we would like to explore how our profession might contribute more substantively to ongoing processes of regulatory reform, whether with regard to the formulation of regulatory goals, reconfiguration of institutional design, or assessment of regulatory outcomes. Our discipline's practitioners, along with the growing number of other social scientists who use historical methods, can make more of a difference in these deliberations. One such channel lies in greater scholarly attention to the complex regulatory history of the last half-century, both in the United States and elsewhere – more case studies of regulatory agencies and regulatory controversies, more overarching narratives of regulatory policy writ large. Historians of regulation might also seek out interdisciplinary audiences, directing their arguments toward intellectual conversations beyond their own specializations. In this essay, we wish to entertain still another set of possibilities for more direct historical engagement with the process of reimagining regulatory purposes, strategies, and techniques – the more systematic integration of professional historians, as well as historically-minded sociologists and political scientists, into the work of regulatory agencies, both inside governments and within the burgeoning world of quasi-public and private regulatory institutions.

One can see the potential for greater incorporation of historical perspective in the response to almost any large-scale regulatory failure. Such events usually generate forensic historical case studies undertaken by legislative oversight committees or independent commissions, which try to ascertain their historical origins. These official interpretations of historical causation help to frame agendas for regulatory reform. Historical diagnosis influences the fashioning of regulatory treatment.<sup>iii</sup>

This article considers what a more systematic integration of historical analysis into regulatory policy-making might look like. The fulcrum for this discussion is a survey of the roles that "History" already plays in several American regulatory agencies. These include, in order of their creation, the Food and Drug Administration (1906, originally as part of the Agriculture Department's Bureau of Chemistry); Federal Reserve (1913); Federal Trade Commission (1914); Securities and Exchange Commission (1934); National Labor Relations Board (1935); Environmental Protection Agency (1970); Occupational Safety and Health Administration (1970); and Nuclear Regulatory Commission (1975). We also examined historical practices in the Government Accountability Office and the Congressional Research Service, two oversight institutions that regularly study federal regulatory institutions at the behest of other

elected officials in search of policy advice, and took note of the historical services that a private consulting firm, History Associates, Inc., offers to many federal agencies.

These agencies all play significant roles in governing the modern American economy, but focus on a variety of issue areas and possess a diverse set of institutional mandates. The FDA and NRC target particular industries, while the Fed and SEC have some regulatory authority over particular industries and some with more general application. The FTC, NLRB, OSHA, and EPA, by contrast, have economy-wide missions, concerning antitrust and the truthfulness of commercial speech, labor practices, workplace safety, and environmental impacts, respectively. Most of these organizations exist as stand-alone, independent agencies, but the FDA operates within the Department of Health and Human Services and OSHA within the Labor Department.

Our findings rests on neither a formal survey nor exhaustive archival assessment of how these institutions draw on historical research. In addition to mining agency websites and databases of academic journals, we have tracked down individuals who are responsible for historical work within each agency, interviewed those individuals either on the phone or via email, and then followed publication trails that they have suggested. (See Appendix I for a full list of interviews and correspondence.) Our purpose has not been to construct a definitive portrayal of historical practice within federal regulatory institutions. Instead our more modest goal has been to construct a rough map of those practices that can guide consideration of how to make better use of historical analysis within the regulatory process.<sup>iv</sup>

The essay first sketches links between transformations in regulatory policy-making since the 1970s and intellectual currents in the social sciences. In addition to fleshing out our contention that academic ideas and disciplinary perspectives can powerfully shape regulatory institutions, this section suggests the value of macro-historical perspective and lays out some comparative advantages of historical method, thinking, and sensibility. Next, we discuss the people responsible for historical endeavors in American regulatory bodies and the major varieties of their work: research and writing directed toward the public; historical analysis that parallels scholarly practices of historical knowledge production; and historical analysis geared toward assisting internal decision-making. Our findings indicate that history already matters within American regulatory agencies, but that those institutions could draw on it more self-consciously and strategically, and to greater effect.

In a final section, we call for an official study of best historical practices among regulatory agencies, carried out by an appropriate oversight/consultative body; we also present several recommendations for how regulatory institutions, and the wider historical profession, might improve the quality of historical inputs to the regulatory process. These include: more systematic use of history to improve understanding of institutional culture; reliance on historical analysis to test the empirical plausibility of conceptual models that make assumptions about the likelihood of potential economic outcomes; and integration of historical methods into program and policy evaluation. Although our discussion focuses on the American case at the national level, we suspect that our conclusions have relevance for regulatory institutions in other nation-states, those based at the continental level, like the EU, those

rooted in state/provincial governments, and those that seek to address global regulatory challenges, whether created through formal international bodies or exercising *de facto* regulatory authority.

## I. Academic Ideas, Regulatory Culture, and the Comparative Advantages of Historical Perspective

To appreciate the contributions that historians and historically-minded social scientists can make to regulatory studies and policy-making, it is worth reviewing the dramatic institutional changes that have occurred since the 1970s, and how developments in the social sciences have influenced those transformations. Over the past two generations, regulatory governance has undergone a degree of transformation unparalleled since the construction of modern regulatory institutions more than a century ago. Within the confines of industrialized nation-states, venerable regulatory institutions have taken on dramatic reconfigurations of mission and strategy. National regulators have embraced novel regulatory tools, such as pollution permit trading systems, dramatically expanded the delegation of regulatory authority to non-state actors, such as corporations and business-affiliated non-profits, and struggled to recalibrate regulatory strategies for an online world. (Balleisen 2010; Hansjürgens 2005; Bowie & Jamal 2006) The drumbeat for deregulation has led the American Congress to abolish some independent regulatory commissions and prompted countries across the globe to privatize public utilities. Privatization, however, has gone hand in hand with the creation of new regulatory authorities to oversee market restructuring and check abuses by private providers. (Eisner 2010; Levi-Faur 2003) A parallel extension of public regulatory governance has occurred in many emerging economies, such as India and China, which have recently beefed up regulatory capacity in such areas as public health, environmental protection, and product safety. (Pearson 2005; Bach *et al.* 2006; Dubash & Morgan 2011) In Europe, the European Union has developed a complex superstructure that alternatively nudges and directs national authorities to toe a continental regulatory line, sometimes in order to remove barriers to continental trade, sometimes to redress market failures. (Sandholtz & Sweet 1998; Sabel & Zeitlin 2010) At the global level, the ground-rules of international trade and finance now increasingly take shape in private standard-setting organizations, such as the International Organization for Standardization and the International Accounting Standards Board. (Büthe & Mattli 2011)

Intellectual currents within the social sciences have profoundly shaped these far-reaching institutional processes. Ideas and models from economics and the field of “public choice” within political science have especially influenced policy-making. The theory of regulatory capture – that powerful incentives would lead regulators to skew their decisions in favor of regulated industries -- furnished a conceptual groundwork for deregulating markets in transportation, energy, electricity, and banking. Although the epicenter of such regulatory reforms was located in Washington, they had considerable impact in Europe and many developing countries eager to attract foreign capital by following neo-liberal prescriptions. (Leight 2010; Levi-Faur 2005) From the 1970s onwards, the elaboration of cost-benefit analysis came to structure the process of regulatory decision-making across many policy domains, especially in industrialized economies with mature regulatory institutions. (Guasch & Hahn 1999;

Radaelli 2004; Shapiro 2010) Economic analyses of negative externalities like pollution, in combination with critiques of excessively rigid regulatory regimes, have encouraged the development of tradable pollution rights as a favored technique of environmental protection. (Montgomery 1972; Noll 1982; Tietenberg 1985; Woerdman 2004) And the construction of sophisticated mathematical approaches to economic modeling served as a crucial prerequisite for the post-1980s redirection of financial regulation around private practices of risk management. (Merton 1995; Kroszner 1999)

Over the same decades, a community of sociologists, political scientists, and legal scholars helped to structure the growing reliance on private and quasi-public regulatory actors, through strategies labeled variously as “business self-regulation,” “management regulation,” and “co-regulation.” (Gunningham & Rees 1997; Coglianese & Lazer 2003) Several considerations drove this research. Popular disenchantment with “command and control” approaches to regulatory enforcement encouraged experimentation with less coercive strategies, especially when regulated entities were characterized by great diversity. The intensification of economic globalization, which meant that an increasing proportion of economic activity fell between the jurisdictional cracks of national sovereignty, compelled new thinking about every facet of regulatory policy-making. Many social scientists also worried about how to reconcile powerful, distant regulatory institutions with democratic values, which generated ideas for infusing regulatory processes with greater public participation and more civic commitment from regulated firms. The resulting scholarship both took note of policy innovations along these lines, such as with American nuclear safety, and guided delegation of regulatory authority in contexts that ranged from Australian oversight of fair trade practices, to British monitoring of food safety, to American rule-setting for corporate environmental practices. This research also encouraged the development of a slew of new self-appointed public interest regulatory institutions at the global level. (Rees 1996; Parker 1999; Hutter 2011; Eisner 2006; Bartley 2007)

The pace of regulatory change may even quicken in the years ahead, since the broad historical processes that have generated much regulatory innovation, like economic globalization and the maturation of emerging economies, show little sign of abating. In addition, a slew of highly publicized regulatory failures have prompted widespread calls for regulatory reform within both established and new economic powers. The Deepwater Horizon oil spill in the Gulf of Mexico, scandals associated with the export of unsafe consumer products from China, the nuclear meltdown at Fukushima, and the Global Financial Crisis, to cite four prominent examples, have each signaled dramatic shortcomings with prevailing regulatory institutions. These events have triggered considerable soul-searching about the fundamental purposes of government and the conceptual frameworks that should guide the formulation of regulatory goals, strategies, and tactics.

Ongoing revision of policy directions will surely be powerfully influenced by the cross-currents of politics. A reinvigorated conservative critique of regulation in the United States may well leave a mark on regulatory institutions, though so too may a burgeoning progressive movement in many countries, including America, that protests growing economic inequality and the concentration of corporate power, especially among global financial firms. Institutional reform will surely also be shaped by fresh

directions in academic research, as scholars seek to account for and learn from instances of regulatory failure, and as policy-makers draw on that research.

This quick overview of broad shifts in regulation since the 1970s suggests one central advantage of injecting a greater degree of historical perspective into the policy process. Policy-makers who grasp the dynamics of institutional evolution will have a better sense of the range of regulatory tools at their disposal, the dynamics of path dependency that can give particular arrangements a sense of permanency, and the “critical junctures” that lead older strategies and conceptual frameworks to fall out of favor, and that create favorable conditions for new approaches. The best historical analysis, moreover, does not merely narrate change over time. It grapples with context and contingency. Without attention to the interplay between structures and agency, we cannot understand the complex webs of events, processes, and choices that create the problems to which society responds with regulatory policy, nor can we fully grasp the implications of regulatory decision-making. Placing a regulatory dilemma in historical perspective helps policy-makers to distinguish long-term causes of regulatory problems from short-term triggers; to pinpoint regulatory objectives that have emerged at different moments and that may be at odds with one another (such as the maintenance of systemic financial stability and the encouragement of financial innovation); and to identify the conflicting, and often shifting, socio-economic interests that simultaneously shape regulatory decision-making and are shaped by it. Such perspective can further keep regulatory agencies from overlooking significant stakeholders, and improve their capacity to build effective policy coalitions among community members and regulated constituencies.<sup>v</sup>

In addition to keeping policy-makers abreast of the big picture, historians, as well as other social scientists with expertise in historical analysis, can offer more particular analyses relevant for the day-to-day work of regulators charged with specific policy responsibilities. (Neustadt & May 1986; May 1981) Historians can serve as repositories of institutional memory, either about the workings of particular agencies, more general intellectual/policy trends, or past social and economic behaviors that have relevance for the assumptions that underpin specific regulatory policies.<sup>vi</sup> They possess skills in particular kinds of fact-finding, especially when evidence resides in archival documents or the memories of oral history informants.<sup>vii</sup> Intellectual scavengers, they frequently draw on conceptual frameworks from other social science or humanistic disciplines, and are used to testing the applicability of those frameworks to complex historical contexts. Attuned to the way that organizational cultures can filter policy initiatives and skeptical of mono-causal explanations for historical change, they have comparative advantages in identifying the consequences of given policies, and how they might interact with other historical processes.<sup>viii</sup> As we will see, the individuals who already “do history” within the American regulatory state already make good use of such skills and sensibilities. But they might do so more comprehensively and with greater impact on policy formulation, implementation, and evaluation.

## II. Historical Knowledge Production, Modes of Presentation, and Target Audiences

All of the regulatory agencies that we examined rely on historical research. The institutional mechanisms for producing such research, however, vary greatly. Some agencies have formal History Offices staffed by one or two professional historians who undertake many kinds of historical analysis. In most cases, these institutional historians have a sophisticated vision of how they can contribute to policy formulation. The NRC and EPA had History Offices at their inception, though congressional budget-cutting led to the latter's demise in the mid-1990s. The FDA and GAO each instituted History Offices during the 1980s, long after their creation. By contrast the Fed, FTC, SEC, NLRB and OSHA never have had official historians.

In the absence of a dedicated History Office, policy entrepreneurs sometimes fill the resulting historical vacuum. Some agencies rely on regular line staff members to take on the role of informally interpreting the institution's past. Scattered throughout the various regulatory agencies, moreover, many additional staffers turn to one form of historical research or another in order to perform their jobs. Almost none of these individuals are professional historians, and most lack extensive historical training.<sup>ix</sup> Instead, they mostly are attorneys, economists, journalists, librarians, and scientists who have found that historical analysis comprises a key element of their own research agendas or their work in regulatory policy making and enforcement.

Yet other institutional forms have emerged for the production of institutional history. In the case of the SEC, historical work occurs through the auspices of a private Historical Society that maintains close links to the Commission and to quasi-public regulatory institutions in the accounting and investment communities. Founded by several former SEC Commissioners and high-ranking officials in 1999, the declared mission of the SEC Historical Society is to "share, preserve and advance knowledge of the history of financial regulation." (SEC Historical Society 2011) As with many government functions in the last quarter-century of tight budgets and widespread privatization, there is also the option of outsourcing. One Beltway consulting firm, History Associates, Inc. (HAI), has built a thriving practice that involves historical research projects for federal agencies. On occasion, HAI has furnished extensive research assistance to official regulatory historians, who typically lack much staff support. (Martin interview; Walker 2004) The SEC Historical Society also relies heavily on such private consultants for its work, since it has chosen not to hire professional historians.<sup>x</sup> (Rosati e-mail; Martin interview)

Whether professionally trained or not, the individuals who "do history" within and for federal regulatory agencies undertake a wide range of research projects. They communicate their findings through a diverse set of media, sometimes with narrower intended audiences, sometimes with broader ones. And although much of their research and writing presumes publication in one form or another, in many agencies, at least some historical analysis is geared predominantly, or even exclusively, toward internal audiences, providing historical context to inform the choices of regulatory decision-makers.

Both official and *de facto* agency historians produce deeply researched works of history about their institutions. Some of this research appears in traditional academic venues (scholarly journal articles and monographs) and targets specialists in policy history. At the FDA, the Department of Labor, and NRC, a central task of official historians has been to produce wide-ranging institutional histories, often

published through scholarly journals and presses. Current and former regulators who are not professional historians, moreover, periodically write memoirs or engage in their own extensive historical research.<sup>xi</sup> These historical works often offer careful contextualization of past agency decision-making and institutional evolution; they also sometimes assess the extent to which agencies achieved their intended objectives, and seek to explain those outcomes.

The research of the two professional historians at the FDA, Suzanne Junod and John Swann, suggest the sort of publications that professional historians have generated from occupational perches within the regulatory state. Publishing in academic journals specific to their fields, these official historians have investigated numerous episodes in which the FDA expanded its effective authority, often as responses to crises, and almost always through negotiating new relationships with medical and pharmaceutical professionals. These contexts include pivotal increases in governmental support for bio-medical research and drug development; the development of good drug manufacturing practices and stringent recall procedures; drug approval procedures (sometimes in international comparative perspective); and the FDA's responses to public health emergencies. (Swann 1989, 1994, 1999; Junod & Marks 2002; Junod 2000; Junod interview)

Official historians also produce broader organizational histories, a practice exemplified by Samuel Walker's publications during a long career as NRC historian. Instead of concentrating solely on intensive regulatory case studies, Walker authored several books, all published with academic presses, that systematically examine the development of post-World War II American nuclear regulation. Walker's monographs investigate pivotal agency decisions that shaped the development of the nuclear industry, situating those decisions in their wider historical contexts, such as the political and military imperatives of the Cold War, the search for peaceful economic uses of nuclear technologies, and pervasive societal fears of radioactivity. His writings investigate why regulators preferred some policy options to others, tease out the consequences of those choices for American nuclear power, and explain the NRC's successes and failures in terms of both institutional structures and the character of organizational leadership. (Walker & Mazuzan 1984; Walker 1992, 2000, 2004, 2009)

In addition to publishing in scholarly venues, historians within federal regulatory agencies have frequently carried out oral history initiatives, creating new source materials about regulatory practices within their organizations. Indeed, most of the regulatory agencies that we examined have embarked on oral history projects. Approaches to oral history, however, vary considerably. At the FTC, the main effort has been to collect interviews of former Commissioners that have been produced by others (either Presidential Libraries or the Columbia Oral History Project), and then to make those interviews available online. Including Commissioners who served from the FTC's first decades through the 1970s, these oral histories focus on high-level regulatory politics, interactions among the White House, Congress, and the Commission, formulation of new strategic directions, and conflicts emerging out of difficult enforcement actions or novel rule-making initiatives.<sup>xii</sup>

The SEC, Federal Reserve, and FDA have all pursued more wide-ranging oral history projects that reach deeply into the bureaucratic trenches, though they reflect varying degrees of centralized planning and

divergent understandings of audience. Oral history at the SEC has been driven by the independent SEC Historical Society, which has amassed over one hundred oral histories of current and former SEC officials, as well as some staff members from other financial regulatory institutions. More recent interviews have been conducted by outside historical consultants such as HAI, and cover a wide array of topics related to financial regulation, including legal and political questions, technical aspects of policy development and implementation, and extensive discussions of enforcement campaigns. Video, audio, and/or transcripts of these interviews are publically available on the SEC Historical Society website.<sup>xiii</sup>

At the Federal Reserve, the practice of conducting oral histories reflects the institution's decentralized structure, with the district banks identifying informants and carrying out interviews. Although these endeavors have often been directed by press offices, they have not had a predominantly "public history" orientation. Almost all of these oral histories exist for internal use only.<sup>xiv</sup> They mostly seek to encapsulate local institutional knowledge about policy formulation, so that middle-level officials within district banks can better understand how they work. (Buchanan interview; Medley interview)

A similar goal of improved appreciation of organizational culture has animated the FDA's extensive oral history efforts. As with the SEC, the FDA's project reflects centralized initiative, though in this instance by the agency itself. Like the Fed, the primary intended audience for FDA interviews has been internal policy-makers rather than the public at large, though transcripts are available at the National Library of Medicine. A staple of FDA historical work since the 1970s, oral history production preceded the official FDA History Office, and to some extent led to the creation of that office. Over the past three decades, the FDA has developed a comparatively cohesive strategy for oral history that relies heavily on retired officials, many of whom have taken a course on oral history methods, to select interviewees and conduct interviews. According to current FDA Historian John Swann, "the involvement of experienced employees, people who have spent their entire careers in various program areas," has underpinned the program's success. This reliance on insiders, Swann argues, has meant that selected informants "reflect the depth and breadth of FDA's regulatory and scientific responsibilities." And while the current staff within the History Office "sometimes provide questions" for oral histories, reliance on retirees to conduct oral histories has enhanced their value. "The insight and comfortable flow of dialogue in these interviews," Swann maintains, "reflect the fact that they take place between like-experienced if not like-minded colleagues." (Swann 1998) Collectively, the FDA oral histories furnish a wealth of evidence about every facet of the regulatory process, as well as the evolution of informal organizational norms and practices.

In producing peer-reviewed scholarship and overseeing oral history programs, the historians within regulatory agencies generally imagine circumscribed audiences – chiefly academics and agency employees. Other projects target broader readership. Regardless of the specific institutional infrastructure for historical analysis, each regulatory agency that we examined views "History" at least partly, and often centrally, as a dimension of public relations – a way to burnish credentials with external constituencies. Thus like corporations and universities, regulatory bodies share a more general impulse to shape popular understandings of their origins, mission, and accomplishments, and invariably draw on powerful conventions about how to convey organizational pasts. (Delahaye *et al.* 2009) The

most common techniques include the construction of historical exhibits and the holding of anniversary commemorations and symposia. Often, these multi-faceted forms of outreach envisage multiple audiences. In addition to the general public, self-presentations of institutional history address members of Congress and their staffs, managers and professionals who work for firms in regulated industries, and academic researchers.

The “history” webpages of most federal regulatory agencies consistently reflect the outlook of public relations. Many provide polished narratives of their agency’s history. All accentuate the positive, portraying agencies’ contributions to the American commonweal. The best of these webpages, such as those maintained by the FTC and FDA, provide mini-archives relating to the mission and history of the organization -- founding legislation, important speeches, press releases, annual reports, and oral history transcripts – along with concise interpretative analysis of the agency’s past and interactive chronologies of key events. The FDA webpage supplies especially extensive caches of documents, as well as detailed histories of particular issues in food, drug, and biomedical device regulation, biographies of commissioners, informative research guides to relevant primary and secondary sources, and an exemplary articulation of the methodology guiding its oral history program.<sup>xv</sup>

Despite the emphasis to online historical resources, physical exhibits retain an important place in the public history endeavors of several federal regulatory agencies. The FDA History Office has also taken the lead in this regard, as illustrated by the recent exhibit, “What’s Cooking Uncle Sam?: The Government’s Effect on the American Diet.” Developed in conjunction with the National Archives, this exhibit emphasized regulatory issues pertaining to food production, including adulteration, factory conditions and manufacturing processes, and product labeling. The curators of such exhibits often organize a variety of connected public events and produce companion volumes for the general public.<sup>xvi</sup>

Major public history initiatives in American regulatory agencies often occur around milestone anniversaries, which provide organization staff with an opportunity to reflect on origins and trumpet accomplishments. Most commonly, as with the NLRB’s online exhibit commemorating its 75<sup>th</sup> year, the resulting celebrations highlight the circumstances surrounding the organization’s founding, key policy successes, and moments in which Congress extended agency jurisdiction.<sup>xvii</sup> Occasionally, an impending anniversary prompts the building up of organizational historical capacity. With its centennial coming up in 2014, the Federal Reserve System has decided to document its internal history more systematically, both within the district banks and at the Board of Governors. (Wheelock interview; Small Interview; Medley Interview; Board of Governors, 2012)

Some scholars might be inclined to underplay the significance of this sort of historical outreach. Even though public history has become more respectable within the historical profession, university-based historians tend to valorize specialized research and formal arguments for a professional audience. But when done well, and when the historical record suggests significant achievements, organizational history has the potential to solidify an institution’s positive reputation among industry insiders, political elites, and the general public. And as the political scientist Daniel Carpenter has demonstrated, a widely

held reputation for probity and bureaucratic competence frequently confers political legitimacy on regulatory agencies, and so widens their capacity to fulfill their missions.<sup>xviii</sup> (Carpenter 2001, 2010)

Historical exhibits and narratives geared toward the public may also allow a regulatory agency's leadership to "see" its organizational culture more clearly. A former historian of the Nuclear Regulatory Commission has described efforts to create an overarching "institutional memory" as a way to let agency staff at all levels learn "from where they came in order to understand better why they operate as they do." (Mazuran, 1985, pp. 37, 40) Indeed, institutional engagement with public history often targets internal constituencies as much as the broader public. As some scholars of business management have noted with regard to corporate history, interpretative narratives of an organization's past can shape internal understandings of its basic purposes and collective identity, or signal significant shifts in strategic direction. Anniversary celebrations frequently take on this character as well, pitched as much at employees as at political overseers, regulated firms, and the public at large. (Booth & Rowlinson 2006; Delahaye *et al.* 2009)

The historical work that we have discussed thus far remains largely disconnected from specific policy processes. But individuals working within regulatory agencies also pursue historical research as an aid to policy-making, especially in those agencies that have invested more substantially in historical capacity. One such context of "usable" institutional history involves a type of "regulatory originalism," a close cousin of the more well-known constitutional variant.<sup>xix</sup> When confronted with contested interpretations of an agency's regulatory authority, its lawyers and other staff members often turn to statutory and organizational history as a means of determining jurisdictional boundaries. During the Clinton Administration, for example, Suzanne Junod served on an FDA committee to determine the agency's authority to regulate tobacco as a drug. More recently, the FDA drew on the expertise of its historical office in considering its jurisdiction over homeopathic medicines and procedures. Junod's work for these committees included extensive archival research into legislative history and initial administrative implementation of relevant statutes. (Junod interview)

The requirements of regulatory enforcement can also lead agency staffers to embark on historical fact-finding endeavors. Such research typically involves micro-history – close examinations of a single community or firm. Sometimes, as with allegations that a company's business practices violate regulatory standards of labor standards or consumer/investor protection, regulatory officials must test those allegations against their own assessments of past behavior. In other contexts, such as environmental protection, evidence of regulatory violations is clear (a toxic dump), but not so the actors responsible for it. The EPA's New England office, for instance, has delved into the origins of environmental degradation at two Superfund locations, both harbors. Directed by a biologist in the Atlantic Ecology Division, Carol Pesch, this research has tried to pinpoint the sources of pervasive hazardous waste dumping over several decades. The techniques of environmental history, Pesch and her colleagues discovered, give regulators means to assess the scope of environmental damage to habitats and species, as well as to identify the commercial practices and specific actors responsible for pollution. They argue that such analysis improves the capacity of regulators to craft environmental remediation projects, while creating a factual basis for enforcement actions. Historical research projects

also give regulators an opportunity to reach out to local communities, at once informing them about the extent and causes of environmental degradation, and encouraging public input into environmental decision-making. (Pesch interview; Voyer *et al.* 2000; Pesch & Gerber 2001)

A more confidential use of history in the regulatory process occurs primarily in those federal agencies that possess official history offices. Regulatory officials periodically ask official historians for background reports on topics of immediate interest to the agency. These requests generally call for short memoranda that relate legislative, rule-making, and/or enforcement issues to their wider historical contexts. Thus the NRC’s current Historian, Thomas Wellock, recently completed an internal report on the development of particular safety systems in nuclear reactors, drawing primarily on engineers’ reports. Such analysis, he stresses, requires not only the skills of a professional historian, but also technical familiarity with nuclear engineering and institutional familiarity with the NRC and nuclear power companies. (Wellock interview; Junod interview)

America’s federal regulatory agencies, then, regularly engage in historical analysis. Figure One pulls together what these historical activities have looked like. This summary suggests that the

**REGULATORY AGENCY**

	FDA	FED	FTC	SEC	NLRB	EPA	OSHA	NRC
<b>H</b>	X	X	X	X	X	X	X	X
<b>I</b>	X	X		X				
<b>S</b>	X	X	X	X	X	X		X
<b>T</b>	X	X	X			X		X
<b>O</b>	X	X	X	X		X		X
<b>R</b>	X	X	X					
<b>I</b>	X					X		X
<b>C</b>	X							X
<b>A</b>								
<b>L</b>								
<b>W</b>								
<b>O</b>								
<b>R</b>								
<b>K</b>								

Figure 1: Current Historical Research, Writing and Production within Eight American Regulatory Agencies

existence of a History Office staffed by professional historians correlates with far more substantial integration of history into policy-making. It further indicates that if regulatory agencies wish to develop a more cohesive strategy of drawing on historical expertise, whether in the United States government, American cities and states, or jurisdictions elsewhere, they have many models from which to choose.

### III. Mining Regulatory Pasts: Some Potential Directions

Amidst so much reconstruction of regulatory agendas and strategies, both in the United States and abroad, the moment seems propitious for a more systematic examination of how internal historical research can inform policy planning and decision-making within regulatory institutions. Individual agencies might pursue their own inquiry along these lines. But the task seems best suited to an oversight body such as OIRA, or a consultative body such as the Administrative Conference of the United States (ACUS).<sup>xx</sup>

Any formal governmental review should begin by identifying best practices in the areas where historical analysis already plays a significant role in regulatory processes, such as institutional oral history. The FDA's oral history program, for example, might well stand out for its approach to informant selection, since it conducts interviews not just with retiring Commissioners/Board members, but also with a sampling of mid-level staff. An ACUS or OIRA review might also identify some basic questions for oral history interviews that have general implications for understanding regulatory governance, such as how institutional culture at the agency evolved over the informant's tenure, how the agency grappled in particular instances with conflicting objectives, and how the agency cultivated and responded to public input. Then there is the opportunity to identify how to leverage oral histories as institutional resources, perhaps through digitization and the sponsoring of research projects to assess what they collectively suggest about agency history.

A formal inquiry into best historical practices might also want to survey the most influential academic work on the regulatory state, to identify additional historical methodologies and research that might prove useful within regulatory agencies. One promising line of scholarly inquiry considers how agencies in both the US and the European Union have varied enormously in their inclinations to slow down processes of technological innovation that pose uncertain risks; another probes the extent to which public comment by third party NGOs provide a counterweight to industry lobbyists in the rule-making process. (Wiener *et al.* 2011; Croley 2007) Policy-makers at regulatory institutions dealing with risk assessment/management would do well to understand how their agency has handled the first of these policy dilemmas. And every regulatory agency would benefit from historical assessment of its patterns of public participation.

We see two additional substantive areas where professional historians working within regulatory agencies might make a more significant contribution to regulatory policy-making. The first concerns historical evaluation of economic models that play a significant role in regulatory policies. These models, like the ones that came to govern risk assessments in financial regulation during the last

decade, usually rest on key factual assumptions about historical behavior in markets. Professional historians have comparative advantages in assessing the plausibility of such assumptions. Consider, for example, the risk models for mortgage-related derivatives that held sway in financial institutions and regulatory bodies up to 2008. The economists who developed these models presumed that although local housing markets might experience short-term declines, national housing prices would not do so, since they had demonstrated steady appreciation since the most recent era of securitization started in the 1980s. (Nocera 2009; Crouhy 2009) If the agencies responsible for systemic financial risk regulation had professional historians on staff, and had asked them to evaluate these models, they might well have raised serious objections, given the record of American housing prices amid the Great Depression. (Reinhart & Rogoff 2009) Such regulatory historians might have also noted that new techniques of financial hedging have sometimes concentrated and exacerbated risk rather than spread and diminish it (another feature of the 1920s and early 1930s), especially when novel financial engineering encouraged dramatic expansions in leverage.<sup>xxi</sup>

Program evaluation beckons as a second analytical terrain on which historical expertise might improve regulatory decision-making. Assessment of policy outcomes has long been an important dimension of the policy process, especially in theory. In light of growing interest in experimental governance, in which public institutions officials try out various options and then closely evaluate their impact, such assessment is poised to grow in practical significance. Economists have especially advocated an experimental regulatory mindset, and the dominant mode of evaluating regulatory outcomes has been quantitative, monetary estimations of costs and benefits. (Greenstone 2010; Sabel & Zeitlin 2008) With the Obama Executive Orders on retrospective analysis of regulatory impacts, there are now higher stakes associated with such evaluations.

Historians within regulatory agencies might assist with assessment of policy outcomes by serving as auditors of benefit-cost methods, evaluating the presumed contexts in which benefits or costs occurred, the ostensible causal links between policies and outcomes, and the methods of quantifying those impacts. They would also be well suited to investigate the details of policy implementation, examining how institutional culture mediated the transformation of initial legislation or rule-making into day-to-day efforts at enforcement and public education. As the historian Peter Stearns observed three decades ago, “the ability to discern what impact a policy had, what causal role it played, is essentially a historical skill.”<sup>xxii</sup> (1982) These same functions might be taken on by historical analysts at OIRA, the GAO, or the Congressional Research Service, when such oversight bodies have occasion to consider the consequences of a given regulatory policy or broader initiative. Such initiatives, however, would require beefing up historical capacity at OIRA and CRS, which at present do not employ professional historians, and the reorientation of historical expertise at the GAO, since its current History Office concentrates on the office’s own past. (Stathis interview; Relyea e-mail, interview; Copeland interview; Krusten e-mail.)

An additional issue that might guide an official inquiry into the uses of regulatory history concerns quasi-public regulatory institutions like the Financial Industry Regulatory Authority (FINRA), the Joint Commission on Health Care Accreditation, or, on the global stage, the ISO. These non-governmental bodies enjoy substantial regulatory authority but operate outside the norms of democratic

transparency, with even basic archival maintenance tending to be spotty. None of these private regulators seem to employ historians, though the financial industry's non-governmental regulatory bodies, like the FINRA, do have points of contact with the SEC Historical Society. (Durr & Colby 2010) Greater attention to institutional history might not only assist policy-making within these shrouded organizations, but also deepen their accountability to public regulatory overseers and broader publics.

An OIRA or ACUS study should additionally investigate the infrastructural requirements of history offices and examine strategies for upholding professional standards. In thinking through these issues, it would make sense to consult the insights of an older generation of North American historians who came into government service during the 1960s and 1970s. One cohort of these public historians worked for the American or Canadian military, intelligence services, or foreign policy establishments, all of which took history very seriously during the Cold War. In the United States, the armed services, CIA, and State Department all maintained comparatively large History Offices, sustained the production of large-scale historical projects, such as the *Foreign Relations of the United States* series and official histories of American wars, and expected staff historians to produce internal research reports for policy-makers. A second group of historians worked on the terrain of social policy, evaluating educational and welfare programs in the aftermath of the Great Society. A third group set up historical shops at regulatory agencies such as the NRC. This older generation of government historians engaged in considerable self-reflection during the late 1970s and 1980s, frequently writing about the potential relevance of historical research for policy-making and the institutional barriers to realizing that potential. Their efforts prompted analogous commentaries from prominent university-based scholars, especially those at the forefront of developing public history Ph.D. programs at Carnegie-Mellon and the University of California-Santa Barbara.<sup>xxiii</sup>

The resulting dialogue explored several themes that remain salient for the development of policy-relevant historical capacity within regulatory institutions. One abiding concern involved the institutional challenges of conducting professional historical analysis that can have a meaningful impact on policy formulation. The time frame of intensive historical research in archives often does not jibe with the fast-pace of policy-making. Many historians, moreover, manifest an academic disinclination to draw firm conclusions from sketchy or messy bodies of evidence, reticence that policy-makers rarely appreciate. Official historians also frequently find themselves isolated in small offices with minimal staff support; and they sometimes confront skepticism about their capacity to inform policy, partly because historical interpretation is so omnipresent in policy debates, and partly because the dominant conceptual frameworks for policy analysis stress quantitative methods from economics and statistics.

These challenges underscore the importance of what one federal historian called "critical mass." Historical offices require sufficient staffing to carry out regular duties – production of institutional histories, oversight of oral history projects, maintenance of public outreach – while building working relationships with officials throughout the agency and undertaking research projects for internal policy processes. Lone historical operators will struggle to fulfill expansive agendas of public outreach as well as policy-directed historical research. A related point concerns the placement of history offices within an agency's bureaucratic structures. If government historians work within public relations offices, there

will be strong pressures to direct their work toward public outreach. A direct reporting relationship to high-level policy officials, by contrast, will exert gravitational pull toward policy-relevant historical analysis. (Trask 1999)

Such reflections suggest some obvious questions that an OIRA or ACUS study might explore. First, what constitutes sufficient historical staffing for a regulatory agency, and how might those requirements differ by agency? To what extent might an agency benefit from having professionally-trained historians on staff in positions other than those within an official “history office?” Second, where should official regulatory historians sit, and to whom should they report? In addition, when might regulatory institutions sensibly rely on external historians, either from academia, other government bodies, or historical consulting firms, for research and writing? David Trask, one of the most prominent federal historians during the 1970s and 1980s, argued that outsourcing often made sense, especially when institutions wished to reach external constituencies, as through historical exhibits or the writing of a synthetic agency history. By contrast, Trask thought that informed historical analysis to support internal policy planning and strategic decision-making required extensive knowledge and internal credibility, which only an official institutional historian could provide. (Gardner & Trask 1999; Trask 1999) And yet in some contexts, the development of strong working relationships between an agency historian and other staff members might inhibit critical perspective or foreclose comparative insights about other regulatory institutions, which an outside consultant might be able to offer.

An OIRA or ACUS inquiry should further consider how to deepen the epistemic community of applied historians within federal agencies. One option would be to encourage the development of informal professional networks across regulatory institutions. Another would be to rotate historical analysts through various agencies early in their careers.<sup>xxiv</sup> Regulatory institutions might further experiment with practices of peer review, borrowing from the “Smart Regulation” program run by the European Union. Under such a framework, history offices might undergo periodic external assessments by outside policy historians. Such peer review might include evaluations of public history outputs and mechanisms of internal policy support. This kind of oversight would bring professional standards to bear on agencies’ self-presentations of their pasts, ensuring that in addition to celebrating policy successes, official histories frankly recognize moments of controversy, episodes that reveal institutional shortcomings, and turning- points in institutional culture or policy focus. (Eberlein & Newman 2008; Maggetti & Gilardi 2010)

In raising these possibilities, we remain cognizant that historical analysis hardly constitutes a panacea for whatever ills might afflict regulatory institutions, and that answers to pressing policy questions do not necessarily reside amid the messy remnants of institutional pasts. Historical work undertaken within or commissioned by governmental institutions is by no means always done well. Historical research into the outcomes of a particular policy or program can generate little more than platitudes and commonplaces. Synthetic organizational histories can reflect the blinkered views of embattled institutional employees who see a need to put the most positive interpretation on events for external constituencies. (O’Donnell 1982) Historians who find themselves incorporated into organizational policy planning can, like analysts with other disciplinary backgrounds, succumb to “groupthink.”<sup>xxv</sup>

(Graham 1983) Even when policy-makers have access to the best and most relevant historical research, they by no means necessarily take it on board. (Gardner & Trask 1999)

Let us return for a moment to our earlier counterfactual musing about the possible impact of professional historians on macro-prudential financial regulation at the Federal Reserve Board. Was it really likely, amid the confidence that Chicago School-trained economists placed in the efficient market hypothesis, the more general optimism bred by a longstanding boom in financial assets, and the abiding fears of competition from foreign financial centers, that a Fed Historian could have leaned against hurricane-force policy winds, successfully demanding that risk models incorporate less rosy-hued estimations of market conditions in a general economic downturn? Certainly the presence of economist Ben Bernanke on the Fed's Board of Governors from 2002 onwards did little to shift policy priorities before the full onset of financial crisis, despite Bernanke's extensive research on crisis transmission mechanisms and macroeconomic policy during the Great Depression.

Furthermore, as former Senator and Democratic presidential candidate George McGovern (himself the holder of a history Ph.D.) observed at a 1989 meeting of public historians, misguided historical arguments and comparisons lie behind more than a few failed policy initiatives. The "hazards of historical analogy," McGovern noted in a review of the historical judgments that led America into the quagmire of Vietnam, can lead decision-makers down disastrous paths. This dynamic can surely occur within regulatory institutions as well as among the highest elected officials. And yet, these cautions also point to the inescapability of historical thinking within policy-making. Historical assumptions and analogies creep into regulatory governance at every stage – agenda formation, construction of policy options, policy selection/justification, and translation of policy blueprints into leaving, breathing, institutional realities. "Almost all public policy," McGovern also noted in his 1989 address, "borrows from history. It is almost impossible to make a decision on anything, whether it is in the state legislature, or the Congress of the United States, or the White House, or wherever, without borrowing from historical experience." (McGovern 1989; Graham 1983; Stearns 1982) Given that reality, we should improve the way that regulatory institutions make sense of and use the past, whether their own, that of other similarly situated organizations, or that of their wider political community and society.

Another prominent historian at the forefront of creating the field of public history, Otis Graham, encapsulated the possibilities almost three decades ago. Historians within government, Graham, argued, can "be more than memory banks. They offer a mode of analysis for future events, sharpened in the study of the human past. They offer an in-house or consultative critique of the uses to which decision-makers already put the past, to make those assumptions visible, then more sophisticated and perceptive." (Graham 1983; Stiller 1999) We return once again to an imagined alternative set of deliberations within the post-2000 Federal Reserve. Even if a single Fed historian would have struggled to resist the institutional faith in prevalent risk models, perhaps it would have made a difference if, scattered among all the economists occupying district bank research positions, there had been a few more analysts with significant historical training and expertise.<sup>xxvi</sup>

Achieving more meaningful integration of history into regulatory policy will take time, even with the focused support of regulatory agencies and coordinating institutions like OIRA and ACUS, and with sufficient budgetary resources. Whether or not regulatory officialdom immediately embraces the more cohesive integration of historical research into policy formation, the historical profession could do more to facilitate such efforts. At the broadest level, wide-ranging scholarly re-engagement with the history of political economy would foster greater insight into the evolution of regulatory regimes – the overarching bundle of normative aspirations and conceptual frameworks that structure policy processes – and the social and economic consequences of those regimes.

More prosaically, closer cooperation with policy schools, along with renewed attention to the pedagogical challenges of teaching applied history, would expand the pool of historians who possess extensive training in both historical research and the quantitative methods so central to analysis of regulatory policy.<sup>xxvii</sup> And a national internship program, perhaps modeled on the regular placements of economics graduate students in the Federal Reserve and early career academics on the President's Council of Economic Advisers, would give young historians invaluable experience in applied history, while increasing the number of professionally trained individuals attracted to careers in policy history or other government service. Such a program would not only expand the capacity of History Offices, but also deepen the reach of historical thinking and research skills within regulatory bureaucracies.<sup>xxviii</sup>

A generation ago, leading academics in the emerging field of public history contemplated analogous directions, before that field chose to focus on museum and documentary studies, digital humanities, and other techniques of engaging public interest. Our informal survey of American regulatory bodies suggests that even with this professional retreat, historians and the practice of institutional history retain some important beachheads. Perhaps it is time to re-imagine the process of bringing the state back in to historical studies, so that it includes bringing a more substantial phalanx of policy-oriented applied historians into the bureaucracies of the regulatory state.

## **Acknowledgements**

We would like to thank the following for their comments on drafts of this essay: Tim Bütke, John Cisternino, Jacquelyn Dowd Hall, Richard Kohn, Robert Korstad, Benjamin Waterhouse, David Levi-Faur, and three anonymous *Regulation & Governance* reviewers.

## **References**

Bach D, Newman A, Weber S (2006) The International Implications of China's Fledgling Regulatory State: From Product Maker to Rule Maker. *New Political Economy* 11, 499-518.

Balkin J (2011) *Living Originalism*. Belknap Press, Cambridge, MA.

Balleisen EJ (2010) The Prospects for Effective Coregulation in the United States: A Historian's View from the Early Twenty-First Century. In: Balleisen, Moss (eds) *Government and Market*, pp. 443-81. Cambridge University Press, Cambridge MA.

Balleisen EJ, Moss D (eds) (2010) *Government and Markets: Toward a New Theory of Regulation*. Cambridge University Press, Cambridge, MA.

Bartley T (2007) Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions. *American Journal of Sociology* 113, 297-351.

Bernanke B (2004) *Essays on the Great Depression*. Princeton University Press, Princeton.

Blouin FX (2011) *Processing the Past: Contesting Authority in History and the Archives*. Oxford University Press, New York.

Board of Governors of the Federal Reserve (2012) Press Release, May 30. Available at URL: <http://www.federalreserve.gov/newsevents/press/other/20120530a.htm>.

Booth C, Rowlinson M (2006) Management and Organizational History: Prospects. *Management and Organizational History* 1, 11-12.

Bowie NE, K. Jamal, (2006) Privacy Rights on the Internet: Self-Regulation or Government Regulation. *Business Ethics Quarterly* 16, 323-42.

Brake EK (forthcoming) "Uncle Sam on the Family Farm: Farm Policy, Rural Economic Development, and the Business of Southern Agriculture, 1933-1980," Ph.D. Diss. in progress, Duke University.

Büthe T (2002) Taking Temporality Seriously: Modeling History and the Uses of Narratives as Evidence. *American Political Science Review* 96, 481-93.

Büthe T, Mattli W (2011) *The New Global Rulers: The Privatization of Regulation in the Global Economy*. Princeton University Press, Princeton.

Capoccia G, Keleman RD (2007) The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism. *World Politics* 59, 341-69.

Carmichael J, Esho N (2001) Asset Price Bubbles and Prudential Regulation. Working Paper 3, Australian Prudential Regulation Authority. [Last accessed 15 May 2012.] Available at URL: <http://www.apra.gov.au/AboutAPRA/Research/Documents/Asset-Price-Bubbles-and-Prudential-Regulation-Sep2001.pdf>.

Carpenter D (2001) *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928*. Princeton University Press, Princeton.

Carpenter D (2010) *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA*. Princeton University Press, Princeton.

Carpenter D, Moss D (eds.) (forthcoming) *Preventing Capture: Special Interest Influence in Regulation, and How to Limit It*. Tobin Project, Cambridge, Ma. [Last accessed 23 August 2012.] Working Drafts available at URL: <http://www.tobinproject.org/books-papers/preventing-capture>.

Clarke SH (1994) *Regulation and the Revolution in United States Farm Productivity*. Cambridge University Press, Cambridge, U.K.

Coglianesse, C (ed.) (forthcoming) *Regulatory Breakdown? The Crisis of Confidence in U.S. Regulation*. University of Pennsylvania Press.

Coglianesse C, Lazer D (2003) Management Based Regulation: Prescribing Private Management to Achieve Public Goals. *Law & Society Review* 37, 691-730.

Croley S (2007) *Regulation and Public Interests: The Possibility of Good Regulatory Government*. Princeton University Press, Princeton.

Crouhy M (2009) Risk Management Failures during the Financial Crisis. In: Evanoff D, Hartmann P, Kaufman G (eds.) *The First Market Turmoil of the 21<sup>st</sup> Century: Implications for Public Policy*, pp. 250-251. World Scientific, Singapore.

Delahaye A, Booth C, Clark P, Procter S, Rowlinson M (2009) The Genre of Corporate History. *Journal of Organizational Change Management* 22, 27-48.

DeLong JB (2011) Economics in Crisis. *The Economists' Voice* 8. Available at URL: <http://www.bepress.com/ev/vol8/iss2/art2>

Dubash N, Morgan B (2011) Understanding the Rise of the Regulatory State in the Global South. *Jerusalem Papers on Regulatory Governance* No. 32 (Feb). [Last accessed 24 September 2011.] Available at URL: <http://regulation.huji.ac.il/papers/jp32.pdf>.

Durr K, Colby R (2010) (curators) *The Institution of Experience: Self-Regulatory Organizations in the Securities Industry, 1792-2010*. SEC Historical Society. [Last accessed 21 October 2011.] Available at URL: <http://www.sechistorical.org/museum/galleries/sro/index.php>.

Eberlein B, Newman A (2008) Escaping the International Governance Dilemma: Incorporated Transgovernmental Networks in the European Union. *Governance* 21, 25-52.

Eisner M (2006) *Governing the Environment: The Transformation of Environmental Regulation*. Lynne Rienner Publishers, Boulder, Co.

Eisner M (2010) Markets in the Shadow of the State: An Appraisal of Deregulation and Implications for Future Research. In: Balleisen, Moss (eds) *Government and Markets: Toward a New Theory of Regulation*, pp. 512-537. Cambridge University Press, Cambridge, MA.

Fisher I (1929) This Era of Investment Trusts. *North American Review* 228 (July), 71-77.

Galbraith JK (1955) *The Great Crash: 1929*. Time, New York, 43-65.

Gardner JB, Trask DF (1999) Serving Time in the Trenches: David F. Trask, Public Historian and Federal Historian. *Public History* 22, 11-12.

Grafton A, Grossman J (2011) No More Plan B: A Very Modest Proposal for Graduate Programs. *Perspectives Online* 49 (Oct.). Available at URL:  
<http://www.historians.org/Perspectives/issues/2011/1110/index.cfm>.

Graham HD (1993) The Stunted Career of Policy History: A Critique and an Agenda. *Public Historian* 15 (Spring), 15-37.

Graham OL (1983) The Uses and Misuses of History: Roles in Policy-Making. *Public Historian* 5 (Spring), 5-19.

Greenstone M (2010) Effective Regulation through Credible Cost-Benefit Analysis: The Opportunity Costs of Superfund. In: Balleisen and Moss (eds.) *Government and Markets, Government and Markets: Toward a New Theory of Regulation.*, pp. 52-59. Cambridge University Press, Cambridge, MA.

Guasch L, Hahn RW (1999) The Costs and Benefits of Regulation: Implications for Developing Countries. *World Bank Research Observations* 14, 137-158.

Gunningham N, Rees J (1997) Industry Self-Regulation: An Institutional Perspective. *Law and Policy* 19, 363-414.

Hansjürgens B (ed) (2005) *Emissions Trading for Climate Policy: US and European Perspectives*. Cambridge University Press, Cambridge.

Harahan P, Davis J (1983) Historians and the American Military: Past Experiences and Future Expectations. *Public Historian* 5 (Summer), 55-64.

Hutter B (2011) *Managing Food Safety and Hygiene: Governance and Regulation as Risk Management*. Edward Elgar Publishing, Cheltenham, U.K.

Junod SW (2000) Diethylene Glycol Deaths in Haiti. *Public Health Reports* 115, 78-86.

Junod SW, Marks L (2002) Women's Trials: The Approval of the First Oral Contraceptive Pill in the United State and Great Britain. *Journal of the History of Medicine and Allied Sciences* 57, 117-160.

Kroszner RS (1999) Can the Financial Markets Privately Regulate Risk? The Development of Derivatives Clearinghouses and Recent Over-the-Counter Innovations. *Journal of Money, Credit, and Banking* 31, 596-618.

Leight J (2010) Public Choice: A Critical Reassessment. In: Balleisen, Moss, (eds.) *Government and Markets: Toward a New Theory of Regulation*, pp. 213-255. Cambridge University Press, Cambridge, MA.

Levi-Faur D (2005) The Global Diffusion of Regulatory Capitalism. *Annals of the American Academy of Political and Social Science* 598 (Mar.), 12-32.

Levi-Faur D (2003) The Politics of Liberalization: Privatization and Regulation for Competition in Europe's and Latin America's Telecoms and Electricity Industry. *European Journal of Political Research* 42, 705-40.

Maggetti M, Gilardi F (2010) Establishing Regulatory Networks and the Diffusion of Best Practices. *Network Industries Quarterly* 12, 10-14.

Mahoney J (2000) "Path Dependence in Historical Sociology. *Theory and Society* 29, 507-48.

Mazuran G (1985) Countering 'Doublethink': Doing History at the Nuclear Regulatory Commission. *Public Historian* 7 (Summer), 37, 40.

May E (1981) *Careers for Humanists*. Academic Press, New York.

McGovern G (1989) The Historian as Policy Analyst. *Public Historian* 11 (Spring), 43.

Merton RC (1995) A Functional Perspective on Financial Intermediation. *Financial Management* 24, 23-41.

Mintz J (1995) *Enforcement at the EPA: High Stakes and Hard Choices*. University of Texas Press, Austin.

Montgomery WD (1972) Markets in Licenses and Efficient Pollution Control Programs. *Journal of Economic Theory* 5, 395-418.

Moss D, Cisternino J (eds) (2009) *New Perspectives on Regulation*. The Tobin Project, Cambridge, MA.

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (2011) *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*. U.S. Government Printing Office, Washington.

National Commission on the Causes of the Financial and Economic Crisis in the United States (2011) *The Financial Crisis Inquiry Report*. U.S. Government Printing Office, Washington.

Neustadt R, May E (1986) *Thinking in Time: The Uses of History for Decision Makers*. Free Press, New York.

Nocera J (2009) Risk Mismanagement. *New York Times*. (Jan 4). New York, NY.

Noll R (1982) Implementing Marketable Emission Permits. *American Economic Review* 72, 120-24.

Obama, Barack (2011) Executive Order 13563 – Improving Regulation and Regulatory Review. *Federal Register* 70, No. 14 (Jan 21), pp. 3821-3823. Government Printing Office, Washington, D.C. [Last accessed 23 August, 2012.] Available from URL: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

Obama, Barak (2012) Executive Order 13610 – Identifying and Reducing Regulatory Burdens. *Federal Register* 77, No. 93 (May 14), p. 28467. Government Printing Office, Washington, D.C. [Last accessed 22 May, 2012.] Available from URL: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/html/2012-11798.htm>.

O'Donnell T (1982) Pitfalls along the Path of Public History. *Public Historian* 4 (Winter), 70-71.

O'Neill J (2005) *Originalism in American Law and Politics*. The Johns Hopkins University Press. Baltimore, MD.

Page D (1984) History and Foreign Policy: The Role and Constraints of a Public Historian in the Public Service. *Public Historian* 6 (Spring), 20-36.

Parker C (1999) Compliance Professionalism and Regulatory Community: The Australian Trade Practices Regime. *Journal of Law and Society* 26, 215-39.

Pearson M (2005) The Business of Governing Business in China: Institutions and Norms of the Emerging Regulatory State. *World Politics* 57, 296-322.

Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate (2011) *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*. United States Senate, Washington.

Pesch C, Gerber J (2001) Historical Analysis, a Valuable Tool in Community-Based Environmental Protection. *Marine Pollution Bulletin* 42 (May), 339-49.

Peter Steans (1982) History and Policy Analysis: Toward Maturity. *Public Historian* 4 (Summer), 16-22.

Public History Resource Center, Where to Study Public History. [Last accessed 17 October 2011.] Available at URL: [http://www.publhistory.org/education/where\\_study.asp#C](http://www.publhistory.org/education/where_study.asp#C).

Radaelli C (2004) The Diffusion of Regulatory Impact Analysis: Best Practices or Line-Drawing? *European Journal of Political Research* 43, 723-47.

Rakove J (1997) *Original Meanings: Politics and Ideas in the Making of the Constitution*. A. A. Knopf, New York.

Rees J (1996) *Hostages of Each Other: The Transformation of Nuclear Safety since Three Mile Island*. University of Chicago Press, Chicago.

Reinhart C, Rogoff K (2009) The Aftermath of Financial Crises. *American Economic Review* 9, 466-72.

Russel E (1993) Lost Among the Parts per Billion: Ecological Protection at the United States Environmental Protection Agency, 1970-1993. *Environmental History* 2, 29-51.

Sabel C, Zeitlin J (2008) Learning from Difference: The New Architectures of Experimentalist Governance in the European Union. *European Law Journal* 14, 271-327.

Sabel C, Zeitlin J (eds) (2010) *Experimentalist Governance in the European Union: Towards a New Architecture*. Oxford University Press, Oxford.

Sandholtz W, Sweet AS (1998) *European Integration and Supranational Governance*. Oxford University Press, Oxford.

SEC Historical Society (2011) Amended Bylaws of Securities and Exchange Commission Historical Society. [Last accessed 23 August, 2012.] Available at URL: <http://www.sechistorical.org/sec/pdf/SECHS-Bylaws.pdf>.

Shapiro S (2011) The Evolution of Cost-Benefit Analysis in U.S. Regulatory Decisionmaking. In: Levi-Faur D (ed) *Handbook on the Politics of Regulation*, pp. 385-396. Edward Elgar Publishing, Cheltenham, U.K.  
Stakenas R, Mock D (1985) Context Evaluation: The Use of History in Policy Analysis. *Public Historian* 7 (Summer), 43-56.

Stearns P (1982) History and Policy Analysis: Toward Maturity. *Public Historian* 4 (Summer), 5-29.

Stearns P, Tarr J (1987) Curriculum in Applied History. *Public Historian* 9 (Summer), 111-25.

Stiller JH (1999) The Practice of Public History in Federal History Programs: Ensuring the Future. In: Gardner JB, LaPaglia PS *Public History: Essays from the Field*, pp. 357-369. Malabar, FL.

Swann JP (1989) Biomedical Research and Government Support: The Case of Drug Development. *Pharmacy in History* 31, 103-116.

Swann JP (1994) FDA and the Practice of Pharmacy: Prescription Drug Regulation Before the Durham-Humphrey Amendment of 1951. *Pharmacy in History* 26, 55-70.

Swann JP (1998) A Perspective on FDA Oral Histories. Paper Presented at the Annual meeting of the Society for History in the Federal Government, College Park, Maryland, 19 March 1998. [Last accessed 28 September 2011.] Available at URL: <http://www.fda.gov/AboutFDA/WhatWeDo/History/OralHistories/PerspectiveonFDAOralHistories/default.htm>.

Swann JP (1999) 1941 Sulfathiazole Disaster and the Birth of Good Manufacturing Practices. *Pharmacy in History* 40, 16-25.

Tietenberg T (1985) *Emissions Trading: An Exercise in Reforming Pollution Policy*. Resources for the Future and Johns Hopkins University Press, Washington.

Trask DF (1976) *A Reflection on Historians and Policymakers*. U.S. Department of State, Washington.

Trask RR (1991) Small Federal History Offices in the Nation's Capital. *Public Historian* 13, 47-60.

Trask RR (1999) Starting Two Federal History Programs: Experiences and Lessons. *Public Historian* 21 (Summer), 54, 58-61.

Voyer RA, Pesch C, Garber J, Copeland J, Comeleo R (2000) New Bedford, Massachusetts, A Story of Urbanization and Ecological Connections, *Environmental History* 5, 352-77.

Walker SJ (1992) *Containing the Atom: Nuclear Regulation in a Changing Environment, 1963-1971*. University of California Press, Berkeley.

Walker SJ (2000) *Permissible Dose: A History of Radiation Protection in the Twentieth Century*. University of California Press, Berkeley.

Walker SJ (2009) *The Road to Yucca Mountain: The Development of Radioactive Waste Policy in the United States*. University of California Press, Berkeley.

Walker JS (2004) *Three Mile Island: A Nuclear Crisis in Historical Perspective*. University of California Press, Berkeley, CA.

Walker SJ, Mazuzan GT (1984) *Controlling the Atom: The Beginnings of Nuclear Regulation 1946-1962*. University of California Press, Berkeley.

Wiener J, Rogers M, Hammit J, Sand P (2011) *The Reality of Precaution: Comparing Risk Regulation in the United States and Europe*. RFF Press, Washington.

Witt JF (2004) *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*. Harvard University Press, Cambridge, MA.

Woerdman E (2004) Path-Dependent Climate Policy: The History and Future of Emissions Trading in Europe. *Environmental Policy and Governance* 14, 261-75.

Yow VR (2005) *Recording Oral History: A Guide for the Humanities and Social Sciences*, Second Edition. Alta Mira Press, Walnut Creek.

---

<sup>i</sup> More information on these organizations is available at the following URLs: [www.tobinproject.org](http://www.tobinproject.org); <http://www.law.upenn.edu/academics/institutes/regulation/>; <http://kenan.ethics.duke.edu/research/rethinking-regulation/>; <http://regulation.upf.edu/>.

<sup>ii</sup> Significantly, the new head of the CFPB's Office of Research, Sendhil Mullainathan, is a behavioral economist.

<sup>iii</sup> Recent American examples include National Commission on the BP Deepwater Horizon Oil Spill (2011); National Commission on the Causes of the Financial and Economic Crisis (2011); Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs (2011).

---

<sup>iv</sup> For an earlier overview of historians in the federal government, see Trask (1991).

<sup>v</sup> Many social scientists interested in historical institutionalism have explored these themes, though mostly with regard to the welfare state, macro-economic policy-making, and constitutional structures such as the European Union, rather than regulatory bodies. For introductions to the literature, see Mahoney (2000); Büthe (2002); Capoccia & Keleman (2007).

<sup>vi</sup> The FDA example offers a case of agency historians becoming repositories of institutional memory as a result of long tenures and extensive archival research. Junod observed that her extensive knowledge makes her a more effective and credible policy advisor. (Junod interview.)

<sup>vii</sup> On the complexities of navigating archival evidence, see Blouin (2011). On oral history methods/theory, see Yow (2005).

<sup>viii</sup> For examples of such scholarship, see Clarke (1994); Witt (2004); Brake (forthcoming).

<sup>ix</sup> David Erickson, Manager of the San Francisco Fed's Center for Community Development Investments and the recipient of a history Ph.D., represents a rare exception.

<sup>x</sup> A list of SEC Historical Society Galleries and their curators is available at URL:

<http://www.sechistorical.org/museum/galleries/>.

<sup>xi</sup> For an example of a publication by a former EPA official that aims to inform policy-making, see Mintz (1995).

<sup>xii</sup> Collectively, the FTC interviews focus as much on career trajectories and personal achievements as they do on evolving regulatory regimes or the successes and failures of particular policies.

<sup>xiii</sup> SEC Historical Society oral histories are available at URL: <http://www.sechistorical.org/museum/oral-histories/a-d/>.

<sup>xiv</sup> Oral histories of with five past presidents of the Minneapolis Fed are available at URL:

<http://www.minneapolisfed.org/about/role/history/minneapolis.cfm>.

<sup>xv</sup> FDA history web pages are available at URL: <http://www.ftc.gov/ftc/history/ftchistory.shtm> and <http://www.fda.gov/AboutFDA/WhatWeDo/History/default.htm>.

For other regulatory agency history webpages, see:

OSHA: <http://www.dol.gov/oasam/programs/history/>

EPA: <http://www.epa.gov/history/>

Fed (Kansas City): <http://www.kansascityfed.org/aboutus/history/>

Fed (Minneapolis): <http://www.minneapolisfed.org/about/role/history/system.cfm>

FTC: <http://www.ftc.gov/ftc/history/ftchistory.shtm>

NRC: <http://www.nrc.gov/about-nrc/history.html>

SEC: <http://www.sec.gov/about/whatwedo.shtml>

<sup>xvi</sup> "What's Cooking Uncle Sam: The Government's Effect on the American Diet." [Last accessed 23 August, 2012.] Available at URL: <http://www.archives.gov/exhibits/whats-cooking/>. Thanks to recent facilities upgrades, the FDA history office hopes to create more exhibits of this nature for FDA visitors and staff in the future. (Junod interview.)

<sup>xvii</sup> For the NLRB's 75<sup>th</sup> anniversary commemorations, see their web site. [Last accessed 15 October 2011.]

Available at URL: <https://www.nlr.gov/75th/index.html>. Agencies also structure historical reflection around anniversaries of significant legislative milestones or policy events. See EPA's celebration of the 40<sup>th</sup> Anniversary of the Clean Air Act. [Last accessed 10 October 2011] Available at URL: <http://www.epa.gov/oar/caa/40th.html>; and NRC's retrospective on the Three Mile Island, incident "25<sup>th</sup> Anniversary of Three Mile Island Unit 2," March 3, 2004 [Last accessed 20 October 2011.] Available at URL: <http://www.nrc.gov/reading-rm/doc-collections/commission/tr/2004/20040303a.pdf>.

<sup>xviii</sup> We are indebted to Tim Büthe for suggesting this connection.

<sup>xix</sup> For introductions to a vast legal and historical literature, see Rakove (1997); O'Neill (2005); Balkin (2011).

<sup>xx</sup> ACUS has taken on several similar reviews since the Obama Administration resuscitated it in 2010, including inquiries into "International Regulatory Cooperation," "Agency Innovations in e-Rulemaking," and "Science in the Administrative Process." See "Current Projects," Administrative Conference of the United States, available at URL: <http://www.acus.gov/research/the-conference-current-projects/>.

<sup>xxi</sup> For a typical pre-1930s expression of optimism about diversified investing as hedge against losses, see Fisher (1929). On the volatile implications of investment trusts relying on high levels of gearing during the final years of the 1920s boom, see Galbraith (1955). For a prominent economist's reflection on how the Global Financial Crisis has demonstrated the value of historical perspective to systemic financial regulation, see DeLong 2011. And for an

---

example of financial regulators engaging with history to explore how prudential regulation can minimize the extent and fall-out of asset bubbles, see Carmichael & Esho (2001).

<sup>xxii</sup> For an example of such an exercise, see Russel (1993).

<sup>xxiii</sup> Representative essays include Trask (1976); Stearns (1982); O'Donnell (1982); Graham (1983); Harahan & Davis (1983); Page (1984); Stakenas & Mock (1985). As federal reliance on formal History Offices waned after 1980, as public historians focused on popular memory and public outreach, and as the wider discipline turned away from the history of foreign policy, military experience, and political economy, discussions of public history as input into policy formulation have dropped out of journals such as *Public Historian*. The focus of graduate programs in public history shifted in similar ways. (Graham 1993); (Public History Resource Center 2011).

<sup>xxiv</sup> One possibility would be to create some Presidential Management Fellowships targeted specifically at history Ph.D. students who wish to explore careers at regulatory agencies. [Last accessed 21 October, 2011] Available at URL: <http://www.pmf.gov/>.

<sup>xxv</sup> The mechanisms of peer review that we discuss above would potentially constrain such corrosive impacts on professional ethics and dispassionate historical analysis.

<sup>xxvi</sup> Perhaps tellingly, Ben Bernanke's research on the Great Depression (2004) focuses predominantly on monetary and currency policy rather than issues of regulatory oversight, and on crisis responses rather than crisis prevention. Nonetheless, his essay on "The Nonmonetary Effects of the Financial Crisis in the Propagation of the Great Depression" demonstrates a clear understanding that because of the degree of leverage through the economy, the United States of the late 1920s was especially vulnerable to macroeconomic shocks and rapid declines in the values of assets such as housing.

<sup>xxvii</sup> On effectively teaching applied history, see Stearns & Tarr (1987).

<sup>xxviii</sup> In the last few years, the American Historical Association has signaled interest in facilitating a wider array of career paths for its members, not least in a formal statement about the relationship between graduate training and career options made by the AHA's President and its Executive Director. (Grafton & Grossman 2011.) The AHA is well-situated to spearhead an initiative to create such an internship program.

## **Appendix I – Interviews and Correspondence by Agency and Organization**

CRS: Interview, Steve Stathis , Aug. 31, 2011; Harold Relyea Email, Sept. 12, 2011; Interview, Harold Relyea, Sept. 12, 13, 2011; Interview, Curtis Copeland, Sept. 8, 2011.

Dept. of Labor: E-mails, Linda Stinson, Oct. 11 & 12, 2011.

EPA: E-mail, Christine Dibble, Jul. 5, 2011; Carol Pesch, Jul. 6, 2011; Interview, Carol Pesch, Jul. 14, 2011.

Federal Reserve: E-mail, Barbara Dean, Jul. 21, 2011; E-mail, David Wheelock, Jul. 27, 2011; Interview, David H. Small, Jul. 28, 2011; Interview, Sarah Burke, Jul. 29, 2011; Interview, Bill Medley, Sept. 6, 2011; Interview, Aaron Buchannan, Sept. 12, 2011; Interview, David Erickson, Dec. 9, 2011.

FDA: Interview, Suzanne Junod, Jul. 19, 2011.

FTC: Interview, Marc Winerman, Jun. 23, 2011.

GAO: Interview, Curtis Copeland, Sept. 8, 2011; E-mail, Maarja Krusten, Sept. 6, 2011.

History Associates, Inc.: Interview, Brian Martin, Aug. 26, 2011.

---

NRC: Interview, Thomas Wellock, Aug. 4, 2011.

SEC Historical Society: E-mail, Carla Rosati, Jun. 29 2011.

One of the authors also made contact with two quasi-public regulatory institutions, the Financial Industry Regulatory Authority (FINRA), and the Institute of Nuclear Power Operators (INPO):

FINRA: Interview, FINRA Public Relations, Aug. 26, 2011

INPO: Interview, Glenda Willoughby, Aug. 31, 2011.

Colleen Shogan, Assistant Director, CRS, and James Grossman, Executive Director at the American Historical Association, helped us to locate interviewees.