

Theory and Practice

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As the fellow who had the temerity to launch this enterprise—with the collaboration of exceptionally talented co-conspirators—I want to say first how delighted I am that the *Yale Journal on Regulation* has thrived for so long and is today what we hoped it would be: a forum for scholarship of lasting value, and for debate, about the theory and practice of regulation. This, after twenty-five years of publication, remains, and will continue to be, an important role and mission.

I welcome this opportunity to share a few reflections and recollections about the *Journal*. My comments are in two parts. Part I describes the conception of the *Journal*—its bases and its main components. (A bit of foreshadowing: former President Jimmy Carter bears some responsibility.) Part II discusses the inception of the publication as a venture (and adventure).

I. Conception

The idea for this *Journal* was a byproduct—or, to use the appropriate parlance, a positive externality—of the Carter administration.

President Carter had promised, during his successful campaign in 1976, to reorganize the federal bureaucracy, to increase its effectiveness and efficiency, and to streamline regulation. Once in office, he created an entity called the President's Reorganization Project, to pursue this portion of his agenda. He appointed leading economists—such as Alfred E. Kahn and Elizabeth E. Bailey, two of this publication's early authors—to key regulatory positions. He issued an executive order that required executive agencies to conduct and publish regulatory analyses—basically, cost-benefit analyses—of regulations with potential economic impacts in excess of \$100 million. He established a Cabinet-level Regulatory Analysis Review Group and charged it with analyzing and commenting on ten to twenty especially important proposed rules each year. He created a Regulatory Council, consisting of thirty-eight executive and independent regulatory agencies, to develop and share new tools and insights that could inform more rigorous analyses of regulatory proposals and options and to compile and publish twice a year a Regulatory Calendar—a

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compendium of major rules under consideration across the government, with summaries of their objectives and prospective content. In addition, President Carter, his appointees, and his staff worked with Congress to shape and secure, and then to implement, deregulation or reduced regulation of substantial swaths of economic activity—including deregulation of airline fares, trucking rates, and natural gas prices.

In the fall of 1977, I began an extended leave of absence from Yale Law School to serve in the Carter administration—initially at the President's Reorganization Project and then, for most of my tenure, at the White House. In both venues, my portfolios encompassed work on regulatory issues—including presidential directives or legislative proposals about telecommunications, consumer protection, the export of hazardous substances and products, broadcasting, and reform of the Administrative Procedure Act. I was a member of the Regulatory Reform Working Group, a small clutch of staff members from the White House and other elements of the Executive Office of the President that met regularly to trade notes on regulatory initiatives and, as appropriate, to work together on projects (including the executive order referred to above).

I emerged from this experience with the impression and belief that regulation was an increasingly coherent and integrated field of analysis and activity. For decades, regulation had proceeded in what could be thought of as a series of vertical domains (for example, communications, energy, and transportation) and sub-domains, each with separate statutory bases, responsible agencies and divisions, accretions of rules and decisions, and sets of practitioners. These domains had been governed, of course, by some cross-cutting procedural requirements and legal standards, but they functioned in mostly parallel universes.

Now, though, these vertical domains were more closely connected horizontally—by the sharply increased importance of economic analysis, by executive directives, by mechanisms for coordination across domains, and by a heightened attention to alternatives to traditional command-and-control regulation. In addition, research and debate about regulatory policies and issues were increasingly being framed in terms that crossed vertical domains—by researchers, policymakers, and practitioners who defined their own professional interests and pursuits more broadly.

I returned to law school determined to try to establish a new law journal not about any particular vertical domain of regulatory activity, but about regulation as a field.

From the start, the *Yale Journal on Regulation* was meant to be a venue for first-rate scholarship and debate about the theory and practice of regulation—and about the connections, actual or potential, between theory and practice. It was designed to be an interdisciplinary journal, with a staff capable of commissioning, understanding, and editing articles that, individually and collectively, would incorporate insights from law, economics, and other

disciplines and perspectives. And it was intended to be a journal with a clear sense of audience. We wanted to publish a journal that scholars, practitioners, and policymakers in and across the field of regulation would find useful—with articles that they would actually want to read.

II. Inception

The *Journal* was an entrepreneurial venture, and it could not have been launched or sustained without four sets of crucial co-venturers who shared a commitment to the enterprise and a willingness to devote resources to it.

First, we needed authorization and investment from the law school. I will always be grateful to Dean Harry Hillel Wellington and to Associate Dean James W. Zirkle, who gave me the go-ahead, and a modest budget, with which to start the *Yale Journal on Regulation*.

In addition, the *Journal* received invaluable counsel, encouragement, and support from our distinguished faculty advisers: Paul W. MacAvoy, Jerry L. Mashaw, and Peter H. Schuck.

Second, the *Journal* was able to attract an extraordinary core editorial staff. Bruce D. Judson (who later succeeded me as Editor-in-Chief), William F. Adkinson, Jr., and Lee Kyriacou were the first to sign up. All three were—and, I am confident, still are—very smart, keenly interested in the range of issues that the *Journal* would address, energetic, and entrepreneurial. That last characteristic—shared by others who would join the effort during our start-up phase—was especially important; after all, we began with what I have carefully described as a modest budget—and with no authors and no subscribers.

At this point, a few words about how we proceeded. Our basic plan was to commission articles from leading scholars, policymakers, and practitioners in the field of regulation—and then to approach potential subscribers not only with a general characterization of the *Journal*'s mission and prospective value, but with what we hoped they find to be compelling descriptions of the articles that would appear in the first issue. I am happy to report that this strategy worked.

Third, then, let us be clear: the authors who agreed to write articles for our nascent *Journal* were, unambiguously, co-venturers, too. They were willing to commit their energies and talents to the preparation of articles for a publication that, at the time, could not guarantee them a readership. They made those commitments in no small part because they wanted to help us create a new forum for scholarship and debate about the theory and practice of regulation.

Our efforts to recruit authors and articles were, in retrospect, informed by, to borrow a phrase, the audacity of hope. We approached some of the very best people in the field—often with suggestions for topics tangent to or implied by their recent writings—and many said yes. The first who did so included, in alphabetical order, Elizabeth E. Bailey, William J. Baumol, C. Boyden Gray,

Robert W. Hahn, Alfred E. Kahn, Paul W. MacAvoy, Roger G. Noll, Kenneth Robinson, and Patricia M. Wald. By any standard, an extraordinary group!

Their leaps of faith were absolutely essential to the establishment of the *Journal*, the silver anniversary of which we now celebrate. To every member of this original group of authors, profound thanks.

And I need to add this: the articles that these leading lights of regulation contributed to the *Journal* were just terrific—compelling, pioneering, readable, and important. I urge you to go back and read them.

Fourth, the early subscribers to the *Yale Journal on Regulation* were also co-venturers. Thanks to them, the *Journal* began life on a firm financial footing and with a readership that would in turn help to attract additional authors.

In closing, and if it is not too presumptuous of me to do so, I would like to thank, on behalf of our original editorial staff, many hundreds of other people who have helped to sustain and build the *Journal*: the faculty members, editorial staffs, authors, and subscribers who have committed their time, ideas, resources, and energies over the past twenty-five years to this ongoing intellectual venture.

The mission of the *Yale Journal on Regulation*—to advance the theory and practice of regulation—is as vital now as ever.

Long may this *Journal* flourish.

